



Fort Myers Beach Town Council

**Town Hall Council Chambers
6231 Estero Blvd.
Fort Myers Beach, FL 33931
Monday, December 15, 2025**

Agenda

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF FINAL AGENDA**
- V. PUBLIC COMMENT**
- VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**
 - A. 2024 Mayor John Mullholland Stewardship Award Recipient: Tunaskin Aquatic Apparel, CO.
 - B. 2025 Mayor John Mullholland Stewardship Award Recipient: Mary Rose Spalletta
- VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**
- VIII. APPROVAL OF MINUTES**
 - A. Town Council - December 1, 2025
- IX. CONSENT AGENDA**
- X. ITEMS REMOVED FROM CONSENT AGENDA**
- XI. PUBLIC HEARINGS**
 - A. Resolution 25-333, VAR20250261 for Beach Access #41
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH 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.

- B. Ordinance 25-21, CPA20250188, 1668 I Street, Additional Signage (Beach Bar)

This quasi-judicial agenda item is a Second Reading and Public Hearing on proposed Ordinance 25-21.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/APPROVING WITH CONDITIONS/ DENYING AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) APPROVED BY ORDINANCE 24-18 FOR THE PROPERTY LOCATED AT 1668 I STREET, FORT MYERS BEACH, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-0070B.0110 IN FORT MYERS BEACH; PROVIDING FOR AMENDMENT TO THE DEVIATIONS TO INCLUDE A DEVIATION TO ALLOW THREE SIGNS OF TOTAL 108 SQUARE FEET WHERE A MAXIMUM ONE SIGN OF 32 SQUARE FEET IS PERMITTED; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND PROVIDING FOR AN EFFECTIVE DATE.

- C. Ordinance 25-22; CPD20250201, Cottages at Myerside

This quasi-judicial agenda item is a Second Reading and Public Hearing on proposed Ordinance 25-22.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/APPROVING WITH CONDITIONS/ DENYING AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) APPROVED BY ORDINANCE 24-15 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 THE SCHEDULE OF PERMITTED USES TO INCLUDE OUTDOOR CONSUMPTION OF ALCOHOLIC BEVERAGES ON THE PROPERTY AS A USE ASSOCIATED WITH THE APPROVED HOTEL AND RESTAURANT USES; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND PROVIDING FOR AN EFFECTIVE DATE.

- D. Ordinance 25-19; DA50250186, 50 Old San Carlos

This quasi-judicial agenda item is a Second and the Adoption Reading Public Hearing on proposed Ordinance 25-19.

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.

XII. ADMINISTRATIVE AGENDA

- A. Resolution 25-331; RFP-26-01-PW, Fort Myers Beach Landscaping and Irrigation

Continued from December 1, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, AWARDING RFP-26-01-PW TO TIDEWATER LANDSCAPE, AS THE MOST RESPONSIVE AND RESPONSIBLE BIDDER TO COMPLETE LANDSCAPING AND IRRIGATION REPAIRS TO RESIDENTIAL AND/OR COMMUNITY YARDS DAMAGED BY UTILITY WORK AS RECOMMENDED BY THE SELECTION ADVISORY COMMITTEE; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AND PREPARE AN AGREEMENT FOR THE RECOMMENDED SERVICES SUBJECT TO LEGAL REVIEW; AUTHORIZING THE TOWN MANAGER TO SIGN THE AGREEMENT; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE

- B. Resolution 25-354, Change Order #2 to ITB-25-02-EN, EarthBalance Dune Planting

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE CHANGE ORDER #2 TO CONTRACT ITB-25-02-EN BETWEEN THE TOWN OF FORT MYERS BEACH AND EARTHBALANCE CORPORATION TO ADD 120 DAYS TO THE DEADLINE FOR COMPLETION OF THE CONTRACT AND TO ALLOW AN INCREASE OF \$500,000 TO THE TOTAL AMOUNT OF THE CONTRACT, WHICH WILL NOW AUTHORIZE A CONTRACT PRICE NOT EXCEED \$1,105,579.50 AND WILL ALLOW FOR COMPLETION OF THE DUNE PLANTING PROJECT; AND PROVIDING FOR AN EFFECTIVE DATE.

- C. Resolution 25-336; STA#2, Coastal Engineering Consultants, Beach Access Survey Dune Vegetation Planting
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE SUPPLEMENTAL TASK AUTHORIZATION #2 OF CONTRACT RFQ-24-06-AD BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR SURVEY SERVICES FOR DUNE VEGETATION PLANTING PURPOSES IN THE TOWN'S BEACH ACCESS RIGHT OF WAY FOR A COST OF \$69,900; AND PROVIDING FOR AN EFFECTIVE DATE.
- D. FMB Lions Club Shrimp Festival
Approval for FMB Lions Club Shrimp Festival
- E. Buffalo Grill Live Music
Approval for Buffalo Grill to have Live Music
- F. 3rd Annual New Year Eve 5K run
Approval of 3rd Annual New Year Eve 5K run

XIII. FINAL PUBLIC COMMENT**XIV. TOWN MANAGER'S ITEMS****XV. TOWN ATTORNEY'S ITEMS****XVI. COUNCILMEMBERS ITEMS AND REPORTS****XVII. ADJOURNMENT**

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

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



For special accommodation, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202

In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.

1. **Request:**

Meeting Date: December 15, 2025

Presentation of the 2024 *Mayor John Mulholland Stewardship Award* to Tunaskin Aquatic Apparel, CO.

Why the action is necessary:

To formally present the 2024 Mayor John Mulholland Stewardship Award, recognize individuals whose efforts contribute to the conservation, protection, and enhancement of Fort Myers Beach's natural environment, and highlight the Town's commitment to environmental stewardship and community engagement.

What the action accomplishes:

2. **Agenda:**

LOCAL ACHIEVEMENTS AND
RECOGNITIONS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Lizzette Roman, Town Clerk
Administrative Coordinator

5. **Background:**

The Town annually presents the **Mayor John Mulholland Stewardship Award** to an individual, business or non-profit that has demonstrated exemplary stewardship of the Town's natural environment, including habitat conservation, wildlife protection, environmental education, community engagement, or other initiatives that promote awareness and preservation of local natural resources. Nominations are reviewed and recommended by the Marine and Environmental Resources Task Force (MERTF).

At the MERTF meeting of October 8, 2025, the Task Force motioned and unanimously approved to award business, **Tunaskin Aquatic Apparel**, in recognition of their stewardship of Fort Myers Beach and long-standing support of beach cleanup efforts. This recommendation was subsequently presented and unanimously approved by the Town Council at the October 20, 2025, Town Council meeting.

Attachments:

1. Mulholland Nomination - Tunaskin Aquatic Apparel, CO.

Financial Impact:

None

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Lizzette Roman, Town Clerk Administrative Coordinator
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

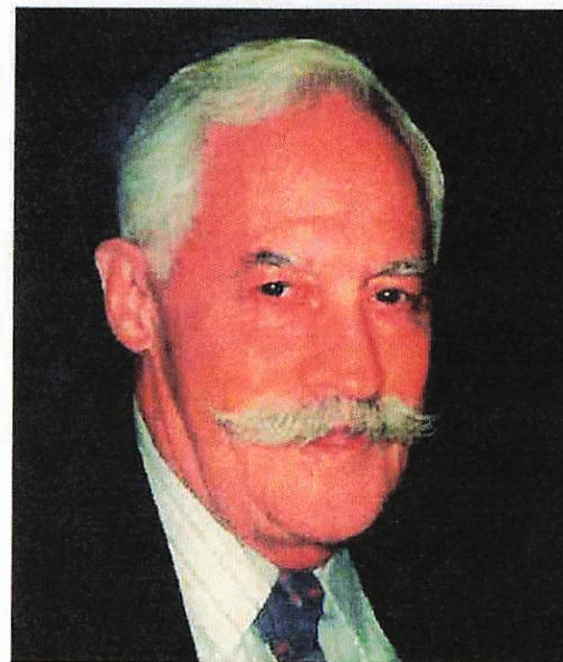
Created/Initiated - 12/8/2025
Approved - 12/8/2025
Approved - 12/8/2025
Approved - 12/8/2025
Final Approval - 12/8/2025

Describe the project or contribution, including benefits to the environment, local community, economy, and education. Add additional sheets if needed.

Please see Attachment

Mail or drop off your application to:
Town Hall
2731 Oak Street
Fort Myers Beach, FL 33931
Download an application at:
www.fmbgov.com
For further information call Town Hall:
239-765-0202

MAKING A DIFFERENCE
Mayor John Mulholland
Stewardship Award



Town of Fort Myers Beach
Marine and Environmental
Resources Task Force

Town of Fort Myers Beach

AUG 26 2025

Received by:

TOWN OF FORT MYERS BEACH

Mayor John Mulholland
Stewardship Award Nomination

Application Deadline:
August 31st



Stewardship is the voluntary conservation of natural habitat and wildlife by concerned citizens.

The Marine and Environmental Resources Task Force, an advisory board to the Fort Myers Beach Town Council regarding awareness, education and preservation of the community's natural re-sources, is pleased to announce its annual request for nomination for this award.

Practicing good natural resources stewardship means:

- ⇒ Using your property carefully
- ⇒ Reporting hazards or violations
- ⇒ Recognizing your relationship and responsibilities to protecting natural resources

Do you know of any individual, business or organization which promotes awareness, education and preservation of our community's natural resources? Then please fill out this nomination form to acknowledge those individuals who continue to make a difference.

Award Categories are:

Individual

Business

Non Profit / Organization



My Nomination is: C/o Tunaskin

Bill Bransford and Mitch Fusek

Name

1300 Estero Blvd

Address

1-7 Myers Beach, FL 33931

City, State, Zip

239-747-2230

Phone

CustomerCare@tunaskin.net

Email address

Please fill out the additional information on the next page.

Nominated by: Dave Nysbaum

Phone: 262-442-8907

Email address: achesehd@gmail.com

I would like to nominate Tunaskin founders Bill Bronsord, Mitch Fusek and the entire Tunaskin team for the Mulholland Award.

Founded in 2009 and opening on Fort Myers Beach in 2015, Tunaskin has been a premier citizen, employer, and steward of our beach. They have become a safeguard of marine environments.

Starting in 2016, Tunaskin founded the Beach Keepers Club. with 86 volunteers policing Fort Myers Beach. In 2025, the 10 th Annual Beach Keepers Club Clean Up enlisted over 400 volunteers who removed over three tons of garbage from the island and raised enough money to donate \$ 5000 to Keep Lee County Beautiful.”

Less than two months after Ian, Tunaskin reopen their clothing store operation out of a trailer on Estero Blvd. helping to reclothe neighbors who had lost everything. Any profits were directed to helping employees who lost homes as well as local recovery efforts.

Tunaskin remains focused on preserving the environment, supporting such initiatives as reef restoration programs, community outreach programs and ECHO product line made from recycled plastic bottles.

Fort Myers Beach is proud to be the founding location of a business concept that has developed into a company with a mission of community engagement, innovation and environmental stewardship.

1. **Request:**

Meeting Date: December 15, 2025

Presentation of the 2025 *Mayor John Mulholland Stewardship Award* to Mary Rose Spalletta

Why the action is necessary:

To formally present the 2024 Mayor John Mulholland Stewardship Award, recognize individuals whose efforts contribute to the conservation, protection, and enhancement of Fort Myers Beach's natural environment, and highlight the Town's commitment to environmental stewardship and community engagement.

What the action accomplishes:

2. **Agenda:**

LOCAL ACHIEVEMENTS AND
RECOGNITIONS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Lizzette Roman, Town Clerk
Administrative Coordinator

5. **Background:**

The Town annually presents the **Mayor John Mulholland Stewardship Award** to an individual, business or non-profit that has demonstrated exemplary stewardship of the Town's natural environment, including habitat conservation, wildlife protection, environmental education, community engagement, or other initiatives that promote awareness and preservation of local natural resources. Nominations are reviewed and recommended by the Marine and Environmental Resources Task Force (MERTF).

At the MERTF meeting of October 8, 2025, the Task Force motioned and unanimously approved to award **Mary Rose Spalletta**, in recognition of her stewardship of Fort Myers Beach. This recommendation was subsequently presented and unanimously approved by the Town Council at the October 20, 2025, Town Council meeting.

Attachments:

1. Mulholland Nomination - Spalletta

Financial Impact:

None

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Lizzette Roman, Town Clerk Administrative Coordinator
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 12/8/2025
Approved - 12/8/2025
Approved - 12/8/2025
Approved - 12/8/2025
Final Approval - 12/8/2025

JUL 31 2025

Received by: _____

TOWN OF FORT MYERS BEACH

**Mayor John Mulholland
Stewardship Award Nomination**

Application Deadline:
March 31st



Stewardship is the voluntary conservation of natural habitat and wildlife by concerned citizens.

The Marine Resources Task Force, an advisory board to the Fort Myers Beach Town Council regarding awareness, education and preservation of the community's natural resources, is pleased to announce its annual request for nomination for this award.

Practicing good natural resources stewardship means:

- ⇒ Using your property carefully
- ⇒ Reporting hazards or violations
- ⇒ Recognizing your relationship and responsibilities to protecting natural resources

Do you know of any individual, business or organization which promotes awareness, education and preservation of our community's natural resources? Then please fill out this nomination form to acknowledge those individuals who continue to make a difference.

X

Award Categories are:

Individual

Business

Non Profit / Organization

My Nomination is:

Mary Rose Spalletta

Name 22712 Island Pines Way Unit 203

Address Fort Myers Beach, FL 33931

City, State, Zip 570-903-1922

Phone Rosedaughter@comcast.net

Email address

Please fill out the additional information on the next page.

Nominated by: Steve Johnson

Phone: 630-880-1023

Email address: Sajohnson311@gmail.com

Describe the project or contribution, including benefits to the environment, local community, economy, and education. Add additional sheets if needed.

Nominee: Mary Rose Spalletta

Since becoming a resident of FMB, Mary Rose Spalletta has devoted her personal time to volunteering and advocating on behalf of the preservation of the natural resources on our island. She has provided direct support and involvement in Town government and non-profit organizations. Mary Rose continues to provide practical experience, knowledge and awareness to the natural community and brings both value and economic benefits to our Town.

Please consider her compelling contributions of service and stewardship:

- Former active Member = **CERT**—Community Emergency Response Team
- 9 year member & Vice Chair—**MERTF Advisory Board**
- 12 year volunteer—**TurtleTime, Inc.**—Permitted Sea Turtle Stewards
- Present—Board Member—**Matanzas Pass Preserve, FMB**
- UF IFAS = **Master Naturalist Program**—Coastal & Freshwater Systems
- **Active memberships:** Friends of Mound House, FMB Historical Society, FMB Garden Club, FMB Community Foundation, C.R.E.W.

Mail or drop off your application to:

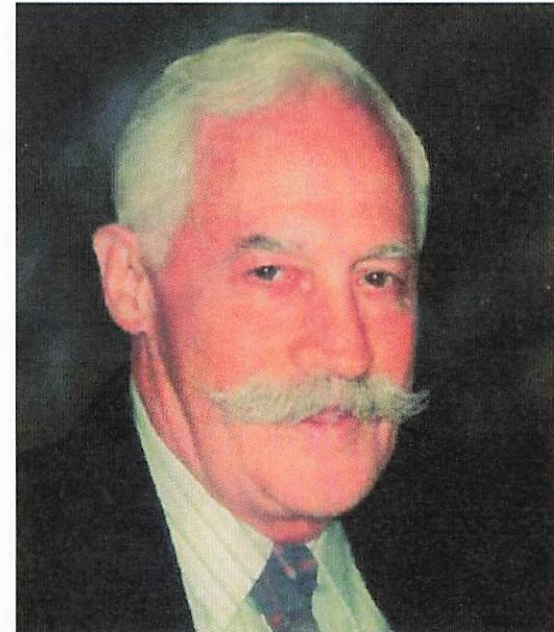
Town Hall
2525 Estero Boulevard
Fort Myers Beach, FL 33931

Download an application at:

www.fmbgov.com

For further information call Town Hall: 239-765-0202

MAKING A DIFFERENCE
Mayor John Mulholland
Stewardship Award



Town of Fort Myers Beach
Marine Resources Task Force



Fort Myers Beach Town Council

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931
Monday, December 1, 2025

Minutes

9:00 AM

DRAFT

ORDER OF BUSINESS

I. CALL TO ORDER

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

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

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

The motion carried unanimously.

V. PUBLIC COMMENT

Barbara Puffer, resident, represented Estero Cove and the Black Party and they were 100% in support of the plans for the old Wyndham property. She noted that fuel tanks and cells were being used as a gas station at the south end of the property and the town council should be concerned.

Teri Caine, resident, hoped that a committee could be formed to review the comp plan yearly. She was concerned about the town's plant list and suggested it be revised. She noted that exotics were listed as acceptable.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Link recognized the men and women of the US Coast Guard Auxiliary Flotilla 91 D7 on Fort Myers Beach, for their ongoing service. She thanked them for keeping their water and boaters safe. She noted they were looking for volunteers.

Vice Mayor Safford recognized the Chamber for the Sand Sculpting event and the private owners who donated parking for the nonprofits.

No items from other members.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**A. Anchorage Advisory Committee (AAC)**

Chair Chris King noted that a copy of the Roles and Responsibilities document was included in the agenda packet. She indicated that the town attorney needed to review it next. Town Attorney Stuparich will meet with Chair King to discuss whether to draft an ordinance, a resolution, or create a policy manual. Chair King read their 2026 objectives, also included in the agenda packet. She suggested having a contest to name the new boat. She thanked Mari Torgerson for organizing a meeting with stakeholders to discuss potential solutions regarding speeding in the bay.

VIII. APPROVAL OF MINUTES**A. Town Council - November 17, 2025**

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

The motion carried unanimously.

IX. CONSENT AGENDA

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

The motion carried unanimously.

A. Resolutions 25-337 through 25-341; Extension of Local Emergency - Tropical Storm Debby

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

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

The motion carried unanimously.

B. Resolutions 25-342 through 25-346; Extension of Local Emergency - Hurricane Helene

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

AN EFFECTIVE DATE AND A TERMINATION DATE.

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

The motion carried unanimously.

- C. Resolutions 25-347 through 25-351; Extension of Local Emergency - Hurricane Milton

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

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

The motion carried unanimously.

X. ITEMS REMOVED FROM CONSENT AGENDA**XI. PUBLIC HEARINGS**

- A. Ordinance 25-27; Certified Recovery Residences

This legislative agenda item is a Second Reading and Public Hearing on proposed Ordinance 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.

Mayor Allers read the title of the ordinance. Town Attorney Stuparich reviewed the background of the request as stated on the blue sheet. No public comment.

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

The motion carried unanimously by roll call vote.

B. Ordinance 24-10: Comprehensive Plan

This legislative agenda item is a Second Reading and Public Hearing on proposed Ordinance 24-10 (Continued from November 17, 2025)

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN IN ITS ENTIRETY, PURSUANT TO 163.3184 (3), FLORIDA STATUTES; PROVIDING FOR ADOPTION OF THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN 2045, INCLUDING AMENDMENTS TO THE FUTURE LAND USE ELEMENT AND THE FUTURE LAND USE MAP, THE COMMUNITY DESIGN ELEMENT, THE TRANSPORTATION ELEMENT, THE HOUSING ELEMENT, THE HISTORIC PRESERVATION ELEMENT, THE UTILITIES ELEMENT, THE CONSERVATION ELEMENT, THE COASTAL MANAGEMENT ELEMENT, THE RECREATION, & OPEN SPACE ELEMENT, THE INTERGOVERNMENTAL COORDINATION ELEMENT, THE CAPITAL IMPROVEMENTS ELEMENT, AND THE PROPERTY RIGHTS ELEMENT; INCLUSIVE OF ALL ASSOCIATED TABLES, EXHIBITS AND MAPS; AUTHORIZING FINDINGS AND ADMINISTRATIVE ACTIONS; PROVIDING FOR TRANSMITTAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING FOR EFFECTIVE DATE.

Mayor Allers read the title of the Ordinance. Mr. Eddie Ng confirmed that the Town Council received a 38-page document with the changes. Town Attorney Stuparich noted that an ordinance with changes was provided and asked that the town council consider voting on the amendments and a second vote on the amended ordinance.

Mayor Allers read three changes to the ordinance that the public did not see. Mr. Ng reviewed the highlighted changes and indicated that all numbering issues would be corrected; Town was a proper noun; grammatical items would be corrected; and should would be replaced with shall where appropriate. Substantive changes were reviewed and amended as needed. Mr. Ng described the next steps. No public comment.

Mayor Allers moved to approve the amendments discussed on Tuesday and today, seconded by Council Member Link.

The motion carried unanimously by roll call vote.

Mayor Allers moved to approve the ordinance and correct the date from November 17, 2025, to December 1, 2025.

The motion carried unanimously by roll call vote.

C. Resolution 25-352; Live Local Act Property Tax Exemption

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, PURSUANT TO SECTION 196.1978(3)(o), FLA. STAT., ELECTING TO NOT EXEMPT PROPERTY FROM AD VALOREM PROPERTY TAX UNDER SECTION 196.1978(3)(d)1.a., FLA. STAT., COMMONLY KNOWN AS THE “LIVE LOCAL ACT PROPERTY TAX EXEMPTION”; PROVIDING FOR INCORPORATION OF RECITALS, REQUIRED FINDINGS, DIRECTION TO THE MAYOR, DIRECTION TO THE TOWN MANAGER, APPLICABILITY, SEVERABILITY, AND A CONDITIONAL EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Attorney Stuparich reviewed the background of the request as stated on the blue sheet. No public comment.

Vice Mayor Safford moved to approve the resolution, seconded by Council Member Link.

The motion carried unanimously by roll call vote.

XII. ADMINISTRATIVE AGENDA

A. Resolution 25-332, Updated Banking Signatory Authorities

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA UPDATING AND AUTHORIZING TOWN OFFICIALS’ ACCESS AND AUTHORITY ON CERTAIN TOWN BANK ACCOUNTS WITH FIRST FOUNDATION BANK AND INVESTMENTS WITH THE FLORIDA MUNICIPAL INVESTMENT TRUST; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Finance Director Joe Onzick reviewed the background of the request as stated on the blue sheet.

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

The motion carried unanimously by roll call vote.

B. Resolution 25-330; South Water Tower Appropriation Grant

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE AND ADMINISTER A GRANT FROM THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION THROUGH THE FY25-26 STATE APPROPRIATIONS FOR THE SOUTH WATER TOWER RENOVATIONS AND MITIGATION; AUTHORIZING THE TOWN MANAGER TO EXECUTE RELATED DOCUMENTS NEEDED TO IMPLEMENT AND ADMINISTER THE GRANT AND PROGRAMS;

PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Community Services Director Jeff Hauge reviewed the background of the request as stated on the blue sheet. He estimated the project could be completed by June or July of next year.

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

The motion carried unanimously by roll call vote.

- C. Resolution 25-329, Tyler Technologies First Amendment to Implement Tyler Munis

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AMENDMENT TO THE EXISTING THREE-YEAR CONTRACT WITH TYLER TECHNOLOGIES, AS AMENDED BY ADDENDUM ON DECEMBER 23, 2024, TO PROVIDE SOFTWARE AS A SERVICE (SAAS) AND ANNUAL SUPPORT AND IMPLEMENTATION SERVICES TO REPLACE THE TOWN'S FINANCIAL AND ACCOUNTING SOFTWARE WITH TYLER MUNIS INSTEAD OF TYLER ERP PRO, REPRESENTING AN INITIAL STARTUP FEE INCREASE OF \$17,100 AND ANNUAL RECURRING FEE INCREASE OF \$1,613; AUTHORIZING THE NEEDED BUDGET AMENDMENT TO REFLECT THIS CHANGE; INCLUDING ADDITIONAL CONTRACT LANGUAGE REQUIRED BY FLORIDA STATUTES CONCERNING BREACH OF CONTRACT DURING A STATE OF EMERGENCY; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Director Onzick reviewed the background of the request as stated on the blue sheet. He explained that the new module was more robust, would improve the process workflow and had additional capabilities. He noted they had over \$35,000.00 unspent from last year and would help fund the additional implementation costs. He expected to go live in the fall of 2026.

Vice Mayor Safford moved to approve the resolution, seconded by Council Member Link.

The motion carried unanimously by roll call vote.

- D. Resolution 25-331, RFP-26-01-PW; Fort Myers Beach Landscaping and Irrigation

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, AWARDED RFP-26-01-PW TO TIDEWATER LANDSCAPE, AS THE MOST RESPONSIVE AND RESPONSIBLE BIDDER TO COMPLETE LANDSCAPING AND IRRIGATION REPAIRS TO RESIDENTIAL AND/OR COMMUNITY YARDS DAMAGED BY UTILITY WORK AS RECOMMENDED BY THE SELECTION ADVISORY COMMITTEE; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AND PREPARE AN AGREEMENT FOR THE RECOMMENDED SERVICES

SUBJECT TO LEGAL REVIEW; AUTHORIZING THE TOWN MANAGER TO SIGN THE AGREEMENT; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE

Mayor Allers read the title of the resolution. Director Hauge noted the contract allowed additional work, including all landscaping. The company had to consult with the town regarding native plants and invasive plants would not be used. He added that the town consulted with the Garden Club and others for best practices. Landscaping on Estero Blvd. cannot begin until Lee County completes its project.

A discrepancy in the total scores was discovered.

Mayor Allers moved to table the resolution for December 15, 2025, seconded by Vice Mayor Safford.

The motion carried unanimously by roll call vote.

XIII. FINAL PUBLIC COMMENT

Teri Caine, resident, suggested a book about plants. She asked that the RFP be reviewed and suggested that plants and mulch be added. She noted that different types of plants grow better in different zones.

XIV. TOWN MANAGER'S ITEMS

Town Manager Will McKannay noted another round of staff discussions regarding the school would be held to see if they could make progress. Deputy Town Manager Traci Kohler indicated she would have a vital meeting with Paula to review the Community Rating System (CRS) documentation. She listed some documents to be reviewed for a rating assignment. The Strategic Planning update will be a separate meeting. Demolition of the old town hall piles should start next week and will transition into a parking lot.

XV. TOWN ATTORNEY'S ITEMS

No items.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member King clarified that the fuel tanks on the Wyndham property will be addressed. He noted that he may have to leave the M&P early for a meeting in Orlando.

Senior Planner Jason Smalley described the proposed plans for the Wyndham property.

Vice Mayor Safford noted that the annual boat parade in the back bay was on Saturday.

Mayor Allers received consensus to add the old town hall property to a future M&P.

No items from other members.

XVII. ADJOURNMENT

Council Member King moved to adjourn. The meeting was adjourned at 11:15 a.m.

1. **Request:**

Meeting Date: December 15, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH 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:

Town Council takes into account the LPA recommendations.

What the action accomplishes:

Town Council takes into account the LPA recommendations.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jason Green, Community
Development Services, Jason
Smalley, Senior Planner

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.

During LPA hearing on November 12, LPA voted 4-1 to recommend approval with conditions for a 2-foot variance request 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.

Attachments:

1. TC_Staff report
2. Exhibit A - Site plan
3. Exhibit B- Survey
4. Estero Island Beach Condominiums deed and recorded easement for BA #41
5. Applicant's narrative
6. NS TC Resolution 25-333, VAR20250261 for Beach Access 41

Financial Impact:

Unknown

6. **Alternative Action**

Approval/ Denial

7. **Management Recommendations:**

Approval with conditions

8. **Recommended Approval:**

Sakshi Goel, Sr. Land Planner
Frankie Kropacek, Community Development Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 12/1/2025
Approved - 12/1/2025
Approved - 12/3/2025
Approved - 12/7/2025
Approved - 12/8/2025
Final Approval - 12/8/2025



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

TOWN COUNCIL

HEARING DATE: December 15, 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.

During LPA hearing on November 12, LPA voted 4-1 to recommend approval with conditions for a 2-foot variance request 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.

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.

During LPA hearing on November 12, LPA voted 4-1 to recommend approval with conditions for a 2-foot variance request 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.

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

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

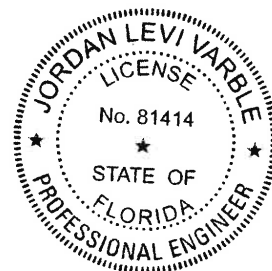
STATE, COUNTIES & CITIES
ARE "NOT" PART OF THE
ONE CALL SYSTEM. THEY
MUST BE CALLED
INDIVIDUALLY.



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'



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

ABBREVIATIONS

AC	ACRE
ALT	ALTERNATE
APPROX.	APPROXIMATE
ASE	ASBESTOS
BM	BENCHMARK
BLDG	BUILDING
BOT	BOTTOM
CB	CATCH BASIN
CF	CUBIC FEET
CFM	CUBIC FEET PER MINUTE
CI	CAST IRON
CIP	CAST IRON PIPE
CJ	CONSTRUCTION JOINT
CMP	CORRUGATED METAL PIPE
CO	CLEANOUT
CV	CHECK VALVE
CF	CUBIC FOOT
CY	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
D/A, Ø	DIAMETER
DIAG	DIAGONAL
DIM	DIMENSION
DIS.	DISTANCE
DI	DUCTILE IRON PIPE
DI	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
FND	FOUNDATION
FIN	FINISH
FRP	FIBERGLASS REINFORCED PLASTIC
FT	FEET
G	NATURAL GAS
GC	GENERAL CONTRACTOR
GV	GALLONS PER MINUTE
GPM	GALLONS PER MINUTE
GA	GATE VALVE
GAL	GALLON
GALV	GALVANIZED
GR	GRADE
HDPE	HIGH DENSITY POLYETHYLENE
HOR	HORIZONTAL
HYD	HYDRAULIC
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
MAN	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
PANT	POINT OF ANGLE
PC	POINT OF CURVATURE
PGL	PROPOSED GRADE LINE
P	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	---	---
SANITARY SEWER	---	---
WATER MAIN	---	---
IRRIGATION MAIN	---	---
RE-USE MAIN	---	---
PERIMETER BERM	---	---
FENCE LINE	---	---
SILT FENCE	---	---
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 AT ANY TIME.
- 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 (MIN: 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.

SILT FENCE DETAIL:

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

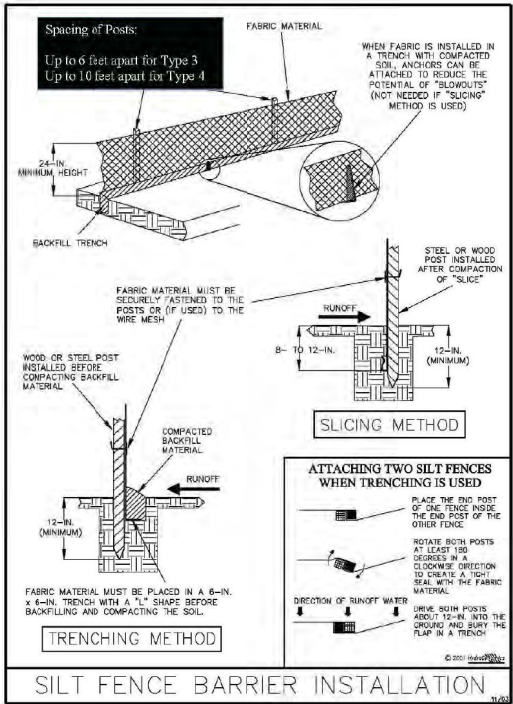
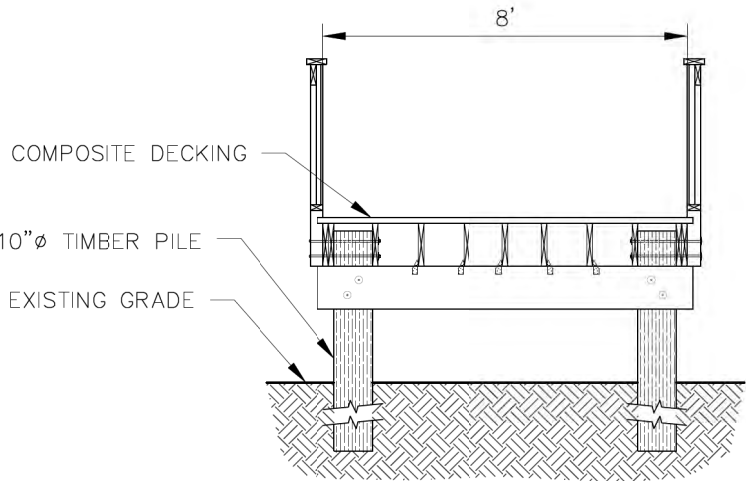


Figure V-2: Illustration of a Silt Fence Barrier

Permeation is given by HydroDynamics Incorporated and reproduced with detail.

V-7

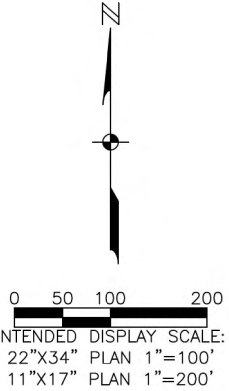
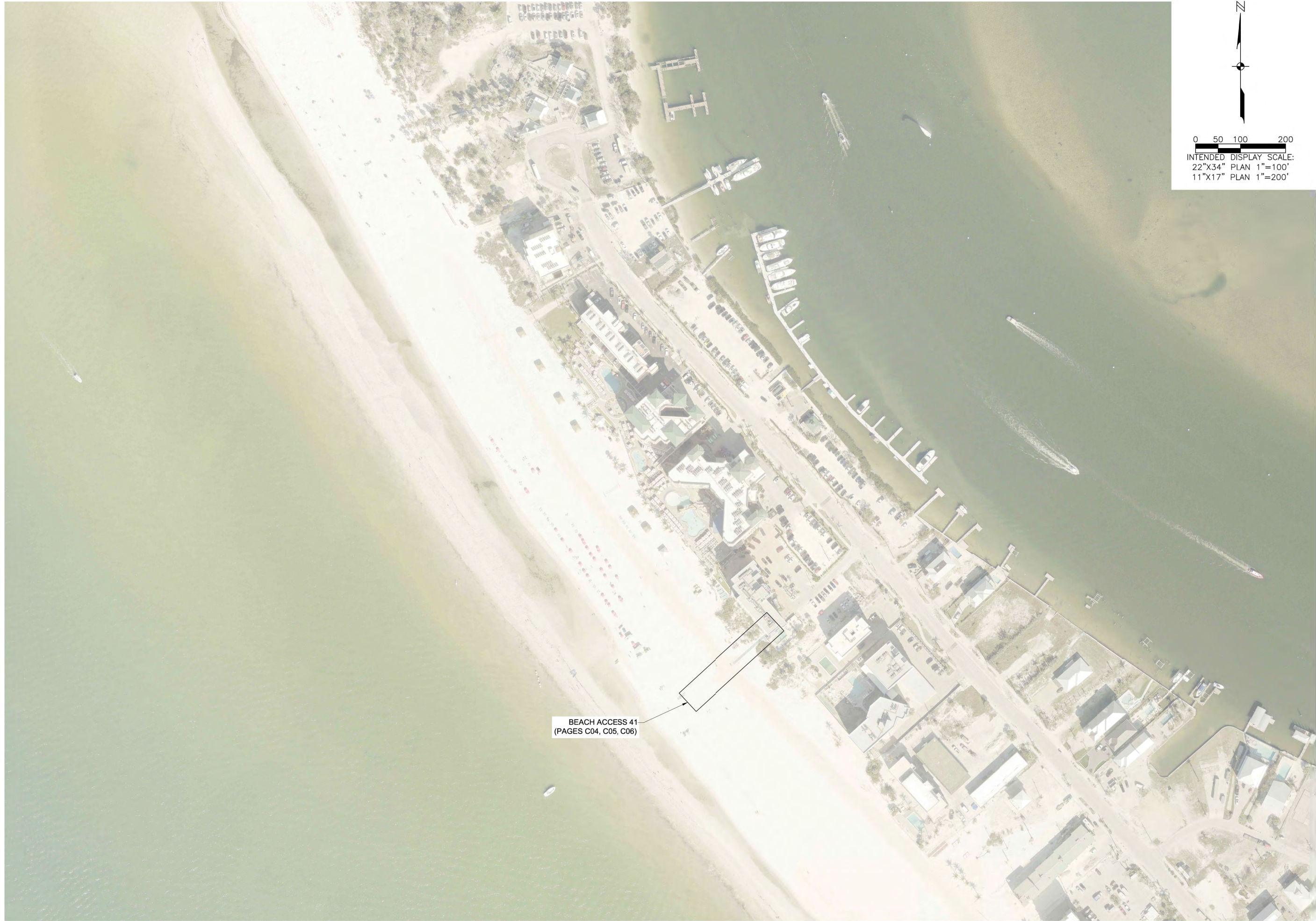


BEACH ACCESS #41 BOARDWALK SECTION VIEW

N.T.S.
FOR STRUCTURAL DETAILS,
SEE PLANS BY WEILER ENGINEERING CORP.

REVISIONS	DATE	DESCRIPTION
NO.		

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



INTENDED DISPLAY SCALE:
22"x34" PLAN 1"=100'
11"x17" PLAN 1"=200'

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.
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



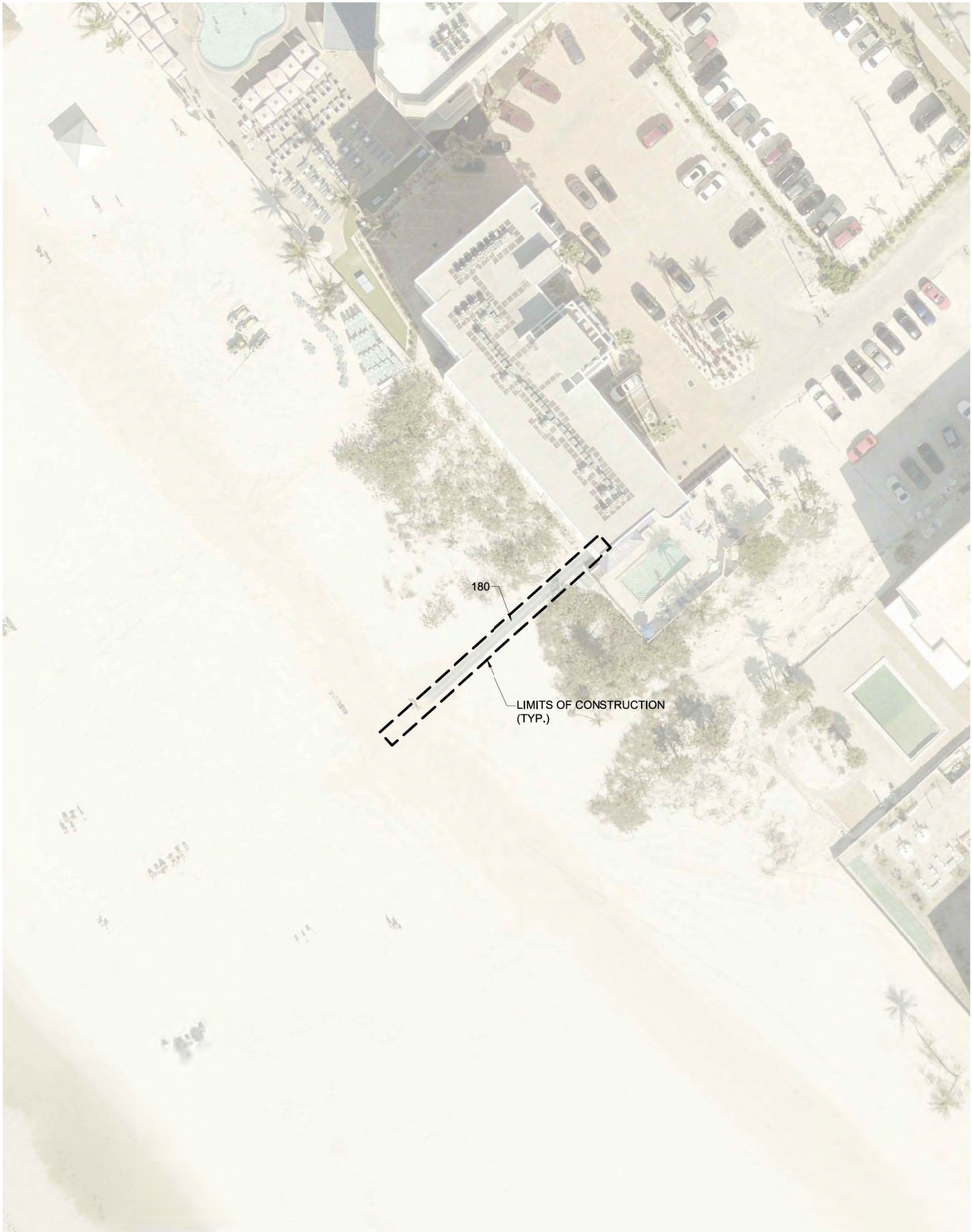
FORT MYERS BEACH
ACCESS 41
VARIOUS BOARDWALK
REPAIRS
LEE COUNTY, FLORIDA

NO.	REVISIONS DESCRIPTION	DATE

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

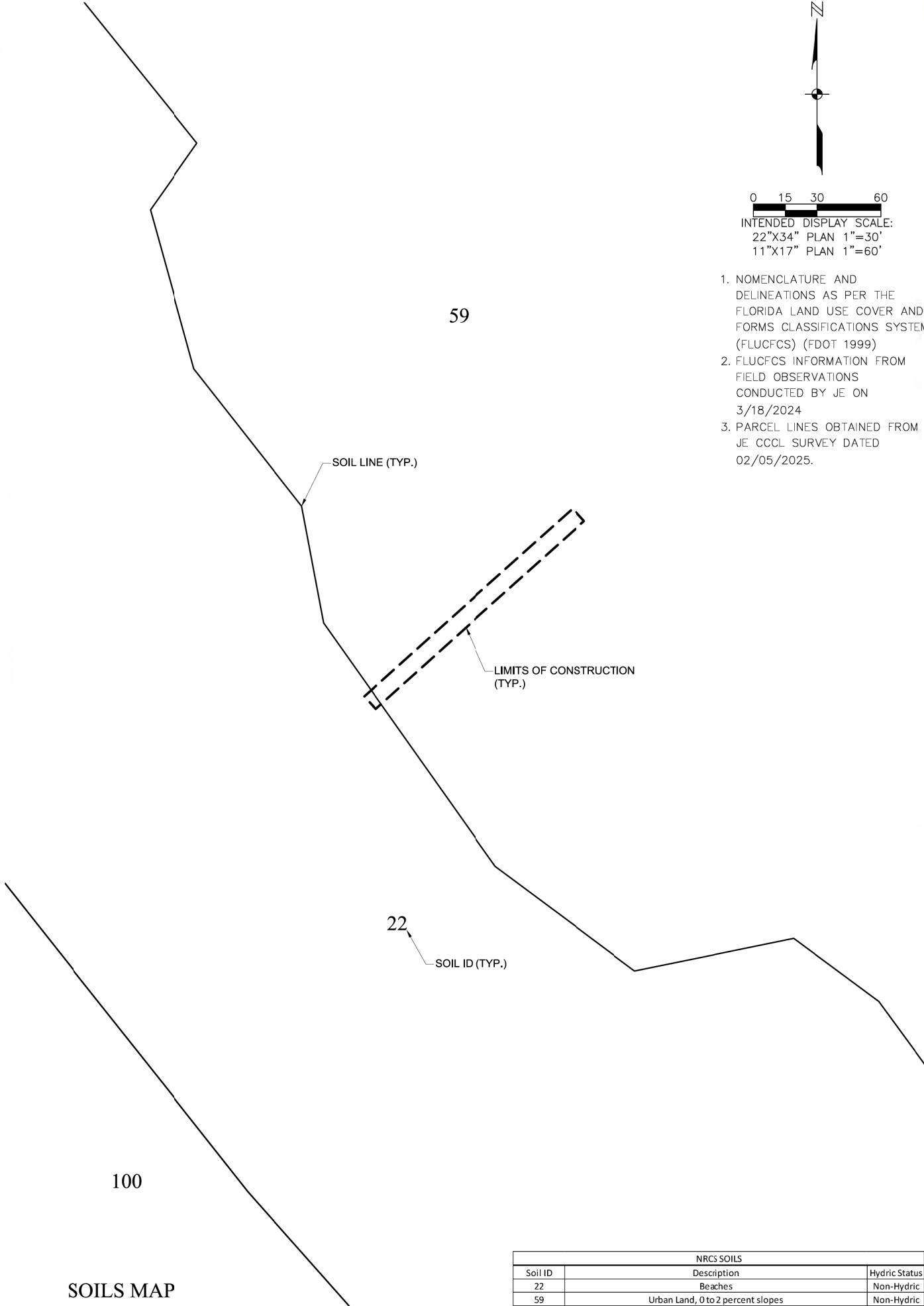
AERIAL KEY MAP

SHEET NUMBER
C03



FLUCFCS Code	Description	Status	Area in Acres
180	Recreational Beach Access	N	0.03
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

N

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

PHONE: (239) 334-0046

F.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

Lee County

Southwest Florida

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

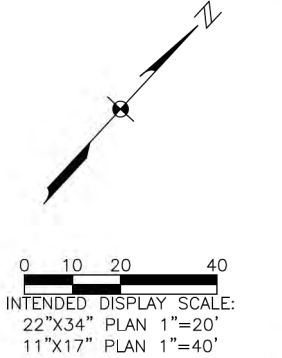
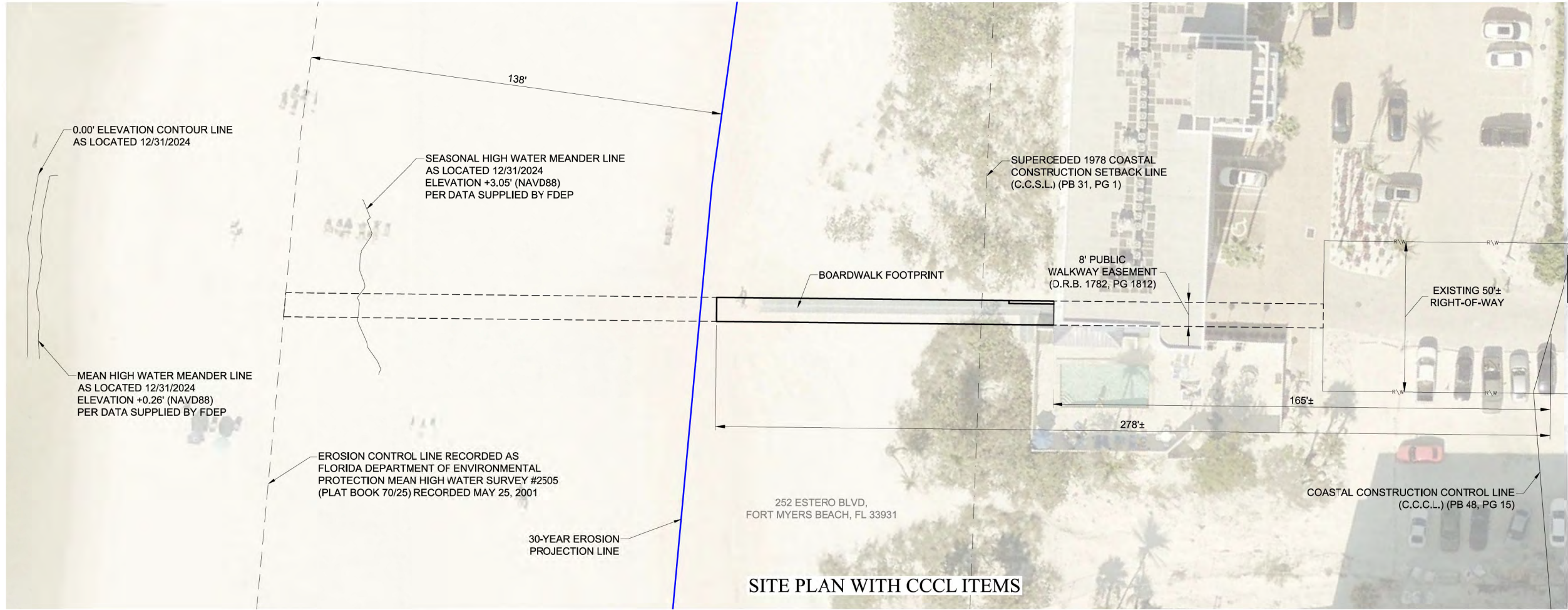
REVISIONS	DATE
DESCRIPTION	
NO.	

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

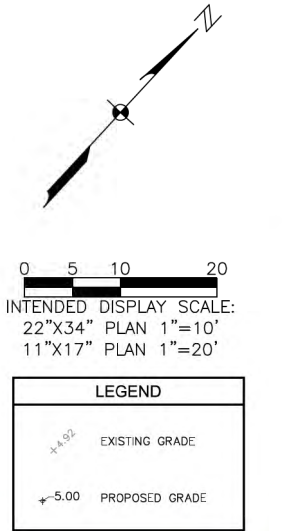
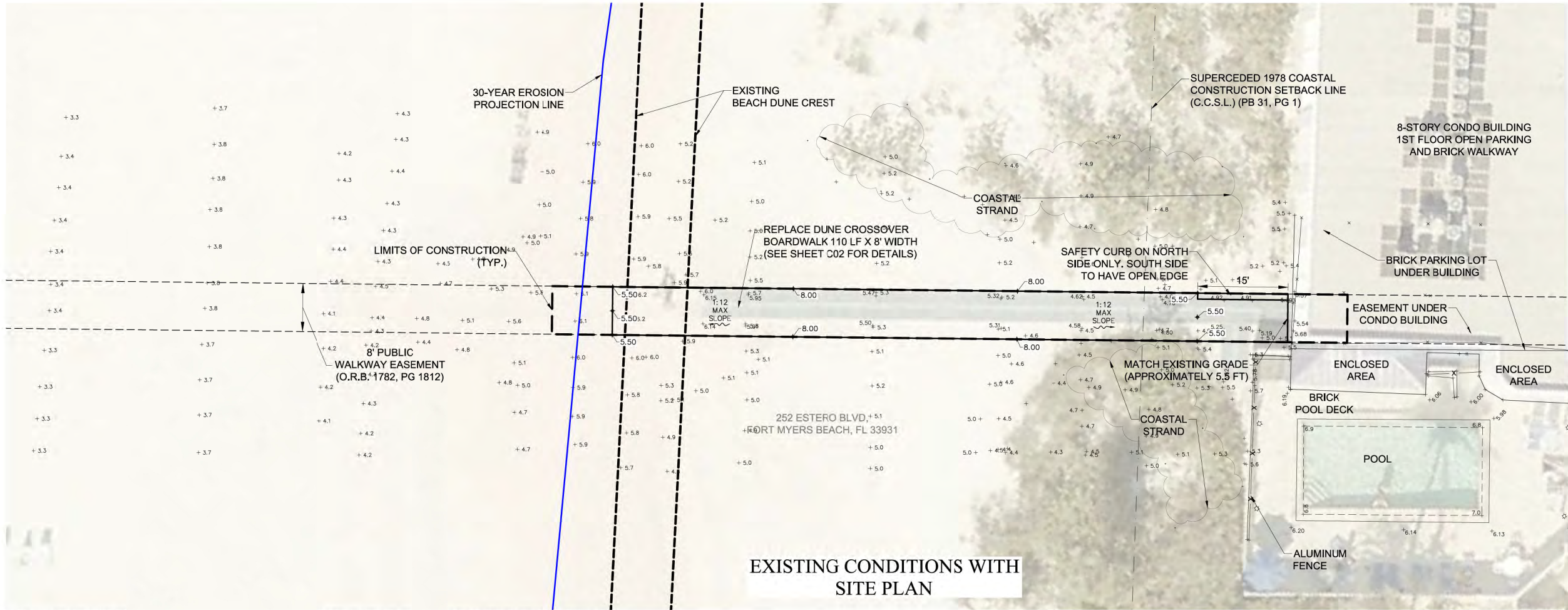
FLUCFCS AND SOILS MAP

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.



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

EXISTING
CONDITIONS AND
SITE PLAN

SHEET NUMBER

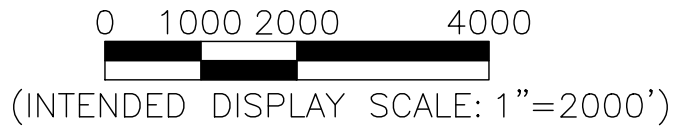
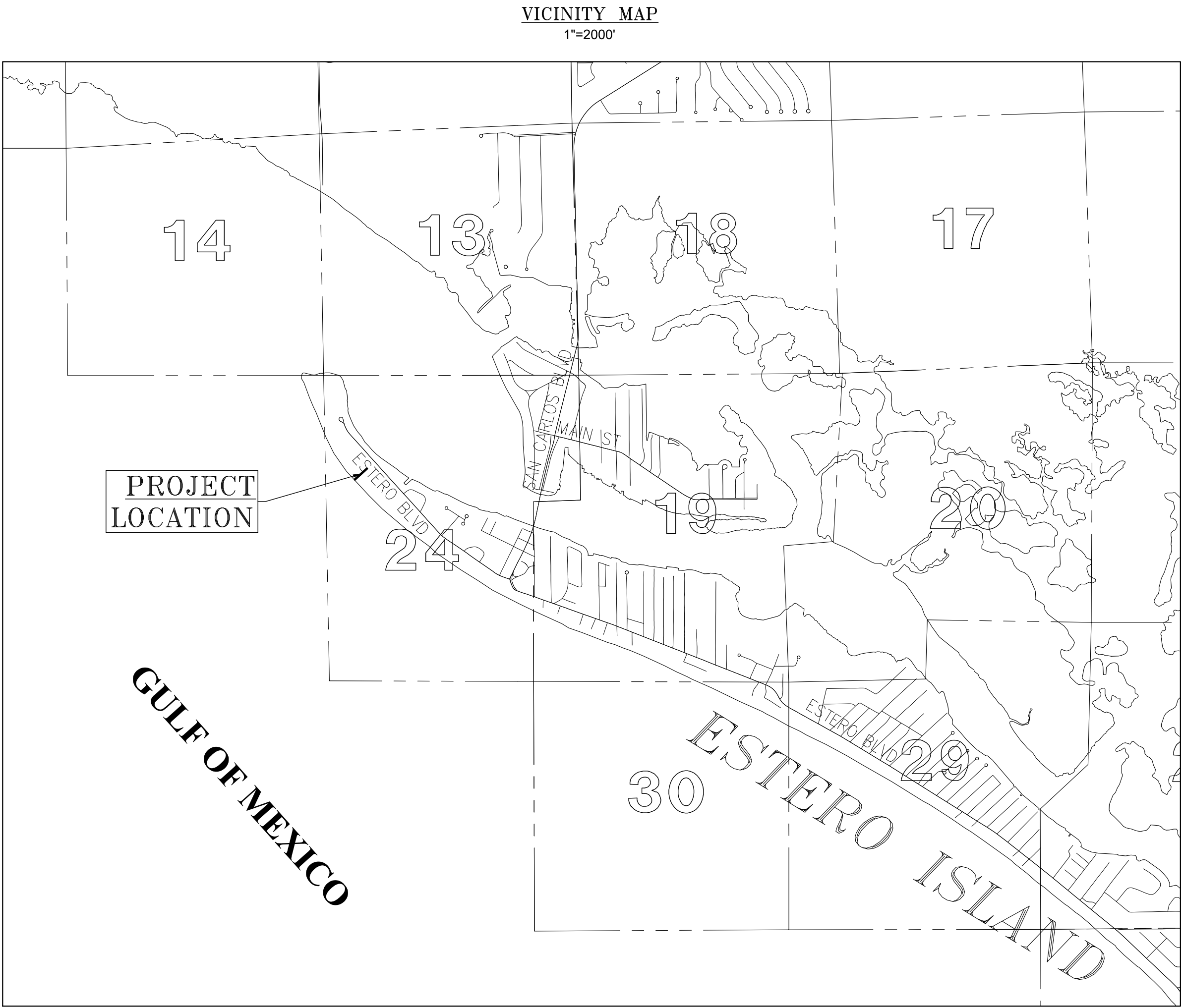
C05

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 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

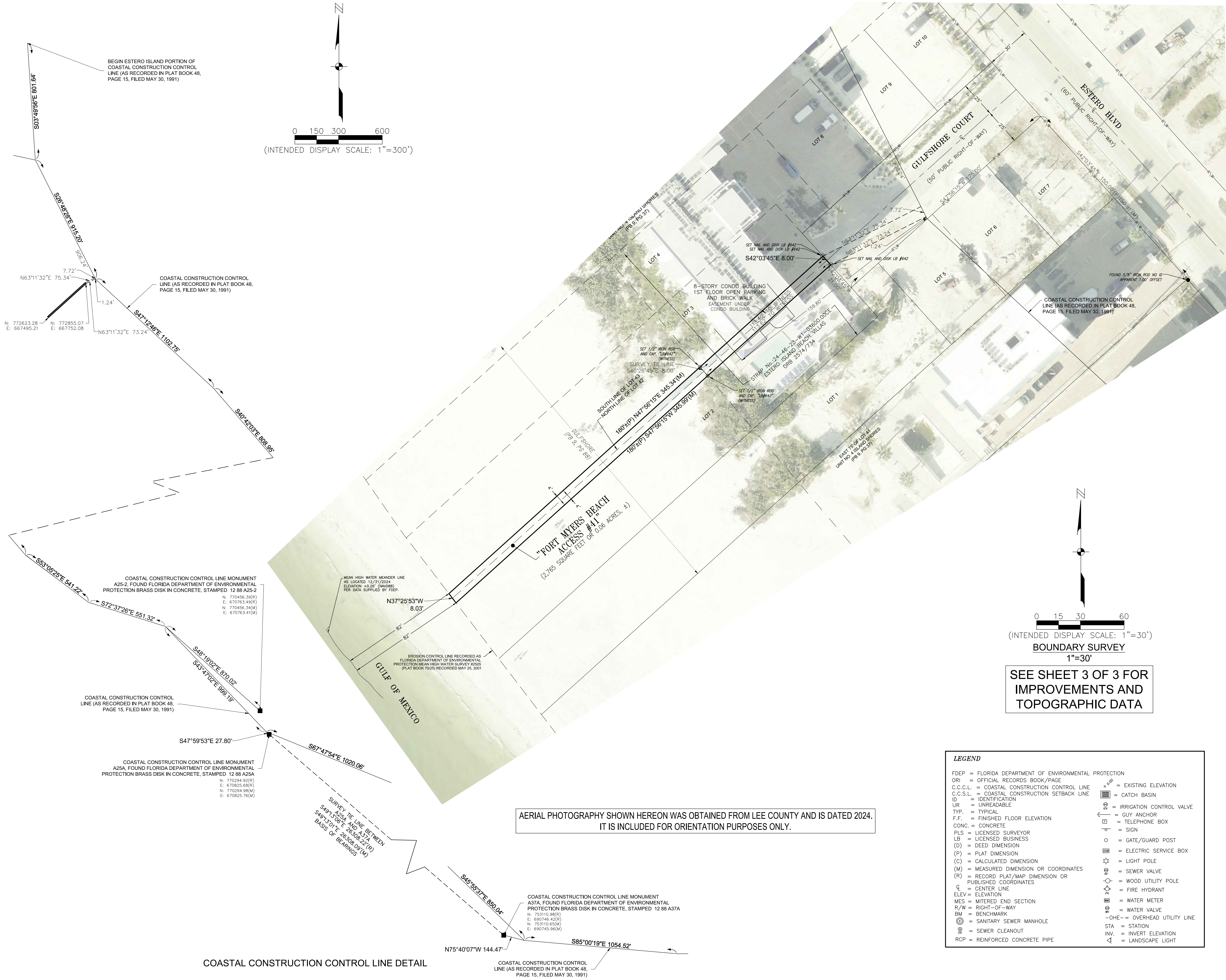
DATE	DESCRIPTION
05/14/24	CHANGES TO BEACH DUE TO CONSTRUCTION
12/31/24	CHANGES TO BEACH TOPOGRAPHY

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.)

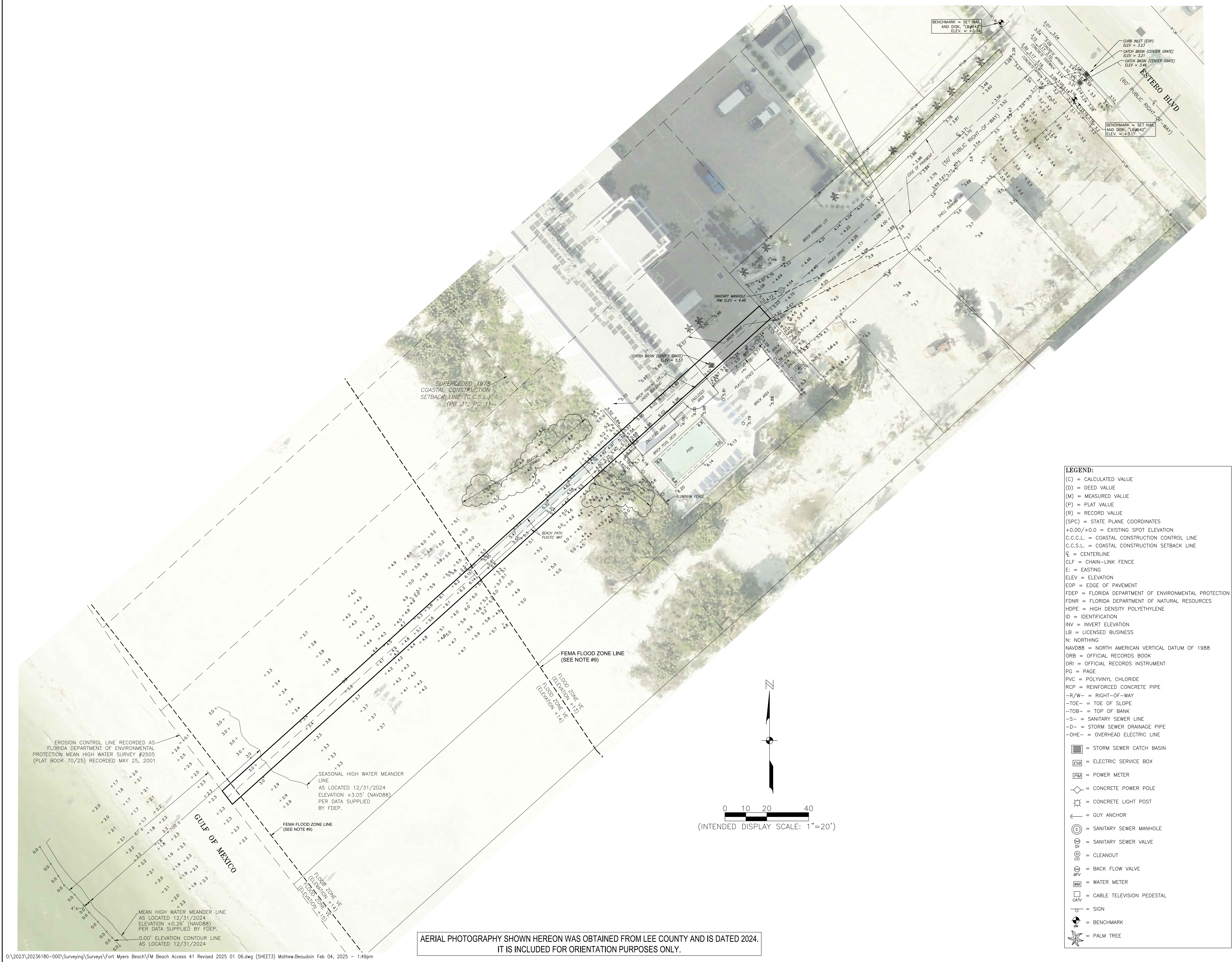
PUBLIC RECORDS OF LEE COUNTY, FLORIDA
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
CITY OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

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:	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. •

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.

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.

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(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".

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

Pruney Fortunata
Print Name PRUNEY FORTUNATA

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. _____



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1/16/95.atm

OR2574 PG0768

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. _____



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

✓ 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.

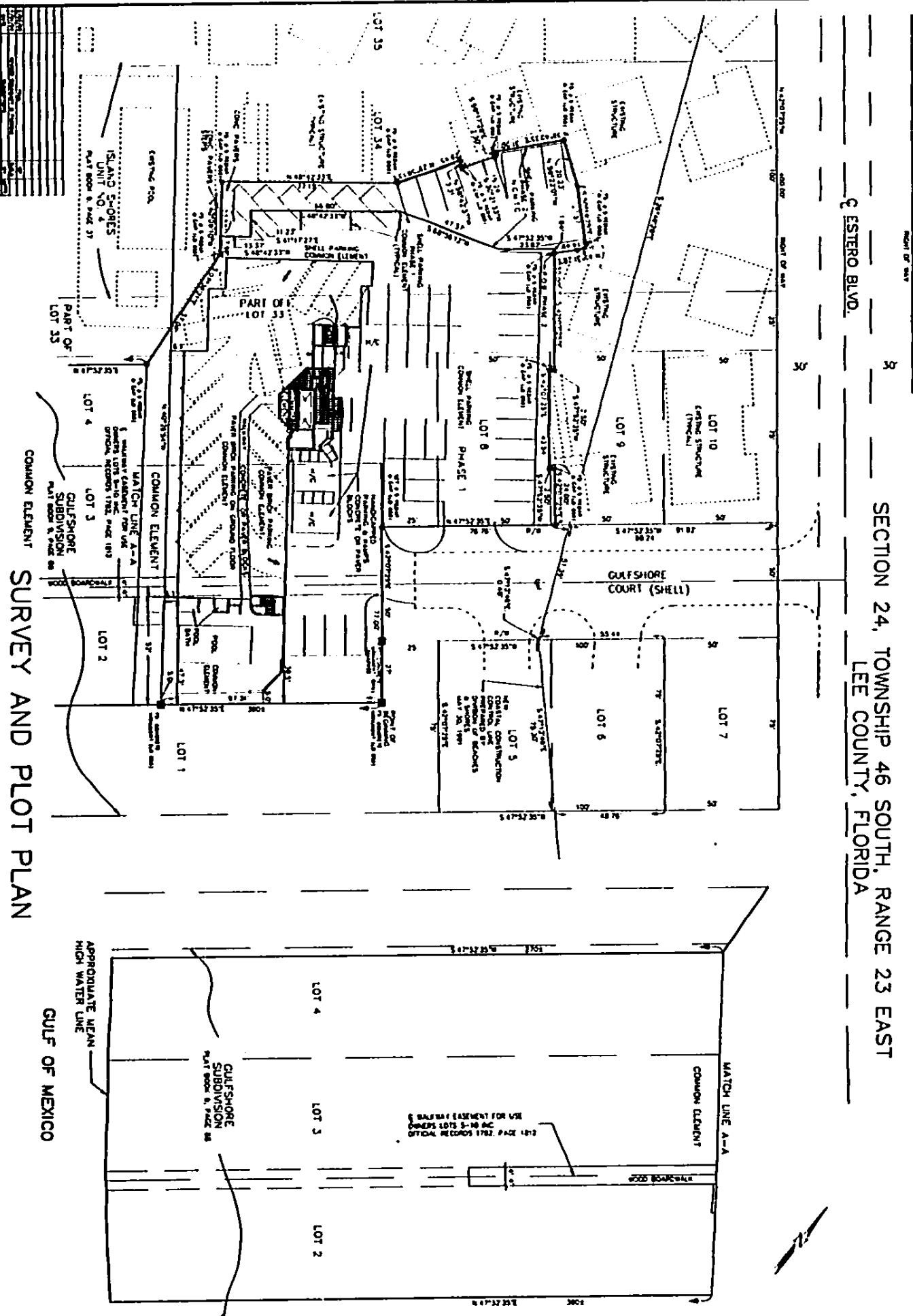
SUBJECT TO ANY EASEMENTS, RESTRICTIONS, RESERVATIONS, OR RIGHTS OF WAY OF RECORD.

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

05011001

TRACT OR PCEIL OF LAND LYING IN SECTION 34, TOWNSHIP 46 SOUTH,
RANGE 33 EAST, LEE COUNTY, FLORIDA, ALSO BEING PART OF LOTS 2, 3
4, 5 AND 6 OF COLUMBIAN REDEVELOPMENT, PLAT BOOK 9, PAGE 88, ALSO
PART OF LOTS 32 AND 34 OF ISLAND SHORES UNIT NO. 4, PLAT BOOK 9,
PAGE 37 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA WHICH IS
DECLARED AS FOLLOWS:

[illegible]

CONTAINING 1.0 ACRES MORE OR LESS

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 CENTERLINE OF GULFSTREAM COURT BEING N.47°52'38"E.

THE UNIVERSITY OF CHICAGO

22000 17400 16400 15400 14400 13400 12400 11400 10400 9400 8400 7400 6400 5400 4400 3400 2400 1400 400

1 HICKLEY CREEK; THAT THE GEOGRAPHICAL SET OF THE REAL PROPERTY OF
2 EATING HAWK AND BLACK VILLAS, A COMMODINITY AS SHOWN AND DESCRIBED
3 THEIR IDENTIFYING AND SERIALS, A THROUGHS, DATED JULY 1, 1993, ARE
4 THE SAME AS THE SERIALS OF THE IDENTIFYING AND SERIALS, DATED JULY 1,
5 1993, PREPARED BY THE ENGINEERING, INC., IN ACCORDANCE WITH THE
6 MINIMUM TECHNICAL STANDARD FOR LAND SURVEYING, CHAPTER 621.15-210,
7 PURSUANT TO SECTION 672.03, FLORIDA STATUTES, AND FURTHER, THAT THE
8 CONSTRUCTION OF THE IMPROVEMENTS INDICATED ON THIS EXHIBIT, SHEETS
9 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22,
10 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41,
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58 759,

AS TO: ESTERO MARINO BEACH
VIA ALBA/COMPOSTUMIL

ZINZ Design Group, Inc.

COLEMAN D. NELSON
PROFESSIONAL LAND SURVEYOR
FLORIDA CERTIFICATE NO. 2894

PAGE 2, LETTER FROM NEW YORK, A CONTINUATION

DISCUSSION

TRACT, OR PORTION OF LANDS LIES IN SECTION 33, TOWNSHIP 18 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA. ALSO BEING PART OF LOTS 3, 3, 4, 8 AND 9 OF GULFSTREAM SUBDIVISION, PLAT BOOK 9, PAGE 88. ALSO PART OF LOTS 21 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:

[illegible]

SUBJECT TO MY AUTHORITY, RESERVE

RIGHTS OF WAY OF RECORD.
 RIGHTS TO ANY EASEMENTS, REDEVICATIONS, OR
 BENEFITS HEREON ARE RELATIVE TO GRID NORTH BASED ON THE

CENTRALINE OF OLYMPIANS COURT BEING N.47°32'38"E.

PHASE 2, ESTERO ISLAND BEACH VILLAS, A CONDOMINIUM

0123456789

TRACT ON PARCEL OF LAND LYING IN SECTION 34, TOWNSHIP 46
SOUTH, RANGE 22 EAST, 12E COUNTY, FLORIDA, ALSO BEING PART OF
LOT 34 OF ISLAND SUBDIVISION NO. 4, PLAT BOOK 9, PAGE 37 OF
THE PUBLIC RECORDS OF LAKE COUNTY, FLORIDA WHICH IS DESCRIBED
AS FOLLOWS:

FROM THE MIDDLE OF CORNER CROCK BEING THE NORTHEASTLY CORNER OF LOT 2 OF SAID GOLD-SHANK EMINENTIA; THENCE N.43°07'28"W. FOR 77.00 FEET ALONG THE SOUTHEASTLY BENT OF ANY LINE OF GOLD-SHANK COUNTY; THENCE S.43°23'38"E. FOR 76.78 FEET ALONG THE NORTHEASTLY BENT OF SAID OF GOLD-SHANK COUNTY; THENCE N.43°07'28"W. FOR 31.00 FEET; THENCE S.43°23'38"W. FOR 2.30 FEET; THENCE N.43°07'28"W. FOR 31.84 FEET; THENCE S.43°23'38"E. FOR 2.30 FEET; THENCE N.43°07'28"W. FOR 30.00 FEET TO THE POINT OF BEGINNING; THENCE COURSE BEING N.43°07'28"W. FOR 1.84 FEET; THENCE S.43°23'38"E. FOR 31.84 FEET; THENCE N.43°07'28"W. FOR 4.80 FEET; THENCE S.43°23'38"E. FOR 4.80 FEET; THENCE N.43°07'28"W. FOR 11.32 FEET; THENCE S.43°23'38"E. FOR 4.80 FEET; THENCE N.43°07'28"W. FOR 2.30 FEET; THENCE S.43°23'38"E. FOR 32.48 FEET; THENCE N.43°07'28"W. FOR 77.48 FEET; THENCE S.43°23'38"E. FOR 32.48 FEET; THENCE N.43°07'28"W. FOR 3.31 FEET; THENCE S.43°23'38"E. FOR 15.36 FEET; THENCE N.43°07'28"W. FOR 2.30 FEET; THENCE S.43°23'38"E. FOR 31.84 FEET; THENCE S.43°23'38"E. FOR 30.23 FEET; THENCE N.43°07'28"W. FOR 31.87 FEET; THENCE S.43°23'38"W. FOR 10.48 FEET TO THE POINT OF BEGINNING.

CONFIRMING 0-000 AREA CODE ON LTR.

SUBJECT TO ANY EXEMPTIONS, LIMITATIONS, RESERVATIONS, OR RIGHTS OF WAY OF RECORD.

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.

COMPONENTS PLAT BOOK **PAGE**

SCALE IN FEET

DATE: 09-21-93 (12-3-93)
JOB NO. 8888
FILE NO. 8888V34
SHEET: 2 OF 4

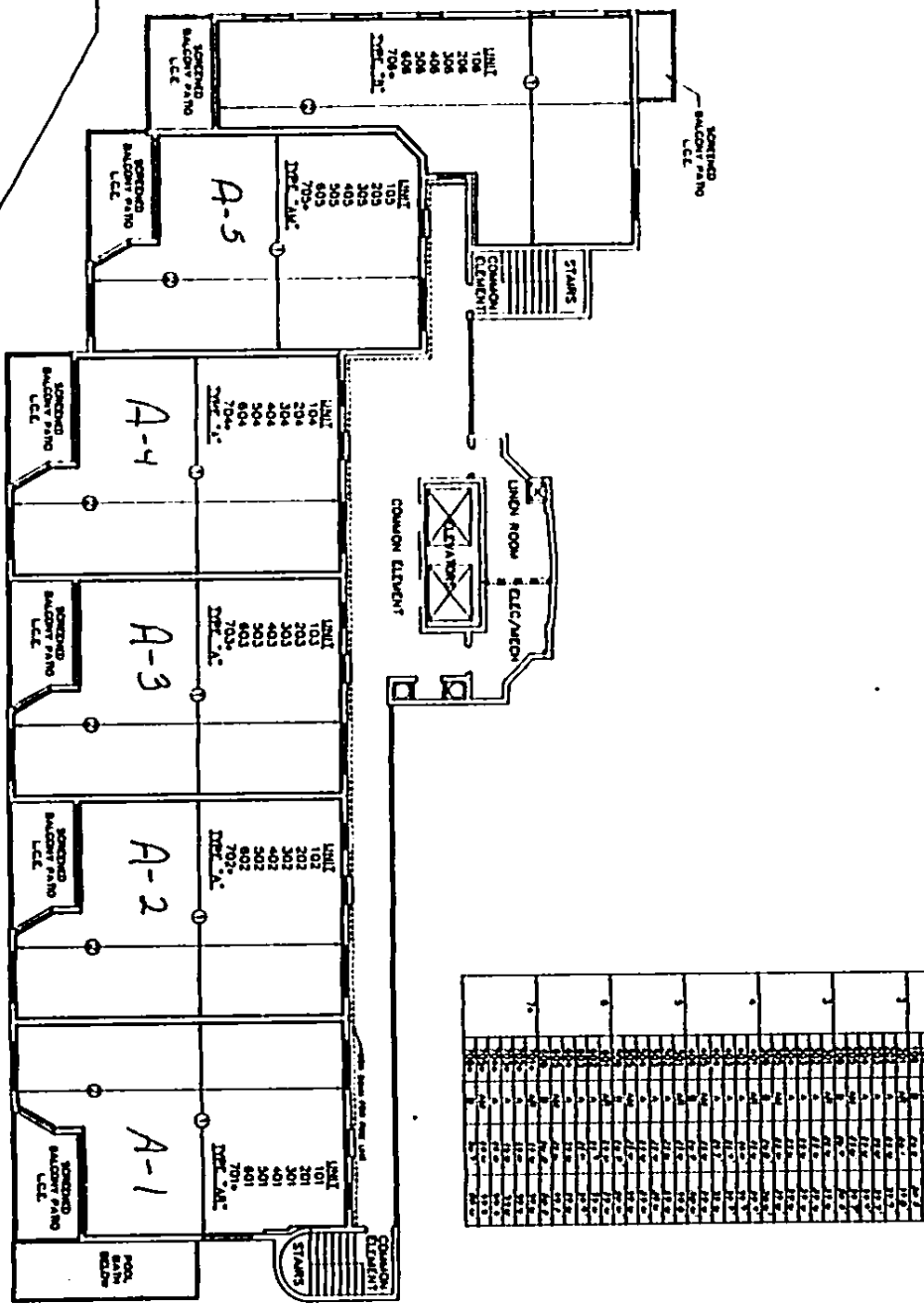
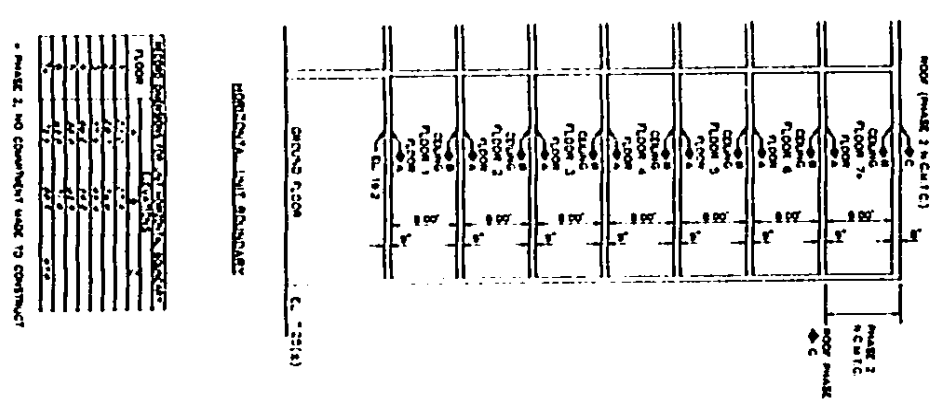
1. THEREFORE, IT IS MADE TO A NEARLY NEARLY OF THE PARCEL TRACT, PREPARED BY THE DISTRICT ENGINEER, DATED MAY 11, 1962.
2. LAND IS IN FLOOD ZONE "A", ELEVATION 14.0 BASED UPON "A.S.M.A. FLOOD INSURANCE RATE MAP, 1958-1962, DATED 1-1-62.
3. ONLY ABOVE GROUND VISIBLE DISCONTINUITIES DUE TO NON ADJACENT PROPERTY ARE SHOWN. DISCONTINUITIES BEHIND THE GROUND SURFACE AND THOSE WHICH ARE NOT VISIBLE BY AERIAL OBSERVATION ARE NOT SHOWN.
4. THE BOUNDING SHOW HEIGHTS ARE BASED ON STATE PLANE COORDINATES FOR THE FLORIDA METER GRID AS ESTABLISHED BY OTHERS GEODETIC SURVEY.
5. THE ELEVATION DATA ARE BASED ON THE U.S. NAVY 5,101.
6. PORTAL AND TOWER TO BE SHOWN IN THE ELEVATION 5,101.
7. LATER SHOWN HEIGHTS ARE NOT INTERFERED FOR ELEVATIONS, RETARDS, RESTRICTIONS, REVISIONS, OR RIGHTS OF WAY RECORDS.
8. 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, BOARD, COMMISSION OR OTHER ENTITY. PLAN THE LOCATION OF THE IMPROVEMENTS AS SHOWN ON THE HEIGHTS, PLAN ARE AN IMPROVEMENTS AND THE DEVELOPER RESERVES THE RIGHT TO ADJUST OR RELOCATE THE IMPROVEMENTS, WITHOUT NOTICE AS DEEMED ADVISABLE ON THE BASIS OF THE INFORMATION.
9. THE ELEVATIONS SHOWN ON NOTED HEIGHTS AND ONLY THE SHOWN TO ON PARTICIPATED BY THE UNDERSTOOD. ADDITIONAL ELEVATIONS MAY EXIST ON THE BASIS OF THE UNDERSTOOD. ADDITIONAL ELEVATIONS MAY EXIST ON THE BASIS OF THE UNDERSTOOD.
10. THE IMPROVEMENTS SHOWN HEREIN ARE PROPOSED UNLESS OTHERWISE INDICATED. THE UNIT DIMENSIONS SHOWN HEREIN ARE APPROXIMATE. THE INTERIOR WALLS, ROOM SIZES, DOORWAYS, AND WINDOWS ARE BASED ON THE INFORMATION PROVIDED BY THE ARCHITECTURAL DRAWINGS. THE ARCHITECTURAL DRAWINGS, PLANS AND NOTED BY SURVEY 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 72

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
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1	103	CONDO	1,110
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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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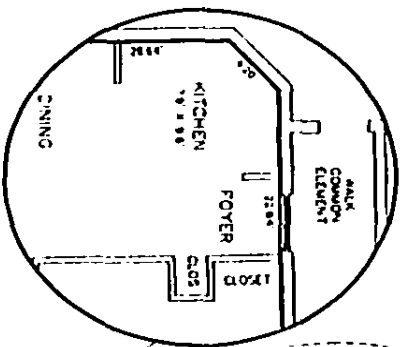
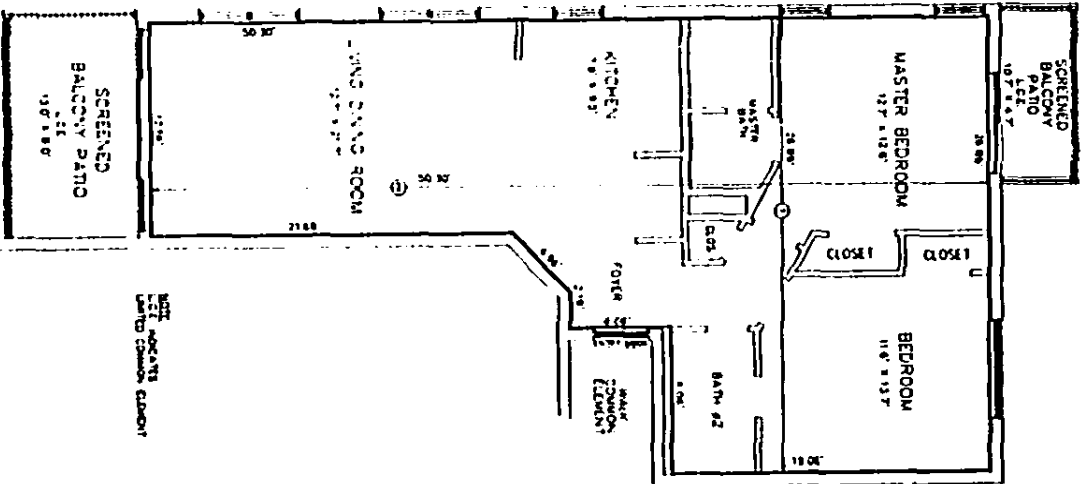
CONDOMINIUM PLAT BOOK PAGE

IMK ENGINEERING, INC.
6320 BEAU DR.
N. FT. MYERS, FLORIDA

CONDOMINIUM PLAT, EXHIBIT "A" TO CONDOMINIUM DECLARATION
**ESTERO ISLAND BEACH VILLAS,
A CONDOMINIUM**

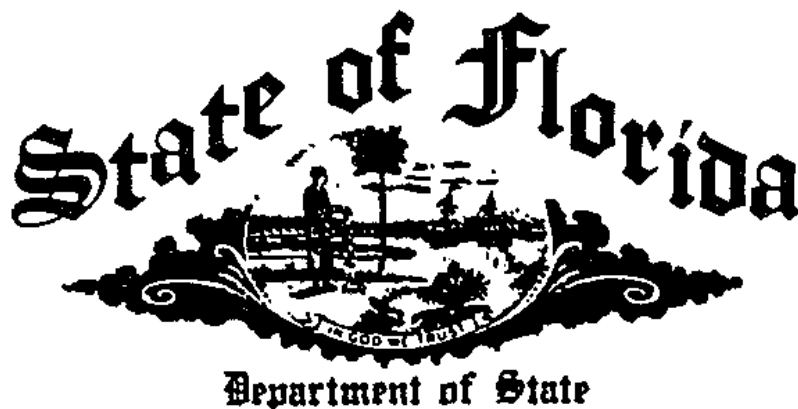
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
LEE COUNTY, FLORIDA

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
AH	201	202	203
AI	204	205	206
AJ	207	208	209
AK	210	211	212
AL	213	214	215
AM	216	217	218
AN	219	220	221
AO	222	223	224
AP	225	226	227
AQ	228	229	230
AR	231	232	233
AS	234	235	236
AT	237	238	239
AU	240	241	242
AV	243	244	245
AW	246	247	248
AX	249	250	251
AY	252	253	254
AZ	255	256	257
BA	258	259	260
BB	261	262	263
BC	264	265	266
BD	267	268	269
BE	270	271	272
BF	273	274	275
BG	276	277	278
BH	279	280	281
BI	282	283	284
BJ	285	286	287
BK	288	289	290
BL	291	292	293
BM	294	295	296
BN	297	298	299
BO	300	301	302
BP	303	304	305
BQ	306	307	308
BR	309	310	311
BS	312	313	314
BT	315	316	317
BU	318	319	320
BV	321	322	323
BW	324	325	326
BX	327	328	329
BY	330	331	332
BZ	333	334	335
CA	336	337	338
CB	339	340	341
CC	342	343	344
CD	345	346	347
CE	348	349	350
CF	351	352	353
CG	354	355	356
CH	357	358	359
CI	360	361	362
CJ	363	364	365
CK	366	367	368
CL	369	370	371
CM	372	373	374
CN	375	376	377
CO	378	379	380
CP	381	382	383
CQ	384	385	386
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CS	390	391	392
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CU	396	397	398
CV	399	400	401
CW	402	403	404
CX	405	406	407
CY	408	409	410
CZ	411	412	413
DA	414	415	416
DB	417	418	419
DC	420	421	422
DD	423	424	425
DE	426	427	428
DF	429	430	431
DG	432	433	434
DH	435	436	437
DI	438	439	440
DJ	441	442	443
DK	444	445	446
DL	447	448	449
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DN	453	454	455
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DP	459	460	461
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DR	465	466	467
DS	468	469	470
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DU	474	475	476
DV	477	478	479
DW	480	481	482
DX	483	484	485
DY	486	487	488
DZ	489	490	491
EA	492	493	494
EB	495	496	497
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EI	516	517	518
EJ	519	520	521
EK	522	523	524
EL	525	526	527
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EO	534	535	536
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EQ	540	541	542
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ES	546	547	548
ET	549	550	551
EU	552	553	554
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EX	561	562	563
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FH	591	592	593
FI	594	595	596
FJ	597	598	599
FK	600	601	602
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FX	639	640	641
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GQ	696	697	698
GR	699	700	701
GS	702	703	704
GT	705	706	707
GU	708	709	710
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GX	717	718	719
GY	720	721	722
GZ	723	724	725
HA	726	727	728
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HQ	774	775	776
HR	777	778	779
HS	780	781	782
HT	783	784	785
HU	786	787	788
HV	789	790	791
HW	792	793	794
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IN	843	844	845
IO	846	847	848
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IQ	852	853	854
IR	855	856	857
IS	858	859	860
IT	861	862	863
IU	864	865	866
IV	867	868	869
IW	870	871	872
IX	873	874	875
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IZ	879	880	881
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JB	885	886	887
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JE	894	895	896
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JJ	909	910	911
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KV	1023	1024	1025
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LG	1056	1057	1058
LH	1059	1060	1061
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LL	1071	1072	1073
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LN	1077	1078	1079
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LQ	1086	1087	1088
LR	1089	1090	1091
LS	1092	1093	1094
LT	1095	1096	1097
LU	1098	1099	1100
LV	1101	1102	1103
LW	1104	1105	1106
LX	1107	1108	1109
LY	1110	1111	1112
LZ	1113	1114	1115
MA	1116	1117	1118
MB	1119	1120	1121
MC	1122	1123	1124
MD	1125	1126	1127
ME	1128	1129	1130



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)

A handwritten signature in cursive script, reading "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:

<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)
) 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.

0R2574 PG0804

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.

Esterio 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.

95 FEB -8 PM 4:15

0R2574 PG0823

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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01/13/95.LS

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.



Case # _____

Date Received: _____

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.

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.
1. 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.
The site's natural conditions and high public use create unique functional challenges. Rebuilding to the prior 8-foot width stays within the easement and existing disturbed footprint.
2. The exceptional conditions are not the result of any actions by the Town or applicant. The original 8-foot boardwalk existed lawfully prior to Hurricane Ian and predates the current 6-foot width limit. The hurricane's destruction created the need for replacement, not any voluntary action. Rebuilding within the existing easement simply restores the pre-storm condition. The requested variance addresses natural and historical site conditions, not applicant-caused changes.
3. The requested 2-foot increase from the 6-foot limit is the minimum necessary to restore the pre-existing 8-foot boardwalk. Reducing the width would unnecessarily restrict accessibility and safe two-way pedestrian flow. The variance stays entirely within the original easement and disturbed footprint. It allows ADA-compliant access and safe public use without exceeding historic dimensions. No lesser variance would adequately address the functional needs or restore pre-storm conditions.
4. Granting the variance would not be injurious to surrounding properties or the neighborhood. The boardwalk will be rebuilt within the existing 8-foot easement and disturbed footprint. No new encroachment, environmental harm, or visual impact is anticipated. Restoring the 8-foot width improves accessibility, safety, and public use at this heavily used access point. The variance benefits the public welfare by maintaining safe, functional, and ADA-compliant beach access.
5. The conditions at Beach Access 41 are unique to this specific easement and not generally applicable to other properties. The site's narrow corridor, coastal dune constraints, and pre-existing 8-foot boardwalk create circumstances that are specific and non-recurrent. Most other boardwalk locations can comply with the 6-foot width limit without issue. Amending the regulation for all properties is unnecessary and impractical. The variance addresses site-specific needs while preserving the intent of the code for other locations.

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 COUNCIL RESOLUTION 25-333

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH 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 holder 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-W1-03600.00C; and

WHEREAS, a site plan is attached as Exhibit A and a survey containing the legal description of the Subject Property is attached as 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, Section 34-652(f)(2)c of the Town of Fort Myers Beach Land Development Code ("LDC") limits dune walkovers serving uses other than single-family residential to a maximum width of 6 feet in 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 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 voted 4 to 1 to recommend approval with conditions of the variance request; and

WHEREAS, on December 15, 2025 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by 34-87 of the LDC; and

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

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

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

Section 2. The Town Council determines the Applicant did/ did not meet its burden of proof that the requested Variance does/ does not meet the requirements of the Town Comprehensive Plan and LDC, and approving the Variance is/ is not in the best interest of the Town to approve. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council **APPROVES/APPROVES WITH CONDITIONS/DENIES** the Variance request to allow like-for-like replacement of 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 seaward of 1978 CCCL.

Section 3. In approving/ approving with conditions/ denying the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Sections 34-84 and 34-87 of the LDC:

- 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.

Section 4. If the Town Council approves/denies the requested Variance and the following conditions of approval are imposed on the Applicants and the Property:

- A. 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.
- B. This Variance is subject to Special Exception SEZ20250241, which 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.
- C. 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.
- D. 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.

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

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

Rebecca Link, Council Member _____
Scott Safford, Council Member _____

ADOPTED this ____ day of December, 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

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

EXHIBITS

Exhibit A: Site Plan

Exhibit B: Survey

1. **Request:**

Meeting Date: December 15, 2025

This quasi-judicial agenda item is a Second Reading and Public Hearing on proposed Ordinance 25-21.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/APPROVING WITH CONDITIONS/ DENYING AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) APPROVED BY ORDINANCE 24-18 FOR THE PROPERTY LOCATED AT 1668 I STREET, FORT MYERS BEACH, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-0070B.0110 IN FORT MYERS BEACH; PROVIDING FOR AMENDMENT TO THE DEVIATIONS TO INCLUDE A DEVIATION TO ALLOW THREE SIGNS OF TOTAL 108 SQUARE FEET WHERE A MAXIMUM ONE SIGN OF 32 SQUARE FEET IS PERMITTED; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The Town Council will take into account the recommendations made by the LPA for DCI20250188.

What the action accomplishes:

The Town Council will take into account the recommendations made by the LPA DCI20250188 regarding an amendment to the list of deviations for the existing Commercial Planned Development (CPD) approved under Ordinance 24-18. This amendment seeks to include a deviation allowing additional signage totaling 108 square feet, where the Land Development Code (LDC) Section 30-5 permits a maximum of 32 square feet.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Jason Smalley, Senior Planner,
Jason Green, Community
Development Services

5. **Background:**

The applicant, Renee Oij of Sign Permits Plus, representing the property owner B & B Properties of Fort Myers, is requesting an amendment to the list of deviations for the existing Commercial Planned Development (CPD) approved under Ordinance 24-18. This amendment seeks to include a deviation allowing additional signage totaling 108 square feet, where the Land Development Code (LDC) Section 30-5 permits a maximum of 32 square feet.

The request would permit the installation of three non-illuminated signs: a 29.5 sq. ft. sign facing I Street, a 29.5 sq. ft. sign facing Avenue E, and a 48.8 sq. ft. sign facing the Gulf/Beach area.

In 2024, the Town of Fort Myers Beach Town Council approved Ordinance 24-18, rezoning the subject property from Downtown to Commercial Planned Development to facilitate the redevelopment of a bar and dwelling unit. Signage was not addressed during that approval. The applicant now proposes these three signs totaling 108 square feet, exceeding the 32-square-foot maximum allowed per establishment by LDC Section 30-5. Therefore, the applicant seeks an amendment to the existing CPD to include this deviation for additional signage.

On October 14, 2025, LPA voted unanimously (6-0) to recommend approval with conditions for

CPD Amendment request 20250188, a request to allow an Amendment to the CPD approved by Ordinance 24-18 and amend the deviations to include a deviation to allow three signs of total 108 square feet where a maximum one sign of 32 square feet is permitted.

On November 17, 2025 Town Council voted unanimously to recommend approval with conditions for CPD request in first reading of Ordinance 25-21.

Attachments:

1. NS TC Ordinance 25-21 CPD Amendment to include signage for 1668 I Street (1)
2. Exhibit A Ord 24-18, 1668 I St - Beach Bar
3. EXHIBIT B, Amended list of deviation and conditions of approval
4. Exhibit C- Signage Plan
5. Application
6. New TC Staff Report (Signage -Beach bar)
7. 25-21, business-impact-estimate CPD20250188

Financial Impact:

Unknown

6. Alternative Action

Deny

7. Management Recommendations:

Staff recommends Approval with conditions of DCI20250188

8. Recommended Approval:

Sakshi Goel, Sr. Land Planner
Frankie Kropacek, Community Development Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 11/18/2025
Approved - 11/18/2025
Approved - 11/18/2025
Approved - 11/18/2025
Approved - 12/1/2025
Final Approval - 12/1/2025

**ORDINANCE 25-21
(PD AMENDMENT - Beach Bar)**

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/APPROVING WITH CONDITIONS/ DENYING AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) APPROVED BY ORDINANCE 24-18 FOR THE PROPERTY LOCATED AT 1668 I STREET, FORT MYERS BEACH, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-0070B.0110 IN FORT MYERS BEACH; PROVIDING FOR AMENDMENT TO THE DEVIATIONS TO INCLUDE A DEVIATION TO ALLOW THREE SIGNS OF TOTAL 108 SQUARE FEET WHERE A MAXIMUM ONE SIGN OF 32 SQUARE FEET IS PERMITTED; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, B & B Properties of Fort Myers, is the owner of 1668 I Street known as Beach Bar and identified as Strap number 19-46-24-W4-0070B.0110, and has filed an application to amend the deviations identified in Ordinance 24-18, which rezoned the property to Commercial Planned Development ("CPD), to allow three signs of total 108 square feet where maximum 32 square feet is permitted by LDC Section 30-5(a)(1) a.1; and

WHEREAS, the property is in the Pedestrian Commercial Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach, and is under common control of the applicant, as listed in the public records of Lee County Property Appraiser; and

WHEREAS, Section 34-214 of the Town's Land Development Code contains the criteria for review of amendments to existing planned developments, with specific criteria for amendments to approved master concept plans in subsections (a) and (b) and states in subsection (c) that "[s]ome amendments can be approved administratively as provided in § 34-219 of this chapter; the remainder shall proceed through the public hearing process described in § 34-216 of this chapter"; and

WHEREAS, Section 34-216 of the LDC requires a public hearing before the LPA and provides that the LPA's recommendation to the Town Council must be supported by the rezoning guidelines set forth in [§ 34-85](#) of the LDC as well as compliance with the following criteria:

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

- b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;
- c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;
- d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development . . .

WHEREAS, Section 34-216(4) further provides that “[i]f the local planning agency determines that a proposed condition is insufficient, it may recommend an alternate condition for consideration by the town council” and “if the application includes a schedule of deviations pursuant to §§ [34-212](#)(3) and [34-932](#)(b) of this chapter, the local planning agency's recommendation must approve, approve with modification, or reject each requested deviation based upon a finding that:

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

WHEREAS, the Town Council approved Ordinance 24-18 rezoning the property from downtown to commercial planned development (“CPD”), with conditions and deviations based on competent and substantial evidence in support of and satisfaction of the requirements of the Comprehensive Plan and the LDC; and

WHEREAS, Section 30-5 (a)(1) a.1. of the LDC provides “For a parcel of land containing one or two business establishments, each separate business establishment shall be allowed a maximum of 32 square feet of sign area”; and

WHEREAS, the applicant is proposing three signs of total 108 square feet, including an existing illuminated sign of 29.5 sq. ft. sign facing I Street, a new non-illuminated 29.5 sq. ft. sign facing Avenue E and a new non-illuminated 48.8 sq. ft. sign facing the Gulf or Beach area”; and

WHEREAS, the proposed signage is consistent with other commercial businesses in neighboring Commercial Planned Developments; and

WHEREAS, in accordance with Section 34-216 of the Land Development Code, a public hearing was held before the Local Planning Agency (LPA) on October 14, 2025 to consider the requested amendment to the CPD, as approved in Ordinance 24-15, for the sole purpose of

including outdoor consumption of alcoholic beverages on the property as an accessory use to the approve hotel and restaurant uses; and

WHEREAS, the LPA gave full and complete consideration of the information contained in the application, the recommendations by Town staff, the documents included in the agenda materials, and the testimony of all interested persons, as required by Section 34-216 of the Town Land Development Code (“LDC”); and

WHEREAS, at the October 14, 2025 public hearing the LPA found that the request **is/is not** consistent with the requirements of the Town’s Comprehensive Plan and the LDC, and based on competent and substantial evidence in the materials presented to it and the testimony during the public hearing, voted 6 to 0 to recommend **approval with conditions** of the requested amendment to Ordinance 24-18; and

WHEREAS, on November 17, 2025 the Town Council held a first reading of Ordinance 25-22 and gave full and complete consideration to the application, the recommendation of the LPA, the recommendation of Town staff, the documents in the agenda materials, and the testimony of all interested persons; and

WHEREAS, the Town Council approved scheduling a second reading and adoption public on December 15, 2025 regarding Ordinance 25-21 and the second public hearing was advertised on the ____ day of _____ in the _____; and

WHEREAS, a Business Impact Estimate was posted on the Town’s website on the ____ day of _____, 2025; and

WHEREAS, all outstanding fees pursuant to Section _____ have been paid; and

WHEREAS, on December 15, 2025, the second public hearing was held and the Town Council gave full and complete consideration to the application, the recommendation of the LPA, the recommendation of the Town staff, requirements of the Comprehensive Plan and the Land Development Code, the documents in the agenda materials, and the testimony of all interested persons.

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

Section 1. **Recitals.** The above WHEREAS are true, correct, and incorporated herein by reference.

Section 2. **Findings and Determination.**

a. Based on competent substantial evidence presented during both public hearings before the Town Council, the Town Council finds and determines that the applicant **did/did not** meet its burden of proof that the requested amendment to the commercial planned development **does/does not** meet the requirements of the Town Comprehensive Plan and Land Development Code. The Town Council specifically finds that the proposed amendment to include a deviation

to allow three signs of total 108 square feet where maximum 32 square feet is permitted by LDC Section 30-5(a)(1) a.1 is consistent with the Comprehensive Plan and compatible with the existing and planned uses of surrounding properties, as well as consistent with the character of the area, and will not result in any adverse impact on adjacent lands. No evidence was presented to reject the findings previously made at the time of adoption of Ordinance 24-18 and its findings are specifically restated and incorporated herein by reference.

b. Accordingly, the Town Council **approves / approves with conditions / denies** the requested amendment to the list of deviations contained in Ordinance 24-18 as provided herein for the CPD zoning of the Property with the following Exhibits attached, restated, and incorporated by reference: Exhibit A Ordinance 24-18 with Master Concept Plan; Exhibit B, Amended List of Deviations and Conditions of Approval from Ordinance 24-18; and Exhibit C Signage Plan. Nothing in this decision is intended in any way to otherwise change the approvals, conditions and deviations contained in Ordinance 24-18. All other provisions of Ordinance 24-18 except as modified herein remain in full force and effect.

Section 3. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 4. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 5. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. This Ordinance will take effect upon adoption by the Town Council.

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

DULY PASSED AND ADOPTED on this ____ day of December 2025.

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day of December 2025.

Exhibits:

Exhibit A – Ordinance 24-18, with Master Concept Plan

Exhibit B – Amended List of Deviations and Conditions from Ordinance 24-18

Exhibit C – Signage Plan

ORDINANCE 24-18

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING WITH CONDITIONS A REQUEST TO REZONE THE PROPERTY LOCATED AT 1668 I STREET, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-0070B.0110 FORT MYERS BEACH, FROM DOWNTOWN TO COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, WITH DEVIATIONS, FOR A BAR AND RESIDENCE; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, B & B Properties of Fort Myers, as owner, and Jim Ink, Ink Engineering Inc., as agent for the owner of property located at 1668 I Street, and generally identified as STRAP numbers 19-46-24-W4-0070B.0110 ("Subject Property") in the Town of Fort Myers Beach, filed an application to rezone the property from the Downtown Zoning District to Commercial Planned Development (CPD) with a Master Concept Plan (MCP) and a request for certain deviations to the Land Development Code (LDC) in order to develop a bar and residence; and

WHEREAS, the Subject Property is a single parcel located in the Pedestrian Commercial Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on June 11, 2024; and

WHEREAS, at the June 11, 2024 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Town Land Development Code (LDC) sec. 34-85; and

WHEREAS, at the June 11, 2024 public hearing the LPA found that the request is **consistent** with the comprehensive plan and the requirements of the LDC and voted to recommend **approval with conditions** of the rezoning by a 6-0 vote; and

WHEREAS, on August 19, 2024 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

WHEREAS, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was legally noticed in the News Press 10 days prior to the Town Council’s meeting on September 9, 2024 at which time the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

WHEREAS, the applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

WHEREAS, a Business Impact Estimate has been prepared and timely published on the Town’s website; and

WHEREAS, the Town Council finds approval of the request with requirements and conditions to be in the interest of the public’s health, safety, and welfare as well as in compliance with the comprehensive plan and the Land Development Code; and

WHEREAS, Exhibit A provides the approved Master Concept Plan (MCP), which future development should be substantially in compliance with; and

WHEREAS, Exhibit B is the schedule of uses, conditions of approval, and approved deviations for this CPD, to be used during the permitting process; and

WHEREAS, the Town Council finds that this request to rezone the property from the Downtown Zoning District to CPD with MCP with certain deviations to the Land Development Code (LDC) in order to develop a bar and residence, is a unique and individual application which does not set precedent for future development or rezoning applications. Approved deviations include:

Deviation #1

Request to deviate from 34-675(c)3 that states, Floor area ratio (FAR). Floor area ratios (see 34-633) of the chapter) shall not exceed: (3) 1.0 for all other properties in the Downtown District” to allow an FAR of 1.4 consistent with properties fronting Estero Blvd per 34-675(c)(2).

WHEREAS, the Town Council has considered all relevant factors and made the following formal findings before making its final decision on the requested rezone to a Commercial Planned Development (see LDC 34-85 and 34-216):

- a. Minor ambiguities were resolved through the deviation process.
- b. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- c. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- d. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.

- e. Urban services are available and adequate to serve the proposed use.
- f. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- g. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- h. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- i. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.
- m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.
- n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

WHEREAS, the Town Council made the following formal findings before making final decisions on the one requested deviation from "by-right" requirements of the Land Development Code (see LDC 34-216):

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

WHEREAS, the Town Council finds that this application to approve Ordinance 24-02 which is, **consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **approve with conditions** the Application.

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

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

Section 2. The Town Council determines the Applicant **did** meet its burden of proof, that the request to approve Town of Fort Myers Beach's Ordinance No. 24-05 and the conditions of approval for the CPD **does** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVE WITH CONDITIONS AND REQUIREMENTS** as contained in the Master Concept Plan in Exhibit A and the schedule of uses, deviations, and conditions of approval for the Property's CPD set forth in Exhibit B, which shall be attached to and incorporated by this reference to approval of the Ordinance.

Section 3. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 4. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 5. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. This Ordinance will take effect immediately upon adoption by the Town Council.

THE FOREGOING ORDINANCE was adopted by the Town Council upon a motion by Member Safford and seconded by Member Woodson, and upon being put to a vote, the result was as follows:

DULY PASSED AND ADOPTED on this 9th day of September 2024.

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers
Dan Allers (Nov 11, 2024 07:35 EST)

Dan Allers, Mayor

ATTEST:

Amy Baker
Amy Baker (Nov 14, 2024 10:11 EST)

Amy Baker, Town Clerk

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

Nancy Stuparich
Nancy Stuparich (Nov 11, 2024 20:45 EST)

Vose Law Firm, LLP, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 8th day of November 2024.

Attachments:

A – Master Concept Plan (MCP)

B – Schedule of Uses, Conditions of Approval and Deviation

Exhibit B

Schedule of Uses

- Dwelling unit, single-family
- Administrative Office
- Commercial Accessory Uses
- ATM
- On-Premises consumption of alcoholic beverages – existing conditions
- Bar or Cocktail Lounge – existing conditions
- Retail Store, Small – existing conditions

Deviation

Request to deviate from 34-675(c)3 that states, “Floor area ration (FAR). Floor area ratios (see 34-633) of the chapter) shall not exceed: (3) 1.0 for all other properties in the Downtown District” to allow an FAR of 1.4 consistent with properties fronting Estero Blvd per 34-675(c)(2).

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 proposed development must be substantially in compliance with the Master Concept Plan attached to the ordinance.
3. A Landscaping Plan and Photometric Plan must be approved prior to CO.
4. From BZA-88-339: The commercial use shall be limited to the retail sales of beach-oriented convenience items, including packaged food and beverage and beach recreational rentals; and
5. From BZA-88-339: Public access shall be limited to the beach on Gulf side of the business.
6. From 95-10-173: The Special Permit for consumption on premises in conjunction with outdoor seating is limited to the use in conjunction with the existing retail use. The use of a bar/service bar on this property is prohibited. However, this does not prohibit the sale of draft beer or wine which is poured from a large bottle, so long as it is consumed only in the designated locations. There will be no waiter or waitress service: the

customers must order their drinks from inside the premises and directly from the person who pours the drinks.

7. From 95-10-173: The location of the Special Permit for consumption on premises in conjunction with outdoor seating is limited to the outdoor deck area (approximately 10 feet by 40 feet as shown on Attachment B to the Staff report) which separates the retail use from the beach area, and on the first 50 feet of the beach which extends south from the deck area toward the water. The seating for both areas may not exceed 75 seats. The alcohol consumption portion of the beach area will be clearly marked.
8. From 95-10-173: Hours of operation for the outdoor seating area are limited to 10:00 a.m. to 10:00 p.m., daily.
9. From 95-10-173: Live entertainment is limited to the hours of 10 a.m. to 8 p.m., daily.
10. The conditions of Resolution No. BZA-88-339 and from Special Permit 95-10-173 will remain in full force and effect to the extent that they are not in conflict with this ordinance.

24-18, DCI20240143, 1668 I St - Beach Bar

Final for signatures

Final Audit Report

2024-11-14

Created:	2024-11-08
By:	Amy Baker (AMY@FMBGOV.COM)
Status:	Signed
Transaction ID:	CBJCHBCAABAAWssd2PG7kaDQLmpNgFT9wNbwlcZBV2Nk

"24-18, DCI20240143, 1668 I St - Beach Bar Final for signature s" History

-  Document created by Amy Baker (AMY@FMBGOV.COM)
2024-11-08 - 8:32:15 PM GMT
-  Document emailed to Dan Allers (allersd@fmbgov.com) for signature
2024-11-08 - 8:32:20 PM GMT
-  Document emailed to Nancy Stuparich (nstuparich@voselaw.com) for signature
2024-11-08 - 8:32:20 PM GMT
-  Document emailed to Amy Baker (AMY@FMBGOV.COM) for signature
2024-11-08 - 8:32:20 PM GMT
-  Email viewed by Dan Allers (allersd@fmbgov.com)
2024-11-11 - 12:35:36 PM GMT
-  Document e-signed by Dan Allers (allersd@fmbgov.com)
Signature Date: 2024-11-11 - 12:35:50 PM GMT - Time Source: server
-  Email viewed by Nancy Stuparich (nstuparich@voselaw.com)
2024-11-12 - 1:45:13 AM GMT
-  Document e-signed by Nancy Stuparich (nstuparich@voselaw.com)
Signature Date: 2024-11-12 - 1:45:36 AM GMT - Time Source: server
-  Document e-signed by Amy Baker (AMY@FMBGOV.COM)
Signature Date: 2024-11-14 - 3:11:45 PM GMT - Time Source: server- Signature captured from device with phone number XXXXXXXX0014
-  Agreement completed.
2024-11-14 - 3:11:45 PM GMT

EXHIBIT B- AMENDED LIST OF DEVIATIONS AND CONDITIONS OF APPROVAL (removed as ~~strike through~~, added as underlined)

Deviation #1: Request to deviate from 34-675(c)3 that states, “Floor area ration (FAR). Floor area ratios (see 34-633) of the chapter) shall not exceed: (3) 1.0 for all other properties in the Downtown District” to allow an FAR of 1.4 consistent with properties fronting Estero Blvd per 34-675 (c)(2).

Deviation #2: Requesting a deviation from LDC 30-5, to allow three (3) wall signs for a total of 108 square feet where a total of 32 square feet is allowed by code. The request will allow the Applicant to install three signs, including an existing illuminated sign of 29.5 sq. ft. sign facing I Street, a new non-illuminated 29.5 sq. ft. sign facing Avenue E and a new non-illuminated 48.8 sq. ft. sign facing the Gulf or Beach area.

AMENDED LIST OF CONDITIONS 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 proposed development must be substantially in compliance with the Master Concept Plan attached to the ordinance.
3. A Landscaping Plan and Photometric Plan must be approved prior to CO.
4. From BZA-88-339: The commercial use shall be limited to the retail sales of beach oriented convenience items, including packaged food and beverage and beach recreational rentals; and
5. From BZA-88-339: Public access shall be limited to the beach on Gulf side of the business.
6. From 95-10-173: The Special Permit for consumption on premises in conjunction with outdoor seating is limited to the use in conjunction with the existing retail use. The use of a bar/service bar on this property is prohibited. However, this does not prohibit the sale of draft beer or wine which is poured from a large bottle, so long as it is consumed only in the designated locations. There will be no waiter or waitress service: the customers must order their drinks from inside the premises and directly from the person who pours the drinks.
7. From 95-10-173: The location of the Special Permit for consumption on premises in conjunction with outdoor seating is limited to the outdoor deck area (approximately 10 feet by 40 feet as shown on Attachment B to the Staff report) which separates the retail use the beach area, and on the first 50 feet of the beach which extends south from the deck area toward the water. The seating for both areas may not exceed 75 seats.

8. The alcohol consumption portion of the beach area will be clearly marked.
9. From 95-10-173: Hours of operation for the outdoor seating area are limited to 10:00 a.m. to 10:00 p.m., daily.
10. From 95-10-173: Live entertainment is limited to the hours of 10 a.m. to 8 p.m., daily.
11. The conditions of Resolution No. BZA-88-339 and from Special Permit 95-10-173 will remain in full force and effect to the extent that they are not in conflict with this ordinance.
12. All signs containing commercial messages, including those shown for the proposed bar, must be in compliance with LDC Chapter 30, except as approved herein by deviations.
13. The approval for the CPD Amendment is contingent to the Town Council's approved and adopted Ordinance#24-18, approving with conditions a request to rezone the property located at 1668 I street, Fort Myers Beach, from downtown to Commercial Planned Development (CPD) zoning, with deviations, for a bar and residence. Any violation of the conditions of approval for the CPD approval shall render the CPD Amendment approval null and void.

FDOT EPRN STATION: FT.MYERS2
 LAT: 26.352750615N, LONG: 81.515098482W
 NAD83/2011, FL WEST ZONE
 ELEVATION: 35.62 FEET NAVD 88

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

CONTROL STATIONS USED:
 1) FDOT EPRN STATION: FT.MYERS2
 LAT: 26.352750615N, LONG: 81.515098482W
 NAD83/2011, FL WEST ZONE
 ELEVATION: 35.62 FEET NAVD 88
 2) NGS STATION: BOOB 2 1955
 PUBLISHED:
 LAT: 26.45259524N, LONG: -81.89624036W
 N: 753534.48, E: 533962.27
 NAD27/1979, FL WEST ZONE
 ELEVATION: 6.25' NAVD 23
 NGS NCAT CONVERSION:
 LAT: 26.40717375N, LONG: -81.89604799W
 N: 753698.01, E: 690191.18
 NAD83/2011, FL WEST ZONE
 CONVERGENCE: 0.002'46.44
 SCALE FACTOR: 0.99994250
 MEASURED:
 LAT: 26.40717602N, LONG: -81.89604759W
 N: 753698.84, E: 690191.31
 NAD83/2011, FL WEST ZONE
 ELEVATION: 5.07' NAVD 88
 3) CCCL STATION: 12-83-A25A
 PUBLISHED:
 LAT: 26.45258635N, LONG: -81.95519580W
 N: 770130.38, E: 514596.20
 NAD27/1979, FL WEST ZONE
 NGS NCAT CONVERSION:
 LAT: 26.45286351N, LONG: -81.9551976491W
 N: 770294.03, E: 670825.13
 NAD83/2011, FL WEST ZONE
 CONVERGENCE: 0.001'11.85
 SCALE FACTOR: 0.99994142
 MEASURED:
 LAT: 26.45286604N, LONG: -81.95538990W
 N: 770294.95, E: 670825.73
 NAD83/2011, FL WEST ZONE

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

LINE	BEARING	DISTANCE
L1	S59°59'11"E	10.11'
L2	S60°54'43"E	28.57'
L3	S82°12'04"E	16.07'
L4	N47°37'33"W	11.38'
L5	S67°44'54"E	1020.06'
L6	S67°48'48"E	863.58'
L7	S74°40'08"E	1061.70'
L8	S61°53'52"E	1023.66'
L9	S61°36'36"E	31.98'
L10	N17°05'21"E	853.58'
L11	S55°12'42"E	609.40'
L12	S59°19'43"E	981.41'
L13	S59°17'33"E	694.83'
L14	S80°21'09"E	1035.98'
L15	S90°12'12"E	1035.98'
L16	S56°40'49"E	883.60'
L17	S53°16'37"E	1089.17'
L18	S53°27'39"E	850.32'
L19	S47°11'00"E	1320.81'
L20	S47°45'44"E	947.92'
L21	S48°14'30"E	904.47'
L22	S45°23'38"E	1124.60'
L23	S43°31'06"E	927.22'
L24	S39°09'46"E	1099.56'
L25	S53°49'22"E	908.90'
L26	S11°21'11"E	1114.21'
L27	S18°21'02"E	1063.12'
L28	S10°18'49"E	1292.22'
L29	S30°03'37"E	1181.94'
L30	S30°01'09"E	623.26'
L31	S15°11'16"E	1113.13'
L32	N15°19'52"E	134.23'
L33	N15°19'52"E	137.98'

BENCHMARK	SET NAIL & DISK, #LB450
▲	SET 5/8" IRON ROD, #LB450
●	FOUND NAIL & DISK, AS NOTED
○	FOUND 5/8" IRON ROD, AS NOTED
□	FOUND CONCRETE MONUMENT, AS NOTED
▣	DRAINAGE STRUCTURE
⊗	SANITARY MANHOLE
⊙	WOOD POWER POLE
⊕	GUY ANCHOR
⊖	TEMPORARY ELECTRIC SERVICE POLE
⊗	SANITARY CLEAN-OUT
⊙	WATER METER
⊕	WATER FAUCET
⊖	GARBAGE CAN ON POST
LS	LICENSED SURVEYOR
LB	LICENSED BUSINESS
PLS	PROFESSIONAL LAND SURVEYOR
END	FOUND
FNDP	EDGE OF PAVEMENT
N/D	IRON ROD
N/D	NAIL & DISK
C.M.	CONCRETE MONUMENT
ID.	IDENTIFICATION
AS	AS MEASURED
(P)	AS PER RECORD PLAT
(D)	AS PER DESCRIPTION
(C)	CALCULATED BASED ON INSTRUMENTS
OCAT	OFFICIAL RECORDING REFERENCE
PB	PLAT BOOK
PG	PAGE
CONC.	CONCRETE
R/W	RIGHT OF WAY
O/A	OVERHEAD UTILITIES
CCOL	COASTAL CONSTRUCTION CONTROL LINE (1991)
CCSL	COASTAL CONSTRUCTION SETBACK LINE (1978)
FDSP	FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FDOT	FLORIDA DEPARTMENT OF TRANSPORTATION
FFRN	FLORIDA FOREMAN REFERENCE NETWORK
NAD	NATIONAL GEODETIC SURVEY
NAD2029	NATIONAL GEODETIC VERTICAL DATUM OF 1929
NAD83	NORTH AMERICAN VERTICAL DATUM OF 1983
NXV188	NCS COORDINATE CONVERSION AND TRANSFORMATION TOOL
5.11.11	ELEVATION POINT

NO.	DATE	REVISION DESCRIPTION	BY

OF A PARCEL LYING IN
SECTION 19, TOWNSHIP 46 SOUTH,
RANGE 24 EAST,
LEE COUNTY, FLORIDA.

(AS PER ORI #2009000330729)

LOT 11, BLOCK B, CRESCENT BEACH SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN PLAT BOOK 4, PAGE 45, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

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

THIS SURVEY PREPARED BASED ON THE RECORD PLAT OF CRESCENT BEACH
SUBDIVISION, AND EXISTING MONUMENTATION.

BEARINGS ARE BASED ON NORTH AMERICAN DATUM OF 1983/2011; THE SIDE
BOUNDARIES OF SAID PARCEL AS BEARING S19°22'58"W.

ELEVATIONS ARE BASED ON NORTH AMERICAN DATUM OF 1988, FROM NATIONAL GEODETIC SURVEY BENCHMARKS, 1) 872 5366 TIDAL 2, ELEVATION: 2.27 FEET AND 2) BOOB 2, ELEVATION: 5.03 FEET.

AS PER FDEP TIDAL WATER SURVEY PROCEDURAL APPROVAL, DATED 09/29/2023:
TIDAL DATUM ELEVATIONS, NAVD 88, NTDE 1983–2001, AT SITE: MEAN HIGH WATER
0.26 FEET; MEAN LOW WATER –1.59 FEET; AND SEASONAL HIGH WATER 3.0 FEET.
TIDAL DATUM ELEVATIONS INTERPOLATED USING TIDE INTERPOLATION POINTS 100229,
100230 AND 100222 FOR PERMITTING PURPOSES.

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

THE COASTAL CONSTRUCTION CONTROL & SETBACK LINE MONUMENTS AND THE MEAN HIGH WATER LINE, 0.00' CONTOUR AND SEASONAL HIGH WATER LINE LOCATED WITH CARLSON BRX7 ROVER GPS SYSTEM USING REAL TIME KINEMATICS METHOD; SOFTWARE CARLSON SURVPC VERSION 6.16.

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

PARCEL LIES IN THE FLOOD ZONES WITH BASE FLOOD ELEVATIONS AS SHOWN. THIS INFORMATION TAKEN FROM FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP NO. 12071C0554G, EFFECTIVE DATE NOVEMBER 17, 2022.

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

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

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

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

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

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

Land Surveyors

Florida Licensed Business No. LB8450

OWNER OF RECORD:
B+B PROPERTIES OF FORT MYERS
21050 SAINT PETERS DR
FORT MYERS BEACH, FL 33931

PROPERTY ADDRESS:
1668 1ST STREET
FORT MYERS BEACH, FL 33931

date	dwg	scale	job#	sheet
9-25-23	23-41SR	1"=20'	23-41	1 of 1

PROPERTY REGULATIONS

ADDRESS: 16681 1 STREET, FT MYERS BEACH, FL 33931
STRAP: 19-46-24-W4-00708.0110
ZONING: DOWNTOWN
LAND USE: PEDESTRIAN COMMERCIAL
OWNER: DALE & DEBRA WEIDELING
711 MATANZAS CT, FT MYERS BEACH, FL 33931
FEMA FLOOD: VE: 14.00' IN BUILDABLE AREA
VE: 15.00' SEAWARD OF 1978 CCCL LINE
FDEP CCCL ELEV: 19.83' LOWEST STRUCTURAL HORIZONTAL BEAM
PROPERTY REGULATIONS IN DOWNTOWN DISTRICT
MIN. FRONT BUILD TO LINE: 5 FT
MAXIMUM FRONT BUILD TO LINE: 10 FT
MINIMUM REAR SETBACK: 25 FT
MINIMUM SIDE SETACK: 5 FT
MAXIMUM BUILDING HEIGHT: 30 FT ABOVE BASE FLOOD
MAXIMUM NUMBER OF STORIES: 3 (1ST FLOOR OPEN)
PARKING: RESIDENTIAL = 2 PER UNIT
FLOOR AREA RATIO: 1.0 (10,367 SF)
BUILDING FRONTAGE - 34-675(a) 35% MINIMUM

GENERAL NOTES

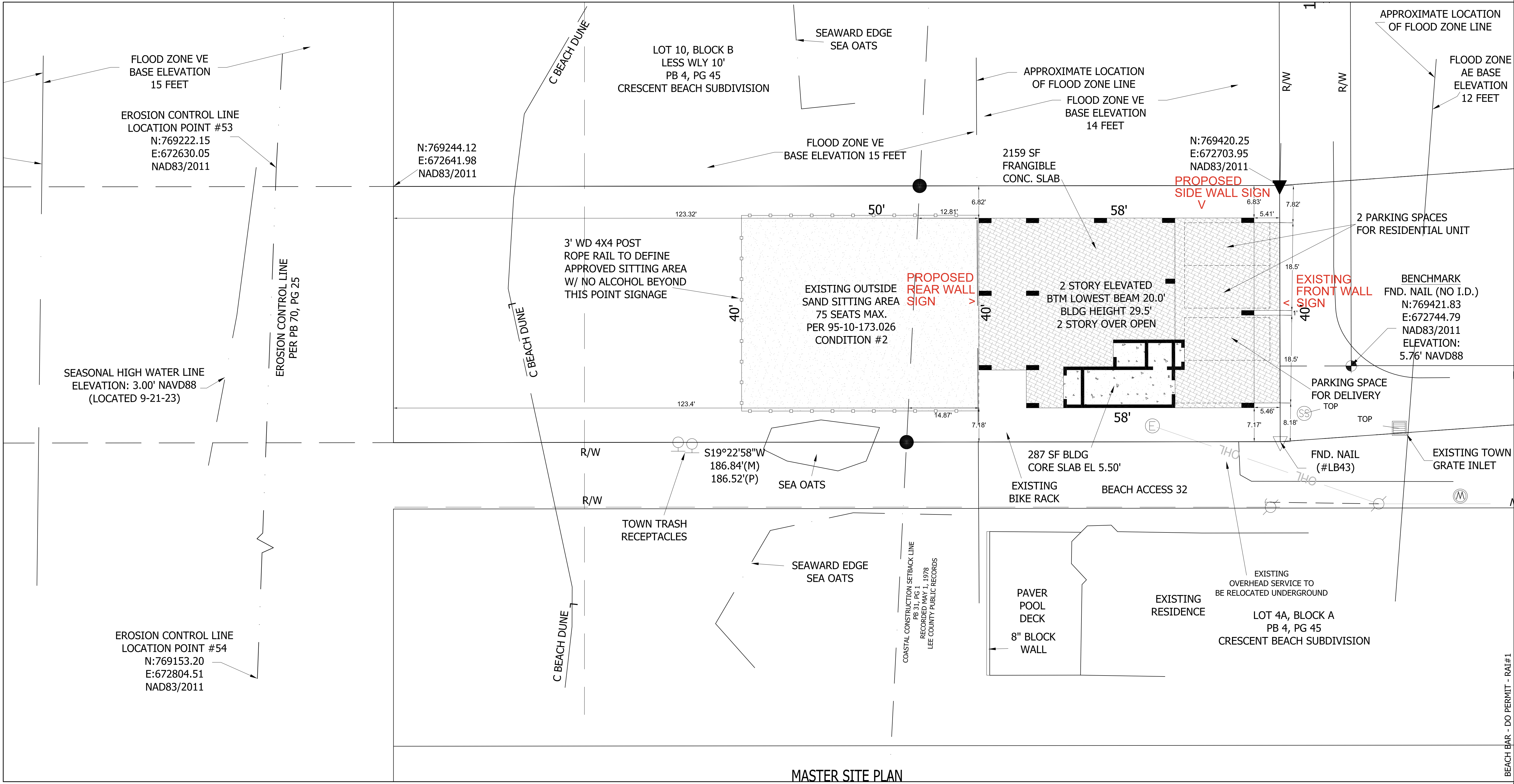
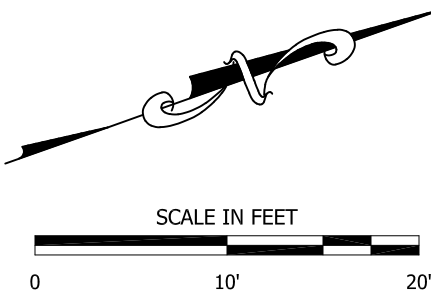
- THE LOCATION OF EXISTING UTILITIES ARE APPROXIMATE. CONTRACTOR RESPONSIBLE TO LOCATE ANY EXISTING UTILITY.
- PRIOR TO ANY WORK, CONTRACTOR SHALL CONTACT SUNSHINE STATE ONE CALL OF FLORIDA, 800-432-4770 OR 811 FOR LOCATION OF UTILITY LINES.
- SPECIAL DEVELOPMENT ENTITLEMENTS PER ORDINANCE 95-10-173.025 COP & RESOLUTION BZA-88-339 FOR GROUND LEVEL COMMERCIAL USE.

DEVELOPMENT SITE DATA

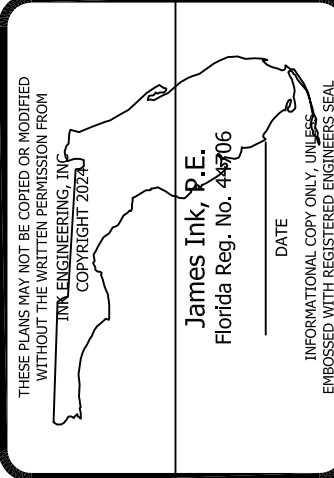
PRE-DEVELOPMENT SITE DATA
PARCEL AREA 0.23 ACRES
DESTROYED STRUCTURE FOOTPRINT 1,600 SF
DESTROYED DECK AREA 400 SF
EXISTING IMPERVIOUS AREA 100 SF
TOTAL HISTORICAL IMPERVIOUS AREA 2,100 SF
TOTAL HISTORICAL PERVIOUS AREA 7,986 SF
TOTAL PARCEL AREA 10,086 SF
ALLOWABLE IMPERVIOUS AREA (67%) 6,757 SF

DEVELOPMENT SITE DATA

POST-DEVELOPMENT SITE DATA
PARCEL AREA 0.23 ACRES
STRUCTURE FOOTPRINT 2,240 SF
STRUCTURE UNDER AIR 3,190 SF
TOTAL IMPERVIOUS AREA 2,446 SF
TOTAL PERVIOUS AREA 7,640 SF (75%)
ALLOWABLE IMPERVIOUS AREA (67%) 6,757 SQFT
PROPOSED TOTAL BUILDING AREA 2,446 SF
TOTAL PARCEL AREA 10,086 SF
PARCEL AREA (CPD ONLY) 4,159 SF
PARCEL AREA (EC ONLY) 5,927 SF
ALLOWABLE FLOOR AREA RATIO (1.4 CPD) 5,822 SF
ALLOWABLE FLOOR AREA RATION (0.01 EC) 60 SF
TOTAL ALLOWABLE FLOOR AREA RATIO 5,882 SF
PROPOSED FLOOR AREA 5,813 SF
PROPOSED FLOOR AREA RATIO 1.39
PROPOSED BUILDING FRONTAGE 74%



MASTER SITE PLAN
THE BEACH BAR
B&B PROPERTIES OF FORT MYERS
1668 1 STREET, FORT MYERS BEACH, FL 33931



PROJECT NO.	23002
PROJECT MANAGER	James Ink P.E.
DRAWN BY	BWM
DATE	12.2023
SCALE	1"= 10'
SHEET NO.	4
OF	8

Proposed sign on
side elevation of building



RIGHT (NORTHWEST) ELEVATION

TOTAL SQ FT = 29.5 Sq Ft



3300 PALM AVENUE, FT. MYERS, FL 33901
PHONE: 239.278.4245
FAX: 239.278.3912

ALL ELECTRICAL WORK TO BE DONE
IN COMPLIANCE WITH NFPA 70-17



This sign, including, but not limited to, all plastic or similar components thereof, has been designed in compliance with the 2020 Florida Building Code 7th Edition, 1609 Wind Loads, ASCE/SEI 7-16 Wind Loads, 3107, and NFPA 70-17

CUSTOMER APPROVAL:

SIGNATURE

DATE

JOB DESCRIPTION:
Wall

COMPANY:
Beach Bar

DRAWING NUMBER:
24-0323 01 G

INITIAL DRAWING DATE:
3/27/2024

REVISION
4/17 E

REVISION
4/22 F

REVISION
4/24 G

Rev G - Added border to rear wall letters

PROJECT MANAGER:
Elisha White

DESIGNER:
MB

ADDRESS:
1668 I Street Ft Myers Beach Fl

FILEPATH:

Z:\grfx\Jobs\Slevens Construction\The Beach Bar (Beach Pub)\Ft. Myers Beach, 1668 I Street\24-0323, Package\Drawings\24-0323 01 G the Beach Bar - Wall.cdr

SCALE: NONE

SHEET 2 of 6

THIS DESIGN IS THE EXCLUSIVE PROPERTY OF LEE DESIGNS LLC AND IS NOT TO BE USED IN WHOLE OR PART BY ANY OTHER PARTIES WITHOUT WRITTEN PERMISSION BY LEE DESIGNS LLC DIMENSIONS AND COLORS MAY VARY SLIGHTLY DUE TO LIMITATIONS WITH FABRICATION MATERIALS



Proposed Sign on
side elevation

**MANUFACTURE & INSTALL ONE (1) SINGLE FACED, NON ILLUMINATED
WALL SIGN ON BACKER PANEL.**

BACKER TO BE ALL ALUMINUM CONSTRUCTION OVER INTERNAL ANGLE
BRACING, FINISH TO BE SMOOTH. ALL COPY AND LOGO TO BE .25\" FLAT
CUT OUT DIBOND WITH PRINTED GRAPHIC APPLIED FIRST SURFACE.
TO MOUNT TO EXTERIOR WALL ABOVE ENTRANCE.

BLACK



3300 PALM AVENUE, FT. MYERS, FL 33901

PHONE: 239.278.4245

FAX: 239.278.3912

**ALL ELECTRICAL WORK TO BE DONE
IN COMPLIANCE WITH NFPA 70-17**



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CUSTOMER APPROVAL:

SIGNATURE

DATE

JOB DESCRIPTION:

Wall

PROJECT MANAGER:

Elisha White

DESIGNER:

MB

COMPANY:

Beach Bar

DRAWING NUMBER:

24-0323 01 G

INITIAL DRAWING DATE:

3/27/2024

REVISION

4/17 E

REVISION

4/22 F

REVISION

4/24 G

Rev G - Added border to rear wall letters

CONTACT:

PHONE:

E-MAIL:

SCALE: 1/2" = 1'-0"

ADDRESS:

1668 I Street Ft Myers Beach Fl

FILEPATH:

Z:\gfrk\S Jobs\Slevens Construction\The Beach Bar (Beach Pub)\Ft. Myers Beach, 1668 I Street\El24-0323, Package\Drawings\24-0323 01 G the Beach Bar - Wall.cdr

SHEET 1 of 6

THIS DESIGN IS THE EXCLUSIVE PROPERTY OF LEE DESIGNS LLC AND IS NOT TO BE USED IN WHOLE OR PART BY ANY OTHER PARTIES WITHOUT WRITTEN PERMISSION BY LEE DESIGNS LLC DIMENSIONS AND COLORS MAY VARY SLIGHTLY DUE TO LIMITATIONS WITH FABRICATION MATERIALS



Proposed sign on
on Rear Elevation
(Beach Side)

REAR (SOUTHWEST) ELEVATION

TOTAL SQ FT = 48.8 Sq Ft



3300 PALM AVENUE, FT. MYERS, FL 33901

PHONE: 239.278.4245

FAX: 239.278.3912

ALL ELECTRICAL WORK TO BE DONE
IN COMPLIANCE WITH NFPA 70-20 NEC 2020



This sign, including but not limited to, all plastic or similar components thereof, has been designed in compliance with the 2023 Florida Building Code 8th EDITION, 1609 Wind Loads, ASCE/SEI 7-22 Wind Loads, 3107, NFPA 70-20 NEC 2020

CUSTOMER APPROVAL:

SIGNATURE

DATE

JOB DESCRIPTION:
Wall 3

PROJECT MANAGER:
Elisha White

DESIGNER:
MB

COMPANY:
The Beach Bar

DRAWING NUMBER:
24-0323 03 G

INITIAL DRAWING DATE:
3/27/2024

REVISION
4/17 E

REVISION
4/22 F

REVISION
4/24 G

Rev G - Added border to rear wall letters

CONTACT:

PHONE:

E-MAIL:

SCALE: NONE

ADDRESS:
1668 I Street Ft Myers Beach Fl

FILEPATH:
Z:\grfx\Jobs\Slevens Construction\The Beach Bar (Beach Pub)\Ft. Myers Beach, 1668 I Street\El24-0323_Package\Drawings\24-0323 01 G the Beach Bar - Wall.cdr

SHEET 6 of 6

THIS DESIGN IS THE EXCLUSIVE PROPERTY OF LEE DESIGNS LLC AND IS NOT TO BE USED IN WHOLE OR PART BY ANY OTHER PARTIES WITHOUT WRITTEN PERMISSION BY LEE DESIGNS LLC DIMENSIONS AND COLORS MAY VARY SLIGHTLY DUE TO LIMITATIONS WITH FABRICATION MATERIALS

24'-5"

2'-0"

THE BEACH BAR

MANUFACTURE & INSTALL ONE (1) SET OF SINGLE FACED, NON ILLUMINATED
FLAT CUT OUT LETTERS

.25" FLAT CUT OUT DIBOND WITH SMOOTH PAINTED FINISHE.

TO MOUNT TO EXTERIOR WALL ABOVE REAR ENTRANCE.



PMS#116c

Proposed sign on
on Rear Elevation
(Beach Side)



3300 PALM AVENUE, FT. MYERS, FL 33901

PHONE: 239.278.4245

FAX: 239.278.3912

ALL ELECTRICAL WORK TO BE DONE
IN COMPLIANCE WITH NFPA 70-17



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CUSTOMER APPROVAL:

SIGNATURE

DATE

JOB DESCRIPTION:

Wall 3

COMPANY:

Beach Bar

DRAWING NUMBER:

24-0323 03 G

INITIAL DRAWING DATE:

3/27/2024

REVISION

4/17 E

REVISION

4/22 F

REVISION

4/24 G

Rev G - Added border to rear wall letters

CONTACT:

PHONE:

E-MAIL:

SCALE: 1/4" = 1'-0"

ADDRESS:

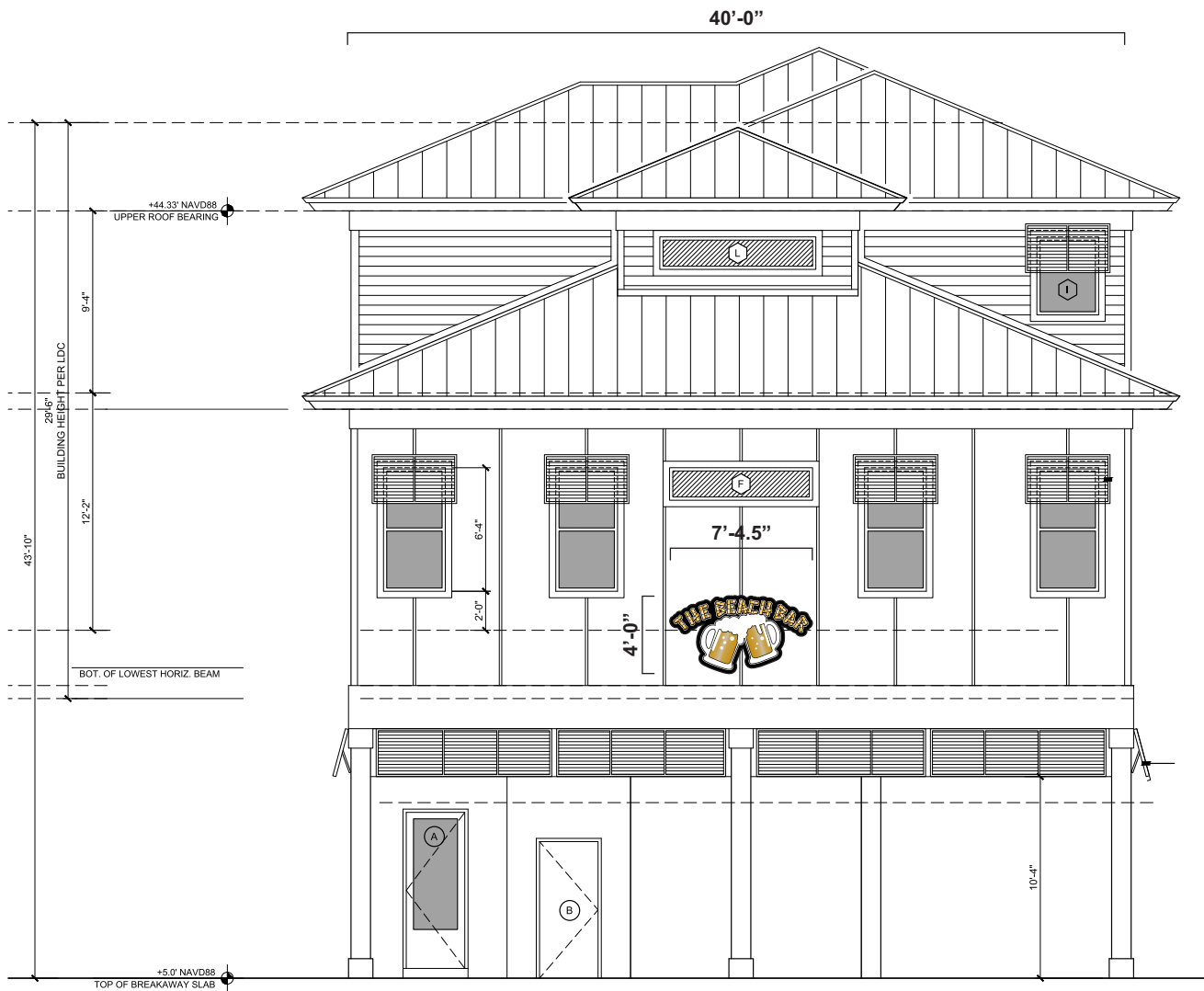
1668 I Street Ft Myers Beach Fl

FILEPATH:

Z:\grfx\Jobs\Slevens Construction\The Beach Bar (Beach Pub)\Ft. Myers Beach, 1668 I Street\24-0323_Package\Drawings\24-0323 01 G the Beach Bar - Wall.cdr

SHEET 5 of 6

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Existing Sign on
Front Elevation

FRONT ELEVATION
TOTAL SQ FT = 29.5 Sq Ft



3300 PALM AVENUE, FT. MYERS, FL 33901
PHONE: 239.278.4245
FAX: 239.278.3912

ALL ELECTRICAL WORK TO BE DONE
IN COMPLIANCE WITH NFPA 70-17



REG#: E216325

This sign, including, but not limited to, all plastic or similar components thereof, has been designed in compliance with the 2020 Florida Building Code 7th Edition, 1609 Wind Loads, ASCE/SEI 7-16 Wind Loads, 3107, and NFPA 70-17

CUSTOMER APPROVAL:

SIGNATURE

DATE

JOB DESCRIPTION:
Wall 2

COMPANY:
Beach Bar

CONTACT:

DRAWING NUMBER:
24-0323 02 G

PHONE:

INITIAL DRAWING DATE:
3/27/2024

E-MAIL:

REVISION
4/17 E

REVISION
4/22 F

REVISION
4/24 G

Rev G - Added border to rear wall letters

SCALE: NONE

ADDRESS:
1668 I Street Ft Myers Beach Fl

FILEPATH:

Z:\grfx\Jobs\Slevens Construction\The Beach Bar (Beach Pub)\Ft. Myers Beach, 1668 I Street\El24-0323, Package\Drawings\24-0323 01 G the Beach Bar - Wall.cdr

SHEET 4 of 6

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Existing Sign on Front Elevation

MANUFACTURE & INSTALL ONE (1) SINGLE FACED, ILLUMINATED WALL SIGN ON BACKER PANEL.

BACKER TO BE ALL ALUMINUM CONSTRUCTION OVER INTERNAL ANGLE BRACING, FINISH TO BE SMOOTH. ALL COPY AND LOGO TO BE .75" WHITE ACRYLIC PUSH THRU WITH OPAQUE PRINTED GRAPHICS APPLIED FIRST SURFACE.

TO BE ILLUMINATED USING AMBER LED's

BLACK



3300 PALM AVENUE, FT. MYERS, FL 33901
PHONE: 239.278.4245
FAX: 239.278.3912

ALL ELECTRICAL WORK TO BE DONE
IN COMPLIANCE WITH NFPA 70-17



This sign, including, but not limited to, all plastic or similar components thereof, has been designed in compliance with the 2020 Florida Building Code 7th Edition, 1609 Wind Loads, ASCE/SEI 7-16 Wind Loads, 3107, and NFPA 70-17

CUSTOMER APPROVAL:

SIGNATURE

DATE

JOB DESCRIPTION:
Wall 2

COMPANY:
Beach Bar

DRAWING NUMBER:
24-0323 02 G

INITIAL DRAWING DATE:
3/27/2024

REVISION
4/17 E

REVISION
4/22 F

REVISION
4/24 G

Rev G - Added border to rear wall letters

CONTACT:

PHONE:

E-MAIL:

SCALE: 1/2" = 1'-0"

ADDRESS:
1668 I Street Ft Myers Beach Fl

FILEPATH:

Z:\grfx\IS Jobs\Slevens Construction\The Beach Bar (Beach Pub)\Ft. Myers Beach, 1668 I Street\EI24-0323_Package\Drawings\24-0323 01 G the Beach Bar - Wall.cdr

SHEET 3 of 6

THIS DESIGN IS THE EXCLUSIVE PROPERTY OF LEE DESIGNS LLC AND IS NOT TO BE USED IN WHOLE OR PART BY ANY OTHER PARTIES WITHOUT WRITTEN PERMISSION BY LEE DESIGNS LLC DIMENSIONS AND COLORS MAY VARY SLIGHTLY DUE TO LIMITATIONS WITH FABRICATION MATERIALS

8-30-25



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: 1668 I Street, Fort Myers Beach, FL 33931

STRAP Number: 19-46-24-W4-0070B.0110

Applicant: B & B Properties of Fort Myers, (Sign Permits Plus, agent) Phone: 813-898-7580

Contact Name: Renee Oij, Lindsay Oij and/or Lance Oij Phone: 941-518-4342

Email: renee@signpermits plus.com Fax: _____

Current Zoning District: CPD

Future Land Use Map (FLUM) Category: _____

FLUM Density Range: _____ Platted Overlay: ☐ YES ☐ NO

ACTION REQUESTED

SUPPLEMENTAL FORM REQUIRED

☐ Special Exception

PH-A

☒ ~~Variance~~

PH-B

☐ Conventional Rezoning

PH-C

☒ Planned Development ☐ Commercial ☐ Residential

PH-D

☐ Master Concept Plan Extension

PH-E

☐ Appeal of Administrative Action

PH-F

☐ Vacation of Platted Right-of-way and Easement

PH-G

☐ Other – cite LDC Section: _____

attach on separate sheet

PART I – General Information

A. Applicant*: Sign Permits Plus, Renee Oij, Lindsay Oij and/or Lance Oij Phone: 941-518-4342

**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: 235 Apollo Beach Blvd, Suite 507, Apollo Beach, FL 33572

Email: renee@signpermitsplus.com Fax: _____

Contact Name: Renee Oij Phone: 941-518-4342



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

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

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

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

Name: Renee Oij, LRO LLC dba Sign Permits Plus Phone: 941-518-4342
Address: 235 Apollo Beach Blvd, Suite 507, Apollo Beach, FL 33572
Email: renee@signpermitsplus.com Fax: _____

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

Name: Lindsay Oij, LRO LLC dba Sign Permits Plus Phone: 813-898-7580
Address: 235 Apollo Beach Blvd, Suite 507, Apollo Beach, FL 33572
Email: lindsay@signpermitsplus.com Fax: _____

Name: Lance Oij, LRO LLC dba Sign Permits Plus Phone: 941-219-9062
Address: 235 Apollo Beach Blvd, Suite 507, Apollo Beach, FL 33572
Email: _____ Fax: _____

PART II - Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☒ ~~Variance from LDC Section~~ 30 - 5
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☒ Amendment. List the project number: 24-18 DC120240143
- ☐ 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: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: N/A Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, N/A _____ 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.

Greg Boyd
Signature

Greg Boyd

Printed Name

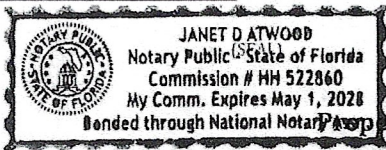
STATE OF FL COUNTY OF LEE

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

presence OR _____ online notarization, this 7 day of July, 2025, by

Greg Boyd ☒ who is personally known to me OR ☐ who has produced

_____ as identification.



Janet D Atwood

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

N/A



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
N/A	

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
N/A	

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
N/A	

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
N/A	



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
N/A	

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, Greg Boyd (name), as Manager (title)
of B & B Properties of Fort Myers Beach LLC (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

B & B Properties of Fort Myers Beach, LLC

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

Greg Boyd

Signature

Greg Boyd

Typed or Printed Name

Owner

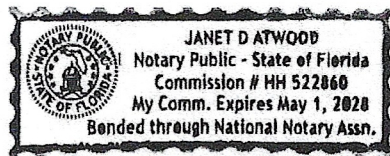
Title

7/2/2025

Date

STATE OF FL COUNTY OF LEE

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 7 day of July, 2025, by Greg Boyd ☒ who is personally known to me OR ☐ who has produced _____ as identification.



Janet D Atwood
Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 19-46-24-W4-0070B.0110

Property Address: 1668 I Street, 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: Crescent Beach

Book: 4 Page: 45 Unit: _____ Block: B Lot(s): 11

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) 54' feet
 Depth (please provide an average width if irregular in shape) 186.72' (M) feet
 Frontage on street: 54' feet. Frontage on waterbody: _____ feet
 Total land area: 10086.09 ☐ acres ☒ square feet

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

Big Carlos Pass Bridge County Rd 865, Fort Myers Beach, FL 33931

Head west on Estero Blvd 3.9 mi Continue onto Estero Blvd 1.7 mi

Turn left onto Avenue E 177 ft Turn right onto I Street ☐

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 |

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-D

Additional Required Information for a Planned Development Application

This is the second part of a two-part application. This part requests specific information for a planned development rezoning or an amendment to an approved planned development. Include this form with the Request for Public Hearing form.

Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre
\$2000.00 PD Amendment minor (< acre total property area)
\$4000.00 PD Reinstatement or \$6500.00 PD Amendment

Project Name: The Beach Bar - Amendment to CPD
Authorized Applicant: Renee Oij, Lindsay Oij and/or Lance Oij
STRAP Number(s): 19-46-24-W4-0070B.0110

Current Property Status: Mixed Use, Comm'l Ground floor, Residential upper floors
Current Zoning: CPD
Future Land Use Map (FLUM) Category:
Platted Overlay? ☐ yes, ☐ no FLUM Density Range:

Requested Action:

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

PART I Narrative Statements

A. Comprehensive Plan Amendments (check one)

☒	There are NO Comprehensive Plan Amendments pending that could affect the future use of this property.
☐	The following Comprehensive Plan Amendments ARE pending and could affect the future use of this property (list the amendment and give a brief explanation of its possible effect)

B. Phasing of Construction

☒	The development is to be constructed in a single phase.
☐	The development is to be constructed in phases as follows: (describe proposed phasing below)

C. Comprehensive Plan Compliance.

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

Signage proposed with this request for deviation occupies a small percentage of
the building facades on which they will be attached. These signs are designed to
be the minimum necessary to be seen by pedestrians and drivers searching for
refreshments and a spot to rest while overlooking the beautiful beach. The
request is not a result of any illegal actions of the applicant. Instead, the request
is made in advance of any action. Granting the deviation serves the residents,
visitors and neighbors by providing clear identification of the business to allow
customers to easily navigate to the establishment. It is in keeping with the signage
granted to similar businesses within Fort Myers Beach and would not grant the
applicant special rights of privileges not afforded to others. The signs are
designed to be in compliance with turtle laws and remain non-illuminated
year-round.

D. Design Standards Compliance

For projects required to meet Commercial Design Standards, explain how the proposed development complies with the design standards set forth in LDC Sections 34-991 through 34-997.

The proposed signage is integrated with and harmonious to the building
on which is will be attached complying with the Purpose and Intent of the Land
development code. The deviation, if granted, would positively impact
surrounding properties by making sure that customers of The Beach Bar know
where to go, and do not wander to adjacent properties in search of the location.
The signs that are proposed are non-illuminated so they do not provide any
visual disturbance to either the adjacent properties or aquatic neighbors.
There are turtle-friendly, plastic, flat cut-out letters letters proposed on the rear
elevation facing the beach and a non-illuminated logo sign proposed on the
side elevation.

E. Decision-making Compliance

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

The LDC recognizes that signage along Fort Myers Beach should serve residents and non-residents by providing information that decreases the probability of accidents, protects the public health, safety and general welfare.
Providing clear identification for The Beach Bar serves that purpose while creating signage that is attractive and integrated to the design of the building.
The yellow signage complements the yellow awnings on the building with a scale that does not create visual blight.
The building's large setback from Estero Boulevard, where vehicular traffic will be coming from, along with its customer entrances on I Street and the beach make is unique and worthy of relief from the regulations.
The proposed side elevation sign aids drivers traveling southbound while the proposed rear elevation sign provides customers entering from the beach information they need to navigate to the watering spot without confusion.

F. Schedule of deviations and written justification

Provide a list of the requested deviations keyed to the Master Concept Plan and provide a written justification for each deviation. The location of each deviation should be indicated on the Master Concept Plan.

Signage was not addressed in the Master Concept Plan.
This amendment is a request for deviation from LDC 30-5 (a) Permanent Signs,
1. Size, a. For a parcel of land containing one or two business establishments
each separate business establishment shall be allowed a maximum of 32
square feet of sign area
The Beach Bar is unusual in that its customer traffic is coming from both a pedestrian pathway from the beach and I Street that runs parallel to Estero Blvd.
That means they need to have identification on the building to allow both drivers and beach goers guidance to the entrance. The existing wall sign on the front elevation is partially obstructed by a palm tree to drivers on Estero Blvd, where customers must turn to navigate to I-Street. The building is setback over 150 feet from Estero Blvd which also decreases visibility of the existing signage.



For amendments to an approved Master Concept Plan, indicate the specific amendments that could not be approved administratively as set forth in LDC Section 34-219.

[illegible]

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

Public Hearing Request Form
Supplement Form PH-D
Master Concept Plan
Traffic Impact Statement
Architectural Elevations
Schedule of Uses
Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre
\$2000.00 PD Amendment minor (< acre total property area)
\$4000.00 PD Reinstatement or \$6500.00 PD Amendment

3/30/2021

Guide to Filing Supplement PH-D for Planned Developments

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

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

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

Case Number will be inserted by Community Development staff.

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

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

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

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

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

Part 1 Narrative Statements:

Comprehensive Plan Amendments

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

Construction Phasing

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

Comprehensive Plan Compliance

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

Design Standards Compliance

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

Decision-making compliance

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

Schedule of deviations and written justification

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

Administrative amendments

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

Part 2 Submittal Requirements

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

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

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

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

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

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

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



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Commercial Planned Development Amendment

CASE NUMBER: Ord 25-21, DCI Rezoning 20250188

CASE NAME: Beach Bar

**LPA
HEARING DATE:** October 14th, 2025

**TOWN COUNCIL
HEARING DATE:** November 17th, 2025 (First reading)
December 15th, 2025 (Second Reading)

**STAFF
RECOMMENDATION:** Approval with conditions

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

I. APPLICATION SUMMARY

Applicant/Owner: Renee Oij from Sign Permits Plus/ B & B Properties of Fort Myers

Request: Amend the existing CPD Ordinance#24-18 (See Exhibit A) to include a deviation to allow three signs of total 108 square feet.

Physical Address: 1668 I Street

STRAP #: 19-46-24-W4-0070B.0110

FLU: Pedestrian Commercial

Adjacent zoning and land uses:

North: DOWNTOWN
Vacant, previously residential

South: Environmentally Critical/Recreation
Beach

East: DOWNTOWN
Residential

West: DOWNTOWN
Vacant

II. BACKGROUND AND ANALYSIS

The applicant, Renee Oij from Sign Permits Plus on behalf of the property owner B & B Properties of Fort Myers is requesting an amendment to the list of deviations for an existing Commercial Planned Development (CPD) as approved in ordinance 24-18, to include a deviation for additional signage of total 108 square feet where maximum 32 square feet is permitted by LDC Section 30-5. The request will allow the Applicant to install three signs, including an existing illuminated sign of 29.5 sq. ft. sign facing I Street, non-illuminated 29.5 sq. ft. sign facing Avenue E and a non-illuminated 48.8 sq. ft. sign facing the Gulf or Beach area.

In 2024, Town of Fort Myers beach's Town Council approved and adopted ordinance 24-18, a request to rezone the subject property from Downtown to Commercial Planned Development for the redevelopment of a bar and dwelling unit. The signage was not addressed during the approval of the CPD. The Applicant is now proposing three signs of total 108 square feet where only a sign of maximum 32 square feet is permitted per establishment by LDC Section 30-5. The Applicant is therefore requesting an amendment to existing CPD to include a deviation to allow additional signage.

On October 14, 2025, LPA voted unanimously (6-0) to recommend approval with conditions for CPD Amendment request 20250188, a request to allow an Amendment to the CPD approved by Ordinance 24-18 and amend the deviations to include a deviation to allow three signs of total 108 square feet where a maximum one sign of 32 square feet is permitted.

Analysis:

The subject property has supported bar and residence since at least 1995. The bar use received approval through Lee County Special Permit Case 95-10-173 and has been in operation since that time. A reduction in parking requirements from 10 parking spaces to 0 parking spaces was approved per Lee County Resolution BZA-88-339. Pre lan, the property included a ground floor retail store with alcohol sales and a second story with two residential units, for a total of approximately 3,690 square feet, per the Lee Property Appraiser property details.

In 2024, Town Council approved and adopted Ordinance 24-18, a request to rezone the subject property from Downtown Zoning to Commercial Planned Development with one deviation, for the redevelopment of a bar and residential dwelling. As per the approved Master Concept Plan, the ground floor open area will be used as a bar which will open to the beach where a sand seating area is located. A residence is proposed on the second and third floor of the structure. The total proposed gross square footage is 5,822 square feet. The signage was not addressed during the CPD approval.

LDC Section 30-5, permits a wall sign of maximum 32 square feet area per establishment. The code is silent on sign language for establishments set on larger site area, establishments situated at a significant street setback and sign requirements for establishments abutting multiple streets or beach frontage. To ensure clear visibility of the signage, the Town has previously approved multiple signs totaling up to more than 32 square feet in area for different establishments- like La De Dah beach bar & Grill and Salty Rim Bar in Margaritaville. The staff plans to address this ambiguity in code during the Land Development code update.

At this time, the Applicant is proposing three signs of total 108 square feet where only a sign of maximum 32 square feet is permitted per establishment by LDC Section 30-5. The Applicant is therefore requesting an amendment to existing CPD to include a deviation to allow additional signage.

Neighborhood Compatibility:

The Beach Bar is in the downtown area of Fort Myers Beach, which is intended as the commercial center for the Town. The use has existed on this site since at least 1995 and is compatible with the neighboring uses. The proposed sign facing the beach will be non-illuminated and compliant with the Town's Sea Turtle Conservation code.

Proposed Deviations:

Deviation #1

Request to deviate from 34-675(c)3 that states, "Floor area ratio (FAR). Floor area ratios (see 34-633) of the chapter) shall not exceed: (3) 1.0 for all other properties in the Downtown District" to allow an FAR of 1.4 consistent with properties fronting Estero Blvd per 34-675 (c)(2).

This deviation was previously approved and there are no proposed changes to existing FAR or language of the deviation.

Deviation #2

Requesting a deviation from LDC 30-5, to allow three (3) wall signs for a total of 108 square feet where a total of 32 square feet is allowed by code.

The subject property is a corner lot with I street as primary street and Avenue E as side street. The rear of the property abuts the Beach area and Gulf of Mexico. The code is silent on sign language for establishments abutting multiple streets or beach frontage. To ensure clear visibility of the signage, the Town has previously approved multiple signs totaling more than 32 square feet in downtown area of the Town and the staff believes the request to permit additional signage is reasonable for the subject property. See the applicant provided rendering in Exhibit C for greater detail on the signs.

IV. FINDINGS AND CONCLUSIONS

LDC Sec. 34-85(b) and (c) and 34-216(2) sets forth the required considerations and findings for the approval of a rezoning:

LDC Sec. 34-85 (b) Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

(1) Whether there exists an error or ambiguity which must be corrected.

Staff response: No errors or ambiguities exist.

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

Staff response: The Applicant has the choice to construct one sign of 32 square feet, consistent with the Town's LDC. The request to provide three signs of total area higher than 32 square feet is a design choice, not a changing condition.

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

Staff response: No impact on the intent of this chapter will occur.

- (4) The testimony of any applicant.
- (5) The recommendation of staff and of the local planning agency.
- (6) The testimony of the public.
- (7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

Staff response: The proposed development is in compliance with the intent and intensity of the Pedestrian Commercial future land use district.

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

Staff response: The proposed development will be required to meet performance standards set forth in 34-2031 and 34-2032.

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

Staff response: The urban services exist in this location.

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

Staff response: The request will have no impact on designated environmentally critical areas and natural resources. The request does not include any revision to the environmentally critical areas.

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

Staff response: The Beach Bar is in the downtown area of Fort Myers Beach, which is intended as the commercial center for the Town. The use has existed on this site since at least 1995 and the request to allow three signs of total 108 sq. ft. area is compatible with the neighboring uses.

- (12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

Staff response: The location is compatible.

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

LDC Sec. 34-85 (c) Findings: Before granting any rezoning, the town council shall find that the requested zoning district complies with:

- (1) The Fort Myers Beach Comprehensive Plan.

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

- (2) This chapter.

Staff response: The proposed uses comply with this chapter.

- (3) Any other applicable town ordinances or codes.

Staff response: The proposed request complies with all other town ordinances and codes.

(4) For planned development rezonings, see § 34-216 of this chapter for additional findings

LDC Sec. 34-216(b)(2) The recommendation made to the town council must be supported by the guidelines set forth in [§ 34-85](#) of this chapter. In addition, the findings must address whether the following criteria can be satisfied:

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

Staff response: The uses are appropriate in this location as it is within the FLU category of Pedestrian Commercial.

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

Staff response: No special conditions are proposed.

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

Staff response: No special conditions are requested as part of this application.

d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.

Staff response: Not applicable.

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

Staff response: Not applicable.

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

Staff response: No additional height is requested.

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

Staff response: Not applicable.

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

Staff response: Not applicable.

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

Staff response: There are no anticipated adverse traffic impacts

V. RECOMMENDATION

Staff finds that the CPD amendment meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC. Staff recommends **approval with conditions** of DCI20250188.

On October 14, 2025, LPA voted unanimously (6-0) to recommend approval with conditions for CPD Amendment request 20250188, a request to allow an Amendment to the CPD approved by Ordinance 24-18 and amend the deviations to include a deviation to allow three signs of total 108 square feet where a maximum one sign of 32 square feet is permitted.

VI. AMENDED LIST OF CONDITIONS OF APPROVAL (removed as ~~strike through~~, added as underlined)

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 proposed development must be substantially in compliance with the Master Concept Plan attached to the ordinance.
3. A Landscaping Plan and Photometric Plan must be approved prior to CO.
4. From BZA-88-339: The commercial use shall be limited to the retail sales of beach oriented convenience items, including packaged food and beverage and beach recreational rentals; and
5. From BZA-88-339: Public access shall be limited to the beach on Gulf side of the business.
6. From 95-10-173: The Special Permit for consumption on premises in conjunction with outdoor seating is limited to the use in conjunction with the existing retail use. The use of a bar/service bar on this property is prohibited. However, this does not prohibit the sale of draft beer or wine which is poured from a large bottle, so long as it is consumed only in the designated locations. There will be no waiter or waitress service: the customers must order their drinks from inside the premises and directly from the person who pours the drinks.
7. From 95-10-173: The location of the Special Permit for consumption on premises in conjunction with outdoor seating is limited to the outdoor deck area (approximately 10 feet by 40 feet as shown on Attachment B to the Staff report) which separates the retail use the beach area, and on the first 50 feet of the beach which extends south from the deck area toward the water. The seating for both areas may not exceed 75 seats.
8. The alcohol consumption portion of the beach area will be clearly marked.
9. From 95-10-173: Hours of operation for the outdoor seating area are limited to 10:00 a.m. to 10:00 p.m., daily.
10. From 95-10-173: Live entertainment is limited to the hours of 10 a.m. to 8 p.m., daily.
11. The conditions of Resolution No. BZA-88-339 and from Special Permit 95-10-173 will remain in full force and effect to the extent that they are not in conflict with this ordinance.
12. All signs containing commercial messages, including those shown for the proposed bar, must be in compliance with LDC Chapter 30, except as approved herein by deviations.
13. The approval for the CPD Amendment is contingent to the Town Council's approved and adopted Ordinance#24-18, approving with conditions a request to rezone the property located at 1668 I street, Fort Myers Beach, from downtown to Commercial Planned Development (CPD) zoning, with deviations, for a bar and residence. Any violation of the conditions of approval for the CPD approval shall render the CPD Amendment approval null and void.

ATTACHMENTS:

Exhibit A –Ordinance 24-18

Exhibit B – Amended List of Deviations and conditions of Approval

Exhibit C – Signage Plan



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Town's website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference: (25-21)

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 RESOLUTION 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.

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Town is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Town is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
 - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;

¹ See Section 166.041(4)(c), Florida Statutes.

- b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
- c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
- d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Town hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance is to allow 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.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Town, including the following, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the Town's regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

There are unlikely to be direct compliance costs associated with the ordinance.

The ordinance does not impose any new charge or fee on businesses.

There are no new charges or fees that will be imposed on businesses by the ordinance.

The Town will not likely incur additional costs.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

One property owner will be impacted by this proposed ordinance.

4. Additional information the governing body deems useful (if any):

1. **Request:**

Meeting Date: December 15, 2025

This quasi-judicial agenda item is a Second Reading and Public Hearing on proposed Ordinance 25-22.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/APPROVING WITH CONDITIONS/ DENYING AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) APPROVED BY ORDINANCE 24-15 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 THE SCHEDULE OF PERMITTED USES TO INCLUDE OUTDOOR CONSUMPTION OF ALCOHOLIC BEVERAGES ON THE PROPERTY AS A USE ASSOCIATED WITH THE APPROVED HOTEL AND RESTAURANT USES; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The Town Council will take into account the recommendations made by the LPA for DCI20250201

What the action accomplishes:

The Town Council will take into account the recommendations made by the LPA for DCI20250201 regarding an amendment to the schedule of uses for an existing CPD, resolution 24-15 (Exhibit A), to include outdoor consumption on premises as a use associated with the hotel and restaurant.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Jason Green, Community
Development Services, Jason
Smalley, Senior Planner

5. **Background:**

The Neighborhood Company, applicant for Cottages at Myerside, LLC, is requesting an amendment to the schedule of uses for an existing CPD, resolution 24-15 (Exhibit A), to include outdoor consumption on premises as a use associated with the hotel and restaurant. The request will allow the applicant to serve alcoholic beverages on:

1. 690 sq. ft. outdoor dining patio in extension to the existing restaurant on the ground floor level; and
2. 3,000 sq. ft. of rooftop pool area on the third floor as an accessory to the hotel.

In 2024, the Town of Fort Myers Beach Town Council approved and adopted Ordinance 24-15, approving with conditions a request to rezone the subject property from Downtown to Commercial Planned Development to allow a mixed-use development including lodging, live/work units, retail, and restaurant uses. The outdoor consumption of alcoholic beverages was not addressed during the approval of the CPD.

The existing approved CPD resolution allows the following uses:

Lodging

Principal:

- Hotel/Motel (Inclusive of Hotel Condominiums)
- Guest Units

Accessory:

- Hotel/Motel Accessory Uses
- Personal Services
- Recreational Facilities

Residential

- Work/Live Units

Commercial

- Offices, General or Medical
- Personal Services
- Restaurant with Bar Area
- Retail Store, Small & Large
- Subordinate Commercial Uses

The Applicant is now requesting an amendment to the existing CPD to revise the schedule of uses and include outdoor consumption on premises on the ground floor as an accessory use for the restaurant and on the third floor rooftop patio as an accessory for the hotel. The hours of operation for the service of alcoholic beverages in the outdoor area will be 8 am to 10 pm Monday through Sunday.

On October 14, 2025, LPA voted unanimously (6-0) to recommend approval with conditions for CPD Amendment request 20250201 with an additional condition that the consumption and serving of alcohol would be limited from 8:00 a.m. to 10:00 p.m. LPA recommended the Town Council to have a conversation to determine if the access for the pool bar area should be allowed for public or be limited for hotel guests uses only.

On November 17, 2025, Town Council voted during the first reading of Ordinance 25-22 to recommend approval with conditions for CPD Amendment along with additional condition that no live music shall be allowed when the school is open.

Attachments:

1. NS TC Ordinance 25-22 CPD Amendment - Cottages at Myerside
2. Exhibit A- 24-15, Myerside CPD
3. Exhibit B- Amended Schedule of Uses and condition of approval (1) 2nd Reading
4. Exhibit C- plans identifying COP area
5. Application
6. revised_TC_Staff Report Cottage at Myerside
7. 25-22, business-impact-estimate CPD20250201

Financial Impact:

Unknown

6. Alternative Action

Deny

7. Management Recommendations:

Staff recommends APPROVAL WITH CONDITIONS of DCI 20250201

8. Recommended Approval:

Sakshi Goel, Sr. Land Planner
Frankie Kropacek, Community Development Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 11/18/2025
Approved - 11/18/2025
Approved - 11/18/2025
Approved - 12/5/2025
Approved - 12/8/2025
Final Approval - 12/8/2025

ORDINANCE 25-22
(PD AMENDMENT - 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) APPROVED BY ORDINANCE 24-15 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 THE SCHEDULE OF PERMITTED USES TO INCLUDE OUTDOOR CONSUMPTION OF ALCOHOLIC BEVERAGES ON THE PROPERTY AS A USE ASSOCIATED WITH THE APPROVED HOTEL AND RESTAURANT USES; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, Cottages at Myerside LLC, is the owner of 125, 131-151 School Street and 2661-2681 Estero Blvd known as Cottages at Myerside and identified as Strap number 19-46-24-W3-0020C.0230; 19-46-24-W3-0020C.0270; 19-46-24-W3-0020C.0290, and has filed an application to amend the schedule of uses identified in Ordinance 24-15, which rezoned the property to Commercial Planned Development ("CPD), to allow outdoor on-premises consumption of alcoholic beverages on the property as a use associated with the approved restaurant and hotel; and

WHEREAS, the property is in the Boulevard Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach, and is under common control of the applicant, as listed in the public records of Lee County Property Appraiser; and

WHEREAS, Section 34-214 of the Town's Land Development Code contains the criteria for review of amendments to existing planned developments, with specific criteria for amendments to approved master concept plans in subsections (a) and (b) and states in subsection (c) that "[s]ome amendments can be approved administratively as provided in § 34-219 of this chapter; the remainder shall proceed through the public hearing process described in § 34-216 of this chapter"; and

WHEREAS, Section 34-216 of the LDC requires a public hearing before the LPA and

provides that the LPA's recommendation to the Town Council must be supported by the rezoning guidelines set forth in [§ 34-85](#) of the LDC as well as compliance with the following criteria:

- a. The proposed use or mix of uses is appropriate at the subject location;
- b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;
- c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;
- d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development . . .

WHEREAS, Section 34-216(4) further provides that “[i]f the local planning agency determines that a proposed condition is insufficient, it may recommend an alternate condition for consideration by the town council” and “if the application includes a schedule of deviations pursuant to [§§ 34-212\(3\)](#) and [34-932\(b\)](#) of this chapter, the local planning agency's recommendation must approve, approve with modification, or reject each requested deviation based upon a finding that:

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

WHEREAS, the Town Council approved Ordinance 24-15 rezoning the property from downtown to commercial planned development (“CPD”), with conditions and deviations based on competent and substantial evidence in support of and satisfaction of the requirements of the Comprehensive Plan and the LDC; and

WHEREAS, Section 34-1264(b)(1) of the LDC provides “[e]xcept as may be exempted in subsections (a)(1) or (b)(2) of this section, no establishment for the sale or service of alcoholic beverages for consumption on the premises shall be located within 500 feet of a place of worship, religious facility, school (noncommercial), day care center (child), park, other establishment serving alcohol or a dwelling unit under separate ownership. Distance shall be measured from any public entrance or exit of the establishment in a straight line to the nearest property line”; and

WHEREAS, the proposed outdoor consumption on premise on the rooftop patio on third floor is proposed as an accessory to the hotel use and the service will be limited only to the hotel guests. The proposed outdoor consumption on premises is situated at 3,000 feet distance from a

religious facility, 550 feet from a school, more than 4,000 feet from a day care center (child), 780 feet from a park, 650 feet other establishment serving alcohol and more than 500 feet from a dwelling unit under separate ownership.

WHEREAS, Section 34-1264(b)(2) of the LDC provides “[r]estaurants are exempt from the locational standards for consumption on a premises code section, provided 1. The restaurant is in full compliance with state requirements; 2. The restaurant serves cooked, full-course meals, prepared daily on the premises; 3. Only a service bar is used, and the sale or service of alcoholic beverages is only to patrons ordering meals, or, 4. The other requirements of LDC Section 34-1264 (k) are met.”; and

WHEREAS, the restaurant use as approved in Ordinance 24-15 is in compliance with the requirements of LDC Section 34-1264(b)(2). Moreover, because the property is: 1) not directly adjacent to any residential units. The closest residential property is located on the other side of the Town owned vacant parcel with an entry to the pool parking lot; and 2) the adjacent to the public pool and surrounded by the Town’s Bay Oaks Recreational Facility, the library and the Fort Myers Beach Elementary School. elementary school, and therefore is compatible and not in conflict with adjacent uses; and

WHEREAS, in accordance with Section 34-216 of the Land Development Code, a public hearing was held before the Local Planning Agency (LPA) on October 14, 2025 to consider the requested amendment to the CPD, as approved in Ordinance 24-15, for the sole purpose of including outdoor consumption of alcoholic beverages on the property as an accessory use to the approve hotel and restaurant uses; and

WHEREAS, the LPA gave full and complete consideration of the information contained in the application, the recommendations by Town staff, the documents included in the agenda materials, and the testimony of all interested persons, as required by Section 34-216 of the Town Land Development Code (“LDC”); and

WHEREAS, at the October 14, 2025 public hearing the LPA found that the request **is/is not** consistent with the requirements of the Town’s Comprehensive Plan and the LDC, and based on competent and substantial evidence in the materials presented to it and the testimony during the public hearing, voted 6 to 0 to recommend **approval with conditions** of the requested amendment to Ordinance 24-15; and

WHEREAS, on November 17, 2025 the Town Council held a first reading of Ordinance 25-22 and gave full and complete consideration to the application, the recommendation of the LPA, the recommendation of Town staff, the documents in the agenda materials, and the testimony of all interested persons; and

WHEREAS, the Town Council approved scheduling a second reading and adoption public on December 15, 2025 regarding Ordinance 25-22 and the second public hearing was advertised on the ____ day of _____ in the _____; and

WHEREAS, a Business Impact Estimate was posted on the Town’s website on the ____

day of _____, 2025; and

WHEREAS, on December 15, 2025, the second public hearing was held and the Town Council gave full and complete consideration to the application, the recommendation of the LPA, the recommendation of the Town staff, requirements of the Comprehensive Plan and the Land Development Code, the documents in the agenda materials, and the testimony of all interested persons.

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

Section 1. **Recitals.** The above recitals are true, correct, and incorporated herein by reference.

Section 2. **Findings and Determination.**

a. Based on competent substantial evidence presented during both public hearings before the Town Council, the Town Council finds and determines that the applicant **did/did not** meet its burden of proof that the requested zoning amendment **does/does not** meet the requirements of the Town Comprehensive Plan and Land Development Code. The Town Council specifically finds that the proposed amendment to include outdoor consumption of alcoholic beverages on the premises as an accessory use to the approved hotel and restaurant uses is consistent with the Comprehensive Plan and compatible with the existing and planned uses of surrounding properties, as well as consistent with the character of the area, and will not result in any adverse impact on adjacent lands. No evidence was presented to reject the findings previously made at the time of adoption of Ordinance 24-15 and its findings are specifically restated and incorporated herein by reference.

b. Accordingly, the Town Council **approves / approves with conditions / denies** the requested amendment to the schedule of uses contained Ordinance 24-15 as provided herein for the CPD zoning of the Property with the following Exhibits attached, restated, and incorporated by reference: Exhibit A Ordinance 24-15 with Master Concept Plan; Exhibit B, Amended Schedule of Uses and Conditions of Approval; and Exhibit C Plan identifying COP area. Nothing in this decision is intended in any way to otherwise change the approvals, conditions and deviations contained in Ordinance 24-15. All other provisions of Ordinance 24-15 except as modified herein remain in full force and effect.

Section 3. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 4. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 5. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such

decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. This Ordinance will take effect immediately upon adoption by the Town Council.

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

DULY PASSED AND ADOPTED on this ____ day of December 2025.

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day of December 2025.

Exhibits:

Exhibit A – Ordinance 24-15, with Master Concept Plan
Exhibit B – Amended Schedule of Uses and Conditions of Approval
Exhibit C - Plan identifying COP area

ORDINANCE 24-15

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING WITH CONDITIONS THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 125, 131-151 SCHOOL STREET AND 2661-2681 ESTERO BLVD., 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, TO ALLOW A MIXED USE DEVELOPMENT INCLUDING LODGING, LIVE/WORK UNITS, RETAIL, AND RESTAURANT USES; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, Cottages at Myerside, LLC, the owner, and The Neighborhood Company, as agent for the property located at 125, 131-151 School Street and 2661-2681 Estero Blvd., parcels generally identified as STRAP numbers 19-46-24-W3-0020C.0230; 19-46-24-W3-0020C.0270; 19-46-24-W3-0020C.0290 in the Town of Fort Myers Beach, filed applications to rezone the property from the CPD with Master Concept Plan (MCP) adopted in Ordinance 21-02 to CPD with Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) in order to develop a mixed use development with 45 lodging units, 4 live-work units, and 9,000 square feet of commercial area; and

WHEREAS, the subject property is a combination of three parcels located in the Boulevard Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on May 14, 2024; and

WHEREAS, at the May 14, 2024 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the Town Land Development Code; and

WHEREAS, at the May 14, 2024 public hearing the LPA found that the request is consistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval with conditions by a 6-0 vote; and

WHEREAS, on June 3, 2024 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

WHEREAS, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was noticed in the Fort Myers News-Press more than 10 days prior to the Town Council on June 17, 2024; and

WHEREAS, at the June 17, 2024 public hearing, the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

WHEREAS, the applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

WHEREAS, a Business Impact Estimate has been prepared and published on the Town's website; and

WHEREAS, with the following terms, conditions, and requirements which the LPA and Town Council find to be in the public health, safety, and welfare, all of which are in compliance with the comprehensive plan and the Land Development Code; and

WHEREAS, Exhibit A provides the approved development regulations and the schedule of uses and conditions of approval for this CPD to be used during the permitting process; and

WHEREAS, Exhibit B is the approved Master Concept Plan (MCP), which future development should be substantially in compliance with; and

WHEREAS, the Town Council finds that this request to rezone the property from the CPD with MCP adopted in Ordinance 21-02 to CPD with MCP with six deviations to the LDC in order to develop a mixed-use development with 45 lodging units, 4 live-work units and 9,000 square feet of commercial area, is a unique application, which does not set precedent for future development or rezoning applications; and

WHEREAS, the requested deviations from the LDC include:

Deviation #1

Deviation from LDC Sec. 10-285, Table 10-1 – Connection Separation, which requires minimum separation between street and accessways, in order to allow driveway separations as depicted on the Master Concept Plan (MCP).

Deviation #2

Deviation from LDC Sec. 10-416 – Landscaping standards to allow the use of

an alternative landscape betterment plan pursuant to LDC Section 10-419. This section states applications are entitled to demonstrate that the intent of the landscaping standards can be more effectively accomplished through an alternate landscape betterment plan. The use of an alternate landscape betterment plan addresses all landscaping requirements pertaining to the redevelopment of the site; such as, but not limited to landscape islands, building perimeters, buffers, walls, parking and vehicular use areas.

Deviation #3

Deviation from LDC Sec. 34-1804(A) and Sec. 34-2020, which regulates parking for hotels/motels non-residential, residential, and combined use developments, to allow a 30% reduction in required parking and a minimum of three (3) individual uses within a master planned mixed use development.

Deviation #4

Deviation from LDC Division 4, Table 34-3 for the CR zoning district which limits height to 30 feet zoned height and three (3) stories to allow a maximum zoned height of 37 feet and a maximum of four (4) stories.

Deviation #5

Deviation from LDC Division 4, Table 34-3 for the CR zoning district which requires street setbacks of 10 feet to instead allow for build-to lines of 5 to 10 feet along Estero Boulevard and School Street.

Deviation #6

Deviation from LDC Sec. 34-1803(a)(1), which allows the conversion of dwelling units to hotel/motel guest units per established equivalency factors, in order to exceed said factors as allowed per LDC Sec. 34-1803(a)(2). This would allow a maximum intensity of 45 guest units rather than the 20 allowed per the existing table.

Deviation #7

A deviation from LDC Sec. 34-645(b) and Table 34-3, which allows a Floor Area Ratio (FAR) of 1.2. This would allow a maximum FAR of 1.3, which is below the maximum FAR allowed under the Boulevard Future Land Use category of 1.5.

WHEREAS, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested rezone to a Commercial Planned Development (see LDC 34-85 and 34-216):

- a. Minor ambiguities were resolved through the deviation process.
- b. The previous development on the subject property was destroyed by fire and adoption of the rezoning with deviations ameliorates longstanding design issues on the site.
- c. The rezoning would carry out the policies and requirements of the Comprehensive Plan

and Land Development Code.

- d. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- e. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- f. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- g. Urban services are available and adequate to serve the proposed use.
- h. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- i. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- j. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- k. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.
- m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.
- n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

WHEREAS, the Town Council made the following formal findings before making final decisions on the eight requested deviations from "by-right" requirements of the Land Development Code (see LDC 34-216):

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

WHEREAS, the Town Council finds that this application to approve Ordinance 24-15 which is, **consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **approve with conditions** the Application.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL
OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:**

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

Section 2. The Town Council determines the Applicant **did** meet its burden of proof, that the request to approve Town of Fort Myers Beach's Ordinance 24-15 and the conditions of approval for the commercial planned development zoning, **does** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVE WITH CONDITIONS** the requested application.

Section 3. Town Ordinance 24-15 is adopted and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit A, the attached Master Concept Plan in Exhibit B, and the attached Landscape Betterment Plan in Exhibit C, attached hereto and incorporated herein by this reference are approved.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This Ordinance will take effect immediately upon adoption by the Town Council.

THE FOREGOING ORDINANCE was adopted by the Town Council upon a motion by Council Member King and seconded by Council Member Safford, and upon being put to a vote, the result was as follows:

DULY PASSED AND ADOPTED on this 17th day of June 2024.

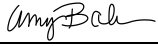
Dan Allers, Mayor	Nay
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

FORT MYERS BEACH TOWN COUNCIL


Dan Allers (Jun 20, 2024 12:02 EDT)

Dan Allers, Mayor

ATTEST:



Amy Baker, Town Clerk

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


Nancy Stuparich (Jun 20, 2024 17:00 EDT)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 20th day of June 2024.

Attachments:

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

Exhibit A: CONDITIONS OF APPROVAL & SCHEDULE OF USE

Conditions of Approval

Staff finds that the CPD with deviations meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends approval of DCI20230246 with the attached conditions:

1. Any tenant with consumption on premises would be required to acquire a separate COP license.
2. The live-work units shall only be occupied by the owner or employees of the commercial establishments at Myerside. At no time shall the live work units be used as an extension to the lodging units or as a part of the boutique hotel. Any other tenants will have to demonstrate employment on the island.
3. The restaurant area shall be limited to 2,250 sq ft of the total 9,000 sq ft of commercial square footage.
4. A local development order is required prior to any development of the site, in accordance with this planned development approval.
5. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
6. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131.
7. The property owner commits to encouraging visitors and staff to arrive without an automobile. If the proposed development's parking needs exceed the on-site parking provided, the applicant shall provide valet parking and/or coordinate with adjacent property owners, and/or consider other parking options to provide adequate parking.

If a shared parking agreement is specifically sought with the Town to help offset the need for supplemental parking, the Town will provide up to 15 parking spaces within the Bay Oaks Recreation Center to the property owner. If the tenants of the development include health and wellness providers, such as, but not limited to the following listed below, the Town will allocate 5 of those parking spaces at no charge for each Town approved (Administrative approval by Town Manager or designee) provider, up to a maximum of 15 parking spaces. The property owner may petition the Town Council to accept alternative personal service providers other than those preferred health and wellness providers listed below.

- Medical Clinic, with an MD, physician's assistant or Nurse Practitioner who can write a prescription
- Urgent Care, with an MD, physician's assistant or Nurse Practitioner who can write a prescription
- Dentist
- Pharmacy
- Rehabilitation/Physical Therapy clinic
- Chiropractor

8. To help mitigate traffic congestion along Estero Boulevard, the hotel proprietor will promote various marketing initiatives that support and encourage all guests to use alternative modes of transportation rather than drive a vehicle to or while on the island.

Such efforts will include:

- Dedicated page(s) on the Myerside Hotel website outlining and promoting alternative modes of transportation in the area and various marketing incentives such as:
 - Information on the walkability of the area and those businesses of interest to guests within walking distance of Myerside.
 - Bicycle rental.
 - Fort Myers Beach's LeeTran "TROLLEE" and seasonal TRAM Service Schedules and Route Maps
 - Publix and other food delivery service options
 - Free resort fee
 - Restaurant discounts
 - Discounts on future stays
- Establish partnerships with businesses on the island, especially in the "Heart of the Island," to provide incentives and discounts for guests. Hotel guests who do not drive onto the island will receive monetary discounts or vouchers for future stays and/or with participating local businesses, such as restaurants, bike rentals, and tour/tourism operators.
- Participate in townwide traffic mitigation efforts, such as:
 - Off-island parking and transport initiatives, e.g. Water ferry/taxi discounts for those staying at the hotel.
 - Off-site parking availability identification systems.
 - Evaluating and improving LeeTran's "TROLLEE" and seasonal TRAM's service and rider/user experience.

9. The final development must be generally consistent with the Master Concept Plan, renderings, and landscape betterment plan attached to this ordinance.

SCHEDULE OF USE

Lodging

Principal:

- Hotel/Motel (Inclusive of Hotel Condominiums)
- Guest Units

Accessory:

- Hotel/Motel Accessory Uses
- Personal Services
- Recreational Facilities

Residential

- Work/Live Units

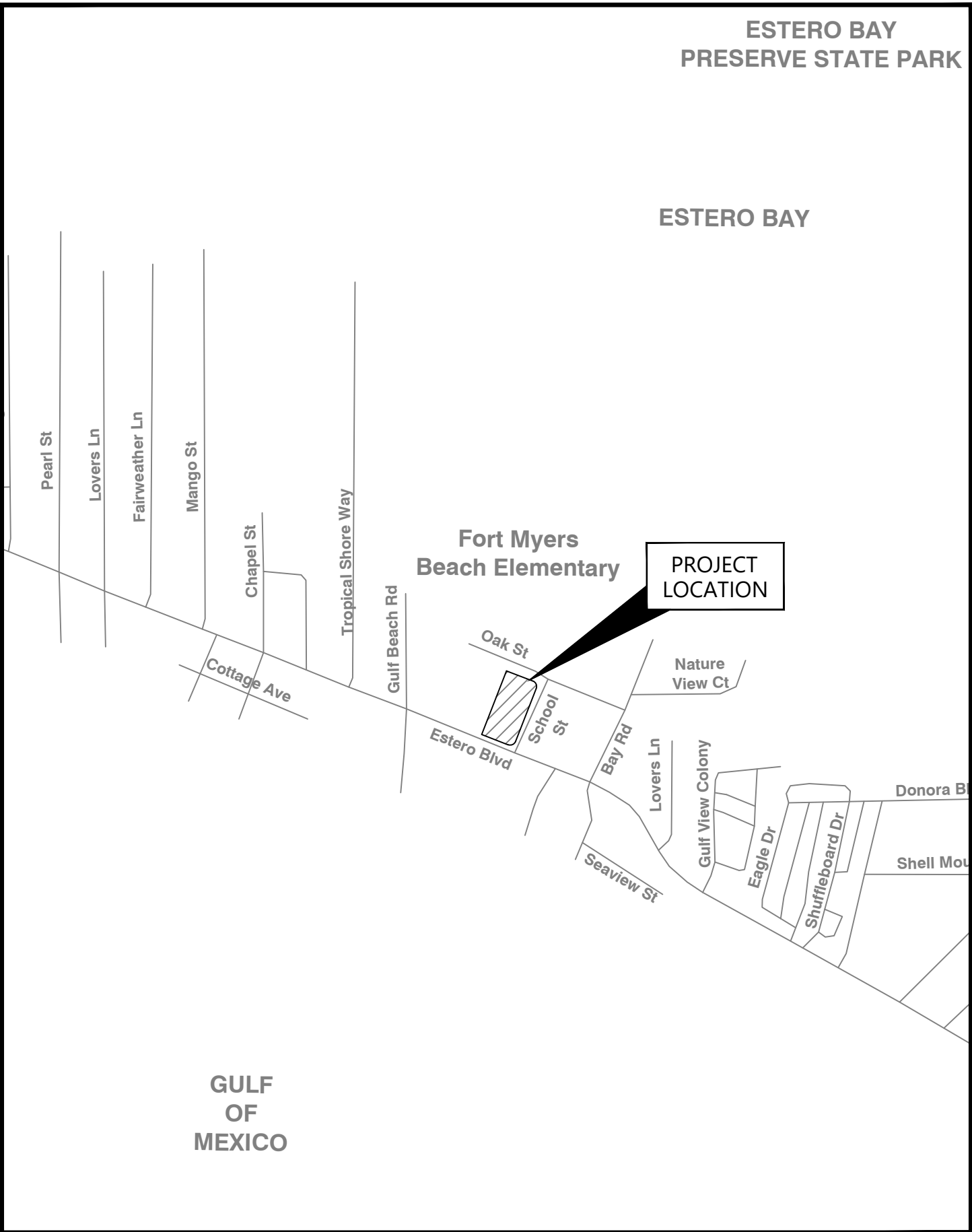
Commercial

- Offices, General or Medical
- Personal Services
- Restaurant with Bar Area
- Retail Store, Small & Large
- Subordinate Commercial Uses

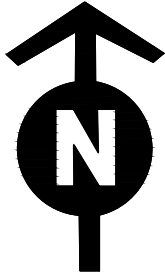
MASTER CONCEPT PLAN FOR

THE MYERSIDE CPD

SECTION 19, TOWNSHIP 46S, RANGE 24E,
FORT MYERS, FLORIDA



VICINITY MAP
N.T.S.



SITE LOCATION MAP
N.T.S.

PREPARED BY:



5618 WHISPERING WILLOW WAY
FORT MYERS, FL 33908

PREPARED FOR:

COTTAGES AT MYERSIDE, LLC
& MYERSIDE, LLC

145 SCHOOL ST
FORT MYERS BEACH, FL 33931

CONTENTS		
SHEET NUMBER	SHEET DESCRIPTION	
1	COVER SHEET	
2	MASTER CONCEPT PLAN	
3	NOTES	
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October, 2023	220050.01.01	1 OF 3

GENERAL NOTES:

1. THIS MASTER CONCEPT PLAN (MCP) IS CONCEPTUAL IN NATURE. THE OVERALL CONFIGURATION, SIZE AND LOCATION OF THE STRUCTURE(S) AND OTHER IMPROVEMENTS MAY VARY. FINAL DESIGN AND IMPROVEMENT DETAILS WILL BE PROVIDED AS PART OF THE DEVELOPMENT ORDER (D.O.) PROCESS.
2. WATER MANAGEMENT REQUIREMENTS FOR REDEVELOPMENT PROJECTS CAN VARY SIGNIFICANTLY. THE WATER MANAGEMENT PLAN WILL BE DESIGNED AT THE TIME OF D.O.
3. TOTAL CPD/DEVELOPMENT AREA: 1.03 +/- ACRES
4. FUTURE LAND USE MAP CATEGORY: BOULEVARD
5. THE PROJECT WILL BE DEVELOPED IN ONE PHASE.
6. NO ENVIRONMENTALLY SENSITIVE LAND OR WATER EXISTS ON SITE AS THIS SITE WAS IMPACTED BY PREVIOUS DEVELOPMENT AND HURRICANE IAN. NO PROTECTED SPECIES SURVEY IS REQUIRED PER APPROVED WAIVER.
7. ALL OTHER DEVELOPMENT STANDARDS SHALL BE SET FORTH IN LDC CHAPTER 24 OR OTHER APPLICABLE PROVISIONS OF THE LDC.
8. IN COMPLIANCE WITH LDC SECTION 34-1803(A)(2), THE MAXIMUM OF 45 ROOMS/LODGING UNITS AND FOUR (4) WORK/LIVE UNITS ARE ALLOWED DUE TO EXCEPTIONAL CIRCUMSTANCES AND PUBLIC BENEFIT PROVIDED BY THIS CPD.

SCHEDULE OF USES:

LODGING:

PRINCIPLE:

- HOTEL/MOTEL (INCLUSIVE OF HOTEL CONDOMINIUMS)
- GUEST UNITS

ACCESSORY:

- HOTEL/MOTEL ACCESSORY USES
- PERSONAL SERVICES
- RECREATIONAL FACILITIES

RESIDENTIAL:

- WORK/LIVE UNITS

COMMERCIAL:

- OFFICES. GENERAL, OR MEDICAL
- PERSONAL SERVICES
- RESTAURANT WITH BAR AREA
- RETAIL STORE, SMALL, & LARGE
- SUBORDINATE COMMERCIAL USES

MAXIMUM INTENSITY:

- MAXIMUM OF 45 HOTEL ROOMS/TRANSIENT LODGING UNITS
- MAXIMUM OF 4 WORK/LIVE UNITS
- MAXIMUM OF 9,000 SF OF COMMERCIAL SPACE
- MAXIMUM FLOOR AREA RATIO (F.A.R.): 1.3 OR 58,327 SF

PARKING:

- REQUIRED: 91 SPACES WITH A 4 SPACE REDUCTION BY PROVIDING 16 BICYCLE SPACES = 87 SPACES
- PROVIDED: MIN. 60 SPACES (INCLUDING 3 ADA SPACES) WITH 31% PARKING REDUCTION

DEVIATIONS:

1. A DEVIATION FROM LDC SEC. 10-285, TABLE 10-1 - CONNECTION SEPARATION, WHICH REQUIRES MINIMUM SEPARATION BETWEEN STREET AND ACCESSWAYS, IN ORDER TO ALLOW DRIVEWAY SEPARATIONS AS DEPICTED ON THE MASTER CONCEPT PLAN (MCP).
2. A DEVIATION FROM LDC SEC. 10-416 - LANDSCAPING STANDARDS TO ALLOW THE USE OF ALTERNATIVE LANDSCAPE BETTERMENT PLAN PURSUANT TO LDC SECTION 10-419. THIS SECTION STATES APPLICATIONS ARE ENTITLED TO DEMONSTRATE THAT THE INTENT OF THE LANDSCAPING STANDARDS CAN BE MORE EFFECTIVELY ACCOMPLISHED THROUGH AN ALTERNATIVE LANDSCAPE BETTERMENT PLAN. THE USE OF AN ALTERNATIVE LANDSCAPE BETTERMENT PLAN ADDRESSES ALL LANDSCAPING REQUIREMENTS PERTAINING TO THE REDEVELOPMENT OF THE SITE; SUCH AS, BUT NOT LIMITED TO LANDSCAPE ISLANDS, BUILDING PERIMETERS, BUFFERS, WALLS, PARKING AND VEHICULAR USE AREAS.
3. A DEVIATION FROM LDC SEC. 34-1804(A) AND SEC. 34-2020, WHICH REGULATES PARKING FOR HOTELS/MOTELS AND OTHER ACCESSORY USES, TO ALLOW A 31% REDUCTION IN REQUIRED PARKING.
4. A DEVIATION FROM LDC DIVISION 4, TABLE 34-3 FOR THE CR ZONING DISTRICT WHICH LIMITS HEIGHT TO 30 FEET ZONED HEIGHT AND THREE (3) STORIES TO ALLOW A MAXIMUM ZONED HEIGHT OF 36 FEET AND A MAXIMUM OF FOUR (4) STORIES.
5. A DEVIATION FROM LDC DIVISION 4, TABLE 34-3 FOR THE CR ZONING DISTRICT WHICH REQUIRES STREET SETBACKS OF 10 FEET TO INSTEAD ALLOW FOR BUILD-TO LINES OF 5 TO 10 FEET ALONG ESTERO BOULEVARD AND SCHOOL STREET.
6. A DEVIATION FROM LDC SEC. 34-1803(A)(1), WHICH ALLOWS THE CONVERSION OF DWELLING UNITS TO HOTEL/MOTEL GUEST UNITS PER ESTABLISHED EQUIVALENCY FACTORS, IN ORDER TO EXCEED SAID FACTORS AS ALLOWED PER LDC SEC. 34-1803(A)(2). THIS WOULD ALLOW A MAXIMUM INTENSITY OF 45 GUEST UNITS RATHER THAN THE 30 ALLOWED PER THE EXISTING TABLE.

DEVELOPMENT STANDARDS:

Minimum Lot Size	
Lot Area	1.03 ± acre
Lot Width	145 feet
Lot Depth	300 feet
Build to Line (Estero Blvd. and School St.)	5 - 10 feet
Minimum Setbacks Principal Building	
Front Street (Estero Blvd.)	N/A
Side Street (School St.)	N/A
Side Yard	15 feet
Rear Yard (Oak St.)	20 feet
Minimum Setbacks Accessory Building	
Side Street (School St.)	10 feet
Side Yard	7.5 feet for dumpster enclosure, 15 feet for all other buildings/structures
Rear Yard (Oak St.)	10 feet
Maximum Zoned Height	37 feet (measured from base flood elevation + 3' of freeboard to mid-point of roof)
Maximum Actual Height	50 feet (measured from grade to peak of roof)
Maximum Stories	4 Stories
Maximum Floor Area Ratio	1.3

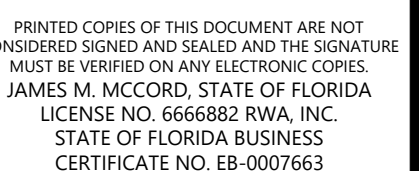


PREPARED FOR/OWNED BY:
MYERSIDE, LLC ----
145 SCHOOL ST.
FORT MYERS BEACH, FL 33931
(239) 529-8785

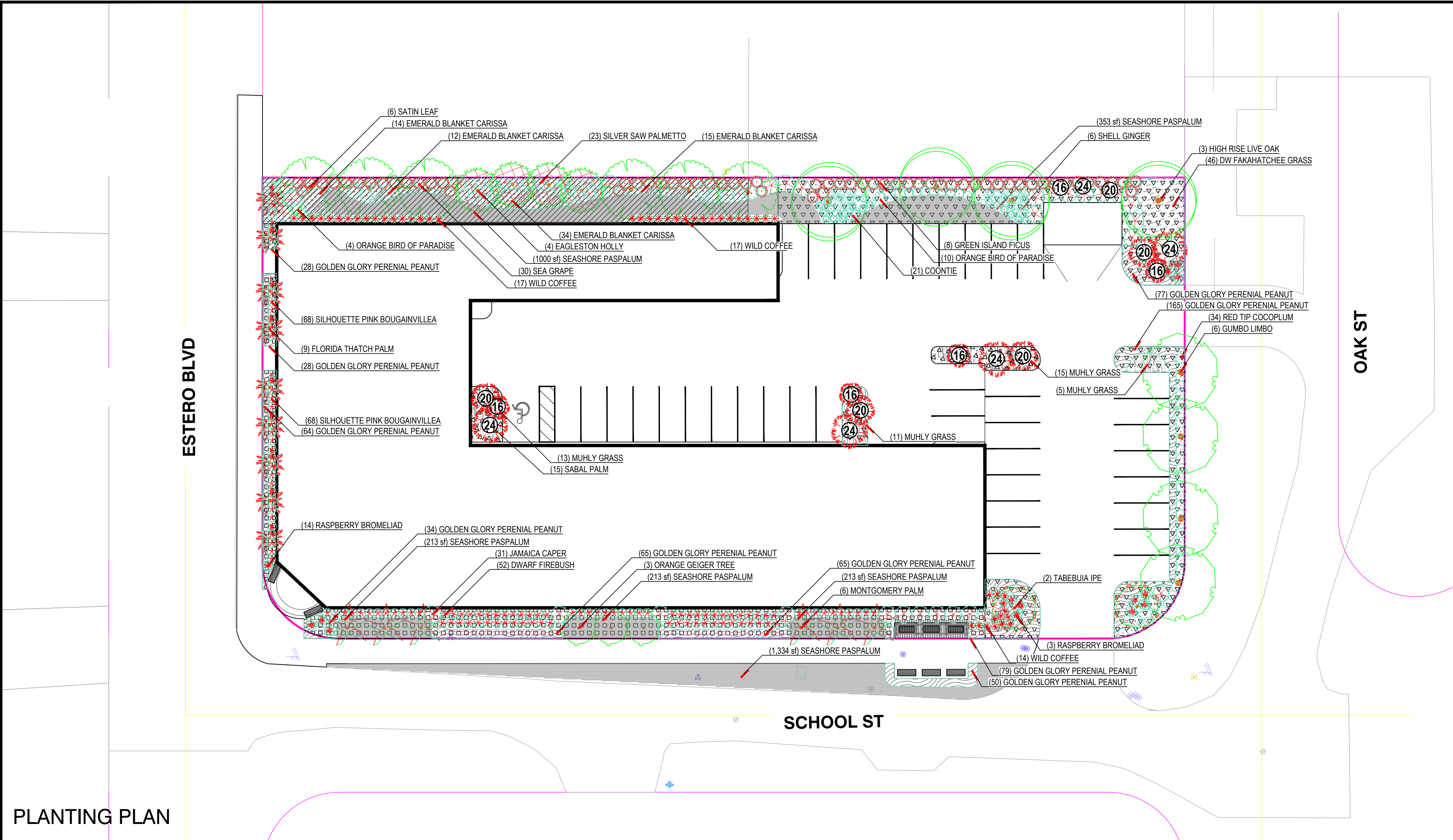


Sheet Number	Sheet Title
01	COVER SHEET
02	MASTER PLANTING PLAN
03	PERMIT CALCULATIONS & IRRIGATION PLAN
04	PERMIT LANDSCAPE NOTES
05	PERMIT LANDSCAPE NOTES
06	LANDSCAPE CONSTRUCTION NOTES
07	LANDSCAPE CONSTRUCTION DETAILS
08	LANDSCAPE CONSTRUCTION DETAILS

No.:	DATE:	DESCRIPTION:	APPROVED:



DATE: MARCH 2004	PROJECT No.: 200022 00 01	SHEET No.: 01 OF 08
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PLANTING PLAN

PLANT MATERIAL SCHEDULE

SYMBOL	QTY	BOTANICAL / COMMON NAME	MIN. SIZE	CALIPER	HEIGHT X SPREAD	NATIVE	SPACING
TREES							
	4	BURSERA SIMARUBA GUMBO LIMBO	45 GAL.	2" CAL	10' X 4'	YES	
	6	CHRYSOPHYLLUM OLIVIFORME SATIN LEAF	45 GAL.	2" CAL	10' X 4'	YES	
	3	CORDIA SEBESTENA ORANGE GEIGER TREE	30 GAL.	1" CAL	6' X 2'	YES	
	4	ILEX X ATTENUATA 'EAGLESTON' EAGLESTON HOLLY	30 GAL.	1" CAL	6' X 2'	YES	
	4	QUERCUS VIRGINIANA 'HIGH RISE' HIGH RISE LIVE OAK	45 GAL.	2" CAL	10' X 4'	YES	
	2	TABEUBIA IMPETIGINOSA TABEUBIA IPE	30 GAL.	1" CAL	6' X 2'	YES	
	4	SABAL PALMETTO SABAL PALM	FG		10' CT MIN. 16'-18' OA	YES	
	4	SABAL PALMETTO SABAL PALM	FG		10' CT MIN. 20'-22' OA	YES	
	4	SABAL PALMETTO SABAL PALM	FG		10' CT MIN. 24'-26' OA	YES	
	9	THRINAX RADIATA FLORIDA THATCH PALM	FG		14' OA	YES	
	6	VEITCHIA MONTGOMERYANA MONTGOMERY PALM	FG		16-18' OA	NO	
SHRUBS							
	14	AECHMEA BLANCHETIANA 'RASPBERRY' RASPBERRY BROMELIAD	3 GAL.		18"	YES	
	68	BOUGAINVILLEA 'SILHOUETTE PINK' SILHOUETTE PINK BOUGAINVILLEA	3 GAL.		18"	YES	
	31	CAPPARIS CYNOPHALLOPHORA JAMAICA CAPER	15 GAL.		60"	YES	
	34	CHRYSOBALANUS ICACO 'RED TIP' RED TIP COCOPLUM	7 GAL.		24"	YES	
	61	COCCOLOBA UVIFERA SEA GRAPE	7 GAL.		36"	YES	
	8	FICUS MICROCARPA 'GREEN ISLAND' GREEN ISLAND FICUS	3 GAL.		12"	NO	
	52	HAMELIA PATENS 'COMPACTA' DWARF FIREBUSH	7 GAL.		24"	NO	
	48	PSYCHOTRIA NERVOSA WILD COFFEE	3 GAL.		18"	YES	
	23	SERENGETIA REPENS SILVER SAW PALMETTO	7 GAL.		24"	YES	
	17	STRELITZIA REGINAE ORANGE BIRD OF PARADISE	15 GAL.		48"	NO	
	21	ZAMIA PUMILA COONTIE	3 GAL.		12"	YES	
	6	ALPINIA ZERUMBET SHELL GINGER	15 GAL.		48"	NO	
	44	MUHLENBERGIA CAPILLARIS MUHLY GRASS	3 GAL.		18"	YES	48" OC
	46	TRIPSACUM FLORIDANUM DWARF FAKAHATCHEE	1 GAL.		12"	YES	36" OC
	757	ARACHIS GLABRATA 'GOLDEN GLORY' GOLDEN GLORY PERENIAL PEANUT	4" POT		3"	NO	18" OC
	75	CARISSA MACROCARPA EMERALD BLANKET CARISSA	3 GAL.		12"	NO	24" OC
TURF							
	3,337 SF	PASPALUM VAGINATUM SEASHORE PASPALUM			SOD		



FRONT ELEVATION

0' 5' 10' 20'

SCALE: 1"=10'

Select Certified

IRRIGATION ASSOCIATION

Experienced professionals. Efficient solutions.

OID, CIC, CLIA

DATE: MARCH 2004

SIC: 19 TWP: 46 S RGE: 24 E

DESIGNED: JMM

DRAWN: JMM

CLIENT: MYERSIDE, LLC

TITLE: MASTER PLANTING PLAN

PROJECT: MYERSIDE

PROJECT NO.: 200022 00 01

FILE NAME: 200022 00 01 LA PERMIT

SHEET NUMBER: 02 OF 08

THIS IS HAS BEEN ELECTRONICALLY SIGNED & SEAL BY JAMES M. MCCORD USING A DIGITAL SIGNATURE AND DATE. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED & SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.

JAMES M. MCCORD

FLORIDA LICENSE NO. 6666882

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April 17, 2024 7:50 AM K:\2020\200022\0002\Myerside Landscape Zoning Services\02 Conceptual Landscape & Hardscape Design\200022 00 01 LA PERMIT.dwg

SURFACE WATER MANAGEMENT

- ## LANDSCAPING STANDARDS.

- OF WATER EXCEPT THOSE PORTIONS OF A SHORELINE HAVING A WALL; EXISTING VEGETATION WITHIN THE BUFFER AREA MUST BE RETAINED; AND THE REMOVAL OR CONTROL OF EXOTIC PEST PLANTS MUST NOT INVOLVE THE USE OF HEAVY MECHANICAL EQUIPMENT.
34. FOR DEVELOPMENT ABUTTING WETLANDS: THERE MUST BE A 75' SEPARATION BETWEEN WETLANDS AND ALL BUILDINGS OR OTHER IMPERVIOUS SURFACES.
35. REQUIRED BUFFERS MAY BE USED FOR PASSIVE RECREATION SUCH AS PEDESTRIAN OR BIKE PATHS, PROVIDED THAT: NO REQUIRED TREES OR SHRUBS ARE ELIMINATED; NOT MORE THAN 20% OF THE WIDTH OF THE BUFFER IS IMPERVIOUS SURFACE; THE TOTAL WIDTH OF THE BUFFER AREA IS MAINTAINED; AND ALL OTHER LDC REQUIREMENTS ARE MET.

1. REQUIRED LANDSCAPING AREAS MUST PROVIDE AN AUTOMATIC IRRIGATION SYSTEM.
2. IRRIGATION SYSTEMS MUST BE DESIGNED TO ELIMINATE THE APPLICATION OF WATER TO IMPERVIOUS AREAS, INCLUDING ROADS, DRIVES, AND OTHER VEHICLE AREAS.
3. IRRIGATION SYSTEMS MUST ALSO BE DESIGNED TO AVOID IMPACTS ON INDIGENOUS PLANT COMMUNITIES.
4. IRRIGATION SYSTEMS MUST INCORPORATE A SYSTEM CONTROLLER SET TO CONSERVE WATER.
5. MOISTURE DETECTION DEVICES MUST BE INSTALLED IN ALL AUTOMATIC SPRINKLER SYSTEMS TO OVERRIDE THE SPRINKLER OPERATIONS DURING PERIODS OF INCREASED RAINFALL.
6. WHERE EXISTING IRRIGATION SYSTEMS ARE MODIFIED REQUIRING THE ACQUISITION OF A PERMIT, AUTOMATIC ACTIVATION SYSTEMS AND OVERRIDING MOISTURE DETECTION DEVICES MUST BE INSTALLED.
7. THE REQUIREMENT TO PROVIDE AN AUTOMATIC IRRIGATION SYSTEM DOES NOT APPLY TO TREES PLANTED IN ACCORDANCE WITH THE LDC OR TO CULTIVATED LANDSCAPED AREAS THAT ARE PLANTED 100% WITH NATIVE FLORIDA PLANT SPECIES. A TEMPORARY IRRIGATION SYSTEM IS STRONGLY ENCOURAGED TO IMPROVE SURVIVABILITY AFTER INITIAL PLANTING. ALL PLANTS THAT DO NOT SURVIVE MUST BE REPLANTED IN THE SAME MANNER AS FOR ALL OTHER REQUIRED.

PLANT MATERIAL STANDARDS.

- ## PLANT INSTALLATION AND MAINTENANCE STANDARDS.

- ## LANDSCAPE CERTIFICATE OF COMPLIANCE.

1. THE LANDSCAPE ARCHITECT MUST INSPECT AND CERTIFY THAT ALL LANDSCAPING AND THE IRRIGATION SYSTEM ARE IN SUBSTANTIAL COMPLIANCE WITH THE APPROVED LANDSCAPE AND IRRIGATION PERMIT PLANS.
2. AN "AS-BUILT" LANDSCAPE PLAN MUST BE SUBMITTED TO HIGHLIGHT ANY CHANGES TO THE APPROVED PERMIT AND INCLUDED WITH THE CERTIFICATION.
3. ANY CHANGES TO AN "ALTERNATIVE LANDSCAPE BETTERMENT PLAN" MUST BE APPROVED BY MINOR CHANGE TO THE DEVELOPMENT ORDER.
4. THE GENERAL CERTIFICATE OF COMPLIANCE PROCEDURE OUTLINED IN THE LDC.
5. RESTORATION STANDARDS FOR INDIGENOUS PLANT COMMUNITIES.
6. A RESTORATION PLAN BASED ON THE MIN LDC STANDARDS WILL BE REQUIRED IF INDIGENOUS PLANT COMMUNITIES HAVE BEEN REMOVED WITHOUT PERMIT OR APPROVAL.
7. RESTORATION PLANTINGS FOR VEGETATION OTHER THAN TREES MUST BE NURSERY GROWN, CONTAINERIZED, AND PLANTED AT NO LESS THAN 36" OC.
8. THE NUMBER OF REPLACEMENT PLANTINGS WILL BE COMPUTED BY THE SQ FT OF THE AREA DESTROYED.
9. ALL OTHER RESTORATION CRITERIA AS SET FORTH IN THE LDC PERTAINING TO TREE PROTECTION WILL APPLY.
10. RESTORATION PLANTINGS FOR NATIVE TREES MUST BE IN COMPLIANCE WITH THE LDC STANDARDS.

1. BEACH IS THE AREA OF SAND ALONG THE GULF OF MEXICO THAT EXTENDS LANDWARD FROM THE MEAN LOW-WATER LINE TO THE PLACE WHERE THERE IS A MARKED CHANGE IN MATERIAL OR PHYSIOGRAPHIC FORM, OR TO THE LINE OF PERMANENT VEGETATION, USUALLY THE EFFECTIVE LIMIT OF STORM WAVES.

2. BEACH WIDTH MEANS THE PERPENDICULAR DISTANCE MEASURED FROM THE EDGE OF WET SAND TO THE PLACE WHERE THERE IS A MARKED CHANGE IN MATERIAL OR PHYSIOGRAPHIC FORM FROM BEACH SAND TO DUNE VEGETATION, SEAWALL, TURF GRASS, ETC.

3. DUNE SANDS ARE SANDS, RIVERS, OR EMBAYMENT ZONES OF LOOSE, UNCONSOLIDATED, USUALLY SAND-SIZED SEDIMENT, LYING UPLAND OF THE BEACH AND DEPOSITED BY ANY NATURAL OR ARTIFICIAL MECHANISM, WHICH MAY BE BARE OR COVERED WITH VEGETATION, AND IS SUBJECT TO FLUCTUATIONS IN CONFIGURATION AND LOCATION. IT ENCOMPASSES THOSE ECOLOGICAL ZONES THAT, WHEN LEFT UNDISTURBED, WILL SUPPORT DUNE VEGETATION, AS TO AREAS RESTORED OR RENOURISHED PURSUANT TO A PERMIT ISSUED BY THE TOWN OR STATE, IT ENCOMPASSES THE AREA SPECIFIED IN THE PERMIT AS A DUNE OR ANY AREA SPECIFIED AS SUITABLE FOR ESTABLISHMENT.

1. DUNE VEGETATION MEANS ANY PIONEER SPECIES OF NATIVE VEGETATION WHICH, IF LEFT UNDISTURBED BY MANMADE FORCES, WILL BEGIN TO GROW ON A DUNE INCLUDING SPECIES SUCH AS BITTER PANICUM, COASTAL PANIC GRASS, CROWFOOT GRASS, SALTMEADOW CORDEGRASS, SANDBUR, SEACOAST BLUESTEM, SEA OTS, SEASHORE DROPSIED, SEASHORE PASPALUM, SEASHORE SALTGRASS, STIFFLEAF EUSTACHYS, BEACH BENE, BLANKET FLOWER, DUNE SUNFLOWER, FIDDLE-LEAF MORNINGGLORY, PARTRIDGE PEA, RAILROAD VINE, SEA PURSLANE, BEACH CREEPER, NICKERBUSH, COIN VINE, INKBERRY, LANTANA, SAW PALMETTO, SEASHORE ELDER, BAYCEDAR, GREEN BUTTWOOD, CABBAGE PALM, COCOPLUM, SEAGRAPE, AND SOUTHERN WAX MYRTLE.
2. EDGE OF WET SAND MEANS THE POINT WHERE THE VISIBLE DARKENING OR STAINING OF THE BEACH SAND FROM WAVE ACTION IS NO LONGER DETECTABLE.
3. HAND RAKING MEANS THE USE OF A STANDARD GARDEN RAKE, PITCHFORK, POTATO FORK, OR ANY OTHER HANDHELD TOOL USED FOR THE PURPOSE OF REMOVING OR ALTERING THE "WRACK LINE."
4. MECHANICAL BEACH RAKING MEANS A METHOD OF MAINTAINING THE BEACH BY PULLING A PRONGED RAKE OR A PIECE OF CHAIN LINK FENCE THAT MEETS THE REQUIREMENTS OF THE LDC § 14-6(C). THE RAKE OR CHAIN LINK FENCE MAY BE PULLED BEHIND A TRACTOR, GOLF CAR, ATV, OR OTHER VEHICLE, AS APPROVED BY THE TOWN, WHICH MEETS THE MAXIMUM GROUND-TO-TIRE PRESSURE FOUND IN THE LDC.
5. SEAWARD LINE OF VEGETATION MEANS THE LOCATION CLOSEST TO THE MEAN HIGH-WATER LINE CONTAINING, OR SUITABLE FOR, DUNE VEGETATION. IF THERE IS NO SUCH VEGETATION UPON A PARCEL OR PORTION OF A PARCEL, IT WILL ENCOMPASS A LINE ALONGSHORE PROJECTED FROM THE CLOSEST AREAS ON EACH SIDE WHERE SUCH VEGETATION DOES EXIST.
6. WET SAND MEANS THE AREA ON THE BEACH WHERE THE SAND IS SATURATED BY SEA WATER FROM WAVE ACTION. THIS AREA IS IDENTIFIED BY A VISIBLE DARKENING OR STAINING OF THE BEACH SAND FROM THE WATER DRIVEN ONSHORE BY WAVE ACTION.
7. WRACK LINE MEANS A WELL-DEFINED ZONE OF THE NATURAL ORGANIC MARINE MATERIAL CAST ON THE SHORE BY THE LAST HIGH TIDE, INCLUDING SEAWEED AND OTHER VEGETATIVE AND ANIMAL DEBRIS, BUT EXCLUDING MANMADE MATERIAL. ANY AREAS OF ORGANIC MARINE MATERIAL LEFT ON THE UPPER BEACH DUE TO ABNORMALLY HIGH SPRING TIDES, STORM TIDES, OR OTHER EXTREME CONDITIONS OR EVENTS, AS DETERMINED BY THE TOWN, ARE NOT INCLUDED IN THE DEFINITION OF "WRACK LINE."
8. IT IS UNLAWFUL AND PROHIBITED FOR ANY PERSON TO DO, CONDUCT, OR PERMIT ANY OF THE FOLLOWING ON A BEACH, UPON A DUNE, OR IN THE WATER ADJACENT TO A BEACH: PLANT VEGETATION OTHER THAN DUNE VEGETATION; DESTROY OR HARM A DUNE OR REMOVE DUNE VEGETATION; DUMP OR DISCARD OR LEAVE LITTER OR GARBAGE, TRASH OR REFUSE, VEGETATIVE CLIPPINGS, OR DEBRIS; DESTROY OR GROSSLY INTERFERE WITH THE NATURAL WRACK LINE AS BY GROOMING OR NON-SELECTIVE RAKING; EXCAVATE, MINE, AND REMOVE, OR HAUL SAND OR SOIL FROM THE BEACH OR DUNE EXCEPT IN EMERGENCY SITUATIONS AS DECLARED BY THE TOWN COUNCIL; DEPOSIT / INSTALL ROCKS, CONCRETE, OR OTHER SHORELINE STABILIZATION MATERIALS WITHOUT A PERMIT FROM DEP AND THE TOWN DEPOSIT/ADD SAND TO THE BEACH AND DUNE SYSTEM WITHOUT A PERMIT FROM DEP.
9. ALL FILL MATERIAL SHALL BE SAND THAT IS SIMILAR TO THE EXISTING BEACH SAND IN BOTH COLORATION AND GRAIN SIZE AND BE FREE OF DEBRIS, ROCKS, CLAY, OR OTHER FOREIGN MATTER.

1. THE USE OF BOXBLADES ON THE BEACH OR DUNE IS PROHIBITED.
2. IN AN EMERGENCY AND/OR STORM EVENT RESULTING IN A BUILD-UP OF SAND AGAINST SEAWALLS, THE USE OF A BOXBLADE MAY BE ALLOWED WITH THE APPROVAL OF DEP, WHERE REQUIRED, AND UPON FILING THAT APPROVAL WITH THE TOWN MANAGER AND MEETING ANY OTHER REQUIREMENTS SET BY THE TOWN.
3. UNDER NORMAL CIRCUMSTANCES, THE RAKING OF THE WRACK LINE IS PROHIBITED.
4. NO MECHANICAL OR HAND RAKING MAY TAKE PLACE SEAWARD OF THE WRACK LINE OR WITHIN 10' LANDWARD OF THE WRACK LINE; PROVIDED THAT HAND RAKING OF THE WRACK LINE MAY BE PERFORMED ANYTIME TO AMELIORATE HAZARDOUS CONDITIONS SUCH AS REMOVAL OF SAND CASTLES OR FILLING IN OF MAN-MADE HOLES ON THE BEACH.
5. THE TOWN MAY APPROVE THE RAKING OF THE WRACK LINE CONDITIONED UPON PRIOR APPROVAL BY THE DEP IF IT IS DETERMINED THAT EXCESSIVE ACCUMULATION OF NATURAL OR OTHER DEBRIS CAUSED BY EXTREME EVENTS, INCLUDING, BUT NOT LIMITED TO, RED TIDE, RED ALGAE BLOOM, OR STORM-CARRIED DEBRIS, ARE PRESENT. SHOULD SUCH EXCESSIVE ACCUMULATION BE DETERMINED, THE TOWN MAY APPROVE RAKING CONSISTENT WITH THE AUTHORIZATION GIVEN BY DEP. ANY SUCH RAKING WHICH WILL RESULT IN THE UN-REIMBURSED EXPENDITURE OF TOWN FUNDS IN EXCESS OF CURRENTLY BUDGETED FUNDS SHALL FIRST BE APPROVED BY THE TOWN COUNCIL.
6. IF RAKING OCCURS DURING SEA TURTLE SEASON (MAY 1 THROUGH OCTOBER 31), THE RAKING MUST BE IN COMPLIANCE WITH THE LDC.

8. A RESTORATION PLAN SHALL BE ORDERED USING THE STANDARDS IN THIS SECTION. SUCH A RESTORATION PLAN SHALL SET FORTH REPLACEMENT OF THE SAME SPECIES OR ANY SPECIES APPROVED BY CONSENT OF THE BEFORE-MENTIONED PARTIES, OR, IF APPROPRIATE, IN ACCORDANCE WITH THE DIRECTION OF THE COURT OR SPECIAL MAGISTRATE.

9. RESTORATION PLANTINGS FOR VEGETATION OTHER THAN TREES MUST BE NURSERY GROWN, CONTAINERIZED, AND PLANTED AT A MIN DENSITY OF NO LESS THAN 1/2" OC.

10. THE NUMBER OF REPLACEMENT PLANTINGS WILL BE COMPUTED BY THE SQ FT OF THE AREA DESTROYED.

11. THE REPLACEMENT STOCK SHALL BE A 2" LINER.

12. HIGHER DENSITY PLANTINGS MAY BE REQUIRED AT THE TOWNS DISCRETION. IF THE DENSITY OR SPECIES OF THE VEGETATION CANNOT BE DETERMINED WHERE THE VIOLATION OCCURRED, THEN AN ASSUMPTION SHALL BE MADE THAT THE DENSITY AND THE SPECIES WERE THE SAME AS ON SIMILAR PROPERTIES.

13. DUNE VEGETATION ALTERATION VIOLATIONS DUE TO RAKING, EXCAVATION, AND/OR CLEARING SHALL BE RESTORED TO NATURAL GROUND ELEVATION AND SOIL CONDITIONS PRIOR TO COMMENCEMENT OF REPLANTING.

14. REPLACEMENT PLANTINGS SHALL GUARANTEE A 80 PERCENT MIN SURVIVABILITY RATE FOR A PERIOD OF NO LESS THAN 5 YEARS

15. ONLY TEMPORARY ABOVE GROUND IRRIGATION MAY BE INSTALLED AND MUST BE REMOVED NO LATER THAN 1 YEAR FROM THE INSTALLATION DATE.

ACTIVITIES THAT DESTROY WETLANDS OR IMPAIR THE FUNCTIONING OF WETLANDS ARE PROHIBITED.

Page 228 of 540

PROTECTED TREE REMOVAL.

- INDIGENOUS VEGETATION.**

- PROTECTED TREES.**

1. ANY TREE DELINEATED IN THE LDC SHALL BE A PROTECTED TREE.
2. ALL OTHER SPECIES OF TREES NOT NAMED IN THE LDC MAY BE REMOVED WITHOUT A PERMIT IN SUCH A MANNER SO AS NOT TO DISTURB OR DESTROY SURROUNDING PROTECTED TREES OR INDIGENOUS VEGETATION.

PROTECTED TREE LIST.

1. ACER RUBRUM, RHUS COPALLINA, ANNONA GLABRA, ILEX CASPINE, COCCOTHORINAX ARGENTATA, COCOS NUCIFERA, ROYSTONIA ELATA, SABAL PALMETTO, AICENNIA GERMINANS, CARPINUS CAROLINIANA, CORDIA SEBESTENA, BURSERA SIMARUBA, CAPPARIS CYNOPOLLOPHORA, BUCIDA BUCURAS, CONOCARPUS ERECTA, LAGUNCULARIA RACEMOSA, CORNUS FOEMINA, CUPRESSACEAE, JUNIPERUS SILICICOLA, EBENACEAE, DIOSPYROS VIRGINIANA, FABACEAE, ACACIA FARNESIANA, LYSILOMA BAHAMENSIS, PISCIDIA PISCIPULA, PITHECELOBIUM UNGUIS-CATI, QUERCUS CHAPMANI, QUERCUS INCANA, QUERCUS LAEVIS, QUERCUS LAURIFOLIA, QUERCUS MYRTIFOLIA, QUERCUS NIGRA, QUERCUS VIRGINIANA, QUERCUS VIRGINIANA GEMINATA, LIQUIDAMBAR STYRACIFLUA, CARYA AQUATICA, CARYA GLABRA, PERSEA BORBONIA, PERSEA PALUSTRIS, MAGNOLIA GRANDIFLORA, MAGNOLIA VIRGINIANA, SWETINIA MAHOGNI, MORACEAE, FICUS AUREA, FICUS CITRIFOLIA, MORUS RUBRA, EUGENIA AXILLARIS, EUGENIA CONFUSA, EUGENIA RHOMBEA, EUGENIA MYRTIODES, MYRCIANTHES FRAGANS, NYSSA SYLVESTICA, XIMENIA AMERICANA, OLEACEAE, FORESTIERA SEGREGATA, FRAXINUS CAROLINIANA, PINUS ELLIOTTII VAR. DENSA, PINUS PALUSTRIS, PLATANUS OCCIDENTALIS, COCCOLOBA DIVERSIFOLIA, COCCOLOBA UVIFERA, RHIZOPHORA MANGLE, PRUNUS CAROLINIANA, ZANTHOXYLUM CLAVAHERCULUS, SALIX CAROLINIANA, BUMEIA CELASTRINA, BUMEIA TENAX, CHRYSOPHYLLUM OLIVIFORME, MASTICHOEDENDRON FORTIODISSIMUM, SIMAROUBA GLAUCA, TAXODIUM ASCENDENS, TAXODIUM DISTICHUM, GORDONIA LANSIANTHUS, JACQUILINA KEYNSIS, CELTIS LAEVIATA, AND ULMUS AMERICANA.

UNLAWFUL INJURY OF TREES.

1. IT SHALL BE A VIOLATION TO REMOVE, INJURE, DISFIGURE, OR DESTROY A PROTECTED TREE IN PREPARATION FOR, IN CONNECTION WITH, OR IN ANTICIPATION OF DEVELOPMENT OF LAND, EXCEPT IN ACCORDANCE WITH THE LDC ANY PROTECTED TREE MAY BE LAWFULLY REMOVED ONLY AFTER A PERMIT THEREOF HAS BEEN.
2. WHERE A PROTECTED TREE IS TO BE REMOVED, THE TOWN MAY RELOCATE THE TREE AT THE TOWN'S EXPENSE WITHIN 30 WORKING DAYS.
3. FOR CLEARING PRIOR TO BUILDING PERMIT ISSUANCE, A SEPARATE TREE REMOVAL PERMIT APPLICATION MUST BE SUBMITTED.
4. NO PERMIT IS REQUIRED FOR THE REMOVAL OF UP TO 3 PROTECTED TREES DURING ANY 1 YEAR PERIOD ON A SINGLE-FAMILY RESIDENCE OR MOBILE HOME LOT.
5. PRIOR TO CLEARING, ALL PROTECTED TREES TO BE REMOVED SHALL BE CLEARLY MARKED.
6. WHERE A TREE REMOVAL PERMIT HAS NOT BEEN ISSUED, PROTECTIVE BARRIERS SHALL BE INSTALLED ACCORDING TO THE FOLLOWING: A MIN 6' RADIUS OF ALL SPECIES OF MANGROVES AND PROTECTED SABAL PALMS; MIN OF THE FULL DRIPLINE OF ALL PROTECTED NATIVE PINES; AND 2/3 OF THE DRIPLINE OF ALL OTHER PROTECTED SPECIES.
7. NO PERSON SHALL ATTACH ANY SIGN, NOTICE OR OTHER OBJECT TO ANY PROTECTED TREE OR FASTEN ANY WIRES, CABLES, NAILS, OR SCREWS TO ANY PROTECTED TREE IN ANY MANNER THAT COULD PROVE HARMFUL TO THE PROTECTED TREE, EXCEPT AS NECESSARY IN CONJUNCTION WITH ACTIVITIES IN THE PUBLIC INTEREST.
8. DURING THE CONSTRUCTION STAGE OF DEVELOPMENT, NO CLEANING OF EQUIPMENT OR MATERIAL WITHIN THE OUTSIDE PERIMETER OF THE CROWN (DRIPLINE) OR ON THE NEARBY GROUND OF ANY PROTECTED TREE OR GROUP OF TREES WHICH IS TO BE PRESERVED.
9. NO STORAGE OF BUILDING MATERIAL AND/OR EQUIPMENT, OR DISPOSAL OF WASTE MATERIAL SUCH AS PAINTS, OIL, SOLVENTS, ASPHALT, CONCRETE, MORTAR, OR ANY OTHER MATERIAL HARMFUL TO THE LIFE OF THE TREE WITHIN ITS DRIPLINE.
10. NO PERSON SHALL PERMIT ANY UNNECESSARY FIRE OR BURNING WITHIN 30' OF THE DRIPLINE OF A PROTECTED TREE.
11. ANY LANDSCAPING ACTIVITIES WITHIN THE PROTECTIVE BARRIER AREA SHALL BE ACCOMPLISHED WITH HAND LABOR.
12. ALL PROTECTED TREES DESIGNATED TO BE PRESERVED THAT WERE DESTROYED DURING CONSTRUCTION SHALL BE REPLACED BY TREES OF THE SAME SPECIES AND EQUIVALENT CAL @ DBH.
13. THE TOWN MAY CONDUCT PERIODIC INSPECTIONS OF THE SITE DURING LAND CLEARANCE AND CONSTRUCTION.
14. IF DEVELOPMENT ACTIVITIES SEVERELY STRESS SLASH PINES OR ANY OTHER PROTECTED TREE SUCH THAT THEY ARE MADE SUSCEPTIBLE TO INSECT ATTACK, PREVENTATIVE SPRAYING OF THESE TREES MAY BE REQUIRED.

RESTORATION STANDARDS.

1. A RESTORATION PLAN SHALL INCLUDE A PLANTING PLAN FOR ALL PROTECTED TREES.
2. REPLACEMENT STOCK SHALL BE COMPUTED ON 3:1 BASIS ACCORDING TO THE TOTAL NUMBER OF UNLAWFULLY REMOVED TREES.
3. REPLACEMENT TREES SHALL BE NURSERY GROWN, CONTAINERIZED, AND NO LESS THAN 6' OA.
4. UNDERSTORY VEGETATION SHALL BE RESTORED TO THE AREA FROM WHICH PROTECTED TREES WERE UNLAWFULLY REMOVED OR MUTILATED.
5. GROUND COVER AND GRASSES PLANT SELECTION SHALL BE BASED ON FLUCCS CODES.
6. UP TO 7 SPECIES SHALL BE UTILIZED WITH RELATIVE PROPORTIONS OF FLUCCS CHARACTERISTIC. THE EXACT NUMBER AND TYPE OF SPECIES REQUIRED SHALL ALSO BE BASED UPON THE EXISTING INDIGENOUS VEGETATION ON ADJACENT PROPERTY. REPLACEMENT STOCK SHALL BE NO LESS THAN 1 GAL, NURSERY-GROWN CONTAINERIZED STOCK PLANTED AT NO LESS THAN 3' OC IN THE AREA FROM WHICH PROTECTED TREES WERE UNLAWFULLY REMOVED / DAMAGED.
7. THIS AREA SHALL BE DEFINED BY THE DRIP LINE OF THE TREES. THE NUMBER OF SHRUBS SHALL NOT EXCEED, BUT MAY BE LESS THAN, 25 SHRUBS PER TREE UNLAWFULLY REMOVED OR DAMAGED.
8. THE UNDERSTORY OF THE RESTORED SITE SHALL BE PROTECTED FOR A PERIOD OF NO LESS THAN 10 YEARS, UNLESS ITS REMOVAL IS A PROVISION OF AN APPROVED DO AFTER THE RESTORATION OF THE SITE.
9. IF THE UNLAWFUL REMOVAL OF TREES HAS CAUSED ANY CHANGE IN HYDROLOGY, THEN THE HYDROLOGY SHALL BE RESTORED TO PRE-VIOLATION CONDITION.
10. REPLACEMENT STOCK SHALL BE FLORIDA NO. 1 OR BETTER GRADE WITH 80% SURVIVABILITY FOR A PERIOD OF NO LESS THAN 5 YEARS.
11. A MAINTENANCE PROVISION OF NO LESS THAN 5 YEARS MUST BE PROVIDED IN THE RESTORATION PLAN TO CONTROL INVASION OF EXOTIC VEGETATION.
12. REPLACEMENT STOCK SHALL NOT BE LOCATED ON ANY PROPERTY LINE, OR IN ANY UTILITY EASEMENT THAT PROHIBITS SUCH PLANTINGS.
13. THE RESTORATION PLAN SHALL INDICATE THE LOCATION OF THE REPLACEMENT STOCK CONSISTENT.
14. IF IDENTIFICATION OF THE SPECIES OF PROTECTED TREES THAT WERE UNLAWFULLY REMOVED IS IMPOSSIBLE, THEN A PRESUMPTION IS OF A SIMILAR SPECIES AND MIX AS THOSE FOUND ON ADJACENT PROPERTIES.
15. NO ONE SHALL DELIBERATELY CUT DOWN, DAMAGE, DESTROY, REMOVE, RELOCATE, DEFOLIATE THROUGH THE USE OF CHEMICALS OR OTHER METHODS WITHOUT FIRST OBTAINING A PERMIT. ITEMS REQUIRED FOR A TREE REMOVAL PERMIT SHALL INCLUDE: A SITE PLAN WITH THE SHAPE AND DIMENSIONS OF THE LOT OR PARCEL WITH THE EXISTING AND PROPOSED STRUCTURES AND IMPROVEMENTS; A TREE LOCATION MAP FOR THE REMOVAL OF 3 PROTECTED TREES OR LESS; ANY PROPOSED GRADE CHANGES THAT MIGHT ADVERSELY AFFECT OR ENDANGER ANY PROTECTED TREES WITH SPECIFICATIONS REFLECTING HOW THE TREES CAN BE SAFELY MAINTAINED; AND A TREE REPLACEMENT PLAN.
16. APPROVAL MAY BE GRANTED FOR A PERMIT FOR THE REMOVAL OF ANY PROTECTED TREE IF: TREES WHICH POSE A SAFETY HAZARD TO PEDESTRIAN OR VEHICULAR TRAFFIC OR THREATEN TO CAUSE DISRUPTION TO PUBLIC UTILITY SERVICES; TREES WHICH POSE A SAFETY HAZARD TO EXISTING BUILDINGS OR STRUCTURES; TREES WHICH, IF NOT REMOVED, WOULD PRECLUDE VEHICULAR ACCESS TO A LOT OR PARCEL; DISEASED TREES WHICH ARE A HAZARD TO PEOPLE, BUILDINGS OR OTHER IMPROVEMENTS ON A LOT OR PARCEL OR TO OTHER TREES; TREES SO WEAKENED BY AGE, STORM, FIRE, OR OTHER INJURY AS TO JEOPARDIZE THE LIFE AND LIMB OF PERSONS OR CAUSE A HAZARD TO PROPERTY; AND TREES THAT WOULD NOT ALLOW A LANDOWNER NO BENEFICIAL USE OF A LOT OR PARCEL OR WOULD PLACE AN INORDINATE BURDEN ON THE LANDOWNER.
- 17.

MANGROVE ENFORCEMENT.

1. THE RESTORATION PLAN SHALL INCLUDE THE FOLLOWING MIN PLANTING STANDARDS: 3:1 REPLACEMENT RATIO; IF THE NUMBER OF ALTERED MANGROVES CANNOT BE DETERMINED, THEN THE REQUIRED NUMBER OF REPLACEMENT STOCK SHALL BE COMPUTED ACCORDING TO THE TOTAL AREA WHEREIN ALL MANGROVES WERE

UNLAWFULLY ALTERED; THE REPLACEMENT STOCK SHALL BE CONTAINER GROWN MANGROVES NO LESS THAN 1 YEAR OLD AND 24: 0A: REPLACEMENT MANGROVES SHALL BE PLANTED AT A MIN DENSITY OF 36" OC. AND IF THE DENSITY OF MANGROVES CANNOT BE DETERMINED WHERE THE VIOLATION OCCURRED, THEN AN ASSUMPTION SHALL BE MADE THAT THE DENSITY WAS THE SAME AS ON ADJACENT PROPERTIES.

MANGROVE ALTERATION VIOLATIONS DUE TO FILLING, EXCAVATION, DRAINAGE, AND/OR CLEARING SHALL BE RESTORED TO NATURAL GROUND ELEVATION AND SOIL CONDITIONS PRIOR TO COMMENCEMENT OF REPLANTING.

REPLACEMENT STOCK SHALL NOT BE LOCATED ON ANY PROPERTY LINE, OR IN ANY UTILITY EASEMENT THAT PROHIBITS SUCH PLANTINGS.

IN THE EVENT THAT THE SPECIES OF MANGROVE CANNOT BE IDENTIFIED ON PROPERTY WHEREIN MANGROVES WERE ALTERED IN VIOLATION OF THIS ARTICLE, THEN A PRESUMPTION SHALL BE MADE THAT THE MANGROVES ILLEGALLY ALTERED WERE OF A SIMILAR SPECIES AND DISTRIBUTION AS THOSE FOUND ON ADJACENT PROPERTIES.

REPLACEMENT PLANTINGS SHALL HAVE A MIN OF 80% SURVIVAL AT THE END OF 5 YEARS, HOWEVER, SUCCESS WILL BE EVALUATED ON AN ANNUAL BASIS. THE RESTORATION PLAN SHALL INCLUDE A MAINTENANCE PROVISION OF NO LESS THAN 5 YEARS FOR THE CONTROL OF INVASIVE EXOTIC VEGETATION.

NO ONE SHALL ALTER ANY MANGROVE TREE LOCATED IN THE INCORPORATED AREA, WITHOUT FIRST OBTAINING A PERMIT, WHERE APPLICABLE, FROM THE STATE DEPARTMENT OF ENVIRONMENTAL, WHENEVER THE REQUIREMENTS OR PROVISIONS OF THIS ARTICLE ARE IN CONFLICT WITH THE REQUIREMENTS OR PROVISIONS OF ANY OTHER LAWFULLY ADOPTED ORDINANCE. THE MOST RESTRICTIVE REQUIREMENTS SHALL APPLY.

SIGNS.

1. A LANDSCAPE PLAN FOR SIGN INSTALLATIONS IS REQUIRED.

SURFACE WATER MANAGEMENT SYSTEMS.

1. SHORELINES MUST BE SINUOUS.
2. THE PLS SHORELINE LENGTH MUST EQUAL 25% OF THE TOTAL LIN FT OF THE LAKE'S CONTROL ELEVATION.
3. THE PLS SHOULD BE CONCENTRATED AT ONE LOCATION OF THE LAKE AND MUST BE LOCATED AWAY FROM RESIDENTIAL LOTS. THE PLS MAY BE LOCATED ADJACENT TO CONTROL STRUCTURES BUT MAY NOT IMPEDE FLOW.
4. THE REQUIRED PLS MAY BE DIVIDED AND PLACED IN MULTIPLE LOCATIONS AS LONG AS NO PLS AREA IS SMALLER THAN 1,000 SQ FT.
5. THE PLS MUST HAVE SLOPES FROM 6:1 TO 4:1 AND EXTEND A MIN OF A 20' WATERWARD OF CONTROL ELEVATION AT A MAX DEPTH OF 2' BELOW THE CONTROL ELEVATION. A DETAILED CROSS SECTION MUST BE PROVIDED IN THE PERMIT PLANS.
6. THE PLS AREAS MUST BE PLANTED WITH A MIN 4 NATIVE HERBACEOUS PLANT SPECIES SELECTED SURVIVAL BASED UPON THE EXPECTED WATER LEVEL FLUCTUATIONS AND MAX DEPTHS. THE LITTORALS MIN SIZE IS A 2' LINER
7. THE REQUIRED NUMBER OF LITTORALS EQUAL A 2' OC SPACING FOR THE ENTIRE AREA OF THE PLS. THE TOTAL NUMBER OF PLANTS FOR THE PLS IS CALCULATED BY MULTIPLYING THE TOTAL LIN FT OF CONTROL BY 25%, THEN MULTIPLIED BY THE 20' SHELF AND THEN DIVIDED BY 4 TO OBTAIN THE 2' OC REQUIREMENT.
8. NATIVE WETLAND TREES MAY BE SUBSTITUTED FOR UP TO 25% OF THE TOTAL NUMBER OF HERBACEOUS PLANTS REQUIRED AT 1 TREE (MIN 10' OA; 2" CAL, WITH A 4' SPREAD) PER 100 HERBACEOUS PLANTS.
9. TREES AND HERBACEOUS PLANTS MUST BE MAINTAINED IN PERPETUITY.
10. HARDENED SHORELINE STRUCTURES (BULKHEADS, GEO-TEXTILE TUBES, RIPRAP) MAY COMPRISE UP TO 20% OF AN INDIVIDUAL LAKE SHORELINE AND CANNOT USED ADJACENT TO SINGLE-FAMILY RESIDENTIAL USES. A 5' COMPENSATORY LITTORAL SHELF PLANTED WITH HERBACEOUS WETLAND PLANTS EQUAL TO THE LIN FT OF THE SHORELINE STRUCTURE MUST BE PROVIDED WITHIN THE SAME LAKE. THE REQUIRED LITTORALS FOR THIS SHELF EQUAL MULTIPLYING THE 5' LITTORAL SHELF WIDTH TIMES THE LENGTH DIVIDED BY 4 TO OBTAIN THE 2' OC REQUIREMENT.

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LANDSCAPE INSTALLATIONS SPECIFICATIONS

GENERAL.

3. THE CONTRACTOR SHALL BE RESPONSIBLE TO REVIEW AND IMPLEMENT ALL OF THE SPECIFICATIONS WITHIN THESE PLANS AND THE WRITTEN SPECIFICATIONS IN THE PROJECT MANUAL (IF PROVIDED).
4. THESE PLANS AND PROJECT MANUAL (IF PROVIDED) ARE INCLUDED AS PART OF THE CONTRACT DOCUMENTS AND ARE CONTRACTUALLY BINDING.
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL APPLICABLE PERMITS.
6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION OF ALL UTILITIES BOTH UNDERGROUND AND OVERHEAD PRIOR TO THE COMMENCEMENT OF ANY WORK.
7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES AND SERVICES THROUGHOUT THE COURSE OF WORK.
8. ALL LANDSCAPE AREAS (EXCEPT FOR PLANTING BEDS) SHALL BE SODDED WITH FLORATAM ST. AUGUSTINE UNLESS OTHERWISE INDICATED ON THE PLANS OR APPROVED IN WRITING BY RWA, INC.
9. CONTRACTOR SHALL NOTIFY RWA, INC. OF ANY CONFLICTS OF THE PLANS AND THE SITE CONDITIONS. FAILURE TO DO SO SHALL MAKE THE CONTRACTOR LIABLE FOR ANY NECESSARY MODIFICATIONS AT THE CONTRACTOR'S EXPENSE.
10. THE CONTRACTOR IS RESPONSIBLE TO VISIT THE SITE, POTHOLE AREAS OF CONCERN, AND PERFORM THE NECESSARY DUE DILIGENCE PRIOR TO BIDDING. FAILURE TO DO SO SHALL MAKE THE CONTRACTOR LIABLE FOR ANY NECESSARY MODIFICATIONS AT THE CONTRACTOR'S EXPENSE IF DEEMED POTENTIALLY FORESEEN.
11. ANY / ALL QUANTITIES SHOWN IN THESE DRAWINGS ARE PROVIDED FOR CONVENIENCE PURPOSES ONLY.
12. IT IS THE CONTRACTOR'S RESPONSIBILITY TO VERIFY ALL QUANTITIES PRIOR TO BIDDING.
13. FAILURE TO VERIFY QUANTITIES SHALL MAKE THE CONTRACTOR LIABLE FOR ANY OMISSIONS.
14. CONTRACTOR SHALL GET APPROVAL OF FINE GRADING FROM RWA, INC PRIOR TO THE INSTALLATION OF SOD OR ANY PLANT MATERIALS.
15. GRADING FOR LANDSCAPE BERMING SHOWN ON THESE PLANS AND IN DETAILS IS APPROXIMATE ONLY TO ENSURE DESIGN INTENT.
16. CONTRACTOR SHALL CONFER WITH RWA, INC PRIOR TO COMMENCING THIS WORK TO CONFIRM ACTUAL SHAPES AND ELEVATIONS OF THE LANDSCAPE BERMING.
17. THE CONTRACTOR SHALL BE THE RESPONSIBILITY TO FINE GRADE ALL THE LANDSCAPE AREAS REMOVING ALL MOUNDS, DEPRESSIONS, ROCKS, STICKS, OR OTHER DEBRIS PRIOR TO THE INSTALLATION OF SOD AND PLANT MATERIAL.
18. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING POSITIVE SHEET FLOW DRAINAGE AWAY FROM ALL STRUCTURES AND ROOTZONES.
19. THE CONTRACTOR SHALL COORDINATE ALL WORK WITH ALL TRADES SO AS TO AVOID ANY CONFLICT WITH THE EXECUTION OF WORK BY OTHERS.
20. OWNER SHALL NOT BE RESPONSIBLE FOR THE DAMAGE TO PLANT MATERIALS CAUSED BY OTHER TRADES OR SUBCONTRACTORS.
21. THE CONDITION AND FINAL LOCATION OF PLANT MATERIAL SHALL BE EVALUATED AND CONFIRMED BY RWA, INC.

PLANT MATERIALS.

1. ALL PLANT MATERIALS SHALL BE TRUE TO SPECIES AND CONFORM TO THE MINIMUM SIZES AS INDICATED IN THESE PLANS.
2. NO SUBSTITUTIONS SHALL BE ALLOWED UNLESS OTHERWISE APPROVED IN WRITING BY RWA, INC
3. ALL PLANT MATERIALS SHALL BE FLORIDA GRADE #1 OR BETTER IN ACCORDANCE WITH THE GRADES AND STANDARDS
4. FOR NURSERY PLANTS AS DETERMINED BY THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, DIVISION OF PLANT INDUSTRY UNLESS OTHERWISE APPROVED IN WRITING BY RWA, INC
5. ALL PLANT MATERIALS SHALL BE DISEASE FREE, INSECT FREE, HEALTHY, WELL-BRANCHED, AND GROWING VIGOROUSLY.
6. ALL PLANT MATERIALS SHALL BE SUBJECT TO RWA, INC'S FINAL APPROVAL.
7. ANY REJECTED PLANT MATERIAL SHALL BE REPLACED AT THE CONTRACTOR'S EXPENSE.
8. A "SPECIMEN" DESIGNATION FOR ANY PLANT MATERIAL REQUIRES IT TO BE GROWN AND PROPERLY PRUNED TO POSSESS SUPERIOR FORM, BRANCHING, COMPACTNESS, SYMMETRY, AND SHALL CONFORM TO FLORIDA FANCY IN ACCORDANCE WITH THE GRADES AND STANDARDS FOR NURSERY PLANTS AS DETERMINED BY THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, DIVISION OF PLANT INDUSTRY.
9. TREES PLANTED IN ROWS SHALL BE UNIFORMLY MATCHED IN SIZE AND SHAPE UNLESS OTHERWISE SPECIFIED IN THE PLANS.
10. RWA, INC RESERVES THE RIGHT REQUIRE THE CONTRACTOR TO RELOCATE AND / OR REPOSITION ANY PLANT MATERIAL AS REQUIRED DUE TO THE SITE CONDITIONS DURING CONSTRUCTION.
11. SINGLE TRUNK TREES SHALL HAVE A STRAIGHT, CENTRAL LEADER WITH UNIFORM BRANCHING UNLESS OTHERWISE SPECIFIED IN THESE PLANS.
12. MULTI-TRUNK TREES ARE TO HAVE 3-5 EQUAL SIZED TRUNKS WITH UNIFORM BRANCHING UNLESS OTHERWISE SPECIFIED IN THESE PLANS.
13. PLANT MATERIALS WITH MARRED, SEVERELY SCARRED, OR BURNED TRUNKS SHALL BE REJECTED.
14. PLANTS SHALL BE PRUNED PRIOR TO DELIVERY ONLY IN ACCORDANCE WITH INTERNATIONAL SOCIETY OF ARBORIST (ISA) GUIDELINES TO INSURE PROPER HEALTH AND VIGOROUS GROWTH.
15. ANY OTHER SUBSEQUENT PRUNING REQUIRED AFTER PLANT MATERIAL ARRIVAL TO THE PROJECT SITE SHALL BE APPROVED PRIOR BY RWA, INC
16. PLANT MATERIALS ARE TO BE HANDLED IN A MANNER TO ENSURE FULL PROTECTION TO THE TRUNKS, LIMBS, LEAVES, AND ROOTS.
17. ANY SIGNS OF MISHANDLING OF PLANT MATERIALS SHALL CAUSE THE REJECTION OF THE SAID PLANT MATERIAL UNLESS OTHERWISE APPROVED IN WRITING BY RWA, INC
18. ALL PLANT MATERIAL SIZES SPECIFIED IN THESE DRAWINGS ARE MINIMUMS.
19. THE CONTRACTOR SHALL BE RESPONSIBLE TO MEET OR EXCEED THE SPECIFIED SIZES OF HEIGHT, SPREAD, AND CALIPER. CONTRACTOR IS RESPONSIBLE TO TAKE THIS IN CONSIDERATION IN THE BIDDING PROCESS AND NOTIFY RWA, INC OF MATERIAL AVAILABILITY ISSUES. FAILURE TO DO SO, SHALL CONTRACTUALLY BIND THE CONTRACTOR TO PROVIDE THE REQUIRED SPECIES AND SIZE.
20. ANY INCIDENTAL MATERIAL COST INCREASES TO PROVIDE THE REQUIRED SPECIES AND SIZE SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR IF NOT STATED IN WRITING PRIOR TO BIDDING.
21. WHEN A HEIGHT, SPREAD, AND / OR CALIPER IS IN CONFLICT WITH A SPECIFIED CONTAINER SIZE, THE CONTRACTOR SHALL BE REQUIRED TO MEET THE FORMER OF THE SPECIFICATIONS AND INSTALL AN APPROPRIATELY SIZED CONTAINER PLANT MATERIAL TO COMPLY WITH THE HEIGHT, SPREAD, OR CALIPER AS SPECIFIED IN THESE DRAWINGS.
22. ANY REFERENCE TO CONTAINER SIZES IN THESE DRAWINGS ARE MINIMUMS REQUIRED FOR PROPER ROOT DEVELOPMENT.
23. A SMALLER CONTAINER SIZE SHALL NOT BE INSTALLED WITHOUT WRITTEN APPROVAL FROM RWA, INC
24. ALL BALLED AND BURLAPPED PLANT MATERIALS SHALL BE FRESHLY DUG, SOUND / SECURE IN THE ROOTBALL, AND POSSESS AN ADEQUATE ROOT SYSTEM TO ENSURE VIGOR. PREVIOUS ROOT PRUNING IS HIGHLY SUGGESTED.
25. ALL BIO-DEGRADABLE BURLAP SHALL BE CAREFULLY REMOVED FROM THE TOP ONE-THIRD (1/3) OF THE ROOTBALL AND TUCKED IN THE PLANTING PIT AS NOT TO BE EXPOSED TO AIR.
26. REMOVAL OF THE BIO-DEGRADABLE BURLAP SHALL BE PERFORMED IN SUCH A MANNER AS NOT TO DAMAGE ANY FEEDER ROOTS.
27. ALL NON-BIO-DEGRADABLE BURLAP, ROPE, AND GROW BAGS SHALL BE COMPLETELY REMOVED FROM THE PLANTING PIT.
28. ALL BALLED & BURLAPPED STOCK THAT IS NOT IMMEDIATELY PLANTED (THE DAY OF DELIVERY), SHALL BE HEALED IN AND THOROUGHLY WATERED UNTIL PLANTING. FAILURE TO DO SO, MADE NECESSITATE THE REJECTION OF ANY UNPROTECTED PLANT MATERIALS.
29. LIFTING, MOVING, OR ADJUSTING THE PLANT MATERIAL BY THE TRUNK SHALL BE PROHIBITED UNLESS OTHERWISE APPROVED IN WRITING BY RWA, INC
30. ALL CONTAINER GROWN PLANT MATERIAL SHALL BE WELL-ROOTED, NOT ROOT BOUND, AND GROWN IN THE SAME CONTAINER WHICH IT IS DELIVERED TO THE PROJECT SITE. LIFTING AND MOVING OF THE PLANT MATERIALS SHALL BE BY THE CONTAINER ONLY.
31. ALL CONTAINER GROWN PLANT MATERIAL THAT IS NOT IMMEDIATELY PLANTED, SHALL BE WATERED THOROUGHLY AND STORED IN A MANNER AS TO SHADE THE CONTAINERS FROM DIRECT SUNLIGHT TO MINIMIZE ROOT DAMAGE.
32. ALL CONTAINER GROWN PLANT MATERIAL SHALL BE THOROUGHLY WATERED IN THEIR RESPECTIVE CONTAINERS IMMEDIATELY PRIOR TO INSTALLATION.
33. TREE HEIGHTS SHALL BE MEASURED FROM GROUND TO THE AVERAGE BRANCH HEIGHT OF THE CANOPY.
34. SPREAD SHALL BE MEASURED TO THE END OF BRANCHING EQUALLY AROUND THE CROWN FROM THE CENTER OF THE TRUNK AND SHALL NOT INCLUDE ANY TERMINAL GROWTH.
35. SHRUB HEIGHTS SHALL BE MEASURED FROM THE GROUND TO THE AVERAGE POINT WHERE MATURE PLANT GROWTH STOPS.
36. SPREAD SHALL BE MEASURED TO THE END OF BRANCHING EQUALLY AROUND THE SHRUB MASS.
37. MEASUREMENT SHALL NOT INCLUDE ANY TERMINAL GROWTH.
38. PALMS SHALL BE MEASURED BY THREE HEIGHT CLASSIFICATIONS AS SPECIFIED IN THESE PLANS BASED ON SPECIES:
39. OVERALL HEIGHT (OA) SHALL BE MEASURED FROM THE FROM THE GROUND TO THE AVERAGE FROND HEIGHT AT TIME OF INSTALLATION.
40. CLEAR TRUNK (CT) SHALL BE MEASURED FROM THE GROUND AT TIME OF INSTALLATION TO THE BOTTOM OF THE FROND SHEATH.
41. GRAY WOOD (GW) SHALL BE MEASURED FROM THE GROUND AT TIME OF INSTALLATION TO THE TOP OF HARDENED WOOD.

PLANTING BED SOIL AND PIT PLANTING BACKFILL MATERIALS

1. PLANTING BED SOIL AND PIT PLANTING BACKFILL MATERIALS SHALL BE FREE FROM HEAVY CLAY, STONES, LIMESTONE, LUMPS, PLANTS, ROOTS OR OTHER FOREIGN MATERIALS AND NOXIOUS VEGETATION.
2. PLANTING BED SOIL AND PIT PLANTING BACKFILL MATERIALS SHALL NOT CONTAIN TOXIC SUBSTANCES WHICH MAY BE HARMFUL TO PLANT GROWTH.
3. PIT PLANTING BACKFILL MATERIALS SHALL BE A FERTILE, FRIABLE, NATIVE SOIL, ORGANIC AMENDMENTS (IF REQUIRED)
4. WITHOUT MIXTURE OF SUBSOIL MATERIALS.
5. PIT PLANTING BACKFILL MATERIALS FOR FIELD GROWN PLANT MATERIALS SHALL BE NATIVE SOIL FROM THE EXCAVATION OF THE PLANTING PIT PIT PLANTING

BACKFILL MATERIALS FOR CONTAINER GROWN PLANT MATERIALS SHALL BE AMENDED TO A RATIO OF ONE HALF (1/2) NATIVE SOIL & ONE HALF (1/2) APPROVED ORGANIC.

6. AMEND PLANTING BEDS WITH 3" MINIMUM OF APPROVED ORGANICS AND OCOTILLO TO A DEPTH OF 6".
7. GRADE PLANTING BEDS AS TO ASSURE PROPER DRAINAGE AWAY FROM PLANT MATERIALS AND STRUCTURES.
8. INCORPORATE A COMPLETE SLOW RELEASE FERTILIZER BY TILLING.
9. INSTALL OTHER REQUIRED SOIL AMENDMENTS PER MANUFACTURER'S OR INDEPENDENT LAB'S RECOMMENDATIONS TO ACHIEVE OPTIMAL PH LEVELS (5.5-6.5) WITHIN THREE (3) MONTHS OF PLANTING.
10. THE RESULTS OF PRE AND POST SOIL MODIFICATION TESTING SHALL BE SUBMITTED TO RWA, INC'S FOR APPROVAL PRIOR TO PLANTING.
11. SELECT AND MIX TESTING SAMPLES' LOCATIONS BASED ON LIKE PLANTING CONDITIONS AND AREA PROXIMITY.
12. ALL GRADING AND BED PREPARATION SHALL BE SUBJECT TO MORRIS-DEPEW ASSOCIATES, INC FINAL APPROVAL.
13. ANY REJECTED GRADING AND BED PREPARATION SHALL BE REMEDIED AT THE CONTRACTORS EXPENSE.
14. PLANTING BED SOIL AND PIT PLANTING BACKFILL MATERIALS :
15. PLANTING BED SOIL AND PIT PLANTING BACKFILL MATERIALS SHALL BE FREE FROM HEAVY CLAY, STONES, LIMESTONE, LUMPS, PLANTS, ROOTS OR OTHER FOREIGN MATERIALS AND NOXIOUS VEGETATION.
16. PLANTING BED SOIL AND PIT PLANTING BACKFILL MATERIALS SHALL NOT CONTAIN TOXIC SUBSTANCES WHICH MAY BE HARMFUL TO PLANT GROWTH.
17. PIT PLANTING BACKFILL MATERIALS SHALL BE A FERTILE, FRAGILE, NATIVE SOIL, ORGANIC AMENDMENTS (IF REQUIRED) WITHOUT MIXTURE OF SUBSOIL MATERIALS.
18. PIT PLANTING BACKFILL MATERIALS FOR FIELD GROWN PLANT MATERIALS SHALL BE NATIVE SOIL FROM THE EXCAVATION OF THE PLANTING PIT
19. PIT PLANTING BACKFILL MATERIALS FOR CONTAINER GROWN PLANT MATERIALS SHALL BE AMENDED TO A RATIO OF ONE HALF (1/2) NATIVE SOIL & ONE HALF (1/2) APPROVED ORGANIC.
20. AMEND PLANTING BEDS WITH 3" MINIMUM OF APPROVED ORGANICS AND ROTO TILL TO A DEPTH OF 6".
21. GRADE PLANTING BEDS AS TO ASSURE PROPER DRAINAGE AWAY FROM PLANT MATERIALS AND STRUCTURES.
22. INCORPORATE A COMPLETE SLOW RELEASE FERTILIZER BY TILLING.
23. INSTALL OTHER REQUIRED SOIL AMENDMENTS PER MANUFACTURER'S OR INDEPENDENT LAB'S RECOMMENDATIONS TO
24. ACHIEVE OPTIMAL PH LEVELS (5.5-6.5) WITHIN THREE (3) MONTHS OF PLANTING.
25. THE RESULTS OF PRE AND POST SOIL MODIFICATION TESTING SHALL BE SUBMITTED TO RWA, INC'S
26. FOR APPROVAL PRIOR TO PLANTING.
27. SELECT AND MIX TESTING SAMPLES' LOCATIONS BASED ON LIKE PLANTING CONDITIONS AND AREA PROXIMITY.
28. ALL GRADING AND BED PREPARATION SHALL BE SUBJECT TO MORRIS-DEPEW ASSOCIATES, INC FINAL APPROVAL.
29. ANY REJECTED GRADING AND BED PREPARATION SHALL BE REMEDIED AT THE CONTRACTORS EXPENSE.

COMMERCIAL FERTILIZER.

1. FERTILIZERS SHALL BE UNIFORM IN COMPOSITION, DRY, AND FREE FLOWING AND DELIVERED TO THE SITE IN ORIGINAL UNOPENED BAGS BEARING ALL THE MANUFACTURER'S LABELS.
2. ALL FERTILIZER IS TO BE SLOW RELEASE AND COMPLETE WITH NECESSARY MICRONESIAN.
3. AFTER INSTALLATION, FERTILIZER SHALL BE CLEANED FROM ALL HARDSCAPES SURFACES AND WATERED IN THOROUGHLY PER MANUFACTURER'S SPECIFICATIONS.
4. TREES AND SHRUBS MIXTURE SHALL CONSIST OF A SLOW RELEASE THE FORMULATION OF THREE (3) PARTS NITROGEN TO ONE (1) PART PHOSPHOROUS TO TWO (2) PARTS POTASSIUM (3-2 RATIO) AT A RATE OF FOUR TO SIX (4-6) POUNDS PER ONE HUNDRED (100) SQUARE FEET .
5. ALL TREES AND SHRUBS SHALL BE FERTILIZED BY MONTHLY DURING THE GROWING SEASON AT A RATE OF FOUR TO SIX (4-6) POUNDS PER ONE HUNDRED (100) SQUARE FEET OF BEDS / TREE CANOPY (THREE (3) FEET FORM BASE TO DRILLING) OR PER MANUFACTURE'S RECOMMENDATION.
6. SOD FERTILIZER SHALL BE TURF SPECIFIC FOR ESTABLISHING NEW LAWNS AND APPLIED PER MANUFACTURE'S RECOMMENDATION.
8. UPON ESTABLISHMENT, THE TURF SHALL BE FERTILIZED AT A RATE OF ONE (1) POUND OF ACTUAL NITROGEN PER THOUSAND (1000) SQUARE FEET OR PER MANUFACTURE'S RECOMMENDATION.
9. BAHIA TURF SHALL RECEIVE FERTILIZATION AT A HALF (1/2) RATE OF POUND OF ACTUAL NITROGEN PER THOUSAND (1000) SQUARE FEET OR PER MANUFACTURE'S RECOMMENDATIONS.
10. APPLY ONE HALF (1/2) POUND OF A PALM SPECIFIC ONE (1) PART NITROGEN TO ONE (1) PART POTASSIUM WITH THREE TENTHS (0.3) PARTS MAGNESIUM FERTILIZER FOR ALL ESTABLISHED PALMS PER TWO (2) OF HEIGHT OR PER MANUFACTURE'S
11. RECOMMENDATION.

MULCH.

1. MULCH MATERIAL SHALL BE FORESTRY RESOURCES VITA MULCH, OR AS SPECIFIED ON THE DRAWINGS, OR APPROVED SUBSTITUTE PRIOR TO PROCUREMENT BY RWA, INC IN WRITING.
2. MULCH MATERIAL SHALL BE UNIFORM, FREE FROM WEED SEEDS, AND CLEAN OF DEBRIS.
3. MULCH MATERIAL SHALL BE APPLIED UNIFORMLY TO A MINIMUM 3" SETTLED DEPTH AFTER WATERING IN.
4. A 12" X 24" MULCH SHALL BE MAINTAINED ALONG THE ENTIRE EDGE OF THE PLANTING BED.
5. MULCH SHALL NOT BE PLACED WITHIN 3" FROM SHRUB CROWNS AND 6" FROM TREE AND PALM TRUNKS.
6. SNAPSHOT OR APPROVED EQUAL IN WRITING BY MORRIS-DEWEY ASSOCIATES, INC PRIOR TO PROCUREMENT SHALL BE APPLIED PER MANUFACTURER'S RECOMMENDATIONS PRIOR TO INSTALLATION OF MULCH.
7. NO MULCH SHALL BE APPLIED TO ANY PLANTINGS LOCATED WITHIN A STORMWATER MANAGEMENT AREA.

SOD.

1. ALL SOD SHALL BE FLORATAM ST. AUGUSTINE UNLESS OTHERWISE STATED IN THESE PLANS.
2. ALL SOD SHALL MEET FLORIDA STATE PLANT BOARD SPECIFICATIONS, ABSOLUTELY TRUE TO VARIETY TYPE.
3. ALL SOD SHALL BE HEALTHY, WEED-FREE, INSECT-FREE AND DISEASE FREE.
4. ALL SOD JOINTS SHALL BE STAGGERED IN A RUNNING BOND PATTERN, AND INSTALLED BUTT TIGHT TO MINIMIZE AIR GAPS.
5. THE GRADE SHALL BE SMOOTH, FREE OF DEBRIS, POSITIVELY DRAINED, AND MOIST PRIOR TO SOD INSTALLATION.
6. ALL SOD JOINTS SHALL BE STAGGERED IN A "RUNNING BOND" PATTERN.
7. GAPS BETWEEN THE JOINTS SHALL NOT BE ACCEPTED.
8. ALL CUT PIECES OF SOD LESS THAN ONE HALF (1/2) A PIECE SHALL BE INSTALLED BETWEEN TWO (2) FULL PIECES TO INCREASE SURVIVABILITY.
9. THE SOD SHALL BE ROLLED IN TWO (2) DIRECTIONS PERPENDICULAR FROM ONE ANOTHER AFTER INSTALLATION AND WATER APPLICATION TO ENSURE PROPER GROUND CONTACT.
10. IN AREAS WHERE A ROLLER CANNOT BE USED, HAND TAMPING SHALL BE REQUIRED.
11. SOD SHALL BE INSTALLED AND WATERED WITHIN 24 HOURS AFTER HARVESTING.
12. ANY SOD LEFT ON A PALLET LONGER THAN TWENTY FOUR HOURS SHALL BE REJECTED AT THE CONTRACTOR'S EXPENSE.
13. ALL SOD SHALL BE SUBJECT TO RWA, INC FINAL APPROVAL.
14. ANY REJECTED SOD SHALL BE REPLACED AT THE CONTRACTORS EXPENSE.

						12800 University Drive, Suite 175 Fort Myers, Florida 33907 (239) 597-0575 FAX: (239) 597-0578 www.consult-rwa.com Florida Certificates of Authorization EB 7663 LB6952			DATE: MARCH 2004 SEC. TWP. RGE. 19 46 S 24 E DESIGNED: JMM DRAWN: JMM			HORIZ. SCALE (FULL): ##### HORIZ. SCALE (HALF): 1" = #####" VERT. SCALE (FULL): N/A VERT. SCALE (HALF): N/A			CLIENT: MYERSIDE, LLC TITLE: LANDSCAPE CONSTRUCTION NOTES			PROJECT: MYERSIDE			THIS IS HAS BEEN ELECTRONICALLY SIGNED & SEAL BY JAMES M. MCCORD USING A DIGITAL SIGNATURE AND DATE. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED & SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES. JAMES M. MCCORD FLORIDA LICENSE NO. 6666882
REV #	REVISION		DRAWN	CHECKED		DATE															

1. FINISH GRADE
2. 4" X 8" COMPACTED SOIL BASIN RING
3. MODIFIED SOIL BACKFILL (ONLY FOR CONTAINER GROWN TREES)
4. 3" MIN MULCH LAYER
5. ROOT BALL (MODIFY ACCORDINGLY)
6. UNDISTURBED / RE-COMPACTED SOIL BASE
7. BED EDGE TRENCH
8. TREE STAKES (SEE STAKING DETAIL)
9. TREE CROWN (SEE CROWN DETAILS)

NOTES

SEE DRAWINGS FOR SPECIFIED SIZES, SPECIES AND GRADES.

ALL PLANT MATERIALS SHALL BE IN ACCORDANCE WITH THE AMERICAN STANDARDS FOR NURSERY STOCK (ANSI Z60.1-2004) AND FLORIDA GRADES AND STANDARDS FOR NURSERY STOCK.

ALL MEASUREMENTS SHALL MEET FLORIDA GRADES AND STANDARDS FOR NURSERY STOCK.

PLANTING HOLE TO BE A MIN. OF 2X THE WIDTH OF ROOT BALL FOR AT LEAST THE FIRST 12" OF DEPTH AND DO NOT DIG THE HOLE DEEPER THAN ROOT BALL DEPTH OR FILL AND COMPACT TO 90% RELATIVE COMPACTION. THE PLANTING HOLE SUB-GRADE AND SIDES SHOULD BE SCARIFIED WHEN 15%+ CLAY SOILS EXIST.

THE TOP-MOST ROOTS SHOULD BE VISIBLE AT THE SURFACE OF THE ROOT BALL.

THE TREE TRUNK SHALL NOT BE USED FOR LIFTING / LEVERAGE. LIFT AND SET THE TREE BY THE ROOT BALL ONLY. REMOVE ALL WRAP, WIRAP AND STRAPS FROM THE UPPER 1/3 OF THE ROOT BALL AFTER THE TREE IS SET IN PLACE. REMOVE ANY TRUNK WRAP REMAINING, CLOSING STAKING, GROW BAG, TAGS, AND TAGGING TAPE AT TIME OF PLANTING.

NO MULCH TO BE PLACED WITHIN 3" OF TRUNK WITH NO MORE THAN 1" OF MULCH PLACED UPON ROOT BALL BACKFILL WITH CLEAN, MODIFIED, WELT-TILLED / BROKEN UP NATIVE SOIL AND ADD APPROPRIATE SOIL AMENDMENT BASED ON SOIL TESTING. DO NOT ADD BACKFILL AMENDMENTS FOR PIT PLANTED BASS TREES. COMPACT BACKFILL TO MINIMIZE AIR POCKETS WITH EVERY 6" LIFTS OF FILL. DO NOT OVER COMPACT SOIL & SETTLE BACK FILL WITH WATERING IN. WATER TREE AFTER FULLY BACKFILLED.

ROOT BALL IS TO REST ON SOIL BASE AND TO BE INSTALLED 7"-2" ABOVE GRADE TO ALLOW FOR SETTLING.

FOR WET SOILS, INSTALL ROOT BALL HIGHER AND GRADE TO IT AS REQUIRED FOR PROPER OXYGEN INTAKE OF THE TREE. INSTALL GRASS, WELT, OR CLOTH CONFINING LAYERS IF HOLE IS NOT FULLY PEGULATION TESTED.

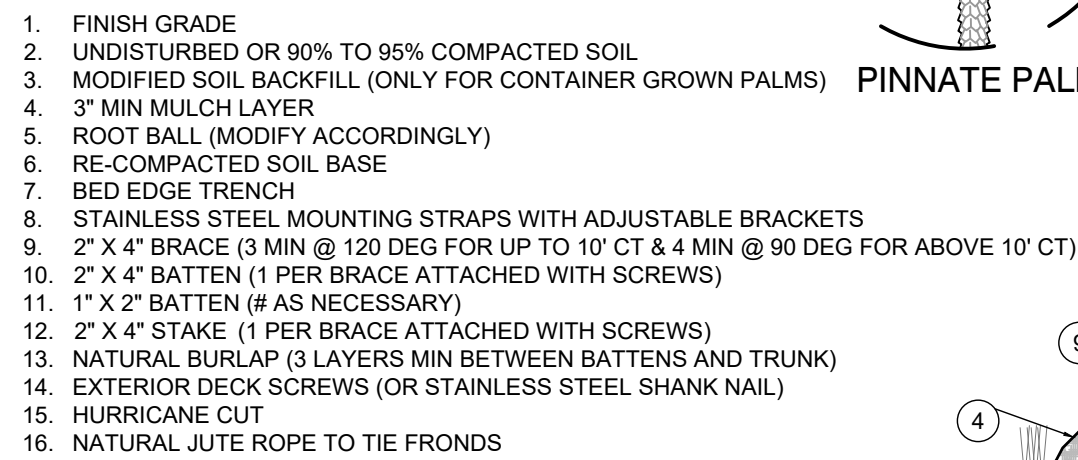
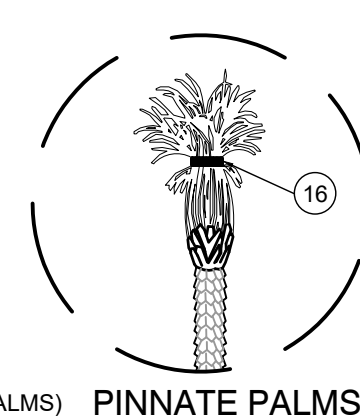
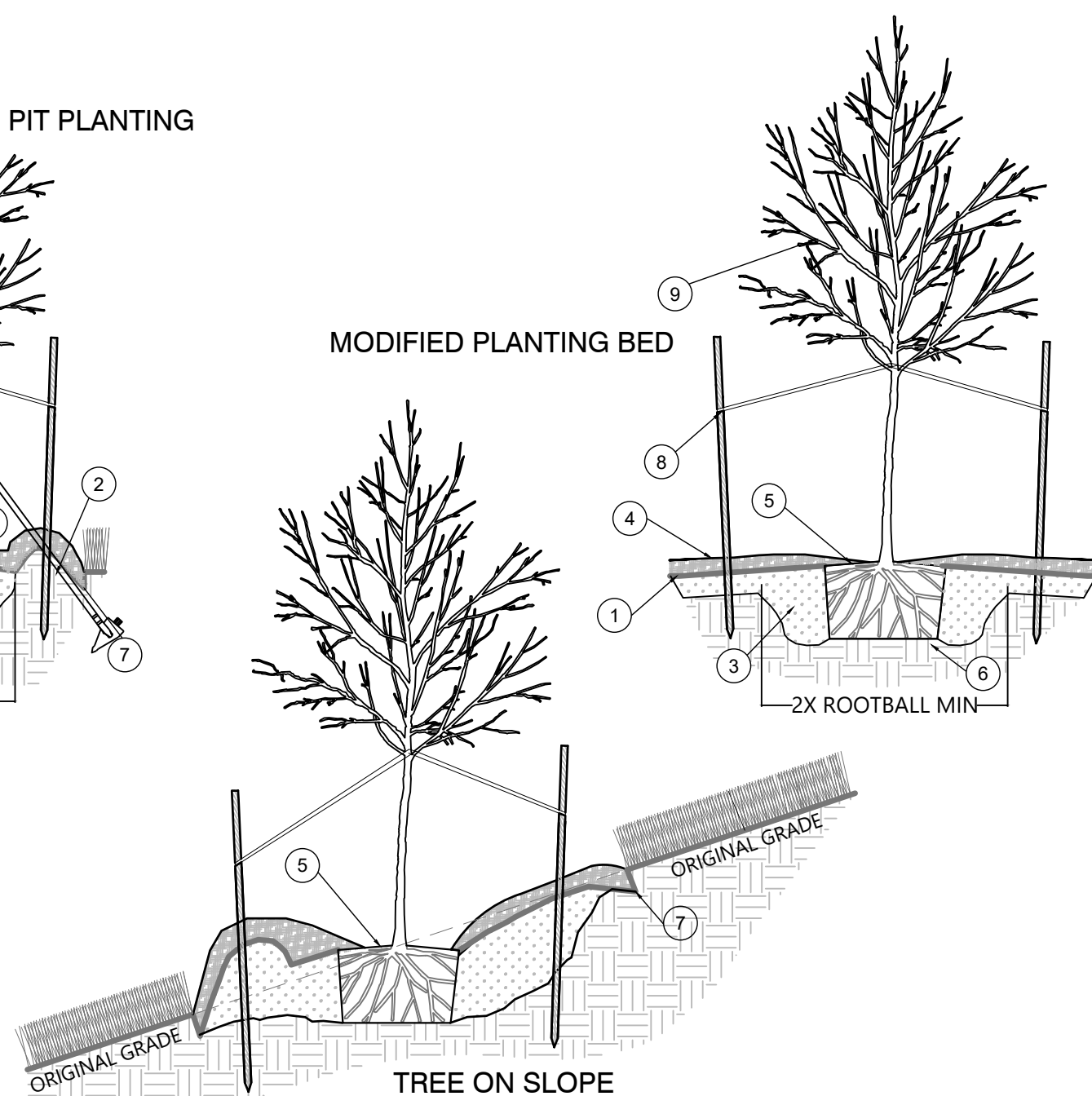
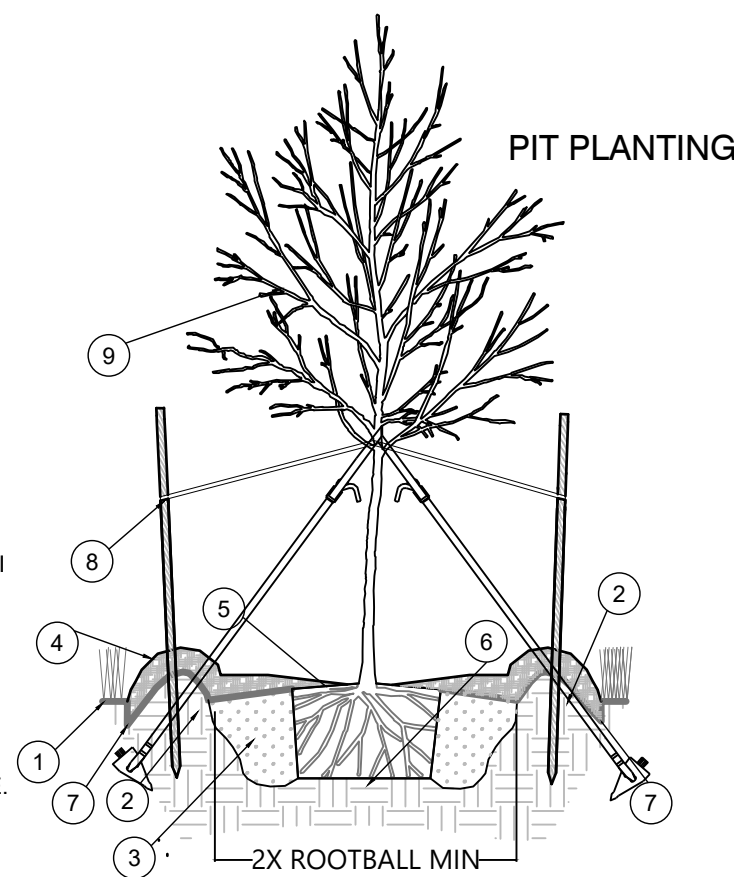
CREATE A 4" BASIN RING AROUND THE TREE TO ALLOW FOR WATER TO LOCATE THE INSIDE EDGE ALONG THE EXCAVATION AND COMPACT BASIN PRIOR TO MULCHING ON ALL SIDES TO RETAIN WATER.

FOR SLOPED PLANTINGS, ORIGINAL SLOPE SHOULD PASS THROUGH THE POINT WHERE THE TRUNK BASE MEETS SUBSTRATE/SOIL.

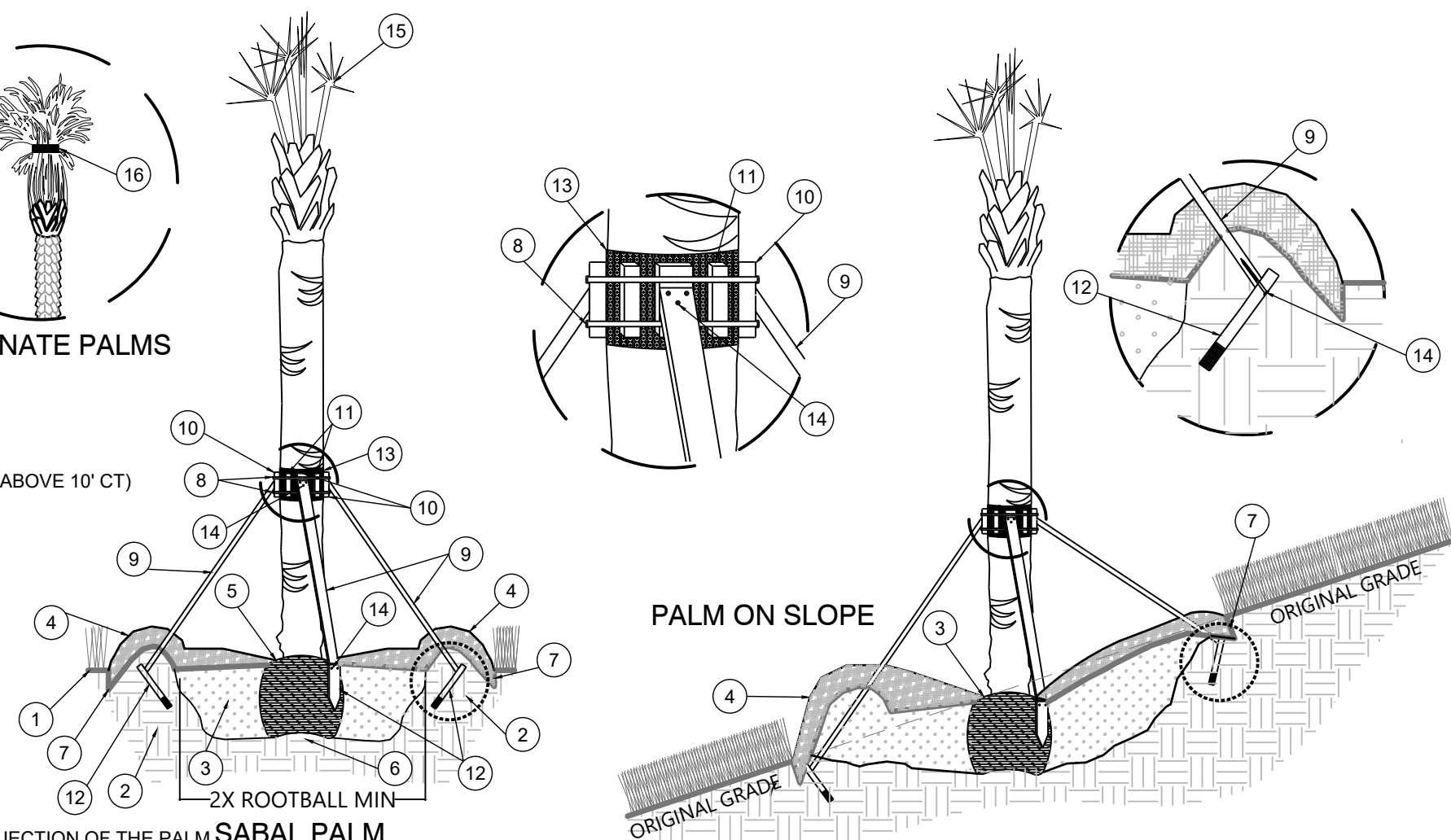
PRUNING SHALL BE LIMITED TO DEAD, DISEASED, OR BROKEN LIMBS ONLY AND SHALL BE IN ACCORDANCE WITH ANSI A300 SPECIFICATION.

CORRECT TREE CROWN AND ROOT BALL AS REQUIRED FOR PROPER CANOPY GROWTH AND ROOT DEVELOPMENT.

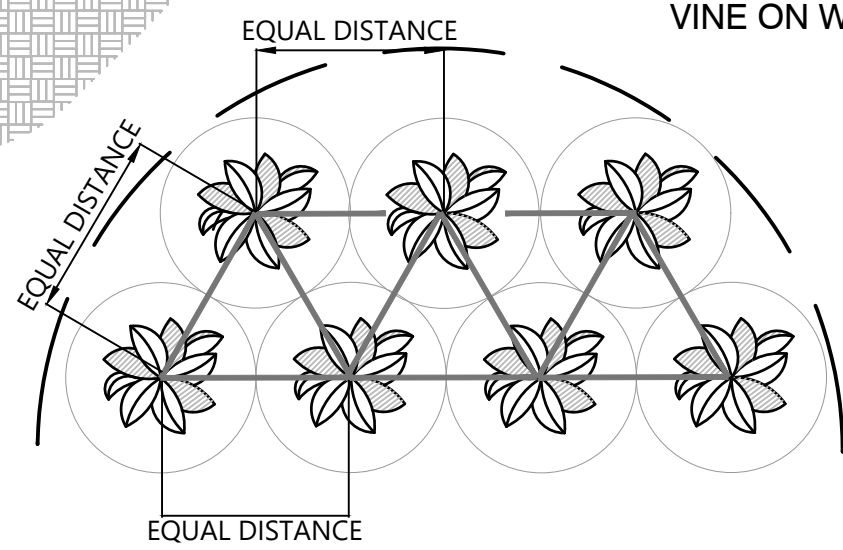
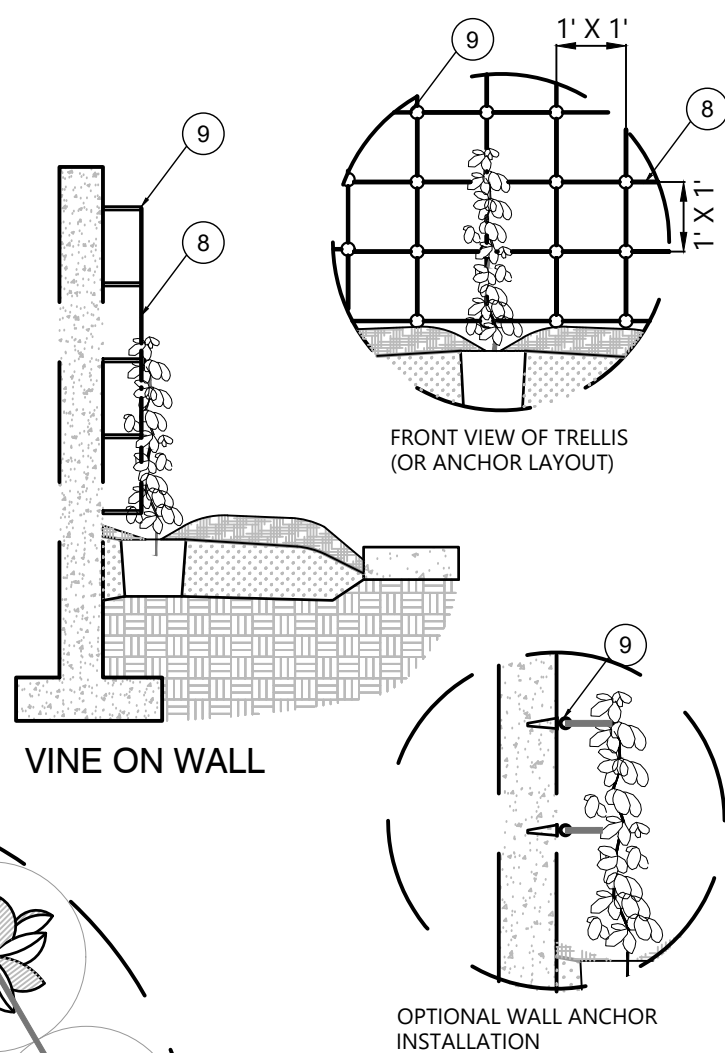
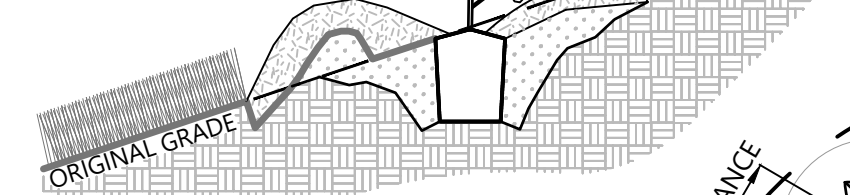
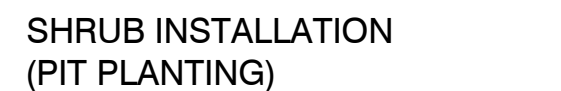
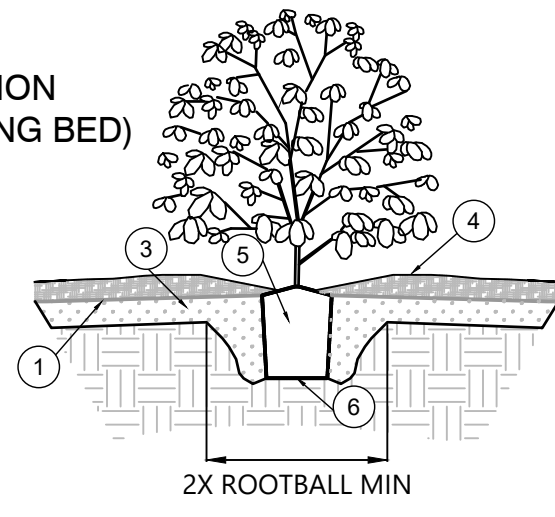
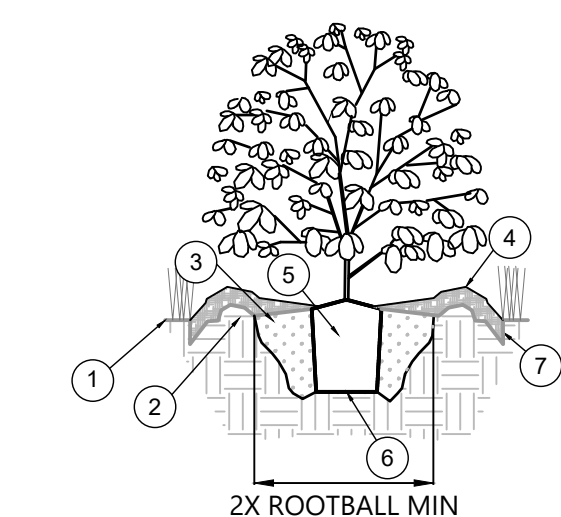
STAKE / GUY TREE ACCORDING TO APPROPRIATE DETAIL.



NOTES:
SEE DRAWINGS FOR SPECIFIED SIZES, SPECIES AND GRADES.
BRACE PALM ACCORDING TO APPROPRIATE STAKING / GUYING DETAIL.
BRACE LOCATIONS SHALL NOT INTERFERE WITH PEDESTRIAN WAYS.
BRACES TO BE REMOVED WITHIN 1 YEAR OF INSTALLATION.
NO BURNT PALMS WILL BE ACCEPTED.
DO NOT SCREW (OR TOE NAIL) BATTENS INTO THE TRUNK OF THE PALM.
ANY TRUNK DAMAGE CAUSED BY NAILS OR SCREWS WILL GIVE CAUSE TO REJECTION OF THE PALM.
PRUNING SHALL BE LIMITED TO DEAD, DISEASED, OR BROKEN LIMBS ONLY AND SHALL BE IN ACCORDANCE WITH ANSI A300 SPECIFICATIONS.
NO FEATHER DUSTER PRUNING, FRONDS SHOULD MAKE A HALF CIRCLE AT A MIN.
HURRICANE CUT ALL PALM PALMS
PALM STAKES TO BE PLACED BELOW GRADE TO NECESSARY DEPTH DETERMINED BY SOIL. STRUCTURE TO PROVIDE PROPER STABILIZATION
PLACE BATTENS AND INSTALL ENOUGH BATTENS AS REQUIRED FOR BAND NOT TO COME INTO DIRECT CONTACT WITH TRUNK.
THE TOP-MOST ROOTS SHOULD BE VISIBLE AT THE SURFACE OF THE ROOT BALL.



1 TREE INSTALLATION



1. FINISH GRADE
2. 3" X 6" COMPACTED SOIL BASIN RING
3. MODIFIED SOIL BACKFILL (ONLY FOR CONTAINER GROWN)
4. 3" MIN MULCH LAYER
5. ROOT BALL (MODIFY ACCORDINGLY)
6. RE-COMPACTED SOIL BASE
7. BED EDGE TRENCH
8. STAINLESS STEEL WIRE TRELLIS (OR APPROVED OTHER)
9. STAINLESS STEEL ANCHOR AND EYE HOOK MOUNTING METHOD
(OR APPROVED OTHER)

NOTES:

SEE DRAWINGS FOR SPECIFIED SIZES, SPECIES AND GRADES.

ALL PLANT MATERIALS SHALL BE IN ACCORDANCE WITH THE AMERICAN STANDARDS FOR NURSERY STOCK (ANSI Z60.1-2004).

PLANTING HOLE TO BE A MIN. OF 2X THE WIDTH OF ROOT BALL FOR AT LEAST THE FIRST 12" OF DEPTH AND DO NOT DIG THE HOLE DEEPER THAN ROOT BALL DEPTH. ROOT BALL IS TO REST ON SOIL.

ROOT BALL IS TO BE PLANTED TO 90% RELATIVE COMPACTION.

THE PLANTING HOLE THE SUB-GRADE AND SIDES SHOULD BE SCARIFIED WHEN PLANTING IN 15% OR MORE CLAY SOILS.

LIFT AND SET THE SHRUB BY ROOT BALL / CONTAINER ONLY. DO NOT LIFT VIA TRUNK.

IF B&B, PLACE SHRUB IN PLANTING HOLE, REMOVE BURLAP, WIRE AND STRAPS FROM AT LEAST THE UPPER 1/3 OF THE ROOT BALL.

FOR CONTAINER STOCK, AMEND ROOT BALL AS REQUIRED FOR PROPER GROWTH AND ROOT DEVELOPMENT AND MIX WITH EXISTING SOIL THAT HAS BEEN WELL-TILLED OR BROKEN UP. DO NOT ADD AMENDMENTS TO THE BACKFILL SOIL FOR B&B SHRUBS. USE CLEAN BACKFILL AND APPROPRIATE SOIL AMENDMENT BASED ON SOIL TESTING.

REMOVE TO DEAD, DISEASED, OR BROKEN BRANCHES ONLY AND SHALL BE IN ACCORDANCE WITH ANSI A300 SPECIFICATIONS.

REMOVE ANY NURSERY TAGS, AND TAPPING TAGS AT TIME OF PLANTING. NO WRAPS SHALL BE PLACED ON TRUNK.

LIGHTLY COMPACT TO MINIMIZE AIR POCKETS EVERY 6" LIFTS OF FILL, DO NOT OVER COMPACT SOIL & SETTLE BACK FILL WITH WATERING IN.

ROOT BALL TO BE INSTALLED 1"-2" ABOVE GRADE TO ALLOW FOR SETTLING. FOR WET SOILS, INSTALL ROOT BALL HIGHER AND GRADE TO IT AS REQUIRED FOR PROPER OXYGEN INTAKE OF THE SHRUB.

FOR SLOPED PLANTINGS, ORIGINAL SLOPE SHOULD PASS THROUGH THE POINT WHERE THE TRUNK BASE MEETS SUBSTRATE/SOIL.

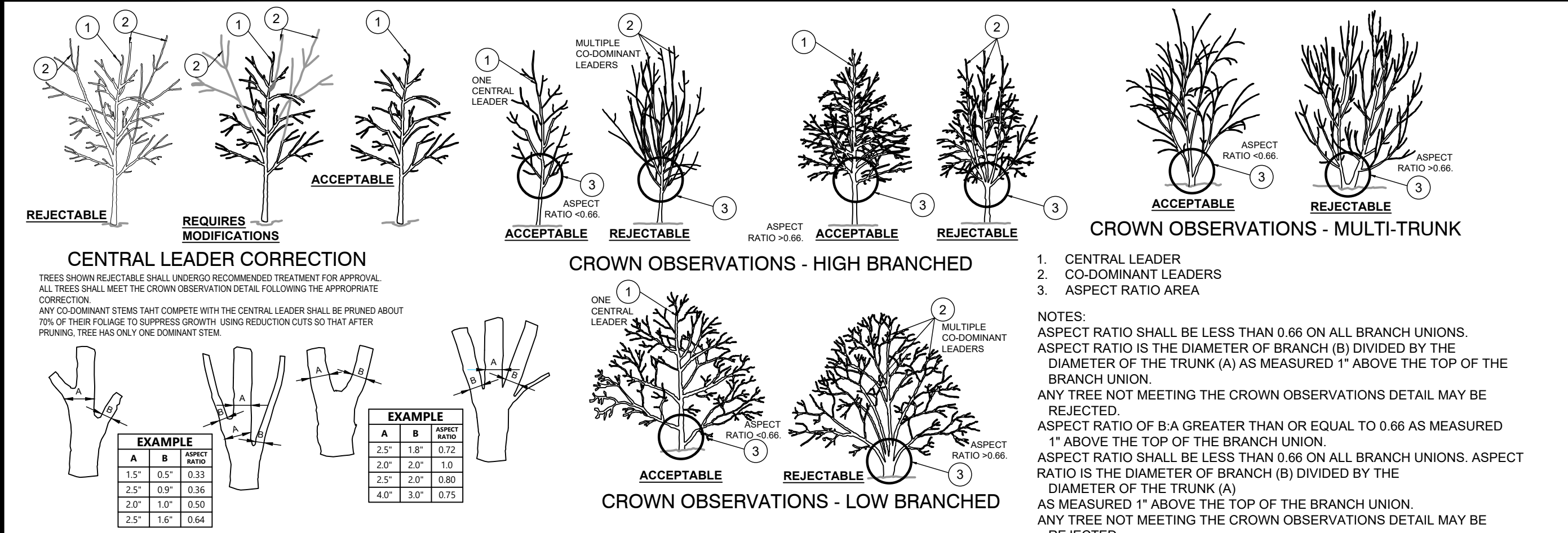
LOCATE SIDES OF BASIN RINGS TO OUTSIDE EDGE OF TREE PIT AND COMPACT IT ON ALL SIDES TO RETAIN WATER.

NO MULCH TO BE INSTALLED WITHIN 3" OF TRUNK.

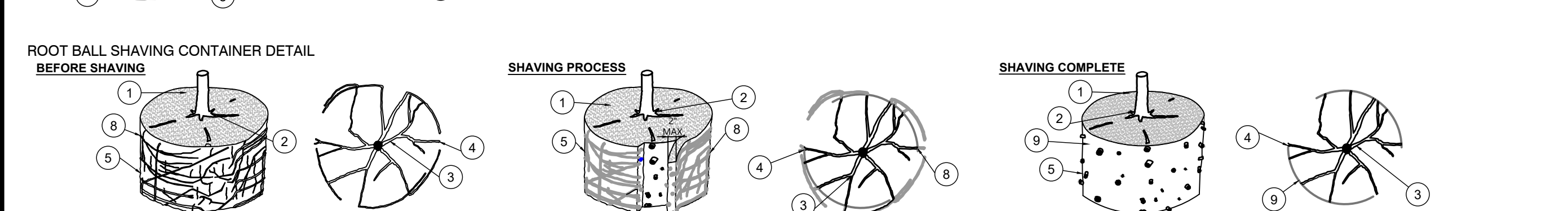
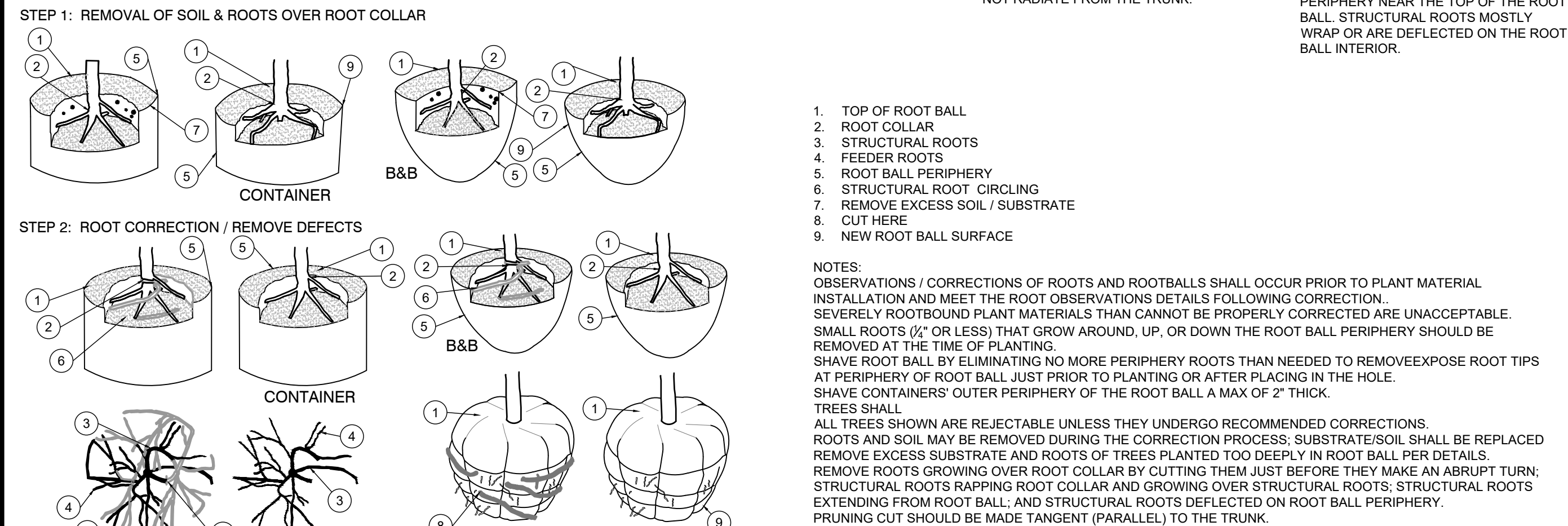
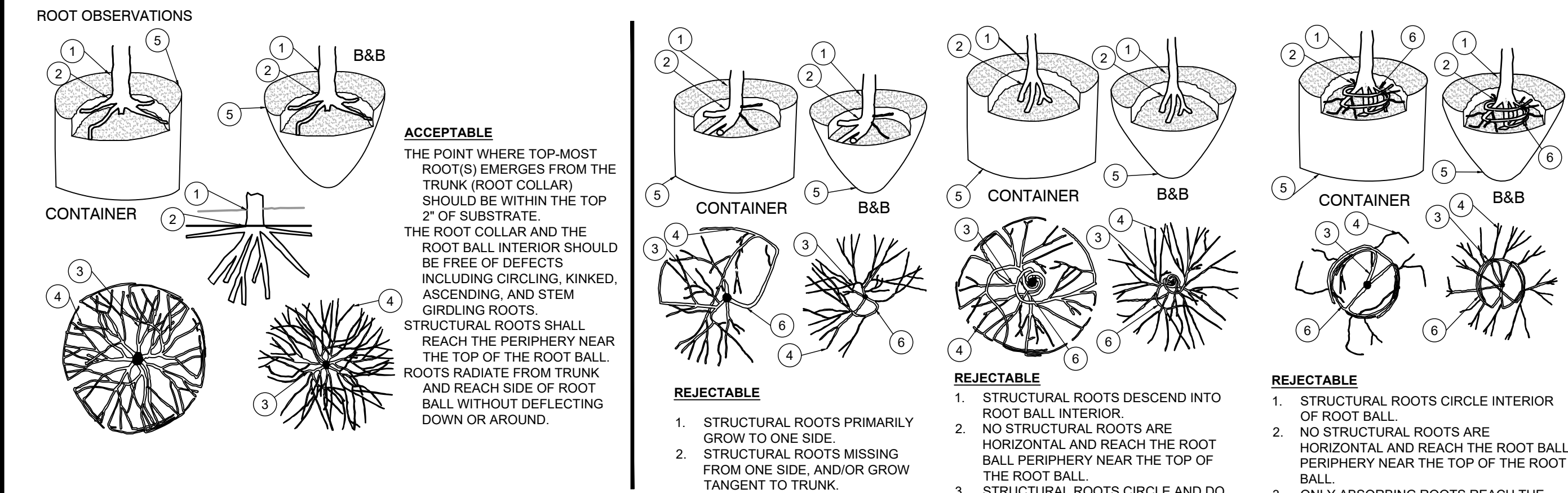
NO MORE THAN 1" OF MULCH TO BE INSTALLED UPON ROOT BALL OF SHRUB.

SHRUB & VINE INSTALLATION

[illegible]



1 TREE CANOPY OBSERVATIONS / CORRECTION DURING INSTALLATION



2 ROOT OBSERVATIONS / CORRECTIONS

EXHIBIT B- AMENDED SCHEDULE OF USES AND CONDITIONS OF APPROVAL (removed as ~~strike through~~, added as underlined)

AMENDED SCHEDULE OF USES

Lodging

Principal:

- Hotel/Motel (Inclusive of Hotel Condominiums)
- The sale of alcoholic beverages for on-premises consumption in 3000 sq. ft. of outdoor rooftop patio in hotel
- Guest Units

Accessory:

- Hotel/Motel Accessory Uses
- Personal Services
- Recreational Facilities

Residential

- Work/Live Units

Commercial

- Offices, General or Medical
- Personal Services
- Restaurant with Bar Area
- Retail Store, Small & Large
- Subordinate Commercial Uses
- The sale of alcoholic beverages for on-premises consumption in 690 sq. ft. of outdoor space in restaurant

AMENDED CONDITIONS OF APPROVAL

1. Any tenant with consumption on premises would be required to acquire a separate COP license.
2. The live-work units shall only be occupied by the owner or employees of the commercial establishments at Myerside. At no time shall the live work units be used as an extension to the lodging units or as a part of the boutique hotel. Any other tenants will have to demonstrate employment on the island.
3. The restaurant area shall be limited to 2,250 sq ft of the total 9,000 sq ft of commercial square footage.
4. A local development order is required prior to any development of the site, in accordance with this planned development approval.
5. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
6. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131.
7. The property owner commits to encouraging visitors and staff to arrive without an automobile. If the proposed development's parking needs exceed the on-site parking provided, the applicant shall provide valet parking and/or coordinate with adjacent property owners, and/or consider other parking options to provide adequate parking.

If a shared parking agreement is specifically sought with the Town to help offset the need for supplemental parking, the Town will provide up to 15 parking spaces within the Bay Oaks Recreation Center to the property owner. If the tenants of the development include health and wellness providers, such as, but not limited to the following listed below, the Town will allocate 5 of those parking spaces at no charge for each Town approved (Administrative approval by Town Manager or designee) provider, up to a maximum of 15 parking spaces. The property owner may petition the Town Council to accept alternative personal service providers other than those preferred health and wellness providers listed below.

- Medical Clinic, with an MD, physician's assistant or Nurse Practitioner who can write a prescription
- Urgent Care, with an MD, physician's assistant or Nurse Practitioner who can write a prescription
- Dentist

- Pharmacy
- Rehabilitation/Physical Therapy clinic
- Chiropractor

8. To help mitigate traffic congestion along Estero Boulevard, the hotel proprietor will promote various marketing initiatives that support and encourage all guests to use alternative modes of transportation rather than drive a vehicle to or while on the island. Such efforts will include:

- Dedicated page(s) on the Myerside Hotel website outlining and promoting alternative modes of transportation in the area and various marketing incentives such as:
 - Information on the walkability of the area and those businesses of interest to guests within walking distance of Myerside.
 - Bicycle rental.
 - Fort Myers Beach's LeeTran "TROLLEE" and seasonal TRAM Service Schedules and Route Maps
 - Publix and other food delivery service options
 - Free resort fee
 - Restaurant discounts
 - Discounts on future stays
- Establish partnerships with businesses on the island, especially in the "Heart of the Island," to provide incentives and discounts for guests. Hotel guests who do not drive onto the island will receive monetary discounts or vouchers for future stays and/or with participating local businesses, such as restaurants, bike rentals, and tour/tourism operators.
- Participate in townwide traffic mitigation efforts, such as:
 - Off-island parking and transport initiatives, e.g. Water ferry/taxi discounts for those staying at the hotel.
 - Off-site parking availability identification systems.
 - Evaluating and improving LeeTran's "TROLLEE" and seasonal TRAM's service and rider/user experience.

9. The final development must be generally consistent with the Master Concept Plan, renderings, and landscape betterment plan attached to this ordinance.

10. The approved schedule of uses are limited to those detailed on the attached Exhibit B.

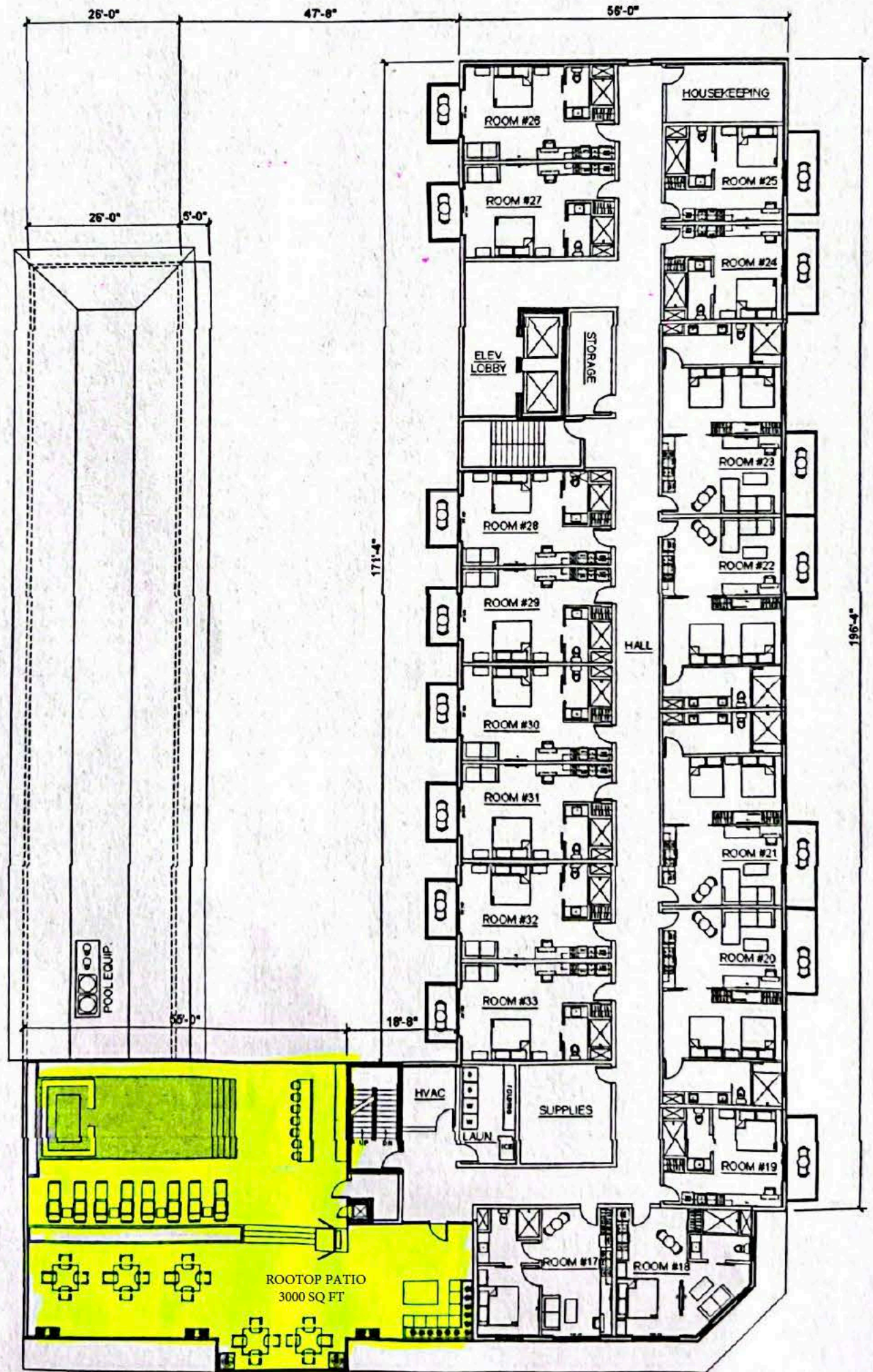
11. The sale of alcoholic beverages for on-premises consumption in 690 sq. ft. of

outdoor space in restaurant, must comply with LDC Section 34-1264(k).

12. Consumption and serving of alcohol would be limited to 8:00 a.m. to 10:00 p.m.
13. Music shall be allowed during the hours when the adjacent “school property” is in use. In the event, the volume of the music is disruptive to the use of the “school property”, upon notice and a request from a representative of the “school property,” the property owner agrees to immediate decrease the volume of the music unless the volume is in compliance with the noise levels contained in the Town’s Code.



SCHEMATIC THIRD FLOOR PLAN





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: 125, 131-151 SCHOOL STREET AND 2661-2681 ESTERO BLVD.

STRAP Number: 19-46-24-W3-0020C.0230; 19-46-24-W3-0020C.0270; 19-46-24-W3-0020C.0290

Applicant: MYERSIDE LLC Phone: (239) 400-2060

Contact Name: KEITH LONG Phone: (239) 400-2060

Email: KEITH@LONGLAWFL.COM Fax: _____

Current Zoning District: CPD

Future Land Use Map (FLUM) Category: BOULEVARD

FLUM Density Range: _____ Platted Overlay: ☐ YES ☐ NO

ACTION REQUESTED

☐ Special Exception

☐ Variance

☐ Conventional Rezoning

☒ Planned Development ☒ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☒ Other – cite LDC Section: CPD Amendment

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*: MYERSIDE LLC c/o Keith Long Phone: (239) 400-2060

**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: 1306 SE 46TH LN STE 1, CAPE CORAL, FL 33904

Email: KEITH@LONGLAWFL.COM Fax: _____

Contact Name: KEITH LONG Phone: (239) 400-2060



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

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

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

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

Name: KEITH LONG Phone: (239) 400-2060
Address: 1306 SE 4TH LN STE 1, CAPE CORAL, FL 33904
Email: KEITH@LONGLAWFL.COM Fax: _____

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

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

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

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☐ Variance from LDC Section _____ - _____
- ☐ Conventional Rezoning from _____ to _____
- ☒ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☒ Amendment. List the project number: DCI20230246
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

PART III – Waivers

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

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

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

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

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

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

Signature

Printed Name

STATE OF _____ COUNTY OF _____

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

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

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

_____ as identification.

(SEAL)

Notary Public Signature

PART V

Property Ownership (Multiple Owners)

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

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

DISCLOSURE OF OWNERSHIP INTEREST

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

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

Name, Address and Office

Percentage of Stock

COTTAGES AT MYERSIDE LLC- BEVERLEY A MILLIGAN, ROLAND WEINMANN

50/50

MYERSIDE LLC - BEVERLEY A MILLIGAN, ROLAND WEINMANN

49/51

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, BEVERLEY MILLIGAN (name), as OWNER (title)
of MYERSIDE LLC / COTTAGES AT MYERSIDE LLC (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**

MYERSIDE LLC / COTTAGES AT MYERSIDE LLC

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

[Signature]

Signature

OWNERS

Title

BEVERLEY MILLIGAN and ROLAND WEINMANN 5/2/25

Typed or Printed Name

Date

STATE OF FL COUNTY OF LEE

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 2 day of MAY, 2025, by _____, ☐ who is personally known to me OR ☒ who has produced _____ as identification.

Seal



CLETUS POSER
Notary Public
State of Florida
Comm# HH605959
Expires 10/23/2028

[Signature]

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: _____

Property Address: _____

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) _____ feet

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

Frontage on street: _____ feet. Frontage on waterbody: _____ feet

Total land area: _____ ☐ acres ☐ square feet

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

☒ 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-D

Additional Required Information for a Planned Development Application

This is the second part of a two-part application. This part requests specific information for a planned development rezoning or an amendment to an approved planned development. Include this form with the Request for Public Hearing form.

Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre
 \$2000.00 PD Amendment minor (< acre total property area)
 \$4000.00 PD Reinstatement or \$6500.00 PD Amendment

Project Name: MYERSIDE COP AMENDMENT
Authorized Applicant: MYERSIDE LLC
STRAP Number(s): 19-46-24-W3-0020C.0230; 19-46-24-W3-0020C.0270;
19-46-24-W3-0020C.0290

Current Property Status: VACANT
Current Zoning: CPD
Future Land Use Map (FLUM) Category: BOULEVARD
Platted Overlay? ☐ yes, ☐ no FLUM Density Range:

Requested Action:

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

PART I Narrative Statements

A. Comprehensive Plan Amendments (check one)

☒	There are NO Comprehensive Plan Amendments pending that could affect the future use of this property.
☐	The following Comprehensive Plan Amendments ARE pending and could affect the future use of this property (list the amendment and give a brief explanation of its possible effect)

B. Phasing of Construction

☐	The development is to be constructed in a single phase.
☐	The development is to be constructed in phases as follows: (describe proposed phasing below)

C. Comprehensive Plan Compliance.

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

D. Design Standards Compliance

For projects required to meet Commercial Design Standards, explain how the proposed development complies with the design standards set forth in LDC Sections 34-991 through 34-997.

E. Decision-making Compliance

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

F. Schedule of deviations and written justification

Provide a list of the requested deviations keyed to the Master Concept Plan and provide a written justification for each deviation. The location of each deviation should be indicated on the Master Concept Plan.

G. Administrative amendments to approved Master Concept Plan

For amendments to an approved Master Concept Plan, indicate the specific amendments that could not be approved administratively as set forth in LDC Section 34-219.

SEE NARRATIVE ATTACHED

PART 2 Submittal Requirements

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

Required Items

- Public Hearing Request Form
- Supplement Form PH-D
- Master Concept Plan
- Traffic Impact Statement
- Architectural Elevations
- Schedule of Uses
- Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre
- \$2000.00 PD Amendment minor (< acre total property area)
- \$4000.00 PD Reinstatement or \$6500.00 PD Amendment

For DRI: A Binding letter of interpretation from DCA or a complete and sufficient ADA.

Guide to Filing Supplement PH-D for Planned Developments

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

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

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

Case Number will be inserted by Community Development staff.

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

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

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

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

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

Part 1 Narrative Statements:

Comprehensive Plan Amendments

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

Construction Phasing

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

Comprehensive Plan Compliance

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

Design Standards Compliance

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

Decision-making compliance

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

Schedule of deviations and written justification

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

Administrative amendments

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

Part 2 Submittal Requirements

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

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

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

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

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

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

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



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Commercial Planned Development Amendment

CASE NUMBER: Ord 25-22, DCI Rezoning 20250201

CASE NAME: 125, 131-151 School St and 2661-2681 Estero Blvd,
request to amend the existing Commercial Planned
Development for Cottages at Myerside to allow
outdoor consumption on premises.

LPA

HEARING DATE: October 14, 2025 at 9:00 AM

STAFF

RECOMMENDATION: Approve with conditions

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

I. APPLICATION SUMMARY

Applicant/Owner: The Neighborhood Company/ Cottages At Myerside, LLC

Request: Amend schedule of uses for the existing CPD Ordinance#24-15 (See Exhibit A) to include outdoor consumption on premises use for the 3,000 sq. ft. rooftop patio and 690 sq. ft. outdoor space next to restaurant.

Subject property: Exhibit A – Adopted Ord 24-15 with Master Concept Plan

Physical Address: 125, 131-151 School St and 2661-2681 Estero Blvd

STRAP #: 19-46-24-W3-0020C.0230; 19-46-24-W3- 0020C.0270;
19-46-24-W3-0020C.0290

FLU: Boulevard

Zoning: Commercial Planned Development (24-15)

Adjacent zoning and land uses:

North: Institutional zoning/ Elementary school with baseball field

South: Commercial Office, Mixed Residential /Offices, multi-family residential

East: Institutional zoning / Library

West: Institutional zoning, Residential Conservation/ single-family and Town's Parking Lot

II. BACKGROUND AND ANALYSIS

Background:

The Neighborhood Company, applicant for Cottages at Myerside, LLC, is requesting an amendment to the schedule of uses for an existing CPD, resolution 24-15 (Exhibit A), to include outdoor consumption on premises as an accessory to the hotel and restaurant. The request will allow the Applicant to serve alcoholic beverages on

- (1) 690 sq. ft. outdoor dining patio in extension to the existing restaurant on the ground floor level; and
- (2) 3,000 sq. ft. of rooftop pool area on third floor as an accessory to the hotel.

In 2024, Town of Fort Myers beach's Town Council approved and adopted ordinance 24-15, approving with conditions a request to rezone the subject property from Downtown to Commercial Planned Development to allow a mixed-use development including lodging, live/work units, retail, and restaurant uses. The outdoor consumption of alcoholic beverages was not addressed during the approval of the CPD.

The existing approved CPD resolution allows the following uses:

Lodging

Principal:

- Hotel/Motel (Inclusive of Hotel Condominiums)
- Guest Units

Accessory:

- Hotel/Motel Accessory Uses
- Personal Services
- Recreational Facilities

Residential

- Work/Live Units

Commercial

- Offices, General or Medical
- Personal Services
- Restaurant with Bar Area
- Retail Store, Small & Large
- Subordinate Commercial Uses

The Applicant is now requesting an amendment to the existing CPD to revise the schedule of uses and include Outdoor consumption on premises on ground floor as an accessory use for the restaurant and on third floor rooftop patio as an accessory for the hotel. The hours of operation for the service of alcoholic beverages in outdoor area will be 8 am to 10 pm Monday through Sunday.

On October 14, 2025, LPA voted unanimously (6-0) to recommend approval with conditions for CPD Amendment request 20250201 with an additional condition that the consumption and serving of alcohol would be limited from 8:00 a.m. to 10:00 p.m. LPA recommended the Town Council to have a conversation to determine if the access for the pool bar area should be allowed for public or be limited for hotel guests uses only.

On November 17, 2025, Town Council voted during the first reading of Ordinance 25-22 to recommend approval with conditions for CPD Amendment along with additional condition that no live music shall be allowed when the school is open.

Analysis:

The subject property consists of three parcels (19-46-24-W3-0020C.0230; 19-46-24-W3- 0020C.0270; 19-46-24-W3-0020C.0230) totaling 1.03+/- acres, north of Estero Boulevard, west of School Street, and south of Oak Street. In 2024, Town of Fort Myers beach's Town Council adopted ordinance 24-15 and approved with conditions a CPD with Master Concept Plan for a mixed-use development including lodging, live/work units, retail, and restaurant uses. Six deviations were approved with the CPD. No additional deviations are requested at this time.

The Applicant now requests an amendment to the existing CPD to revise the schedule of uses and include Outdoor consumption on premises on ground floor as an accessory use for the restaurant and on third floor rooftop patio as an accessory for the hotel.

As per LDC Section 34-1264(b)(1) Except as may be exempted in subsections (a)(1) or (b)(2) of this section, no establishment for the sale or service of alcoholic beverages for consumption on the premises shall be located within 500 feet of a place of worship, religious facility, school (noncommercial), day care center (child), park, other establishment serving alcohol or a dwelling unit under separate ownership. Distance shall be measured from any public entrance or exit of the establishment in a straight line to the nearest property line. The proposed outdoor consumption on premise on rooftop patio on third floor is proposed as an accessory to the hotel use and the service will be limited only to the hotel guests. The proposed outdoor consumption on premises is situated at 3,000 feet distance from a religious facility, 550 feet from a school, more than 4,000 feet from a day care center (child), 780 feet from a park, 650 feet other establishment serving alcohol and more than 500 feet from a dwelling unit under

separate ownership.

As per LDC Section 34-1264(b)(2), Restaurants are exempt from the locational standards for consumption on a premises code section, provided 1. The restaurant is in full compliance with state requirements; 2. The restaurant serves cooked, full-course meals, prepared daily on the premises; 3. Only a service bar is used, and the sale or service of alcoholic beverages is only to patrons ordering meals, or, 4. The other requirements of LDC Section 34-1264 (k) are met. The proposed restaurant is in compliance with the requirements of LDC Section 34-1264(b)(2) and staff has included a condition for ensure compliance with LDC Section 34-1264(k).

Neighborhood Compatibility:

These parcels are not directly adjacent to any residential units. The closest residential property is located on the other side of the Town owned vacant parcel with an entry to the pool parking lot. This proposed development will be adjacent to the public pool and surrounded by Bay Oaks Park, the library and the elementary school. The Amendment request to include outdoor consumption on premises as an accessory to the ground floor restaurant and on rooftop area as an accessory use to the hotel do not appear to create conflict with the adjacent uses.

Considerations, Findings and Conclusions:

LDC Sec. 34-85 and 34-216 sets forth the required findings and conclusions for the approval of a Planned Development Ordinance Amendment:

Sec. 34-85(b). Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

(1) Whether there exists an error or ambiguity which must be corrected.

Staff response: There is no error or ambiguity regarding the allowed uses for this development.

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

Staff response: - The requested use for outdoor consumption on premises for the restaurant and the hotel is a design choice, not a changing condition.

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

Staff response: No impact on the intent of this chapter will occur.

(4) The testimony of any applicant.

Staff response: To be heard at the public hearing.

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

Staff response: Provided in this staff report and associated presentation.

(6) The testimony of the public.

Staff response: To be heard at the public hearing.

(7) Whether the request is consistent with the goals, objectives, policies, and intent,

and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

Staff response: This proposed amendment is consistent with the goals, objectives, policies and intent of the Comprehensive Plan.

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

Staff response: The proposed development will be required to meet performance standards set forth in 34-2031 and 34-2032.

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

Staff response: Urban services are available and adequate for these uses.

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

Staff response: The request will not cause any damage to the environment or natural resources.

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

Staff response: The proposed addition of outdoor consumption on premises on third floor roof top patio for hotel and outdoor consumption on premises on ground floor with the restaurant are unlikely to have a negative impact on the adjacent uses.

(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

Staff response: The location is compatible.

LDC Sec. 34-85 (c) Findings: Before granting any rezoning, the town council shall find that the requested zoning district complies with:

(1) The Fort Myers Beach Comprehensive Plan.

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

(2) This chapter.

Staff response: The proposed uses comply with this chapter.

(3) Any other applicable town ordinances or codes.

Staff response: The proposed request complies with all other town ordinances and codes.

(4) For planned development rezonings, see § 34-216 of this chapter for additional findings

Sec. 34-216(b)(2). The recommendation made to the town council must be supported by the guidelines set forth in Sec. 34-85 of this chapter. In addition, the findings must address whether the following criteria can be satisfied:

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

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

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

Staff response: Sufficient safeguards are provided for the public interest.

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

Staff response: All conditions are related to the impacts on the public interest.

d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.

Staff response: Not applicable.

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

Staff response: The proposal is in compliance with these policies.

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

Staff response: Not applicable.

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

Staff response: Not applicable.

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

Staff response: Not applicable.

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

Staff response: There are no anticipated adverse traffic impacts.

III. RECOMMENDATION

Staff finds that the amendment to the CPD meets the required findings and conclusions for the approval of a Planned Development Ordinance Amendment found in Sec. 34-85 and 34-216 of the land development code. Staff recommends approval with conditions of DCI20250201 to allow the outdoor consumption on premises at the Cottages at Myerside, with the attached conditions.

On October 14, 2025, LPA voted unanimously (6-0) to recommend approval with conditions for CPD Amendment request 20250201 with an additional condition that the consumption and serving of alcohol would be limited from 8:00 a.m. to 10:00 p.m. LPA recommended the Town Council to have a conversation to determine if the access

for the pool bar area should be allowed for public or be limited for hotel guests uses only.

On November 17, 2025, Town Council voted during the first reading of Ordinance 25-22 to recommend approval with conditions for CPD Amendment along with additional condition that no live music shall be allowed when the school is open.

IV. CONDITIONS OF APPROVAL (removed as ~~strike through~~, added as underlined)

1. Any tenant with consumption on premises would be required to acquire a separate COP license.
2. The live-work units shall only be occupied by the owner or employees of the commercial establishments at Myerside. At no time shall the live work units be used as an extension to the lodging units or as a part of the boutique hotel. Any other tenants will have to demonstrate employment on the island.
3. The restaurant area shall be limited to 2,250 sq ft of the total 9,000 sq ft of commercial square footage.
4. A local development order is required prior to any development of the site, in accordance with this planned development approval.
5. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
6. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131.
7. The property owner commits to encouraging visitors and staff to arrive without an automobile. If the proposed development's parking needs exceed the on-site parking provided, the applicant shall provide valet parking and/or coordinate with adjacent property owners, and/or consider other parking options to provide adequate parking.

If a shared parking agreement is specifically sought with the Town to help offset the need for supplemental parking, the Town will provide up to 15 parking spaces within the Bay Oaks Recreation Center to the property owner. If the tenants of the development include health and wellness providers, such as, but not limited to the following listed below, the Town will allocate 5 of those parking spaces at no charge for each Town approved (Administrative approval by Town Manager or designee) provider, up to a maximum of 15 parking spaces. The property owner may petition the Town Council to accept alternative personal service providers other than those preferred health and wellness providers listed below.

- Medical Clinic, with an MD, physician's assistant or Nurse Practitioner who can write a prescription

- Urgent Care, with an MD, physician's assistant or Nurse Practitioner who can write a prescription
 - Dentist
 - Pharmacy
 - Rehabilitation/Physical Therapy clinic
 - Chiropractor
8. To help mitigate traffic congestion along Estero Boulevard, the hotel proprietor will promote various marketing initiatives that support and encourage all guests to use alternative modes of transportation rather than drive a vehicle to or while on the island. Such efforts will include:
- Dedicated page(s) on the Myerside Hotel website outlining and promoting alternative modes of transportation in the area and various marketing incentives such as:
 - Information on the walkability of the area and those businesses of interest to guests within walking distance of Myerside.
 - Bicycle rental.
 - Fort Myers Beach's LeeTran "TROLLEE" and seasonal TRAM Service Schedules and Route Maps
 - Publix and other food delivery service options
 - Free resort fee
 - Restaurant discounts
 - Discounts on future stays
 - Establish partnerships with businesses on the island, especially in the "Heart of the Island," to provide incentives and discounts for guests. Hotel guests who do not drive onto the island will receive monetary discounts or vouchers for future stays and/or with participating local businesses, such as restaurants, bike rentals, and tour/tourism operators.
 - Participate in townwide traffic mitigation efforts, such as:
 - Off-island parking and transport initiatives, e.g. Water ferry/taxi discounts for those staying at the hotel.
 - Off-site parking availability identification systems.
 - Evaluating and improving LeeTran's "TROLLEE" and seasonal TRAM's service and rider/user experience.
9. The final development must be generally consistent with the Master Concept Plan, renderings, and landscape betterment plan attached to this ordinance.
10. The approved schedule of uses are limited to those detailed on the attached Exhibit B.
11. The sale of alcoholic beverages for on-premises consumption in 690 sq. ft. of outdoor space in restaurant, must comply with LDC Section 34-1264(k).

LPA recommended additional condition

12. Consumption and serving of alcohol would be limited to 8:00 a.m. to 10:00 p.m.

Town Council recommended additional condition during first reading of the Ordinance 25-22

13. No live music shall be allowed when the school is open.

V. APPROVED DEVIATIONS

No deviations have been requested associated with this amendment. All previously approved deviations apply.

Staff Report Exhibits:

Exhibit A – Ordinance 24-15, with Master Concept Plan

Exhibit B – Narrative and Revised Schedule of Uses and Conditions of Approval

Exhibit C- Plan identifying COP area



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Town's website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference: (25-22)

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 AN ACCESSORY USE TO THE HOTEL AND RESTAURANT USE, AND OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND PROVIDING FOR AN EFFECTIVE DATE.

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Town is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Town is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:

¹ See Section 166.041(4)(c), Florida Statutes.

- a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
- b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
- c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
- d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Town hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance is to allow an amendment to the Commercial Planned Development (CPD) zoning, previously approved by Resolution 24-15 for the parcel located at 125, 131- 151 School Street and 2661-2681 Estero Blvd, amend the schedule of uses for the Property's Commercial Planned Development ("CPD) to allow outdoor on-premises consumption of alcoholic beverages as an accessory use to the restaurant and hotel.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Town, including the following, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the Town's regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

There are unlikely to be direct compliance costs associated with the ordinance.

The ordinance does not impose any new charge or fee on businesses.

There are no new charges or fees that will be imposed on businesses by the ordinance.

The Town will not likely incur additional costs.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

One property owner will be impacted by this proposed ordinance.

4. Additional information the governing body deems useful (if any):

1. **Request:**

Meeting Date: December 15, 2025

This quasi-judicial agenda item is a Second and the Adoption Reading Public Hearing on proposed Ordinance 25-19.

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.

Why the action is necessary:

The Town Council will make a motion to approve DA20250186.

What the action accomplishes:

The Town Council will take into account the recommendations made by the LPA and Town Council 1st hearing for DA20250186 requesting a Development Agreement to redevelop the subject property as a mixed-use with retail at ground level and residential above.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Jason Green, Community
Development Services

5. **Background:**

The Neighborhood Company, on behalf of the Carlos L Chavez Trust, is requesting a Development Agreement with deviations to allow for the redevelopment of the subject property, which was home to Kilwin's Chocolates within Times Square Pedestrian Plaza, to build a 3-story mixed-use building with an open ground floor mobile ice cream vending and second and third floor would be for one bedroom residence. The subject property encompasses 0.03 +/- acres (1,119 sq. ft.). The property is located along the Times Square Pedestrian Plaza, has a Future Land Use Designation of Pedestrian Commercial and is within the Downtown Zoning District. It lies directly across from Lynn Hall Memorial Park and is approximately 100 feet from the base of the historic Fort Myers Beach Pier. This area of the island was heavily damaged by Hurricanes Ian, Helene and Milton. The redevelopment of the Downtown area is slowly progressing, with the guidance of the Comprehensive Plan continuing to steer this area toward being a lively, inviting, comfortable, and safe public environment. The Commercial Design Standards for Times Square encourage the incorporation of façade elements such as balconies, awnings and windows to add visual interest and architectural character.

As shown in the enclosed architectural rendering exhibits (Exhibit C), the proposed coastal

design will be aesthetically pleasing and complement future development along the plaza. The building has been designed with second and third-floor balconies that extend forward of the build-to line, in accordance with LDC Section 34-995(e)(2) a and b. The balconies will enhance visual interest and offer functional benefits by providing shade and shelter from the elements for pedestrians.

At the Town LPA hearing on October 14, 2025, the LPA conducted a public hearing regarding the petition. The LPA members heard the petition from applicants, staff and attorney. Applicant attorney Akin suggested five language change in the DA.

The LPA voted 7-0 to recommend approval to the Town Council and directed town attorney to discuss the requested language change in DA proposed by applicant attorney.

Additional requirements include:

- Alternatives to construction staging and materials, given the site's tight layout and traffic.
- Potted plants in the location

Attachments:

1. Final Dec 15 Ordinance 25-19 DA 50 Old San Carlos
2. Exhibit A to Ordinance 25-19 DA 50 Old San Carlos
3. Exhibit A to DA : Survey and Legal Description -50 Old San Carlos Dev Agree
4. Exhibit B to DA: Deviations 50 Old San Carlos
5. Exhibit C to DA: Site Plan for Floor Plan and Data 50 Old San Carlos
6. Exhibit D to DA: Title Opinion -(TO BE UPDATED AND APPROVED PRIOR TO RECORDING)
7. 25-19: Business-Impact-Estimate DA 50 OldSanCarlos
8. TC- DA 50 Old San CarlosStaff Report -edited (1)

Financial Impact:

Unknown

6. Alternative Action

Deny

7. Management Recommendations:

Staff recommends **APPROVAL WITH CONDITIONS of DA20250186**

8. Recommended Approval:

Uma Sarmistha, Senior Planner
Georgina Cid, Community Development Manager
Frankie Kropacek, Community Development Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 12/8/2025
Approved - 12/8/2025
Approved - 12/8/2025
Approved - 12/9/2025
Approved - 12/9/2025
Final Approval - 12/9/2025

**ORDINANCE NO. 25-19
(KILWINS AT TIMES SQUARE DEVELOPMENT)**

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.

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

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

WHEREAS, the property owner, Carlos L. Chavez as trustee for the Carlos L. Chavez Trust, through its agent The Neighborhood Company (the "Applicant"), wishes to develop certain parcels of land in the Town of Fort Myers Beach, as more explicitly described in the Home Rule Development Agreement, attached hereto as Exhibit "A" (the "Development Agreement"); and

WHEREAS, following several meetings with Town Staff as provided in Resolution 24-247, the Applicant presented a Development Agreement to the Town's Local Planning Agency ("LPA") at its October 14, 2025 meeting and the LPA voted to recommend approval of the Development Agreement by a vote of 6 to 0, inclusive of a finding of consistency between the Development Agreement and the Town of Fort Myers Beach Comprehensive Plan; and

WHEREAS, the Town Council held its first reading and public hearing of Ordinance 25-19 containing the Development Agreement at its November 17, 2025 Town Council meeting,

during which the Town Council determined that the Development Agreement and the accompanying application **satisfied** the guidelines and criteria set forth in Sections 2-100 and 2-96 of the Town's Code of Ordinances and the procedures for approval of development agreements in Exhibit A to Resolution Number 24-247; and

WHEREAS, the Town Council approved scheduling a second reading and adoption public on December 15, 2025 regarding Ordinance 25-19 and the second public hearing was advertised on the 26th day of November in the News-Press; and

WHEREAS, thereafter the Town Council held the second and final reading and public hearing to adopt Ordinance 25-19, containing the Development Agreement on December 15, 2025 and voted to **approve/disapprove** the Development Agreement ____ to ____; and

WHEREAS, a Business Impact Estimate was prepared and posted on the Town's website on the 7th day of November, 2025, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, the Town Council determined that adoption of the ordinance, as provided herein is in the best interests of the health, safety, welfare, and morals of the Town's residents.

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

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

Section 2. The Town Council hereby formally approves the Development Agreement attached hereto as Exhibit "A" to Ordinance 25-19 and authorizes the Applicant to proceed with the development as further outlined therein.

Section 3. The Town Clerk is directed to record a copy of the Home Rule Development Agreement in the Official Records of Lee County, Florida.

Section 4. This Ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put on a roll call vote, the results were as follows:

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

ADOPTED this ____ day of _____, 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Town Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

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

Attachments:

Exhibit A – Home Rule Development Agreement with Exhibits

HOME RULE DEVELOPMENT AGREEMENT
(As Approved _____ (date))

Commented [SS1]: They added some language saying the TC found the DA consistent with Comprehensive Plan that was removed at some point and Applicant wants to add that back. They do not specify where in the DA.

THIS HOME RULE DEVELOPMENT AGREEMENT (hereinafter “Agreement” or “Development Agreement”) is entered into this _____ day of _____, 2025, by and between THE TOWN OF FORT MYERS BEACH, FLORIDA, a municipality of the State of Florida (hereinafter “Town”), having its principal office at 6231 Estero Blvd, Fort Myers Beach, FL, and CARLOS L. CHAVEZ AS TRUSTEE FOR THE CARLOS L. CHAVEZ TRUST, (hereinafter “Owner/Developer”), whose address is 991 Aqua Lane, Fort Myers, FL 33919. Developer and the Town may hereinafter be individually referred to as “Party” and collectively referred to as the “Parties.”

WHEREAS, Section 2-100 of the Town’s Land Development Code (“LDC”) authorizes the Town to enter into a Home Rule Development Agreement pursuant to Article VIII, § 1(f), of the Constitution of the State of Florida and F.S. chs. 163, 166, and 380, and specifically recognized by the State Legislature in F.S. §163.3220(5); and

WHEREAS, the Developer has requested approval of this Development Agreement pursuant to Sections 2-100 and 2-96 of the Town’s Land Development Code and Resolution 24-247, as amended; and

WHEREAS, Developer owns approximately 0.03 +/- acres (1,119 square feet) of land located within the Town, said property, is located seaward of the 1978 Coastal Construction Control Line (hereinafter “CCCL”), being legally described in Exhibit "A" attached hereto (hereinafter, "the Property"); and

WHEREAS, the Town and the Developer desire to enter into this Agreement to provide for the approval and a comprehensive understanding of the development parameters consistent with the Town’s Land Development Code and Comprehensive Plan as set forth herein; and

WHEREAS, a public hearing was held before the Town of Fort Myers Beach Local Planning Agency (“LPA”) on the 14th day of October 2025, and the LPA reviewed the proposed Agreement and by a vote of 6 to 0 recommended approval with conditions and amendments to the Town Council; and

WHEREAS, the Town conducted two public hearings on the 17th day of November, 2025, and the 15th day of December, 2025, prior to entering into this Agreement, both of which were properly noticed on the Town’s website and by mailing to affected property owners within a 500 foot radius of the boundaries of the real property at the addresses of such property owners found on the Lee County Property Appraiser’s website prior to the first public hearings; and

WHEREAS, the Town Council has determined after consideration of the recommendation of the LPA, Town staff, and the information and testimony provided at the two public hearings, which provided an opportunity for comment, testimony, and evidence from the Developer, Town staff, and the public, the Town Council has determined that the Development Agreement is consistent with the Comprehensive Plan, reasonable and not arbitrary, and in the best interest of the Town and the residents of the Town Fort Myers Beach.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, for the purposes set forth in Section 2-100 and 2-96 of the Town's Land Development Code, the benefits to accrue to each party on its own behalf, and in the case of the Developer, and for other good and valuable consideration, the receipt of which the parties hereby acknowledge, the Town and the Developer agree as follows:

1. Recitals. The foregoing recitations are true and correct and are incorporated herein by reference. All exhibits to this Agreement are deemed a part hereof.

2. Property Subject to this Agreement. The real property described in Exhibit "A" is subject to the terms and conditions of this Agreement.

3. Ownership. Developer represents that it is the legal and equitable owner, having an interest in the Property pursuant to Instrument No.: 2020000015932 recorded January 17, 2020, in the Official Records of Lee County, Florida (Exhibit D), and as such may lawfully enter into this Agreement. The Town is in receipt of a title opinion from a Florida attorney upon which it can rely for the purpose of confirmation of the Developer's ownership representation.

4. Proposed Development and Use of Property. The proposed uses and development of the property will be consistent with the following:

A. The Property contains 0.03 acres (1,119 square feet), more or less. The proposed development will include a three-story mixed-use structure with a total of ~~2,787.5~~ 2797.5 square feet. The mixed-use structure will include an open area on the ground floor for a mobile vendor, food service use (including but not limited to an ice cream shop) and the second floor and third floors will be a one-bedroom, one-and-a-half-bathroom residence as depicted on the enclosed Exhibit C. Should a wave mitigation wall be erected in the Times Square District at a future time, the Developer may elect to convert the ground floor of the structure into an enclosed retail establishment, (including but not limited to an ice cream shop) with storage and a restroom. In the event the Developer elects this option in the future, the development will obtain all required permits through the Town of Fort Myers Beach and other required permitting authorities.

(1) Building Setbacks.

(a) The build-to line is zero (0) feet for all properties facing the Times Square pedestrian plaza. Minimum side setbacks are zero (0) feet for properties fronting Times Square. The applicable Town Code provisions require a minimum rear setback in Times Square of ten (10) feet, this development will eliminate the rear setback.

(b) Per LDC Sec. 34-995(e), the proposed structure may include cantilevered porches, balconies or arcades that extend forward of the build-to-line and into the Times Square Right-of-Way to provide shade to pedestrians as encouraged in the Downtown district.

- (2) Drainage. No stormwater management system has been offered.
- (3) Vehicular Access/Transportation. The development is located on Old San Carlos Boulevard. Vehicular Access is limited to service vehicles only.
- (4) Parking. No onsite parking is required under applicable Town Code provisions.
- (5) Commercial Area. The lot area of the property is 0.03 acres (1,119 square feet), more or less. The property is located within the Pedestrian Commercial Future Land Use category.
- (6) Height. The zoned height of the structure will be 3 stories and a maximum of 30 feet from the minimum DEP required elevation (lowest horizontal structural member) mid-point of sloped roof, as permitted along the pedestrian plaza in Times Square, and an actual building height of +/- 47'-5" measured from grade to the highest peak of roof.
- (7) Landscape. No trees and landscape have been provided – The request is for maximum built out. The Developer will provide decorative plants to be located in movable planters/pots at the time of building permit.
- B. Environmentally Sensitive Land. There are no environmentally sensitive lands on-site.
- C. Threatened and Endangered Species. There are no threatened or endangered species on-site.
- D. Conflicts. Any conflict between the matters set forth in this paragraph and other paragraphs in this Agreement will be resolved in favor of the terms and conditions in this Paragraph. Moreover, this Agreement identifies known instances in which the proposed redevelopment conflicts with the Town's existing Land Development Code. Any ambiguity with respect to whether this Development Agreement or an ordinance is to control will be interpreted to favor the ordinance. Failure of this Development Agreement to address a particular permit condition, term or restriction will not relieve the owner or developer of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restrictions. Any matter or action required under existing ordinances of the town will not be otherwise amended, modified or waived, unless such modification, amendment or waiver is expressly provided for in the Development Agreement with specific reference to the Code provision so waived, modified or amended.

5. Public Facilities. The following public facilities will serve the Proposed Development on the Property:

- A. Potable Water: Potable water will be supplied by the Town of

Fort Myers Beach. The Town presently has adequate capacity to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement will be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project will be based on its availability at the time of submission of a development order application. The Developer is responsible for improvements to the utility system required to service the proposed development.

B. Sanitary Sewer:

Wastewater services will be provided by Lee County Utilities (LCU). LCU presently has adequate capacity to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement will be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project will be based on availability at the time of submission of a development order. The Developer is responsible for improvements to the utility system required to service the Proposed Development.

C. Solid Waste:

Developer will coordinate solid waste services with Lee County, the Town, or a third-party service provider, adequate to serve the Proposed Development, prior to issuance of the development order. Notwithstanding the foregoing, this does not create a reservation of capacity. Capacity for the project will be based on availability at the time of submission of a building permit.

D. Drainage:

Drainage will be in accordance with the applicable environmental resource permit ("ERP") to be issued by the South Florida Water Management District ("SFWMD") for the Property. Prior to issuance of the development order, if applicable, Developer will provide plans related to storm water run-off into the Town's system to the Town. The Developer is responsible for improvements to the drainage system required to service the proposed development.

E. Fire and Rescue:

Fire control and rescue services will be provided by the Fort Myers Beach Fire Control

District, and Emergency Medical Services will be provided by Lee County Emergency Medical Services. The applicant for a building permit will be required to pay Fire and EMS impact fees.

In the event new or additional facilities are needed to serve the project, the Developer will bear the burden its proportionate share of the cost of such facilities to be constructed consistent with the dual rational nexus test, and provide a schedule to the Town to assure that the public facilities and services will be available concurrent with the impact of the development project for those facilities subject to concurrency consistent with Section 163.3180, F.S.

6. Impact Fees. Impact fees, when adopted by Town Ordinance for all new developments and change in use, will be calculated at time of issuance of a building permit and payment will be required consistent with Section 163.31801, F.S. Site-related improvements will be evaluated by the Town during the review of the development order application.

7. Development Permits May be required for Proposed Development. A list of all known governmental permits may be needed for the Proposed Development is set forth below:

Town of Fort Myers Beach Development Order
Town of Fort Myers Beach Building Permit
South Florida Water Management District Environmental Resource Permit
FDEP Wastewater Permit
FDEP Coastal Construction Permit
LCDOH Potable Water Permit
Lee County Right-of-Way Permit

The failure of this Agreement to address a particular permit, condition, term or restriction will not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions. The Developer will be responsible at its sole cost for obtaining any required approval and will not in any manner obligate the Town or any other governmental agency to grant other required permit approvals. Any reliance on this Agreement or expenditures in pursuance of its terms or any rights accruing to the Developer will not vest any development right in the Developer or the project to a continuation of this Agreement. In the event of the permit listed above is not required by the authority having jurisdiction to issue the permit, the developer will not be required to obtain the permit.

8. Developer Commitments and Obligations. For and in consideration of the benefits received pursuant to this Agreement, the Developer agrees to the following commitments, obligations, and associated public benefits which are deemed to be in the public interest:

NO OBLIGATIONS ARE SUBMITTED BY DEVELOPER

9. Deviations. The Deviations set forth in Exhibit B to this Agreement are incorporated by reference as if fully set forth herein and are granted pursuant to this Agreement.

Commented [SS2]: They removed some text here but it is unclear in the meeting exactly what they removed.

Commented [SS3R2]: Applicant said they don't know what this could mean and all necessary permits are mentioned in Section 7, so they want to remove part of this section to avoid any unnecessary hold up.

Commented [SS4]: Not sure where in this paragraph they added this sentence.

10. Consistency with the Comprehensive Plan. The Proposed Development outlined in this Agreement is consistent with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code.

11. Development Requirements. Prior to the issuance of any building permits being issued for the development the following must occur:

- a. Utilities, which include water, sewer, gas, electricity, cable television, and other utilities will be reviewed during the development order review process; and
- b. Drainage plans will be reviewed in accordance with Section 10-321, LDC; and
- c. Grading plans and elevation requirements of the Town, including, but not limited to those related to the National Flood Insurance Program, will be reviewed during the Development Order review; and
- d. The developer will provide a traffic impact statement as required by Section 10-286, LDC; and
- e. Parking will be provided as required by Section 34-2020; and
- f. All other Town requirements necessary for the initial building permits to build the proposed project on the Property shall have been satisfied.

12. Amendment.

- A. This Agreement may be amended with the Parties' mutual consent, in writing signed by both Parties.
- B. This Agreement may be amended administratively by Town staff and the Developer without the need for approval by Town Council to provide for changes to the site plan and/or the Conceptual Plans provided such changes do not include increased building intensity, density, increased height, reduction in open space, reduction in public benefits. Substantial Deviations from the approved Conceptual Plans will require approval by Town Council.

13. Notices. All notices required or permitted under this Agreement will be in writing and will be personally delivered or mailed by certified mail, return receipt requested to the following addresses, or to such other person or address as any Party may designate from time to time in writing:

If to the Developer: Carlos L. Chavez,
as Trustee of the Carlos L. Chavez Revocable Trust
50 Old San Carlos, Fort Myers Beach, FL 33931

Commented [SS5]: The Applicant added some information saying the Applicant can terminate the DA and go ahead with underlying plan in the event there is a cohesive centralized development plan for this area. Exact language was not read in the meeting. A part of it as read- "Notwithstanding the foregoing in the event of termination, the developer will not leave any improvements in an unsafe condition."

With a copy to: Patrick Vanasse, AIPC
Land use planner and Partner
Neighborhood Company
5618 Whispering Willow Way,
Fort Myers Beach Fl 33908

If to the Town: Town Manager
Town Hall, 6321 Estero Blvd.
Fort Myers Beach, FL 33931

With a copy to: Town Attorney
Town Hall, 6321 Estero Blvd.
Fort Myers Beach, FL 33931

14. Remedies. Any material breach of this Agreement may be enforced by either party as against the other by appropriate action in law or equity filed in a court of competent jurisdiction; provided, however, no such action may be brought until the defaulting party has been given notice and ninety (90) days in which to cure the default. If the default cannot reasonably be cured within the ninety (90) day period, such period will be extended if the cure is commenced within such ninety (90) days and the defaulting party is proceeding with due diligence for such period reasonably required to complete such cure.

15. Governing Law. This Agreement will be construed and interpreted according to the laws of the State of Florida, and venue with respect to any litigation between the Parties related to this Agreement will be exclusively in Lee County, Florida.

16. Enforcement. In the event the Developer, upon approval of the Development Agreement, fails to comply with the terms of this Agreement, the Town may bring an action in a court of law with competent jurisdiction to protect its rights and interests as provided herein. All associated reasonable costs and attorney's fees will be reimbursed to the Town if an action at law is necessary regardless of whether the Town is the prevailing party thereunder. In no event will the Town be liable for payment of the Developer's attorney fees.

17. Post Development Agreement Liability. The parties acknowledge that the Town will not have any liability for any expenses or other damages that may be incurred as a result of denial of building permits due to the failure of the proposed development to meet the Town's requirements as to any Post-Development Agreement requirements.

18. Severability. If any part, term, or provision of this Agreement is held to be illegal, void, or unenforceable, the remaining portions or provisions of this Agreement will not be affected or impaired, each remaining provision will remain in full force and effect, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

19. Entire Agreement; Termination of Prior Agreements. This Agreement embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement will supersede all previous communications, representations, or agreements, either verbal or written, regarding the Proposed Development of the Property between the Parties.

20. Covenants Running with the Land and Successors and Assigns. The obligations imposed and entitlements created pursuant to this Agreement will run with the Property and bind Developer's successors and assigns to the covenants as set forth in this Agreement and will be enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees, and assigns. The obligations of the Developer may be assigned to one or more successor developers or property owners associations, and the Developer will thereafter be relieved of all obligations hereunder.

21. Effective Date and Duration This Agreement will become effective upon full execution by both Parties and recording of the Agreement in the Public Records of Lee County pursuant to paragraph 25 below. The Developer must apply for a development order for at least a portion of the development contemplated herein within five years of the effective date. In the event no building permits are applied for by the Developer within five years of the effective date, the Agreement will terminate. If requested by the Developer, the term of the Agreement may be extended at the sole discretion of the Town Council and a finding that the Developer is unable to fulfill its obligations due to circumstances beyond its control. The development of the project may proceed in phases in any sequence. Notwithstanding the provisions of this paragraph, unless terminated as provided herein, or pursuant to paragraph 13 above, the obligations imposed and entitlements created pursuant to this Agreement will run with the property will be enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees, and assigns.

23. Recording of Agreement. This Agreement will be recorded by the Town in the Public Records of Lee County within fourteen (14) days of approval by the Town. The costs of recording this Agreement will be paid by the Developer.

24. Representation and Warranties. The parties make the following representations to each other as stated herein:

- A. The execution, delivery and performance of this Agreement by the Developer will not violate any law, or the terms of any agreement by which they are bound.
- B. The Town and Developer have the power and authority to enter into this Agreement, and to perform the development as set forth herein, and all the documents have been duly authorized, executed, and delivered and the transactions contemplated herein have been duly authorized.

This Agreement constitutes a valid and legally binding obligation of the Developer and the Town after independent investigation by both of the information contained herein and is enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year written below.

CARLOS L. CHAVEZ TRUSTEE FOR
CARLOS L. CHAVEZ TRUST

Witness: _____
Print Name: _____
Address: _____
City/State: _____

Print Name: _____
Title: _____

Witness: _____ (Corporate Seal)
Print Name: _____
Address: _____
City/State: _____

**STATE OF FLORIDA
COUNTY OF LEE**

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to take acknowledgments, personally appeared _____ to me known to be _____ and that he acknowledged executing the same, freely and voluntarily, and who [] is personally known to me, or [] produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 2025.

(NOTARY SEAL)

Signature of Notary
Print Name: _____

ATTEST:

TOWN OF FORT MYERS BEACH,

FLORIDA, a Florida municipal corporation

DRAFT

Amy Baker, Town Clerk
Date: _____

Dan Allers, Town Mayor
Date: _____

**Approved as to form and legality for use and
reliance only by the Town of Fort Myers Beach,
Florida:**

Vose Law Firm, LLP, Town Attorney

Exhibits:

- A. Survey and Legal Description of Subject Property
- B. List of Deviation proposed by Developer
- C. Site Plan for Floor Plans and Data
- D. Title Opinion

Air Photos: 2025 Hi-Res (3 inch)

Hospital Locations

County Bounda

Parcels Near

—

九

Page 288 of 540

Exhibit B

Deviations from the Code

1. Deviation from Section 34-674(b)(1) a.1. which requires a minimum rear setback of 10 feet to allow a zero-foot (0') rear setback.
2. Deviation from Section 34-675(c)(1) a. which requires a maximum FAR of 1.8 for the Times Square Pedestrian Plaza to allow a maximum FAR of 2.5 as permitted in the Pedestrian Commercial Future Land Use category.
3. Deviation from LDC Section 10-416(b) which requires building edge plantings for commercial and mixed-use buildings in the Downtown zoning district, to allow no edge plantings for the subject property.

GENERAL NOTES:

- 1. THIS SITE PLAN IS CONCEPTUAL IN NATURE. THE OVERALL CONFIGURATION, SIZE AND LOCATION OF THE STRUCTURE AND OTHER IMPROVEMENTS MAY VARY. FINAL DESIGN AND IMPROVEMENT DETAIL SWILL BE PROVIDED AS PART OF THE DEVELOPMENT ORDER (D.O.) PROCESS.
- 2. TOTAL SITE AREA: 0.03± ACRES (1,119 SQUARE FEET, MORE OR LESS)
- 3. FUTURE LAND USE DESIGNATION: PEDESTRIAN COMMERCIAL
- 4. EXISTING ZONING: DOWNTOWN
- 5. ALL OTHER DEVELOPMENT STANDARDS SHALL BE SET FOR IN LDC CHAPTER 24 OR OTHER APPLICABLE PROVISIONS OF THE LDC.

DEVELOPMENT STANDARDS:

MINIMUM SETBACKS

STREET : 0 FEET BUILD-TO LINE
SIDE: 0 FEET
REAR: 0 FEET

MAXIMUM HEIGHT:
30 FEET ABOVE DESIGN FLOOD ELEVATION, NO TALLER THAN 3 (THREE) STORIES

MAXIMUM INTENSITY AND DENSITY

INTENSITY: 2.5 FLOOR AREA RATIO (FAR)

DENSITY: 1 DWELLING UNIT

DEVIATIONS:

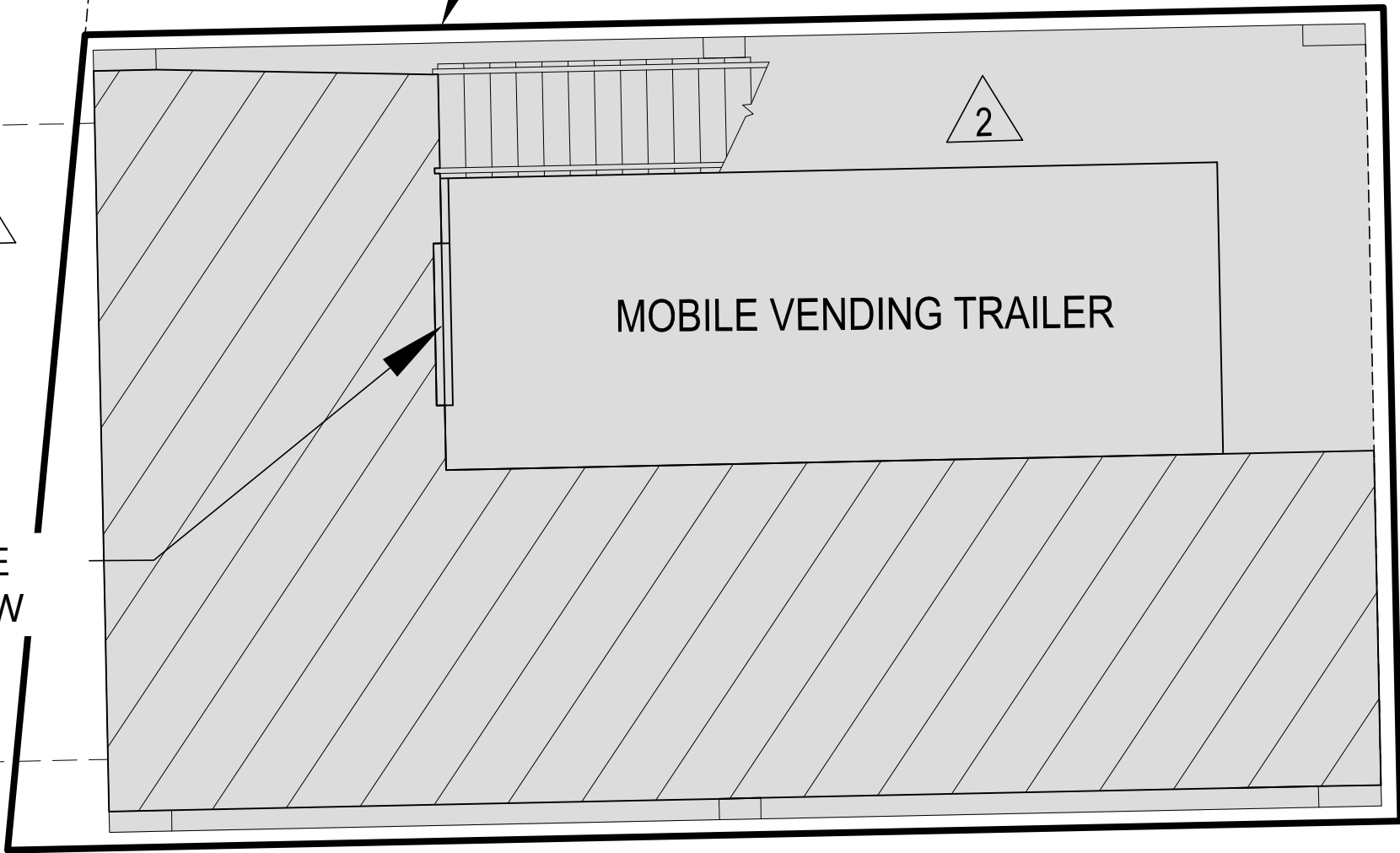
- 1. DEVIATION FROM SECTION 34-674(B)(1)A.1. WHICH REQUIRES A MINIMUM REAR SETBACK OF 10 FEET TO ELIMINATE THE REAR SETBACK
- 2. DEVIATION FROM SECTION 34-675(C)(1)A. WHICH REQUIRES A MAXIMUM FAR OF 1.8 FOR THE TIMES SQUARE PEDESTRIAN PLAZA TO ALLOW A MAXIMUM FAR OF 2.5 AS PERMITTED IN THE PEDESTRIAN COMMERCIAL FUTURE LAND USE CATEGORY.
- 3. DEVIATION FROM LDC SECTION 10-416(B) WHICH REQUIRES BUILDING EDGE PLANTINGS FOR COMMERCIAL AND MIXED-USE BUILDINGS IN THE DOWNTOWN ZONING DISTRICT, TO ALLOW NO EDGE PLANTINGS FOR THE SUBJECT PROPERTY.

FLU: RECREATION
ZONING: COMMUNITY FACILITIES
EXISTING USE: TIMES SQUARE
PEDESTRIAN AREA/ LYNN HALL PARK

TIME SQUARE
PEDESTRIAN PLAZA

MAXIMUM OF 6'-0"
ENCROACHMENT INTO RIGHT OF
WAY ALLOWED PER SECTION
34-995(e)(2) a AND b

SERVICE
WINDOW



FLU: PEDESTRIAN COMMERCIAL
ZONING: DOWNTOWN
EXISTING USE: COMMERCIAL

PROPERTY
BOUNDARY

FLU: PEDESTRIAN COMMERCIAL
ZONING: DOWNTOWN
EXISTING USE: VACANT COMMERCIAL

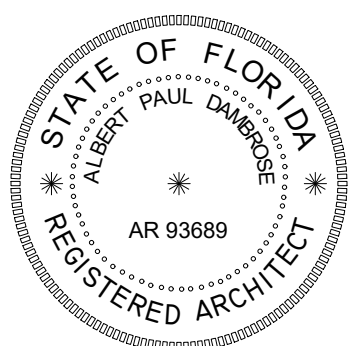
FLU: PEDESTRIAN COMMERCIAL
ZONING: DOWNTOWN
EXISTING USE: VACANT COMMERCIAL

LEGEND		
	-	BUILDING FOOTPRINT
	-	DEVIATIONS
	-	SEATING AREA

		5 0 5	
			DATE
			DRAWN
			REVISION
			#
5618 WHISPERING WILLOW WAY FORT MYERS, FL 33908 WWW.THENEIGHBORHOOD.COM/PANY			
CLIENT:	CARLOS L. CHAVEZ, TRUSTEE FOR CARLOS L. CHAVEZ TRUST		
	PROJECT:		
TITTLE:	50 OLD SAN CARLOS PROPERTY		
	SITE PLAN		
PROJECT NO:	220050.01.01		
DATE:	06/25	DRAWN:	F.L.
DESIGN:		P.V.	
SHEET NUMBER:	1	OF	2

A NEW BUILDING FOR:
MELI'S ICE CREAM SHOP
50 OLD SAN CARLOS BLVD, AT TIMES SQUARE
FORT MYERS BEACH, FL

CONSULTANT:



ALBERT DAMBROSE
AR93689

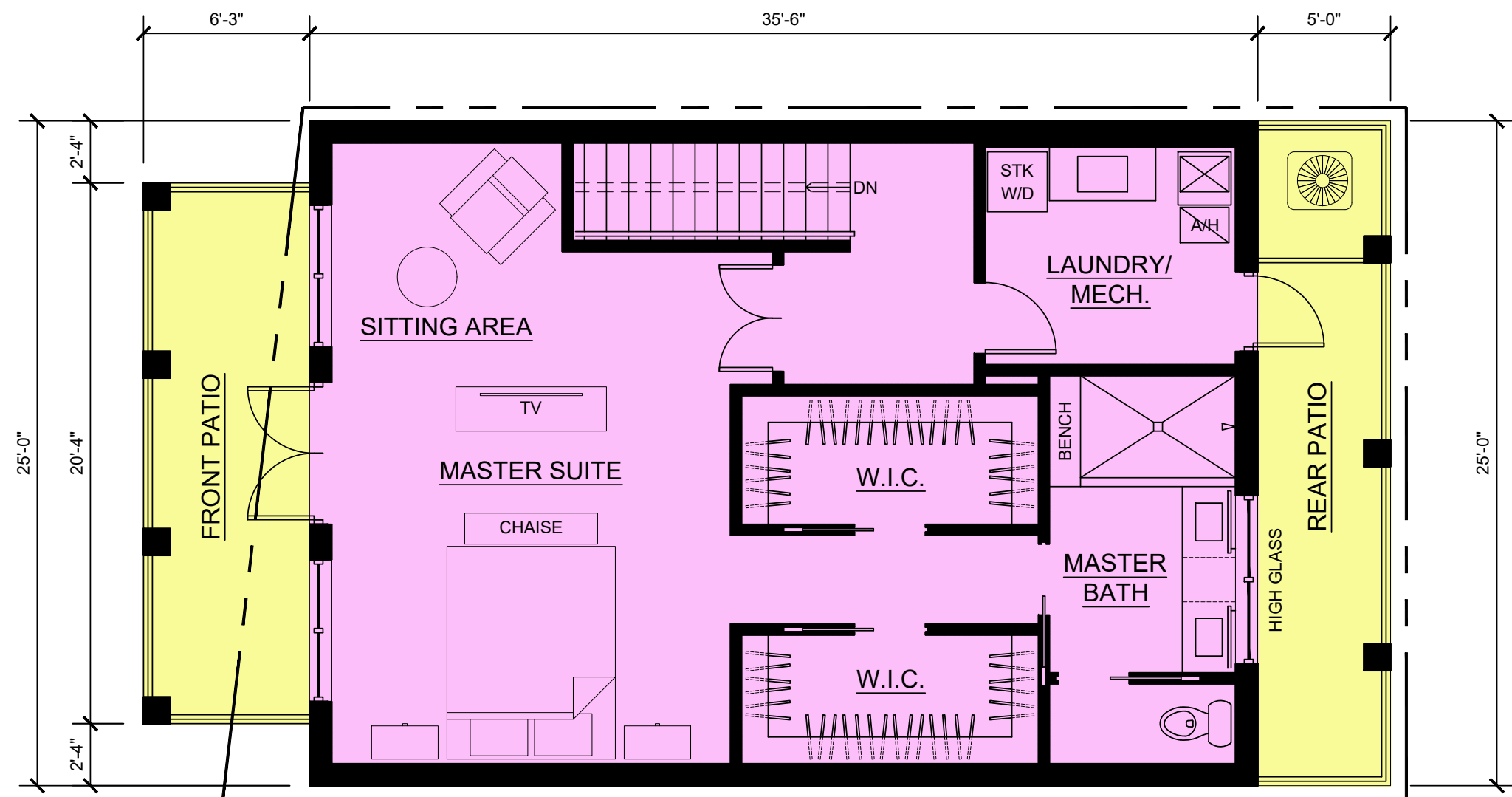
DATE ISSUED: 16 SEPT 2025

REVISIONS:

SHEET

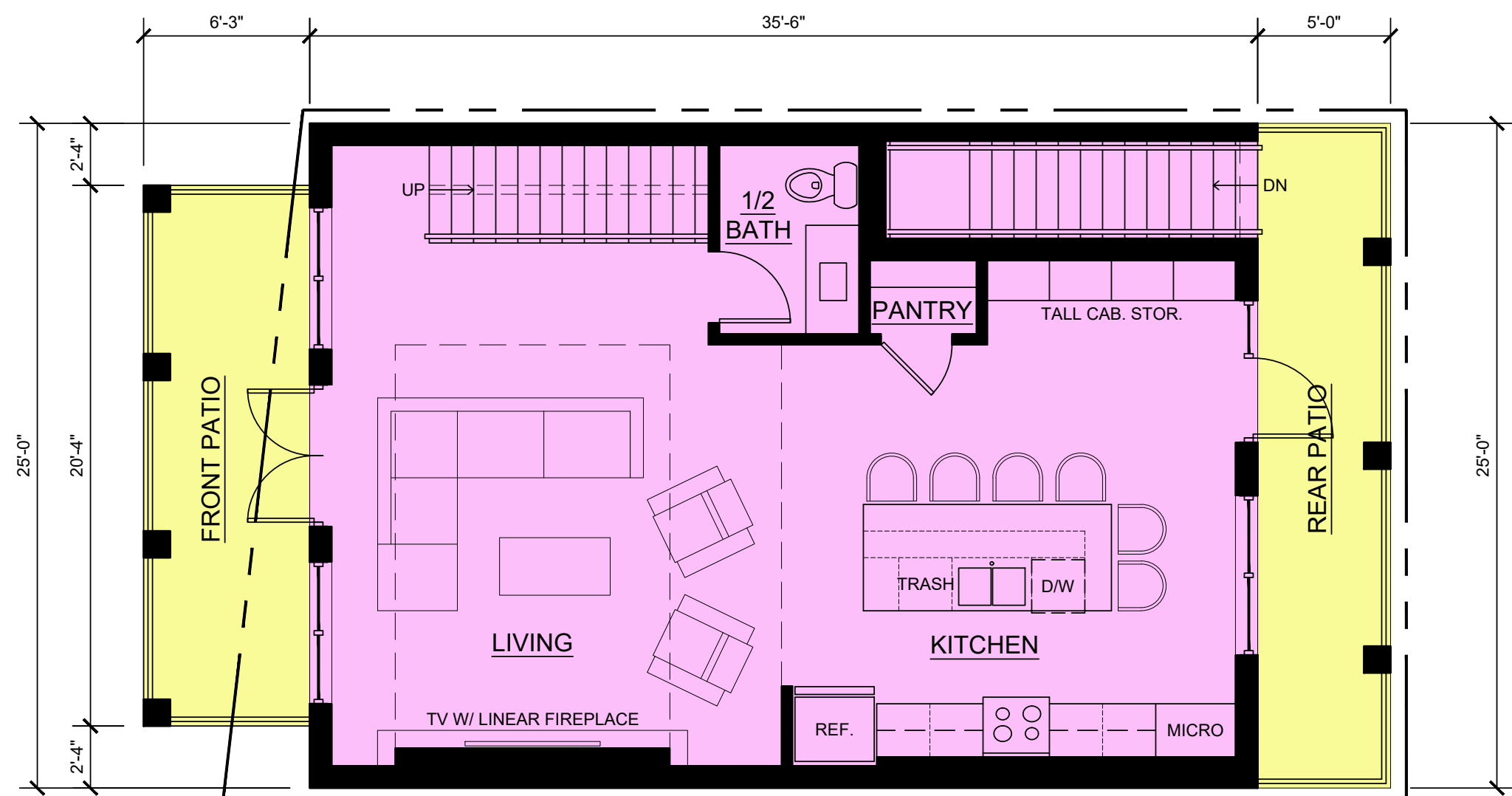
D2

OF 3



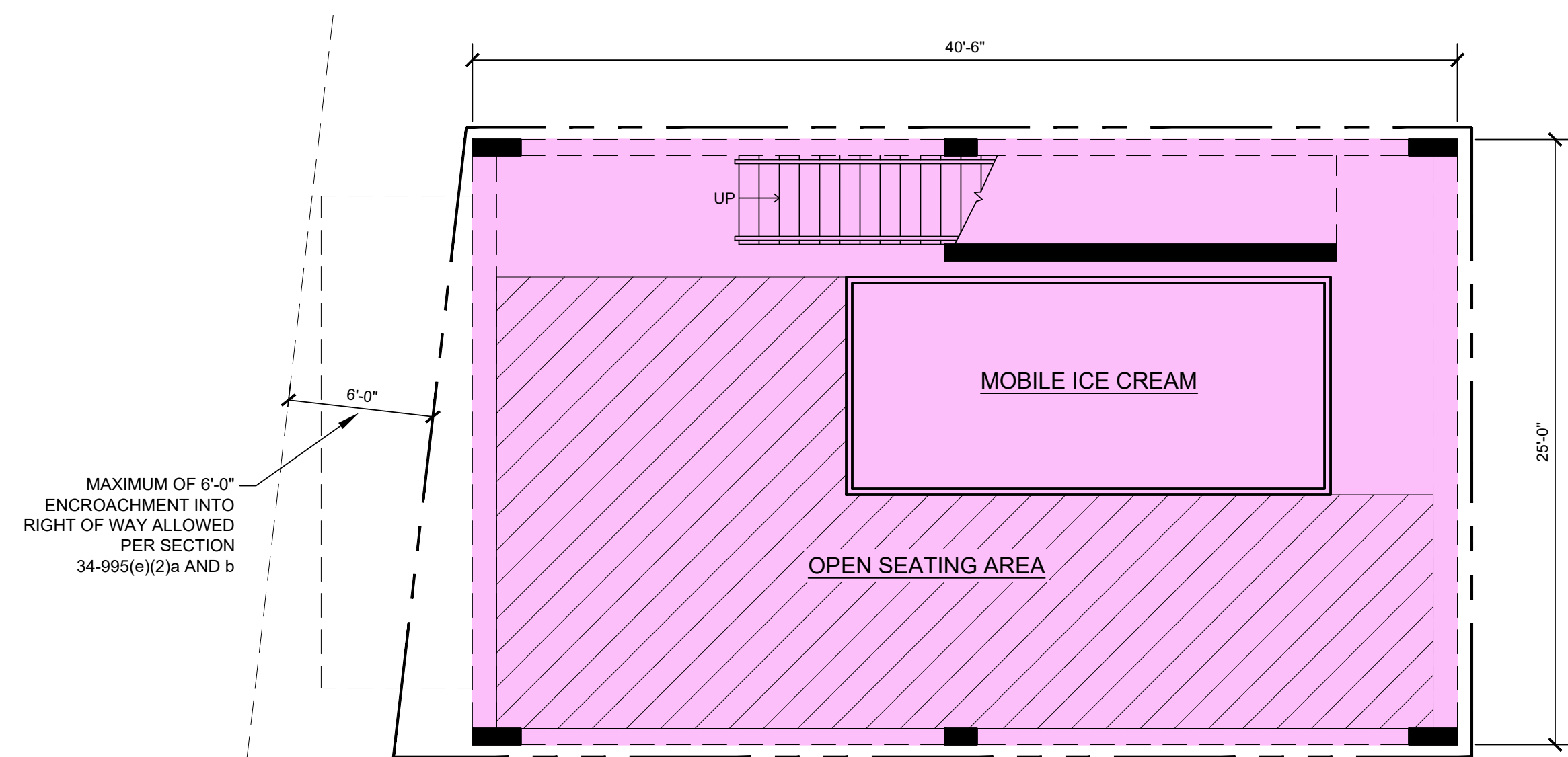
NORTH
SCHEMATIC THIRD FLOOR PLAN

SCALE: 3/16" = 1'-0"



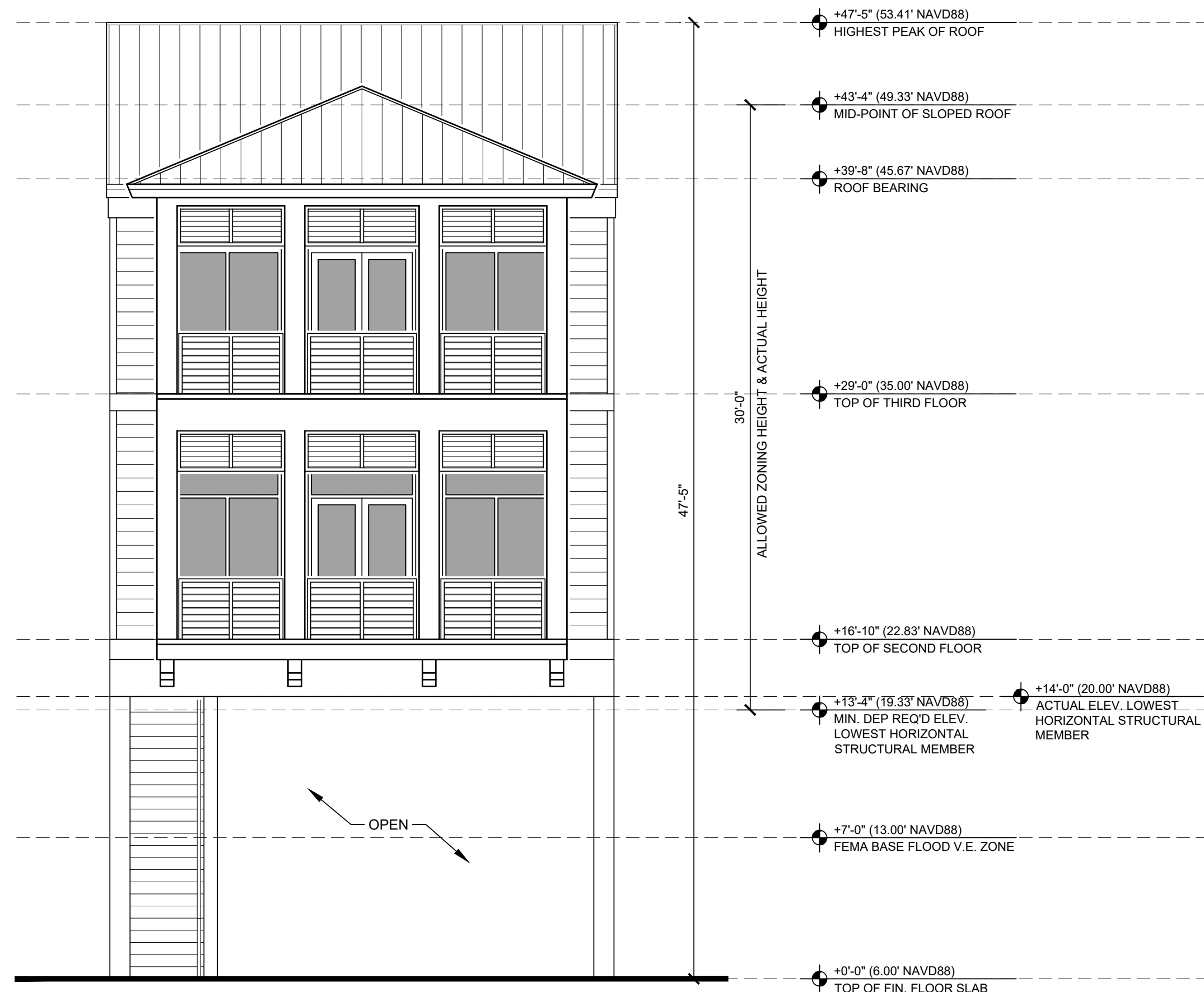
NORTH
SCHEMATIC SECOND FLOOR PLAN

SCALE: 3/16" = 1'-0"



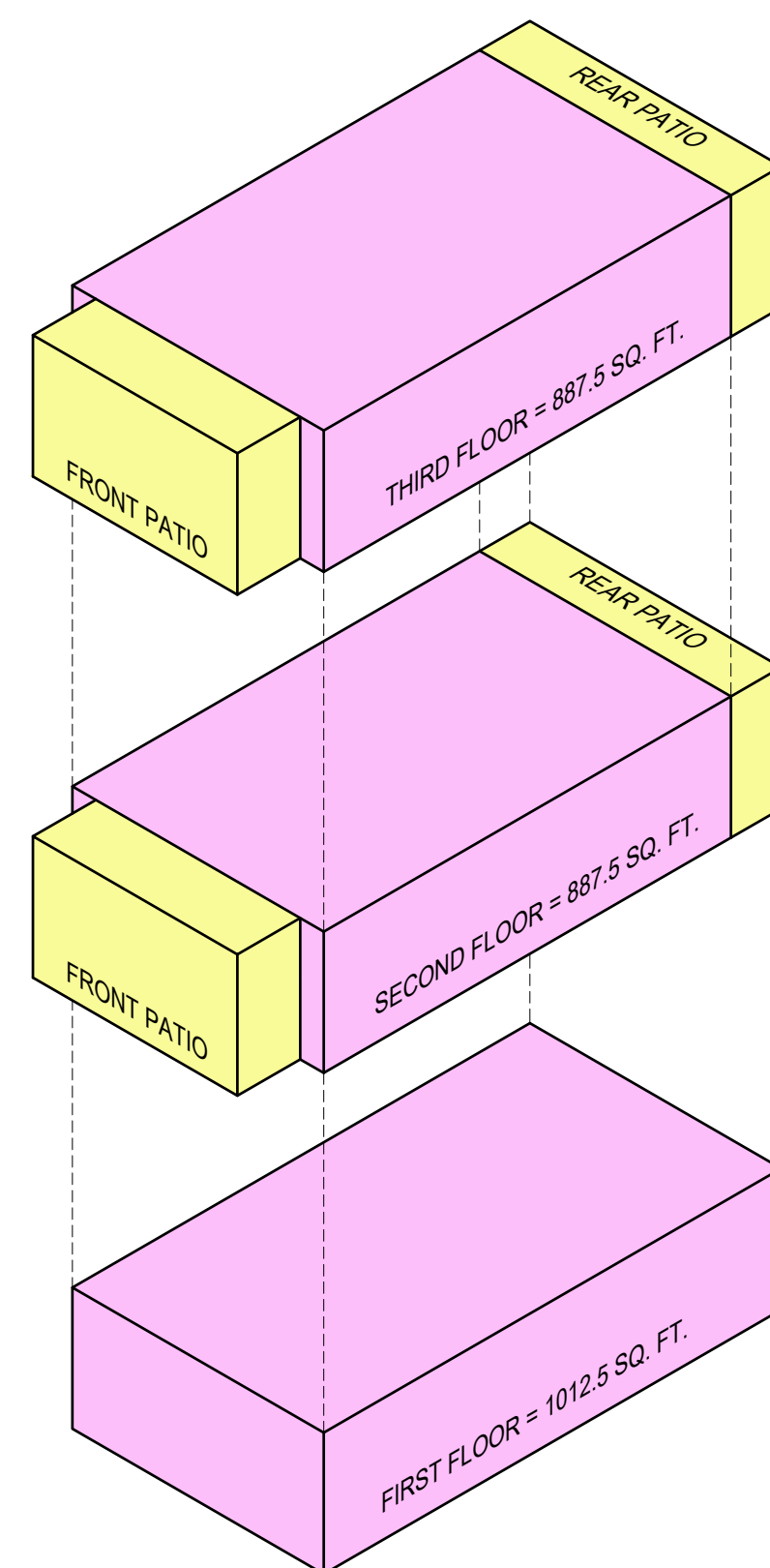
NORTH
SCHEMATIC FIRST FLOOR PLAN - WITH MOBILE TRAILER

SCALE: 3/16" = 1'-0"



SCHEMATIC FRONT (WESTERN) ELEVATION

SCALE: 3/16" = 1'-0"



F.A.R. ISOMETRIC

SCALE: 1/16" = 1'-0"

BUILDING AREA ANALYSIS

FIRST FLOOR	1,012.5 SQ. FT.	
SECOND FLOOR	887.5 SQ. FT.	
THIRD FLOOR	887.5 SQ. FT.	

TOTAL F.A.R. PROPOSED = 2,787.5 SQ. FT.

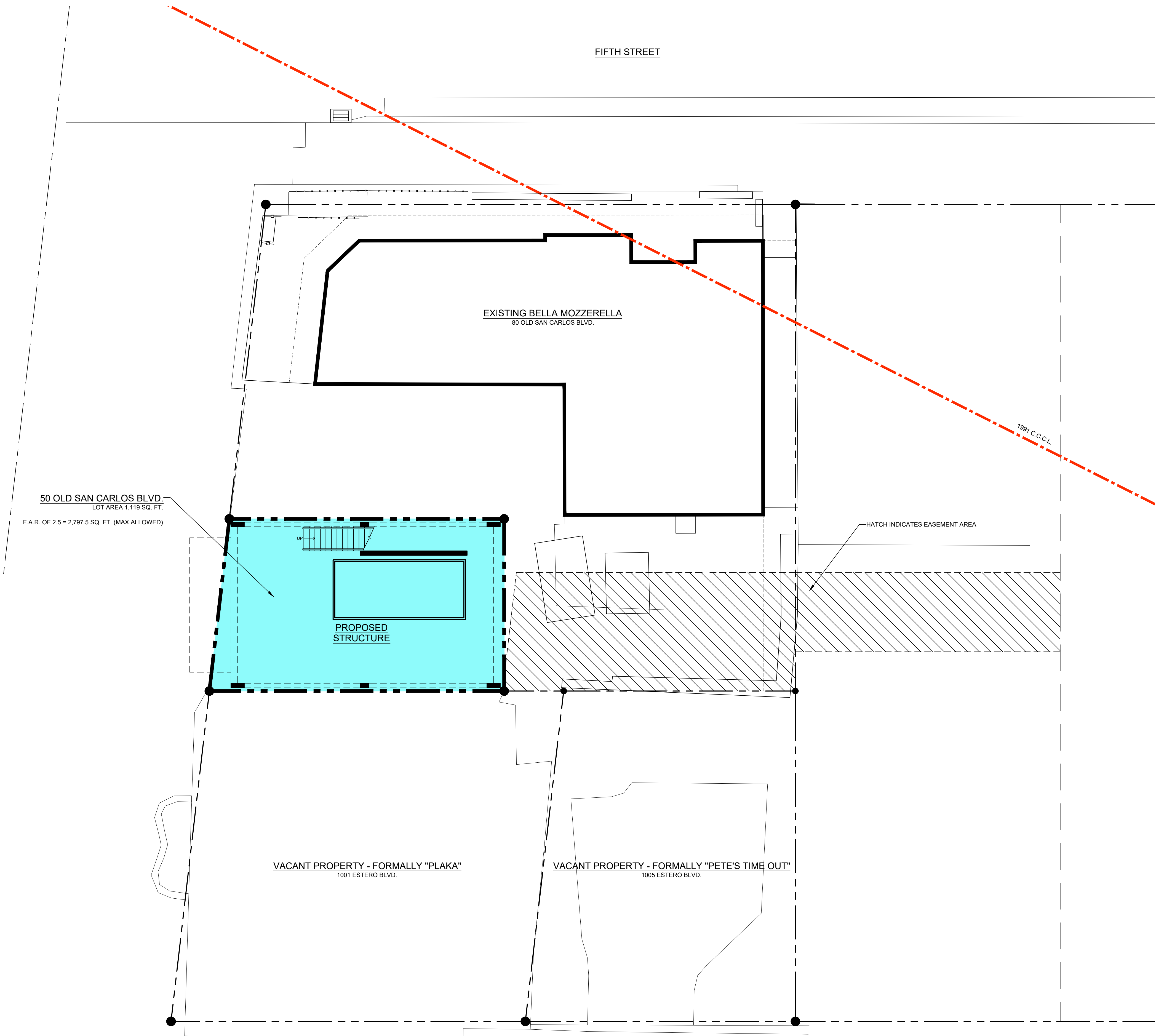
MAXIMUM F.A.R. ALLOWED W/ 2.5 RATIO = 2,797.5 SQ. FT.

*EXCLUDED FROM F.A.R.

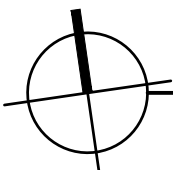
-FRONT AND REAR EXTERIOR PATIOS

-252 SQ. FT. AT SECOND FLOOR

-252 SQ. FT. AT THIRD FLOOR



NORTH



SCHEMATIC SITE PLAN

SCALE: 1/8" = 1'-0"

STUDIO
AD
ARCHITECT

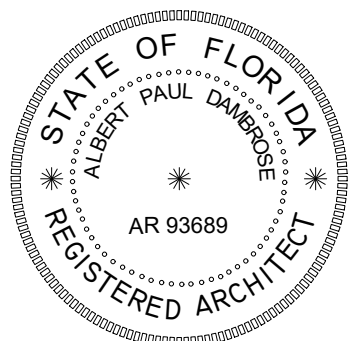
6202 Presidential Ct Suite D
Fort Myers, FL 33919
T: 239.292.4098

apd@studioad.net
www.studioad.net

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A NEW BUILDING FOR:
MELI'S ICE CREAM SHOP
50 OLD SAN CARLOS BLVD, AT TIMES SQUARE
FORT MYERS BEACH, FL

CONSULTANT:



ALBERT DAMBROSE
AR93689

DATE ISSUED: 16 SEPT 2025

REVISIONS:

SHEET

D1

OF 3



SCHEMATIC FRONT (WESTERN) ELEVATION

N.T.S.

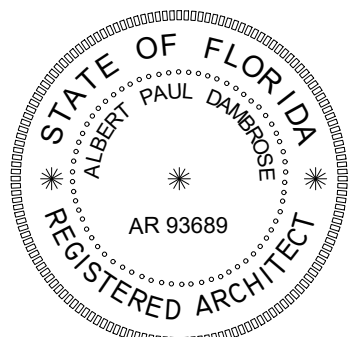


SCHEMATIC FRONT (WESTERN) ELEVATION

N.T.S.

A NEW BUILDING FOR:
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FORT MYERS BEACH, FL

CONSULTANT:



ALBERT DAMBROSE
AR93689

DATE ISSUED: 16 SEPT 2025

REVISIONS:

SHEET

D3

OF 3



TITLE OPINION

This opinion is provided to:

May 30, 2025

Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach, FL 33991

I am an attorney licensed to practice law in the State of Florida and I have examined the ALTA Owner's Policy of Title Insurance issued by Old Republic National Title Insurance Company under Policy OF6-4173577 dated August 13, 2015, together with Title Update prepared by Old Republic National Title Insurance Company dated May 9, 2025 (with an effective search through May 9, 2025) under File No. 250071, copies of which are attached hereto (collectively, the "Title Reports") covering the real property described therein (the "Property"). Based upon my examination of the Title Reports, it is my opinion that as of May 9, 2025, the record title to the Property was vested in Carlos L. Chavez, as Trustee of the Carlos L. Chavez Revocable Trust ("Owner"), subject to mortgage(s), easement(s) and other matters expressly referenced in the Title Reports. Owner's contact information is c/o Carlos L. Chavez, as Trustee of the Carlos L. Chavez Revocable Trust, 991 Aqua Lane, Fort Myers, Florida 33919.

This Title Opinion is provided pursuant to the requirements of the Town of Fort Myers Beach Resolution 24-73 for the uses and purposes specifically stated therein, and is not to be used as the basis for issuance of an insurance commitment and/or policy or relied upon for any other purposes.

Respectfully submitted,

Richard B. Akin

Richard B. Akin, Esquire
Henderson, Franklin, Starnes & Holt, P.A.
1715 Monroe Street
Fort Myers, Florida 33901

RBA

Enclosures: Old Republic National Title Insurance Co.
Commitment for Title

**AMERICAN LAND TITLE ASSOCIATION
COMMITMENT
(With Florida Modifications)**

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:

Commitment Number: 1643826	Revision Number:	Issuing Office File Number: 250071	Issuing Agent: Victory Title Services, LLC
Property Address: 50 Old San Carlos Blvd., Fort Myers Beach, FL 33931	Loan ID Number:	Issuing Office's ALTA® Registry ID:	Issuing Office: 923 Del Prado Boulevard S., Suite 107, Cape Coral FL 33990

SCHEDULE A

1. Commitment Date: **May 9, 2025 at 11:00 PM**
2. Policy to be issued:
a. OWNER'S: 2021 ALTA® Owner's Policy with Florida Modifications
Proposed Insured:
The estate or interest to be insured: **Fee Simple as shown by instrument to be recorded in the Public Records of Lee County, Florida.**
b. MORTGAGEE: 2021 ALTA® Loan Policy with Florida Modifications
Proposed Insured:
The estate or interest to be insured: **Fee Simple**
3. The estate or interest in the Land at the Commitment Date is: *(Identify each estate or interest covered, i.e., fee, leasehold, etc.)*
Fee Simple
4. The Title is, at the Commitment Date, vested in: *(Identify vesting for each estate or interest identified in Item 3 above)* **Carlos L. Chavez, as Trustee of the Carlos L. Chavez Revocable Trust**
5. The Land is described as follows:
The Southwest 26 feet of Lot 2, Block 8, Business Center, excepting therefrom the Southeast 44 feet thereof, according to the map or plat on file and recorded in Plat Book 9, Pages 9 and 10, Public Records of Lee County, Florida.

Old Republic National Title Insurance Company
1408 N. Westshore Blvd., Ste. 900, Tampa, FL 32607, (612) 371-1111



AUTHORIZED SIGNATORY

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by Old Republic National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Form C21 - Schedule A – ALTA Commitment for Title Insurance 2021 v. 01.00 (with Florida Modifications)
07/01/2021

**AMERICAN LAND TITLE ASSOCIATION
COMMITMENT
(With Florida Modifications)**

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Commitment Number: 1643826

Schedule B-I

Issuing Office File Number: 250071

REQUIREMENTS

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
 - A. Warranty Deed from Carlos L. Chavez, individually and as Trustee of the Carlos L. Chavez Revocable Trust, joined by spouse, if married, or nonhomestead language, to the proposed purchaser(s).
5. Recording of Certification of Trust confirming the information as required by Sec. 736.1017(1), F.S., containing the confirmatory statement under Sec. 736.1017(3).
6. No open mortgage(s) were found of record. Agent should confirm with the owner that the property is free and clear.
7. An update of the title search must be completed just prior to the closing and the commitment must be endorsed to require clearance of, or take exception for, any additional title defects or adverse matters found.

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by Old Republic National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

**AMERICAN LAND TITLE ASSOCIATION
COMMITMENT
(With Florida Modifications)**

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Schedule B-II

Issuing Office File Number: 250071

EXCEPTIONS FROM COVERAGE

SOME HISTORICAL LAND RECORDS CONTAIN DISCRIMINATORY COVENANTS THAT ARE ILLEGAL AND UNENFORCEABLE BY LAW. THIS COMMITMENT AND THE POLICY TREAT ANY DISCRIMINATORY COVENANT IN A DOCUMENT REFERENCED IN SCHEDULE B AS IF EACH DISCRIMINATORY COVENANT IS REDACTED, REPUDIATED, REMOVED, AND NOT REPUBLISHED OR RECIRCULATED. ONLY THE REMAINING PROVISIONS OF THE DOCUMENT WILL BE EXCEPTED FROM COVERAGE.

The Policy will not insure against loss or damage resulting from the terms and conditions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I - Requirements are met.
2.
 - a. General or special taxes and assessments required to be paid in the year 2025 and subsequent years.
 - b. Rights or claims of parties in possession not recorded in the Public Records.
 - c. Any encroachment, encumbrance, violation, variation or adverse circumstance that would be disclosed by an inspection or an accurate and complete land survey of the Land and inspection of the Land.
 - d. Easements or claims of easements not recorded in the Public Records.
 - e. Any lien, or right to a lien, for services, labor or material furnished, imposed by law and not recorded in the Public Records.
3. Any Owner's Policy issued pursuant hereto will contain under Schedule B the following exception: Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the Land insured hereunder, including submerged, filled and artificially exposed lands, and lands accreted to such lands.
4. Any lien provided by County Ordinance or by Chapter 159, F.S., in favor of any city, town, village or port authority, for unpaid service charges for services by any water systems, sewer systems or gas systems serving the land described herein; and any lien for waste fees in favor of any county or municipality.
5. All matters contained on the Plat of Business Center, as recorded in Plat Book 9, Pages 9 and 10, Public Records of Lee County, Florida.
6. Lee County Ordinance No. 86-14 recorded November 30, 1990, in O.R. Book 2189, Page 3281; and amended by Ordinance No. 86-38 in O.R. Book 2189, Page 3334, Public Records of Lee County, Florida.
7. Rights of the lessees under unrecorded leases.

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by Old Republic National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Form C21 - Schedule B II – ALTA Commitment 2021 v. 01.00 (with Florida Modifications)

07/01/2021

OWNER'S POLICY OF TITLE INSURANCE

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Minnesota corporation (the "Company") insures, as of Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protection

if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce but only to the extent of the violation or enforcement referred to in that notice.

(Covered Risks continued)

In Witness Whereof, OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, has caused this policy to be signed and sealed as of Date of Policy shown in Schedule A, the policy to become valid when countersigned by an authorized signatory of the Company.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111



By

Mark A. Bilsby

President

Attest

David Wald

Secretary

SERIAL

OF6- 4173577

(Covered Risks continued)

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
 - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1 (a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1 (b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
 - (i) the term "Insured" also includes
 - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
 - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (C) successors to an Insured by its conversion to another kind of Entity;
 - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured,
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
 - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
 - (ii) with regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (e) "Insured Claimant": An Insured claiming loss or damage.
- (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (j) "Title": The estate or interest described in Schedule A.
- (k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

- (i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

- (ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b) (i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

- (i) the Amount of Insurance; or

- (ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

- (i) the Amount of Insurance shall be increased by 10% and
 - (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

- (a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.
- (b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Unless prohibited by applicable law, arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association may be demanded if agreed to by both the Company and the Insured at the time of the controversy or claim. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, and service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the Insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the Land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim whether or not based on negligence shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States or other territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at 400 Second Avenue South, Minneapolis, Minnesota 55401-2499. Phone: (612) 371-1111.

FORM OF6 (rev. 12/10)(With Florida Modifications)

6 of 6

**Old Republic National
Title Insurance Company**

OWNER'S
TITLE INSURANCE
POLICY

1# 8/02/0202/02



For information about coverage or
assistance in resolving complaints,
call (612) 371-1111.

Offices at
400 Second Avenue South
Minneapolis, Minnesota 55401

**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
OWNER'S POLICY**

Schedule A

Policy No.: OF6-4173577

Date of Policy: August 13, 2015 at 9:07 AM

Fund File Number 211314

Agent's File Reference: JWR-Chavez

Amount of Insurance: \$1,075,000.00

Premium: \$5,262.50

Address Reference: 50 Old San Carlos Boulevard, Fort Myers Beach, FL 33931

1. Name of Insured:

Carlos L. Chavez

2. The estate or interest in the Land that is insured by this policy is FEE SIMPLE as shown by instrument recorded in Instrument Number 2015000177016, of the Public Records of Lee County, Florida.

3. Title is vested in:

Carlos L. Chavez

4. The land referred to in this Policy is described as follows:

The Southwest 26 feet of Lot 2, Block 8, Business Center, excepting therefrom the Southeast 44 feet thereof, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court in Plat Book 9, Pges 9 and 10, Public Records of Lee County, Florida.

Old Republic National Title Insurance Company

400 Second Avenue South, Minneapolis, Minnesota 55401, (612) 371-1111

AGENT NO.: 742901

ISSUED BY: Kevin F Jursinski P.A.

MAILING ADDRESS:

15701 S Tamiami Trail
Ft Myers, FL 33908

AGENT'S SIGNATURE _____

Kevin F Jursinski, Esq.

OF6-SCH.-A (rev. 12/10) (With Florida Modifications)

**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
OWNER'S POLICY**

Schedule B

Policy No.: OF6-4173577

Fund File Number 211314

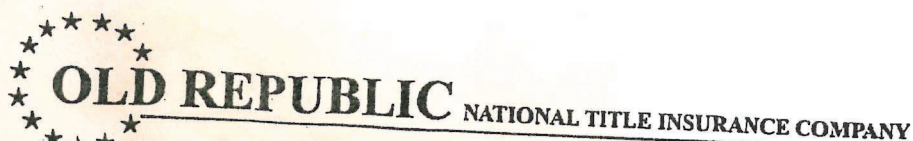
Agent's File Reference: JWR-Chavez

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. General or special taxes and assessments required to be paid in the year 2015 and subsequent years.
2. Rights or claims of parties in possession not recorded in the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance that would be disclosed by an inspection or an accurate and complete land survey of the Land and inspection of the Land.
4. Easements or claims of easements not recorded in the Public Records.
5. Any lien, or right to a lien, for services, labor, or material furnished, imposed by law and not recorded in the Public Records.
6. Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the Land insured hereunder, including submerged, filled and artificially exposed lands, and lands accreted to such lands.

Items 2 and 5 are hereby deleted.

7. Any lien provided by County Ordinance or by Chapter 159, F.S., in favor of any city, town, village or port authority, for unpaid service charges for services by any water systems, sewer systems or gas systems serving the land described herein; and any lien for waste fees in favor of any county or municipality.
8. All matters contained on the Plat of Business Center, as recorded in Plat Book 9, Pages 9 and 10, Public Records of Lee County, Florida.
9. Lee County Ordinance No. 86-14 recorded November 30, 1990, in O.R. Book 2189, Page 3281; and amended by Ordinance No. 86-38 in O.R. Book 2189, Page 3334, Public Records of Lee County, Florida.
10. Mortgage executed by Carlos L. Chavez, in favor of John W. Richard, as Trustee of the John W. Richard Revocable Trust U/T/A dated May 3, 1995, dated August 12, 2015, in the amount of \$525,000.00, recorded August 13, 2015, in Instrument Number 2015000177017, of the Public Records of Lee County, Florida.



400 Second Avenue South
Minneapolis, Minnesota 55401
(612) 371-1111

PRIVACY POLICY NOTICE

Title V of the Gramm-Leach-Bliley Act (GLBA) generally prohibits any financial institution, directly or through its affiliates, from sharing nonpublic personal information about you with a nonaffiliated third party unless the institution provides YOU with a notice of its privacy policies and practices, such as the type of information that it collects about you and the categories of persons or entities to whom it may be disclosed. In compliance with the GLBA, we are providing you with this document, which notifies you of the privacy policies and practices of Old Republic National Title Insurance Company.

We may collect nonpublic personal information about you from the following sources:

- Information we receive from you such as on applications or other forms.
- Information about your transactions we secure from our files, or from our affiliates or others.
- Information we receive from a consumer reporting agency.
- Information that we receive from others involved in your transaction, such as the real estate agent or lender.

Unless it is specifically stated otherwise in an amended Privacy Policy Notice, no additional nonpublic personal information will be collected about you.

We may disclose any of the above information that we collect about our customers or former customers to our affiliates or to nonaffiliated third parties as permitted by law.

We also may disclose this information about our customers or former customers to the following types of nonaffiliated companies that perform marketing services on our behalf or with whom we have Joint Marketing Agreements:

- Financial service providers such as companies engaged in banking, consumer finance, securities and insurance.
- Non-financial companies such as envelope stuffers and other fulfillment service providers.

WE DO NOT DISCLOSE ANY NONPUBLIC PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT SPECIFICALLY PERMITTED BY LAW.

We restrict access to non-public personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Town's website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference: (25-19)

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 TRUSTEE FOR 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.

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Town is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Town is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;

¹ See Section 166.041(4)(c), Florida Statutes.

- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
 - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
 - b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
 - c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
 - d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Town hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance is to create a Development agreement (DA) to allow redevelopment of property to a mixed use with commercial at the ground level and single family above in the Downtown zoning district. The parcel located at 50 San Carlos Blvd, generally identified as Strap Number 24-46-23-W3-00208.002A Fort Myers Beach.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Town, including the following, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the Town's regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

There are unlikely to be direct compliance costs associated with the ordinance.

The ordinance does not impose any new charge or fee on businesses.

There are no new charges or fees that will be imposed on businesses by the ordinance.

The Town will not likely incur additional costs.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

One property owner will be impacted by this proposed ordinance.

4. Additional information the governing body deems useful (if any):



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

TYPE OF CASE: Development Agreement

CASE NUMBER: DA20250186

CASE NAME: 50 SAN CARLOS BLVD-KILWINS REDEVELOPMENT

LPA

HEARING DATE: October 14th, 2025, 9am

TOWN COUNCIL

HEARING DATE: November 17th , 2025, 9am (First Reading)
December 15th, 2025, 9am (Second Reading)

STAFF

RECOMMENDATION: Approval with conditions

**PREPARED/
SUBMITTED BY:** Uma Sarmistha, Ph.D.

I. APPLICATION SUMMARY

Applicant/Owner: The Neighborhood Company (Applicant)

Request: The applicant is requesting a Development Agreement to redevelop the subject property as a mixed-use with retail at ground level and residential above.

Subject property: 50 San Carlos Blvd.

Physical Address: 50 San Carlos Blvd
STRAP #: 24-46-23-W3-00208.002A

FLU: Pedestrian Commercial

Zoning: DOWNTOWN

Adjacent zoning and land uses:

North:	Downtown / PEDESTRIAN COMMERCIAL
South:	Downtown /PEDESTRIAN COMMERCIAL
East:	Downtown / PEDESTRIAN COMMERCIAL
West:	Community Facilities /RECREATION

II. BACKGROUND AND ANALYSIS

Background:

The Neighborhood Company, representing the Carlos L. Chavez Trust, seeks approval for a Development Agreement with deviations to redevelop the former Kilwin’s Chocolates site within the Times Square Pedestrian Plaza. The proposed project includes a three-story mixed-use building with a mobile ice cream vending operation on the ground floor and residential units on the second and third floors.

The property is approximately 0.03 acres (1,119 sq. ft.), located across from Lynn Hall Memorial Park and about 100 feet from the Fort Myers Beach Pier. The area sustained significant damage from Hurricanes Ian, Helene, and Milton. Redevelopment efforts are guided by the Comprehensive Plan, which envisions a vibrant, pedestrian-friendly public realm.

Design and Compliance:

The proposed coastal design includes balconies extending beyond the build-to line, consistent with LDC Section 34-995(e)(2)a and b. These elements enhance visual interest and provide shade and shelter for pedestrians. While the design adheres to most Downtown district standards, the applicant requested for three deviations due to site constraints:

1. Rear Setback: Deviation from Section 34-674(b)(1)a.1 to allow a zero-foot rear setback.
2. Floor Area Ratio (FAR): Deviation from Section 34-675(c)(1)a to increase FAR from 1.8 to 2.5.
3. Edge Plantings: Deviation from LDC Section 10-416(b) to waive the requirement for building edge plantings.

At the Town LPA hearing on October 14th, 2025, the LPA conducted a public hearing regarding the petition. The LPA members heard the petition from applicants, staff and attorney. Applicant attorney Akin suggested five language change in the DA.

The LPA voted 7-0 to recommend approval to the Town Council and directed town attorney to discuss the requested language change in DA proposed by applicant attorney. Additional requirements include:

- Alternatives to construction staging and materials, given the site's tight layout and traffic.
- Potted plants in the location.

Analysis:

The proposed development supports infill in the Downtown district and aligns with the Comprehensive Plan's vision for Times Square. The previous structure was non-conforming, built before current codes. The new proposal aims to comply with the Land Development Code and Comprehensive Plan, requesting deviations only where necessary.

The property is approximately 0.03 acres (1,119 sq. ft.), located across from Lynn Hall Memorial Park and about 100 feet from the Fort Myers Beach Pier. The area sustained significant damage from Hurricanes Ian, Helene, and Milton. Redevelopment efforts are guided by the Comprehensive Plan, which envisions a vibrant, pedestrian-friendly public realm. However, to redevelop the property with suitable size, the applicant submitted a Development Agreement with deviations in accordance with the procedures outlined in Resolution #24-247.

The Comprehensive Plan and the Land Development Code (LDC) have outlined the anticipated redevelopment of the Downtown Zoning District. A Community Redevelopment Agency (CRA) plan was adopted in 1993, and the comprehensive plan's land use policies incorporate this CRA plan by focusing on improvements to the district. The comprehensive plan specifically addresses the desired types of development in Times Square, the important improvements needed in the area, and height regulations. The proposed development aligns with the goals, objectives, and policies set forth in the Comprehensive Plan.

GOAL 4: To keep Fort Myers Beach a healthy and vibrant “small town,” while capitalizing on the vitality and amenities available in a beach–resort environment and minimizing the damage that a hurricane could inflict.

OBJECTIVE 4-A SMALL-TOWN CHARACTER — Maintain the small-town character of Fort Myers Beach and the pedestrian-oriented “public realm” that allows people to move around without their cars even in the midst of peak-season congestion.

Applicant Response and Staff comment: The proposed project at the Times Square Pedestrian Plaza aims to support and enhance the pedestrian-friendly environment that is desired by the town for the redevelopment of the plaza. The ground-floor ice cream shop will promote pedestrian and bicycle traffic. The project is designed at a scale that preserves the small-town character of the area and will seamlessly integrate with future redevelopment efforts for Times Square. The proposed uses, architecture, scale, and location ensure that this project will further enhance the community.

Policy 4-B-6: *“PEDESTRIAN COMMERCIAL”: a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map’s “platted overlay” indicates a maximum density of 10 units per acre for affordable units consistent with the adopted redevelopment plan). Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. Where commercial uses are permitted, residential uses are encouraged in upper floors.*

Applicant Response and Staff comment: The proposed development is well-aligned with the allowed density and intensity for Times Square, promoting a vibrant "pedestrian-oriented public realm." By incorporating a residential unit above the commercial space, it strengthens the community aspect highlighted in the policy. At present, the Times Square Plaza offers limited options for visitors, primarily temporary ones. The introduction of a permanent mobile ice cream shop will not only draw more people to the plaza but also enhance the experience with covered seating for patrons, creating a welcoming and enjoyable atmosphere.

Policy 4-C-2 Commercial Intensity: The maximum intensity of allowable commercial development in any category may be controlled by height regulations (see Policy 4-C-4) or by other provisions of this plan and the Land Development Code. Standards in the Land Development Code will encourage more intense commercial uses only in the “Pedestrian Commercial” category. The Land Development Code shall specify maximum commercial intensities using floor-area-ratios (the total floor area of the building divided by the area of the site in the category allowing commercial uses). The Land Development Code may allow floor-area-ratios in the “Pedestrian Commercial” category as high as 2.5, and in other categories as high as 1.5.

Applicant Response and Staff comment: The proposed redevelopment involves constructing a three-story mixed-use building with a floor area ratio (FAR) of 2.5. Currently, the property's zoning allows a maximum FAR of 1.8. This proposed FAR aligns with the Comprehensive Plan's Pedestrian Commercial category. The subject property measures 0.03 acres (approximately 1,119 square feet). To create a reasonably sized and financially viable building, that will create an appropriate infill development for a Pedestrian Plaza.

Policy 4-C-4 Building Heights: The Land Development Code shall limit the height of new buildings under most conditions to two stories above flood elevation (exceptions may include the build back situations (see Policies 4-D-1 and 4-E-1), and different heights may be applied to officially designated redevelopment areas such as Times Square, Red Coconut/Gulf View Colony, and Villa Santini Plaza).

Applicant Response and Staff comment: The building will be three stories and will comply with all FEMA, DEP, Florida Building Code, and local regulations. As shown in the enclosed

architectural exhibit (Exhibit C), the structure is two stories above flood elevation and meets zoned height restrictions.

List of Uses

The proposed DA, with a FAR of 2.5, provides the following uses of the subject property:

1. Commercial Space. Approximately 1000 square feet of commercial space is provided in this development. Uses include Ice cream shop/ mobile vender.
2. Residential Unit. A two-story single-family unit above the retail with a total square feet of 1775 (887.5 each story).

Deviations from the Code

The attached document entitled *Project Narrative* includes the applicant's complete justification for the deviations on 8-9.

1. Deviation from Section 34-674(b)(1)a.1. which requires a minimum rear setback of 10 feet to allow a zero-foot (0') rear setback.
2. Deviation from Section 34-675(c)(1) a. which requires a maximum FAR of 1.8 for the Times Square Pedestrian Plaza to allow a maximum FAR of 2.5 as permitted in the Pedestrian Commercial Future Land Use category.
3. Deviation from LDC Section 10-416(b) which requires building edge plantings for commercial and mixed-use buildings in the Downtown zoning district, to allow no edge plantings for the subject property.

General Description of Development

The proposed DA consists of three stories: a ground floor with commercial space and single-family residential units above. The ground floor will be open and designed to allow for mobile ice cream vending, with no permanent structures. The second and third floors will contain single-family residences.

The applicant has noted that the Town of Fort Myers Beach is currently studying wave mitigation walls to strengthen the shoreline. This initiative could potentially enable properties in the Times Square area to be removed from the V-Zone. If the mitigation plan is successful, there may be an opportunity to develop on the ground floor. However, the town has not yet established any regulations regarding this matter.

The proposed retail and residential uses are permitted right within the Downtown district, as outlined in the Land Development Code. However, in the current plan, there is no on-site parking or stormwater, and three deviations are requested.

Deviation #1 Deviation from LDC Section 34-674(b)(1)a.1. Allowing minimum rear setback line of 10 feet for parcels within the Downtown Zoning District and facing the Times Square Pedestrian Plaza to zero (0) rear setback.

Applicant Justification: Due to the property's limited dimensions—approximately 26 feet in width and 44 feet in depth—strict adherence to the ten-foot setback would restrict the building's depth to 34 feet and its footprint to 884 square feet. This limitation greatly hinders the ability to construct a commercially viable retail space that complies with the current Land Development Code. The requested deviation would allow the building to be positioned with a zero-foot setback at the rear property line, enabling a more functional and appropriately sized structure for a retail establishment. Access to the rear of the building will be available to property owners and employees. Eliminating the rear setback will not harm or detract from the adjoining property owners, as this property abuts a common access easement that cannot be developed by neighboring properties. Additionally, a portion of the property partially borders land that is under the same ownership. This area is shown in the survey and the architectural exhibits (Exhibit C). The building will be constructed to meet all fire and life safety regulations.

Deviation #2 Deviation from Section 34-675(c)(1)a. Allowing maximum FAR of 1.8 to a maximum FAR of 2.5 as permitted in the Pedestrian Commercial Future Land Use category.

Applicant Justification: Due to the property's limited size of approximately 0.03 acres (1,119 sq. ft.), current zoning regulations restrict the building to a maximum FAR of 1.8, which allows for a total of 2,014 square feet. This limitation presents a significant challenge in developing a commercially viable ground floor space and a modest-sized residential unit above. The requested deviation would allow for an FAR of 2.5, resulting in an additional 783 square feet. This extra space at the ground level would accommodate a mobile vending ice cream shop that can be easily maneuvered under the building. Additionally, the extra square footage for the residential unit would ensure an adequate living space on the second floor and provide a one-bedroom unit on the third floor.

DEVIATION #3 Deviation from LDC Section 10-416(b), Allowing no edge planning requirement for the subject property.

Applicant Justification: The subject property is quite small, measuring approximately 0.03 acres, and is situated directly along the Times Square pedestrian plaza. The design for the proposed

building places the structure very close to the right-of-way, allowing minimal space for edge plantings. Additionally, the planters and hardscaping in Times Square should follow a cohesive design theme that is consistent throughout the entire public plaza. This should be done in a way that does not obstruct pedestrian traffic or create safety hazards. Furthermore, the mobile vending operation will require the ability to easily maneuver a trailer and light-duty truck under the proposed structure. Having permanent edge plantings would restrict access and pose an unnecessary hardship.

Neighborhood Compatibility and Public Benefit:

The neighborhoods surrounding the subject site are planned for mixed-use development, specifically in the Downtown Times Square Pedestrian Commercial Plaza. The proposed mixed-use structure is thoughtfully designed to align with the town's vision for Times Square. It features ground-level retail space along the pedestrian plaza, along with a residential unit situated above the commercial area.

Approval of this project will accelerate the redevelopment of Times Square and support the goal of transforming Times Square, Old San Carlos, and the proposed bayfront plaza into a cohesive, pedestrian-friendly "*Main Street*" that connects the island from the Gulf to the Bay. The proposed development adheres to the permitted density and intensity for Times Square. It will enhance the "pedestrian-oriented public realm" and provide a residential unit above the commercial space, as outlined in this policy.

The building's vertical mixed-use design and coastal architectural style align well with the Town's vision and development goals for this area. Furthermore, the proposed redevelopment will restore the economic viability of this parcel and contribute to the Town's tax revenues.

Findings and Conclusions:

The applicant has provided a DA meeting the minimum statutory requirements of the Code of Ordinances. The DA has been processed in accordance with the procedures in the Administrative Code.

RECOMMENDATION

The development agreement included in your agenda packet results from preliminary negotiations between the applicant and Town staff, in accordance with the processes and procedures outlined in the administrative code section (Ordinance 24-247, attached as Exhibit B). The proposed uses and some of the suggested public benefits align with the policies of the comprehensive plan.

Staff recommend the following items for discussion: -

1. Currently, there is no stormwater management plan in place. However, the development will need to establish either a dedicated stormwater facility or provide evidence of access to a shared stormwater pond in the plaza area.
2. Given the zero-rear setback (deviation #1), staff recommend incorporating landscaping or a stormwater facility, as this would be beneficial to the Town.
3. Building design considerations should ensure both cohesion and aesthetic appeal.
4. A separate signage plan must be submitted before the building permit can be issued. Staff recommend that the Local Planning Agency (LPA) ask questions of the applicant, suggest any modifications, and make recommendations for adoption or changes to the Town Council.

At the Town LPA hearing on October 14th, 2025, the LPA conducted a public hearing regarding the petition. The LPA members heard the petition from applicants, staff and attorney. Applicant attorney Akin suggested some language change in the DA.

The LPA voted 6-0 to recommend approval to the Town Council and directed town attorney to discuss the requested language change in DA proposed by applicant attorney. Additional requirement includes:

- Alternatives to construction staging and materials, given the site's tight layout and traffic.
- Potted plants in the location.

CONDITIONS OF APPROVAL

Conditions of approval are contained within the DA.

V. EXHIBITS

- A. DA FMB 50 Old San Carlos
- B. Application packet and Site Plan
- C. Applicant Narrative

1. **Request:**

Meeting Date: December 15, 2025

Continued from December 1, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, AWARDING RFP-26-01-PW TO TIDEWATER LANDSCAPE, AS THE MOST RESPONSIVE AND RESPONSIBLE BIDDER TO COMPLETE LANDSCAPING AND IRRIGATION REPAIRS TO RESIDENTIAL AND/OR COMMUNITY YARDS DAMAGED BY UTILITY WORK AS RECOMMENDED BY THE SELECTION ADVISORY COMMITTEE; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AND PREPARE AN AGREEMENT FOR THE RECOMMENDED SERVICES SUBJECT TO LEGAL REVIEW; AUTHORIZING THE TOWN MANAGER TO SIGN THE AGREEMENT; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

This item was continued from the December 1, 2025 Town Council meeting due to a clarification needed regarding evaluation scoring totals. After a review of the materials provided in the December 1st packet materials it was discovered that one of the scoring sheets was left out and one was duplicated. The accurate evaluation criteria and summary scores are attached to this item and are ready for Town Council consideration.

Pursuant to the Town's purchasing policies, the Town publicly solicited through a Request for Proposals (RFP) process for a landscaping contractor to provide all labor, equipment and material necessary to perform landscaping repairs to residential and/or community yards damaged from utility work.

The Town solicited RFP-26-01-PW on October 2, 2025 and proposals were due November 3, 2025 in which the Town received two responses from Green Construction Technologies and TideWater Landscape.

The Selection Advisory Committee met on Friday, November 14, 2025 to discuss, evaluate and rank the proposals submitted, unanimously recommending to the Town Manager TideWater Landscape.

After review by the Town Manager, this recommendation for award and contract negotiations pursuant to the Town's purchasing policies is before the Town Council for approval through this Resolution.

Attachments:

1. NS 25-331, Accepting rankings for RFP-26-01-PW Lanscaping and Irrigation (1)
2. RFP 25-16-PW Landscaping and Irrigation
3. Green Construction

4. Tidewater Landscape
5. Overall scores RFP-26-01-PW

Financial Impact:

6. Alternative Action

Do not accept the recommendations and potentially rebid the solicitation.

7. Management Recommendations:

Accept the recommendations and authorize the Town Manager to negotiate with the top ranking firms.

8. Recommended Approval:

Amy Baker, Town Clerk
Jeff Hauge, Community Services Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 12/8/2025
Approved - 12/8/2025
Approved - 12/8/2025
Approved - 12/9/2025
Approved - 12/9/2025
Final Approval - 12/9/2025

RESOLUTION NUMBER 25-331

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, AWARDING RFP-26-01-PW TO TIDEWATER LANDSCAPE, AS THE MOST RESPONSIVE AND RESPONSIBLE BIDDER TO COMPLETE LANDSCAPING AND IRRIGATION REPAIRS TO RESIDENTIAL AND/OR COMMUNITY YARDS DAMAGED BY UTILITY WORK AS RECOMMENDED BY THE SELECTION ADVISORY COMMITTEE; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AND PREPARE AN AGREEMENT FOR THE RECOMMENDED SERVICES SUBJECT TO LEGAL REVIEW; AUTHORIZING THE TOWN MANAGER TO SIGN THE AGREEMENT; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

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

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

WHEREAS, the Town of Fort Myers Beach is seeking to find a contractor to provide all labor, equipment and materials necessary to perform landscaping repairs to residential and/or community yards damaged from utility work; and

WHEREAS, the Town of Fort Myers Beach solicited an RFP in October 2025 to receive proposals for FMB Landscaping and Irrigation; and

WHEREAS, the Town received proposals from two firms, Green Construction Technologies and TideWater Landscape, and the Selection Advisory Committee met on November 14, 2025, and unanimously recommended to the Town Manager TideWater Landscape for the award; and

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

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

Section 2. The Town Council hereby awards the bid as provided herein with TideWater Landscape, authorizes the Town Manager to negotiate and prepare an agreement for the services included within the proposal subject to legal review, and authorize the Town Manager to execute the agreement.

Section 3. This resolution shall take effect immediately upon adoption.

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

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

ADOPTED this ____ day of December 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: _____.

THE TOWN OF FORT MYERS BEACH



REQUEST FOR PROPOSAL RFP-26-01-PW

DATE ISSUED: Thursday, October 2, 2025

Electronic responses are to be submitted via Demandstar.com

Monday, November 3, 2025 by 3:15 PM

To:
TOWN OF FORT MYERS BEACH
VIA DEMANDSTAR.COM

PROPOSAL OPENING: Monday, November 3 at 3:30 PM

Fort Myers Beach Landscaping and Irrigation

Town of Fort Myers Beach
6231 Estero Blvd
Fort Myers Beach, FL 33931

TOWN OF FORT MYERS BEACH, FLORIDA

RFP-26-01-PW

The Town of Fort Myers Beach, Florida invites qualified firms to submit proposals to provide:

Fort Myers Beach Landscaping and Irrigation

The Town intends to award a contract to a firm(s) to provide services necessary for the project (the "Project") described herein.

The Town of Fort Myers Beach, Florida (the "Town") will receive sealed, electronic proposals until **3:15 pm, (local), Monday, November 3, 2025 electronically via Demandstar.com** only.

The contact for this RFP is:

Town Clerks Office

6231 Estero Blvd

Fort Myers Beach, Florida 33931

Email: bids@fmbgov.com

Phone: 239-765-0202

RFP documents may be obtained via the Internet at www.Demandstar.com. If you do not have internet access, you may obtain the documents by contacting the Contracts and Procurement Specialist (an additional charge will apply). See Part II, Section H of the RFP for information regarding submitting a proposal.

This solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part with or without cause.

LEGAL NOTICE TO PROPOSERS

NOTICE IS HEREBY given that **electronic proposals only** will be received by the TOWN OF FORT MYERS BEACH electronically through www.demandstar.com until 3:15 pm LOCAL TIME on Monday, November 3, 2025. Proposals will be opened at 3:30 pm November 3, 2025 in Town Hall Council Chambers, 6231 Estero Blvd., Fort Myers Beach, FL 33931.

Fort Myers Beach Landscaping and Irrigation RFP-26-01-PW

Any proposals received by the Town after the above date and time shall remain unopened.

BACKGROUND: The Town of Fort Myers Beach requires a landscaping contractor to provide all labor, equipment and material necessary to perform landscaping repairs to residential and/or community yards damaged from utility work.

During the contract period, the Town may identify additional projects relating to landscaping and irrigation on Fort Myers Beach. The Town will issue separate Supplemental Task Orders and Purchase Orders for each additional project.

The official proposal documents and project specifications shall be obtained from www.demandstar.com.

The Town of Fort Myers Beach reserves the right, in its sole judgment and in the best interest of the Town of Fort Myers Beach, to waive any informalities in any proposals; to make award(s) including multiple awards; to waive any non-substantive in Town's sole judgment, irregularity or technicality in proposals received, and/or to reject any or all proposals.

OBTAINING PROPOSAL DOCUMENTS

Ordering Instructions: The official proposal Documents (project specifications and drawings) shall be obtained from Demandstar.com at www.demandstar.com

PROPOSER must furnish the TOWN with a mailing address, e-mail address and phone number for contact purposes. It shall be the PROPOSER'S sole responsibility to keep all such information current with the TOWN until the execution of a contract by the TOWN for this project. If the official documents are not obtained directly from Demandstar.com, or are modified in any manner, the proposal **will not** be accepted for consideration by the TOWN.

Complete sets of Proposal Documents must be used in preparing the Proposal. The TOWN will not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Proposal Documents.

SUBMITTAL OF PROPOSALS

PROPOSAL SUBMITTALS MUST COMPLY WITH THE FOLLOWING TO BE VALID:

Proposals must be **electronically** submitted via Demandstar.com and identified as
**Fort Myers Beach Landscaping and Irrigation
RFP-26-01-PW**

Any questions regarding the use of Demandstar for submittal should be directed to Demandstar prior to the proposal's due date.

**ALL REQUIRED FORMS MUST BE ELECTRONICALLY SUBMITTED THROUGH DEMANDSTAR.COM.
FAILURE TO COMPLY AND SUBMIT MAY RESULT IN DISQUALIFICATION OF THE PROPOSAL.**

The TOWN reserves the right to waive informalities in any proposals; to reject any or all proposals with or without cause; and/or to accept the proposal that in its judgment will be in the best interest of the TOWN.

The TOWN is not responsible for any cost incurred by any PROPOSER in preparing these Proposal Documents.

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RFP GENERAL INFORMATION

For the purposes of this Request for Proposals (RFP): **Proposer** shall mean the contractor, consultant, respondent, organization, firm, or other person submitting a response to this RFP. **Town** shall mean the Town of Fort Myers Beach, Town Manager, as applicable, and any officials, employees, agents, and elected officials.

A. GENERAL INFORMATION

INVITATION TO PROPOSE; PURPOSE

The Town solicits proposals from responsible Proposers to perform work for or provide goods and/or services to the Town as specifically described in Part II, Statement of Work.

ACCOMODATION FOR DISABILITIES

Prospective Proposers with disabilities requiring an accommodation to attend the pre-Proposal meeting or to otherwise participate in this RFP process should contact the Town Clerk's Office as promptly as possible to allow the Town to examine the request and determine what if any accommodations are possible.

DEVIATION FROM SPECIFICATION

Any deviation from specifications must be clearly stated, explained in detail, and accepted by the Town in writing. Otherwise, items offered are expected to be in strict compliance with specifications and the successful Proposer shall be held accordingly.

INFORMALITIES

The Town reserves the right to both waive any informality in Proposals and to determine, in its sole discretion, whether or not, the informality is minor.

INFORMATION AND LITERATURE

Proposers are to furnish all information and literature requested. Failure to do so may be cause for rejection.

PRICING

As provided in Proposal C, which will be attached to the Contract.

RESPONSIBLE PROPOSER

A Proposer, business entity or individual which is fully capable to meet all of the requirements of the solicitation and subsequent contract, which possesses the full capability, including financial and technical, to perform as contractually required, and which must be able to fully document the ability to provide good faith performance in accordance with Town Ordinance 24-11.

RESPONSIVE PROPOSER A

A Proposer, business entity or individual which has submitted a proposal that fully conforms in all material respects to the RFP and all of its requirements, including requirements as to form and substance in accordance with Town Ordinance 24-11.

CONTRACT AWARDS

The Town Council anticipates entering into a contract with the Proposer who submits the proposal judged by the Town to be most responsive and responsible. The Town anticipates the awarding of one contract but reserves the right to award more than one contract if it is in its best interest. If the Town selects a Proposal, the Town will provide a written notice of the award.

The Town reserves the right to reject proposals containing any additional terms or conditions not specifically requested in the original conditions and specifications.

The Proposer understands that neither this RFP nor the notice of award constitutes an agreement or a contract with the Proposer. A contract or agreement is not binding until a written contract, or agreement has been approved as to be formed by the Town Attorney and has been executed by both the Town (with Council approval, if applicable) and the successful Proposer.

PROPOSED EXPENSES

The proposal should be prepared simply and economically, providing a straightforward, concise description of the proposers' ability to fulfill the requirements of the proposal. No out-of-scope services shall be provided in the absence of prior written authorization in the form of a written supplemental agreement and issuance of an appropriate amendment to the contract. The Town will not pay a retainer or similar fee. The Town is not responsible for any expenses that the proposer may incur in preparing and submitting proposals called for in this request. The Town will not pay for any out-of-pocket expenses, such as word processing, photocopying, postage, per diem, travel expenses and the like, incurred by the proposer. The Town will not be liable for any costs incurred by the proposer in connection with any interviews/presentations (i.e., travel, accommodation, etc.).

INQUIRIES

The Town will not respond to oral inquiries. Proposers may mail or email written inquiries to bids@fmbgov.com. Please mark the correspondence "RFP-26-01-PW QUESTION".

The Town will respond to written inquiries received no later than 7 working days prior, or Thursday, October 23, 2026 by 4:00 pm, from the date scheduled for submission of the proposals. The Town will record its responses to inquiries and any supplemental instructions in the form of a written addendum. It is the sole responsibility of a Proposer to remain informed as to any changes to the RFP.

DELAYS

The Town may postpone scheduled due dates at its sole discretion. The Town will attempt to notify all registered Proposers of all changes in scheduled due dates by written addenda.

COMMITTEE MEETINGS AND NOTIFICATIONS

Notice of the Evaluation Committee meetings will be posted with reasonable advanced notice in advance of such meetings. Proposers are responsible for checking the following locations for updates on this proposal's status: physical posting at Town Hall, a link to which may be found on the Town's web page www.fmbgov.com.

Pursuant to Florida Statutes § 286.0113, any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation, or answers questions as part of a competitive solicitation is exempt from the Public Meeting requirements of Florida Statutes § 286.011 and Art. I, § 24(b) of the Florida Constitution.

TAX EXEMPTIONS

The Town of Fort Myers Beach is tax exempt.

PROPOSAL SUBMISSION

PROPOSALS MUST COMPLY WITH THE FOLLOWING TO BE VALID:

Proposals must be electronically submitted via Demandstar.com and identified as

Fort Myers Beach Landscaping and Irrigation Project RFP-26-01-PW

Any questions regarding the use of Demandstar for submittal should be directed to Demandstar prior to the proposal due date.

ALL REQUIRED FORMS MUST BE ELECTRONICALLY SUBMITTED THROUGH THE DEMANDSTAR.COM. **FAILURE TO COMPLY AND SUBMIT MAY RESULT IN DISQUALIFICATION OF THE PROPOSAL.**

The TOWN reserves the right to waive informalities in any proposals; to reject any or all proposals with or without cause; and/or to accept the proposal that in its judgment will be in the best interest of the TOWN.

The TOWN shall not be responsible for any cost incurred by any PROPOSER in the preparation of these Proposal Documents.

B PROPOSAL FORMAT

NO LOBBYING; REQUIRED AFFIDAVIT

After the issuance of any solicitation, or during renegotiation of an existing contract, no prospective offerors or their agents, representatives or persons acting at the request of such offerors shall contact, communicate with, or discuss, either in person, by phone, email or text message, any matter relating to the solicitation or the renegotiation with any Town officers, agents or employees (including the Town council and Town manager) other than the purchasing agent designated in the solicitation, unless otherwise provided for in the solicitation or otherwise directed by the designated purchasing agent or procurement official. This prohibition includes copying such persons on written communications with the purchasing agent but does not apply to presentations made to evaluation committees or at a council meeting where the council is considering approval of a proposed contract. The prohibition ends upon execution of the final contract or when the solicitation has been canceled, or the renegotiation efforts are terminated. Renegotiation will be deemed to have commenced upon vote of the council directing renegotiation or on issuance of a written notice from the procurement official to the existing contractor instituting a renegotiation process. **Failure of businesses seeking to conduct business with the Town to strictly adhere to this section will result in the offender's proposal, proposal or response being disqualified from further consideration, and may also result in the suspension**

or debarment of the offending business.

As part of its proposal submission, each Proposer must submit the attached Affidavit acknowledging the foregoing Code provision and attesting compliance therewith.

NON-COLLUSION AFFIDAVIT As part of its proposal submission, each Proposer must submit the attached Non-Collusion Affidavit.

CONFLICT OF INTEREST DISCLOSURE As part of its proposal submission, each Proposer must submit the attached certification confirming that the proposal was not influenced by or the result of collusion with any other actual or potential Proposer, and is not otherwise in violation of federal, state, associate, or agent which who is also an officer or employee of the Town or of its agencies. Offerors must disclose the name of any officer or employee of the Town who owns, directly or indirectly, an interest of five percent (5%) or more in the Offeror's firm or any of its branches or affiliate companies.

ANTI-DISCRIMINATION/ EQUAL EMPLOYMENT OPPORTUNITY The successful Proposer will be required, during the term of its performance, to refrain from discrimination against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, disability, or national origin.

VENDOR LIST CERTIFICATIONS The Town requires a certification from Proposer that their firm is not on the following Vendor List maintained by the Florida Department of Management Services. The Florida Department of Management Services prohibits the use of vendors which appear on their Vendor Lists.

Florida Statute	287.1346	Forced Labor Vendor List (Awarded Firm required to provide Affidavit)
Florida Statute	287.133	Convicted Vendor List/Public Entity Crimes
Florida Statute	287.134	Discriminatory Vendor List
Florida Statute	287.1351	Suspended Vendor List
Florida Statute	287.137	Antitrust Violator List
Florida Statute	287.135	Scrutinized List of Prohibited Companies
Florida Statute	287.057(1-3)	Federal Excluded Parties List
Florida Statute	287.057(25)	Anti-Lobbying Clause (Cone of Silence)

FLORIDA CIVIL RIGHT ACT The Contractor or Consultant shall comply with Florida Statute 760, which states that the contractor shall comply with the Florida Civil Rights Act of 1992, which states that individuals in the state are free from discrimination because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

BYRD ANTI-LOBBYING AMENDMENT

31 U.S.C. § 1352 (as amended). Contractors who submit a proposal for an award of \$100,000 or more shall file the required certification (Exhibit IV). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract,

grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

SUSPENSION AND DEBARMENT

1. This contract is a covered transaction for purposes of Chapter 2 Code of Federal Regulations. As such, a contract award (see 2 CFR § 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR § 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by the Town of Fort Myers Beach. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town of Fort Myers Beach, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The proposer or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

SUBCONTRACTS The CONTRACTOR or sub-CONTRACTOR must insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (11), along with the applicable wage determination(s) and such other clauses or contract modifications as the U.S. Department of Housing and Urban Development may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

ACCESS TO RECORD The Contractor agrees to provide the Town of Fort Myers Beach, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract. In compliance with the Disaster Recovery Act of 2018, the Town of Fort Myers Beach and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS This is an acknowledgement that ARPA and/or FEMA financial assistance/grants may be used to supplement all or a portion of the contract. If so, the proposer will comply with all 16 applicable Federal law, regulations, executive orders, FEMA and ARPA policies, procedures, and directives.

NO OBLIGATION BY FEDERAL GOVERNMENT The Federal Government will not be a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

CHANGES Either party may request modification of the provisions of this Agreement including the not to exceed amount, duration, scope, and rate(s). Changes which are mutually agreed upon shall be valid only when reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Agreement.

TERMINATION FOR CAUSE AND CONVENIENCE If, through any cause, Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if Contractor shall violate any of the covenants, agreements, warranties or stipulations of this Contract, the Town of Fort Myers Beach, shall thereupon have the right to terminate this Contract for cause by giving written notice to Contractor of such termination and specifying the date thereof, at least ten (10) calendar days before the effective date of such termination. In such event, all finished and unfinished documents, data, studies, surveys, drawings, specifications, field notes, maps, models, photographs, and reports prepared by Contractor under this Contract shall become the property of the Town of Fort Myers Beach, and Contractor shall be entitled to receive just and equitable final compensation for any work satisfactorily completed hereunder provided such compensation is approved by the Town of Fort Myers Beach, in its sole discretion. Notwithstanding the above, Contractor shall not be relieved of liability to the Town of Fort Myers Beach for damages sustained by the Town of Fort Myers Beach by virtue of any intentional and/or negligent act or omission or any breach of the Contract by Contractor, and the Town of Fort Myers Beach may withhold any payment for the purpose of reasonable setoff until such time as the exact amount of damages due the Town of Fort Myers Beach from Contractor is determined. Contractor agrees that the Town of Fort Myers Beach shall have all rights and remedies afforded to it at law to recover any damages sustained by the Town of Fort Myers Beach in connection with the work performed by Contractor under the Contract. In the alternative, the Town of Fort Myers Beach shall also have all rights and remedies afforded to it in equity to enforce the terms of the Contract. The exercise of any one right or remedy shall be without prejudice the enforcement of any other right or remedy allowed at law or in equity. The contractor or the Town of Fort Myers Beach may terminate this

contract for its convenience at any time by giving at least thirty (30) calendar days' notice in writing to the other party. If the Contract is terminated by the Town of Fort Myers Beach and/or Contractor as provided herein, Contractor will be paid for the time and work properly provided, and expenses incurred up to the termination date, if such final compensation is approved by the Town of Fort Myers Beach, in its sole discretion.

EQUAL EMPLOYMENT OPPORTUNITY The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause: "During the performance of this contract, the contractor agrees as follows:

The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or

vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT Pursuant to Subsection (F) of Appendix II to 2 C.F.R. Part 200, if the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient agrees to comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

DAVIS-BACON ACT If this Contract is subject to a requirement by the Federal program legislation related to the funding award, the Contractor shall comply with the Davis–Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, Contractor must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor shall pay wages not less than once a week. The Contractor acknowledges it is in possession of a copy of the current prevailing wage determination issued by the Department of Labor. The Contractor acknowledges that the decision of the Town to award the Agreement, and Contractor’s agreement to enter a contract with any subcontractor, is conditioned upon the acceptance of the wage determination. The Town will report all suspected or reported violations to the Federal awarding agency.

The Contractor (and its subcontractors) shall also comply with the Copeland “Anti–Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Town will report all suspected or reported violations to the Federal awarding agency.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1 where an additional contract provision is required:

The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.”

CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The contractor agrees to report each violation to the Florida DEP and understands and agrees that the Florida DEP will, in turn, report each violation as required to assure notification to the Town of Fort Myers Beach, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

FEDERAL WATER POLLUTION CONTROL ACT The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

The contractor agrees to report each violation to the Florida DEP and understands and agrees that the Florida DEP will, in turn, report each violation as required to assure notification to the Town of Fort Myers Beach, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

LIQUIDATED DAMAGES For each deliverable due date agreed to by the State Project Manager and Contractor, a penalty of \$500 per day will be assessed for each business day that the delivery exceeds the agreed due date. The penalty will be assessed against accounts payable to the Contractor under this Contract. The Contractor shall not be assessed a penalty for delays due to circumstances not subject to its control.

RULES, REGULATIONS, LAWS, ORDINANCES AND LICENSES It shall be the responsibility of the Proposer to assure compliance with all other federal, state, local laws, or regulations/requirements as they may apply. Any involvement with the Town of Fort Myers Beach shall be in accordance with but not limited to:

LOCAL GOVERNMENT PROMPT PAYMENT ACT In addition to any other invoicing and payment terms the Parties may negotiate, invoice payments will be subject to the Florida Local Government Prompt Payment Act, Florida Statutes § 218.70, et seq.

PUBLIC PROPOSAL DISCLOSURE Per Florida Statute 218.80, there are no permit fees for this project, therefore permitting fees to be paid by contractor is zero dollars.

BACKGROUND SCREENING In accordance with Florida Statute 435, all employees required by law to be screened must undergo background screening as a condition of employment and continued employment which includes, but need not be limited to, employment history checks and statewide criminal correspondence checks through the Department of Law Enforcement, and a check of the Dru Sjodin National Sex Offender Public Website, and may include local criminal records checks through local law enforcement agencies.

CONTRACTING WITH ENTITIES OF FOREIGN COUNTRIES OF CONCERN PROHIBITED Pursuant to Florida Statute 607.1501(1), a governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if:

- a. The entity is owned by the government of a foreign country of concern;
- b. The government of a foreign country of concern has a controlling interest in the entity; or
- c. The entity is organized under the laws of or has its principal place of business in a foreign country of concern; or
- d. Foreign corporations are prohibited from transacting business in Florida until the corporation obtains a certificate to do business from the state department.

Beginning January 1, 2024, a governmental entity may not accept a proposal on, a proposal for, or a reply to, or enter into, a contract with an entity which would grant the entity access to an individual's personal identifying information unless the entity provides the governmental entity with an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the entity does not meet any of the criteria in paragraphs (2)(a)-(c).

Beginning July 1, 2025, a governmental entity may not extend or renew a contract with an entity listed in paragraphs (2)(a)-(c) if the contract would give such entity access to an individual's personal identifying information.

Beginning July 1, 2025, when an entity extends or renews a contract with a governmental entity which would grant the entity access to an individual's personal identifying information, the entity must provide the governmental entity with an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the entity does not meet any of the criteria in paragraphs (2)(a)-(c). The Attorney General may bring a civil action in any court of competent jurisdiction against an entity that violates this section.

PROHIBITION AGAINST CONSIDERING SOCIAL, POLITICAL, OR IDEOLOGICAL INTERESTS IN GOVERNMENT CONTRACTING In accordance with Florida Statute 287.05701 the Town may not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is a responsible vendor. An awarding body may not give preference to a vendor based on the vendor's social, political, or ideological interests.

INSPECTOR GENERAL COOPERATION In accordance with Florida Statutes § 20.055(5), it is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

BUSINESS RELATIONSHIP DISCLOSURE REQUIREMENT Sections 112.313(3), 112.313(7) and 112.317, F.S., prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. If this disclosure is applicable, the Bidder must request the form entitled "INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS" (Required by §

112.313(12)(b), F.S.) to be completed and **returned with the Solicitation Response**. It is the **Bidder's responsibility to request the form and disclose this relationship; failure to do so may result in being declared non-responsive.**

NOTICE: UNDER THE PROVISIONS OF § 112.317, F.S., A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR, AND MAY BE PUNISHED BY, ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.00.

End of Part II

PART III – SCOPE OF SERVICES AND WORK

The Town of Fort Myers Beach requires a landscaping contractor to provide all labor, equipment and material necessary to perform landscaping repairs to residential and/or community yards damaged due utility work. The scope of service includes, but not limited to the following:

- 1) Site Preparation and Clean up
 - a. Remove debris, dead/damaged vegetation, and unsuitable soil.
 - b. Grade and prepare soil to ensure proper drainage and a level surface prior to installation.
- 2) Sod Installation
 - a. Supply and install high-quality sod.
 - b. Ensure sod is laid evenly, tightly fitted, and properly watered at installation.
 - c. Provide a short-term watering and maintenance schedule to ensure establishment.
- 3) Tree & Shrub Planting
 - a. Supply and install healthy, nursery grade trees and shrubs in designated area.
 - b. Plant in accordance with industry best practice, ensuring proper depth, spacing, and soil amendment.
 - c. Stake trees as necessary to ensure stability during establishment.
- 4) Bushes and Ground Cover
 - a. Supply and install selected bushes and/or ground cover to restore landscaping areas.
 - b. Mulch around plantings to conserve moisture and improve aesthetics.
- 5) Final Inspection & Warranty
 - a. Conduct a walkthrough with owner/representative upon completion.
 - b. Replace any plant material that fails to establish within the warranty period, 90 days.
- 6) **No Pesticides allowed on Fort Myers Beach. For weed killer, only vinegar is allowed.**

Type of required Plants, Bushes, Sod and Rock

Description	Unit of Measure	Description	Unit of Measure
Rock		Plants	
#57 Rock	per yard	Silver Buttonwood	25 Gallon
#67 Rock	Yard	Green Buttonwood	25 Gallon
White River Rock	Yard	Dark Pink Oleander	15 Gallon
Crimson Rock	Yard	Light Pink Oleander	7 Gallon
Brown River Rock	Yard	Variegated Ginder	7 Gallon
Black/White Granite	Yard	Calusa	25 Gallon
Crushed Shell	Yard	Variegated Arboricola	7 Gallon
Trees		Purple Lantana	1 Gallon
Chinese Fan Palm	Minimum 12'	Yellow Lantana	1 Gallon
Fishtail Palm	25 Gallon	Sod and Top Soil	
Areca Palm	25 Gallon	Floratam Grass	Sq Ft
Coconut Grey Wood	4' Tree	Top Soil	Yard
Maho Tree	25 Gallon	Weed Mat (Coconut Fiber)	Roll
Christmas Palm	10' Tree		
Miscellaneous Work			
Property Clean Up	Bid as Needed		
Irrigation Repair	Bid as Needed		
Concrete Replacement	Bid as Needed		
White Fencing 6' Tall	Bid as Needed		
Driveway Repairs	Bid as Needed		

END OF PART III

RFP FORM A

Proposer: _____

QUALIFICATIONS STATEMENT

Note: Forms A, B & C are available in WORD format from the Town upon request.

THIS FORM MUST BE SUBMITTED WITH PROPOSAL TO BE DEEMED RESPONSIVE.

- a. State the full and correct name of the partnership, corporation, or trade name under which you do business and the address of the place of business. (If a corporation, state the name of the president and secretary. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do business under the trade name.)
 - i. The correct and full legal name of the Proposer is:
 - ii. The business is a (Sole Proprietorship) (Partnership) (Corporation).
 - iii. The names of the corporate officers, or partners, or individuals doing business under a trade name, are as follows:
- b. Please describe your company in detail.
- c. The address of the principal place of business is:
- d. Company telephone number and e-mail addresses:
- e. Number of employees:
- f. Name of employees to be assigned to this Project:
- g. Company identification numbers for the Internal Revenue Service:
- h. Provide Lee County business tax receipt number, if applicable, and expiration date:
- i. How many years has your organization been in business? Does your organization have a specialty?
- j. List the last three projects of this nature that the firm has completed? Please provide project description, reference, and contact information and cost of work completed.
- k. Have you ever failed to complete any work awarded to you? If so, where, and why?

- l. Provide the following information concerning all contracts that are similar in nature or use the same project team proposed for this project that are **in progress** as of the date of submission of this Proposal for your company, division, or unit as appropriate.

Name of Project	Contract with:	Contract Amount	Estimated Completion Date	% of Completion to Date

(Continue list as necessary)

- m. Provide the following information for any subconsultants you will engage if awarded the contract.

Subcontractor Name	Address	Work to be Performed

The foregoing list of subconsultants may not be amended after award of the contract without the prior written approval of the Town Manager, whose approval shall not be unreasonably withheld.

RFP Form B

Proposer: _____

REFERENCE FORM

Forms A, B & C are available in WORD format from the Contracts Manager upon request.

***THIS FORM MUST BE SUBMITTED WITH PROPOSAL TO BE
DEEMED RESPONSIVE.***

Give names, addresses and telephone numbers of four individuals, corporations, agencies, or institutions for which you have performed work similar to what is proposed in this RFP:

- Name of Contact:

Title of Contact: Email:

Telephone Number: Fax Number:

Project:
- Name of Contact:

Title of Contact: Email:

Telephone Number: Fax Number:

Project:
- Name of Contact:

Title of Contact: Email:

Telephone Number: Fax Number:

Project:
- Name of Contact:

Title of Contact: Email:

Telephone Number: Fax Number:

Project:

RFP Form C

Proposer: _____

PRICE PROPOSAL FORM

Note: Forms A, B & C are available in WORD format from the Contracts Manager upon request.

***THIS FORM MUST BE SIGNED AND SUBMITTED WITH PROPOSAL
TO BE DEEMED RESPONSIVE.***

Name of Proposer: _____

Name of authorized representative of Proposer: _____

Project Cost – No Labor to be Included

Item	Unit of Measure	Price Per Unit
#57 Rock	Per yard	\$
#67 Rock	Yard	\$
White River Rock	Yard	\$
Crimson Rock	Yard	\$
Brown River Rock	Yard	\$
Black/White Granite	Yard	\$
Crushed Shell	Yard	\$
Chinese Fan Palm	Minimum 12'	\$
Fishtail Palm	25 Gallon	\$
Areca Palm	25 Gallon	\$
Coconut Grey Wood	4' Tree	\$
Maho Tree	25 Gallon	\$
Christmas Palm	10' Tree	\$
Silver Buttonwood	25 Gallon	\$
Green Buttonwood	25 Gallon	\$
Dark Pink Oleander	15 Gallon	\$
Light Pink Oleander	7 Gallon	\$
Variegated Ginder	7 Gallon	\$
Calusa	25 Gallon	\$
Variegated Arboricola	7 Gallon	\$
Purple Lantana	1 Gallon	\$
Yellow Lantana	1 Gallon	\$
Floritam Grass	Sq Ft	\$
Top Soil	Yard	\$
Weed Mat (Coconut Fiber)	Roll	\$

Project Cost – Include Labor

Item	Unit of Measure	Price Per Unit
#57 Rock	Per yard	\$
#67 Rock	Yard	\$
White River Rock	Yard	\$
Crimson Rock	Yard	\$
Brown River Rock	Yard	\$
Black/White Granite	Yard	\$
Crushed Shell	Yard	\$
Chinese Fan Palm	Minimum 12'	\$
Fishtail Palm	25 Gallon	\$
Areca Palm	25 Gallon	\$
Coconut Grey Wood	4' Tree	\$
Maho Tree	25 Gallon	\$
Christmas Palm	10' Tree	\$
Silver Buttonwood	25 Gallon	\$
Green Buttonwood	25 Gallon	\$
Dark Pink Oleander	15 Gallon	\$
Light Pink Oleander	7 Gallon	\$
Variegated Ginder	7 Gallon	\$
Calusa	25 Gallon	\$
Variegated Arboricola	7 Gallon	\$
Purple Lantana	1 Gallon	\$
Yellow Lantana	1 Gallon	\$
Floritam Grass	Sq Ft	\$
Top Soil	Yard	\$
Weed Mat (Coconut Fiber)	Roll	\$

Project Cost – Labor Rate (Not Limited To)

Labor - By Product	Labor Rate/Hour	Supervisor Rate/Hour
Labor - Sod Installment	\$	\$
Labor - Mulch Installment	\$	\$
Labor - Tree Planting	\$	\$
Labor - Bush Planting	\$	\$
Labor - Driveway Repair	\$	\$
Labor - Irrigation Repair	\$	\$
Labor - Concrete Replacement	\$	\$

Instructions: Show the project cost for each deliverable your firm will provide per the requested scope of work. Include the fees associated with each proposed deliverable. Fees should be detailed to the extent possible per deliverable.

The Price Per Unit cost shall include all fees and reimbursements for out-of-pocket costs. The Town will not reimburse for any costs not actually incurred and paid for by the Proposer and included in its proposal. Reasonable proof thereof will be required.

Payments will be made on each deliverable upon receipt and acceptance by the Town.

Additional Services

The Town may have the need for additional services, which may be requested over the next 3 years.

If the Proposer is interested in additional work, please provide the hourly rate, unit rate and staff position available. The rates for the additional work will not be used for evaluation of the services required in this RFP.

Additional Work	
<u>Title:</u>	<u>Hourly Rate/Per Unit Rate</u>

By: _____

Date: _____

Name: _____

Title: _____

RFP FORM D

Proposer: _____

**THIS FORM MUST BE SIGNED AND SUBMITTED WITH PROPOSAL TO BE
DEEMED RESPONSIVE.**

The undersigned guarantees the truth and accuracy of all statements and the answers contained herein.

PROPOSER'S CERTIFICATION

I have carefully examined the Request for Proposal referenced above ("RFP") and any other documents accompanying or made a part of this RFP.

I hereby propose to furnish the goods or services specified in the RFP. I agree that my proposal will remain firm for a period of 120 days in order to allow the Town adequate time to evaluate the proposals.

I certify that all information contained in this proposal, which includes the TOWN required RFP forms A, B, C and D, is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this proposal on behalf of the firm as its act and deed and that the firm is ready, willing, and able to perform if awarded the contract.

The firm and/or Proposer hereby authorizes the Town of Fort Myers Beach, its staff, or consultants, to contact any of the references provided in the proposal and specifically authorizes such references to release, either orally or in writing, any appropriate data with respect to the firm offering this proposal.

I further certify, under oath, that this proposal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a proposal for the same product or service; no officer, employee or agent of the Town or any other Proposer is interested in said proposal; and that the undersigned executed this Proposer's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

If this proposal is selected, I understand that I will be expected to execute the Town's standard professional services agreement, in the form approved by the Town Attorney.

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crimes may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in Sec. 287.017 Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

I further certify, under oath, that neither the entity submitting this sworn statement, nor to my knowledge, any of its officers, directors, executives, partners, shareholder, employees, members, or agents active in the management of the entity has been convicted of a public entity crime subsequent to July 1, 1989.

Name of Business: _____

By: _____

Print Name & Title

Mailing Address:

STATE OF FLORIDA)
COUNTY OF LEE)

SWORN TO AND SUBSCRIBED BEFORE ME, on this ____ day of _____, 20__, by means of () physical presence or () online notarization, personally appeared _____ as _____ of the Town of Fort Myers Beach, () who is personally known to me or () who has produced _____ as identification.

NOTARY PUBLIC – State of Florida

My commission expires:

PART IV: SAMPLE PROFESSIONAL SERVICES AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

Fort Myers Beach Landscaping and Irrigation

This PROFESSIONAL SERVICES AGREEMENT is made and entered into this ____ day of _____ by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 6231 Estero Blvd, Fort Myers Beach, Florida 33931 ("Town"), and _____ ("Consultant"), whose address is _____

WHEREAS the Town desires the Consultant to provide and perform professional services as further described hereinafter concerning Fort Myers Beach Mooring Field Inspection & Ground Tackle Maintenance, ("Project"); and

WHEREAS the selection and engagement of the Consultant has been made by the Town in accordance with the provisions of the Consultants' Competitive Negotiation Act, Chapter 287.055, Florida Statutes and applicable Town Ordinances, Rules, and Charter Provisions;

TIME OF CONTRACT: This contract will be for a period of three (3) years with an option to renew for two (2) terms of one-year each by mutual agreement of the parties. Hourly rates and all other negotiated expenses will remain in effect throughout the duration of the contract period, and any subsequent renewal.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree as follows:

ARTICLE 1.00 - SCOPE OF PROFESSIONAL SERVICES

1.1 SCOPE OF SERVICES. Consultant hereby agrees to provide and perform the professional services required and necessary to complete the work set forth on EXHIBIT "A", entitled "Scope of Professional Services", which is attached hereto and incorporated herein by reference. Such services shall be referred to hereunder as "Basic Services."

1.2 ADDITIONAL SERVICES. Should the Town request the Consultant to provide and perform related professional services for this Project which are not set forth in EXHIBIT "A", the Consultant agrees to provide and perform such Additional Services as may be agreed to in a Supplemental Task Authorization to this Agreement.

1.3 SUPPLEMENTAL TASK AUTHORIZATION. All authorized changes to the scope of professional services, tasks, work or materials to be performed or provided by the Consultant; the compensation and method of payment; the schedule or time period for performance and completion; and/or the guidelines, criteria and requirements pertaining thereto, shall be (i) reduced to writing on the Town's standard form Supplemental Task Authorization and (ii) signed by both parties, to be effective. Notwithstanding anything to the contrary herein, the Town shall have the unilateral right to delete all, or portions, of the Scope of Services, set forth on EXHIBIT "A" and/or any Supplemental Task Authorization executed hereunder, by the unilateral issuance of a written Supplemental Task Authorization to the Consultant, which shall be effective with or without Consultant's execution thereof.

ARTICLE 2.00 - OBLIGATIONS OF THE CONSULTANT

The obligations of the Consultant shall include, but not be limited to, the following:

2.01. LICENSES: Consultant certifies that it possesses valid, current licenses to do business, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the Consultant pursuant to this Agreement. Consultant agrees to maintain such licenses throughout the period that this Agreement is in effect.

2.2 QUALIFIED, WILLING AND ABLE. Consultant certifies it is qualified, willing, and able to provide and perform all services hereunder, in accordance with the requirements hereof.

2.3 PERSONNEL

1. QUALIFIED PERSONNEL: The Consultant shall employ and/or retain only qualified personnel for all services it provides hereunder. Such personnel shall have all license(s), certificate(s) of authorization and other legal qualifications to provide such services.
2. CONSULTANT'S PROJECT DIRECTOR: The Consultant agrees to employ and designate, in writing, a qualified and properly licensed professional as the Consultant's Project Director. The Consultant's Project Director shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating, and administering all aspects of the services to be provided and performed under this Agreement and all addenda hereto. The Consultant's Project Director shall have full authority to bind and obligate the Consultant on any matter arising hereunder unless the parties have previously agreed otherwise in writing. The Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the Consultant throughout the entire period this Agreement is in effect. The person selected by the Consultant to serve as the Consultant's Project Director shall be subject to prior approval and acceptance by the Town.
3. REMOVAL OF PERSONNEL: Within ten (10) days of receipt of the Town's written request, the Consultant shall remove and replace its Project Director, or any other personnel employed or retained by the Consultant, or personnel of the sub consultant(s) or subcontractor(s) engaged by the Consultant to provide and/or perform services and/or work pursuant to this Agreement, and any Addenda hereto. The Town shall have the ability to make such a request with or without cause.
4. SUB-CONSULTANT: The Consultant shall have the ability to engage the professional services of a Sub-consultant or Sub-consultants to assist the Consultant in providing and performing the professional services, work, and materials for which the Consultant is contractually obligated to perform hereunder. The Town shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the Consultant and any Sub-consultant. Such engagement shall be with the prior written approval of the Town and is subject to the terms of ARTICLE 8 below.
5. SUB-CONTRACTOR: The Consultant shall have the ability to engage the services of a Sub-contractor or Sub-contractors to assist the Consultant in providing and performing services, work, and materials for which the Consultant is contractually obligated to perform hereunder. The Town shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the Consultant and any Subcontractor. Such engagement shall be with the prior written approval of Town and is subject to the terms of ARTICLE 8 below.

2.4 TIMELY ACCOMPLISHMENT OF SERVICES: The timely performance and completion of the required services, work and materials is vitally important to the interests of the Town and time is of the essence for all of the duties and obligations contained in this Agreement. The Town may suffer damages in the event that the Consultant does not accomplish and complete the required services in a timely manner. The Consultant agrees to employ, engage, retain, and/or assign an adequate number of personnel throughout the period of this Agreement so that all services will be provided, performed, and completed in a timely and diligent manner throughout.

2.04 STANDARDS OF PROFESSIONAL SERVICE: The work and/or services to be provided and/or performed by the Consultant (and by any Sub-consultant(s) and/or Sub-contractor(s) engaged by the Consultant) as set forth in the Scope of Professional Services, EXHIBIT "A", shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the Town approves this Agreement, or which may subsequently be changed or revised.

2.6 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

1. RESPONSIBILITY TO CORRECT: The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any Sub consultant(s) and/or Subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant.
2. TOWN'S APPROVAL NOT RELIEVING CONSULTANT OF RESPONSIBILITY: Neither review, approval, nor acceptance by the Town of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and/or incidental professional services, work and materials furnished hereunder by the Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant, shall in any way relieve Consultant of responsibility for the adequacy, completeness and accuracy of its services, work and materials and the services, work and materials of any and all Sub consultants and/or Subcontractors engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the Town's review, approval, or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the Town's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

2.7 LIABILITY/HOLD HARMLESS. The Consultant shall be liable and agrees to be liable for and shall indemnify and hold the Town harmless for any and all claims, suits, judgments or damages, losses and expenses including but not limited to court costs and attorney's fees (including but not limited to appellate attorney fees) arising out of, or resulting from, the Consultant's errors, omissions, and/or negligence, and/or willful and/or deliberate acts or failure to act, or those of any and all Sub consultants and/or Subcontractors engaged by the Consultant during the providing, performing and furnishing of services, work and materials pursuant to this Agreement and any and all Supplemental Task Authorizations hereto. The Consultant shall not be liable to nor indemnify the Town for any portions of damages arising out of any error, omission, and/or negligence of the Town, its employees, agents, or representatives or third parties. The Consultant hereby acknowledges that the compensation to be paid by the Town hereunder includes compensation as consideration for the indemnification provided herein.

2.8 NOT TO DIVULGE CERTAIN INFORMATION: Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without Town's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub consultant(s) or subcontractor(s) hereunder, subject to the requirements of the Florida Public Records Law. Consultant shall require all of its employees, Sub consultant(s) and Subcontractor(s) to comply with these provisions.

2.9 CONSULTANT TO REPAIR PROPERTY DAMAGE IT HAS CAUSED: Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expense and in a manner acceptable to and approved by the Town, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its Sub consultants and/or Subcontractors. The Consultant's obligation hereunder does not apply to property damage caused by any other Consultant or Contractor engaged directly by the Town. Should the Consultant fail to make such repairs and/or replacements within a reasonable time, the Town reserves the right to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the Town for all such costs and expenses.

2.10 PERMITS: The Consultant shall be responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the Project. Any fees required for such reviews, approvals or permits will be paid via check issued by the Town and made payable to the respective governmental body, upon the Consultant furnishing the Town satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The Town shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the Town so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

2.11 TRUTH-IN-NEGOTIATIONS CERTIFICATE: The Consultant shall execute a Truth-in-Negotiations Certificate ("Certificate"), in a form attached as EXHIBIT "F" and incorporated herein by reference. The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the Town determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates or other factual unit costs.

2.12 COMPLETION OF TASKS: Unless otherwise set forth herein, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in EXHIBIT "A" entitled "Scope of Professional Services" and Supplemental Task Authorizations, if any, hereto. The compensation to be paid the Consultant as set forth in EXHIBIT "B" entitled "Compensation and Method of Payment" and Supplemental Task Authorizations authorized hereunder shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in EXHIBIT "A" and Supplemental Task Authorizations, if any, thereto.

2.13 DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT: The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder to the Town shall be in addition to, and not a limitation of, any which are otherwise imposed or available by law, regulation, ordinance, or statute.

2.14 REPRESENTATION OF THE TOWN BY CONSULTANT: Other than as specified in the Scope of Services which is attached to this Agreement as Exhibit "A" or in any duly executed addendum to this Agreement, the Consultant is not authorized to act on the Town's behalf, and shall not act on the Town's behalf. The Town will neither assume nor accept any obligation, commitment, responsibility, or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

3.1 TOWN PROJECT MANAGER: The Town shall promptly provide written notice to Consultant of the name of the Town's PROJECT MANAGER, who, on behalf of the Town, shall provide information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and any addenda hereto. The PROJECT MANAGER is not authorized to, and shall not issue any verbal or written request or instruction to the Consultant that would have the effect or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) Scope of Services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; and (3) the amount of compensation the Town is obligated or committed to pay the Consultant.

3.2 AVAILABILITY OF TOWN INFORMATION

1. **PROJECT GUIDELINES AND CRITERIA:** Guidelines to the Consultant regarding requirements the Town has established or suggests relative to the Project, including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria, are set forth in EXHIBIT "E", entitled "PROJECT GUIDELINES AND CRITERIA", which is attached hereto and incorporated herein by reference.
2. **TOWN TO PROVIDE PERTINENT REFERENCE MATERIAL:** At the Consultant's request, the Town agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the Town to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the Town such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

4.1 BASIC SERVICES: The Town shall pay the Consultant for all requested and authorized Basic Services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms hereof and accepted by the Town. Such payment shall be as set forth in EXHIBIT "B", entitled "COMPENSATION AND METHOD OF PAYMENT", which is attached hereto and incorporated herein by reference.

4.2 ADDITIONAL SERVICES: The Town shall pay the Consultant for all such Additional Services as have been requested and authorized by the Town and agreed to, in writing, by both parties hereto, which have been rendered as Additional Services by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the Town. Such payment shall be made as set forth under "ADDITIONAL SERVICES" in EXHIBIT "B".

4.3 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. **LUMP SUM FEE(S):** When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel- related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of- pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
2. **NOT-TO-EXCEED FEE(S):** When the Consultant's compensation hereunder (including any Addenda) is established on a NOT-TO-EXCEED ("N.T.E.") amount basis, it shall mean:
 - For the actual hours necessary, required and expended by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in Attachment No. 1 to EXHIBIT "B" to this Agreement; and
 - For actual necessary, required and expended non-personnel reimbursable expenses and costs, multiplied by the applicable "Basis of Charges" for each item as set forth in Attachment No. 2 to EXHIBIT "B" to this Agreement and any Supplemental Task Authorizations and
 - For actual, necessary, and required hours, and non-personnel expenses and costs, expended by Sub-consultants and Subcontractors engaged by the Consultant, multiplied by such hourly rates and unit costs as are agreed to by the Town and the Consultant and as are set forth as a part of this Agreement and any Supplemental Task Authorizations thereto; and
 - Any payment hereunder is subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the Town covering all such costs and expenses; and
 - The Consultant's invoices and all payments to be made for all N.T.E. amounts shall be subject to the review, acceptance, and approval of the Town; and

- When the Consultant's compensation is established on a N.T.E. basis for a specific Task(s), the total amount of compensation to be paid to the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and Sub consultant and Subcontractor costs for any such specific Task(s) shall not exceed the amount of the total N.T.E. compensation established and agreed to for each specific Task(s).
- If the amount of compensation for any Task(s) which the Consultant is entitled on the N.T.E. basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the N.T.E. amount established for the specific Task, any unexpended amount under a specific Task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other Task(s).

4.4 METHOD OF PAYMENT

1. MONTHLY STATEMENTS: The Consultant shall submit no more than one invoice statement to the Town each calendar month, covering services rendered during the preceding calendar month. The Consultant's invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement or Supplemental Task Authorization(s) hereunder. The Consultant's invoice statements shall contain a breakdown of charges, description of service(s) and work provided and/or performed, and where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in the Agreement, or in Supplemental Task Authorization(s) hereunder.
2. PAYMENT FOR SERVICES PERFORMED: The Town shall pay the Consultant for services performed using either of the following methods, or using a combination thereof:
 - a. The Town shall pay the Consultant on the basis of services completed, for tasks set forth in EXHIBITS "A" and "B", as evidenced by work products such as reports, drawings, specifications, etc., submitted by the Consultant and accepted by the Town. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
 - b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work- in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying, or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

(3) PAYMENT SCHEDULE: The Town shall issue payment to the Consultant within thirty (30) calendar days after receipt of an invoice statement from the Consultant in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the Town object or take exception to the amount of any Consultant's invoice statement, the Town shall notify the Consultant of such objection or exception within the thirty (30) calendar day payment period set forth in this subparagraph. If such objection or exception remains unresolved at the end of said thirty (30) calendar day period, the Town shall withhold the disputed amount and make payment to the Consultant of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

4.5 PAYMENT IF SERVICES ARE TERMINATED AT CONVENIENCE OF THE TOWN:

If this Agreement is terminated at the convenience of the Town and not at the fault of the Consultant, the Town shall compensate the Consultant only for services performed prior to the effective date of termination and reimbursable expenses then due including project drawings, plans, data, and other project documents.

4.06 PAYMENT WHEN SERVICES ARE SUSPENDED: If the Town suspends the Consultant's services and work on all or part of the services required be providing and performing by the Consultant pursuant to this Agreement, the Town shall compensate the Consultant only for the services performed prior to the effective date of suspension and reimbursable expenses then due.

4.07 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION, AND/OR DECREASE: If the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased by the Town and/or are modified by the subsequent issuance of Supplemental Task Authorization(s), other than receiving the compensation set forth in Sub Articles 4.05 and 4.06, the Consultant shall not be entitled to receive compensation for anticipated professional fees, profit, mobilization costs, general and administrative overhead expenses or for any other anticipated or unanticipated income or expense which may be associated with the services terminated, suspended, eliminated, cancelled, or decreased.

ARTICLE 5.00 - TIME AND SCHEDULE OF PERFORMANCE

5.1 NOTICE TO PROCEED: Following the execution of this Agreement by both parties, and after the Consultant has complied with the insurance requirements set forth hereinafter, the Town shall issue the Consultant a written Notice to Proceed. Following the issuance of such Notice to Proceed, the Consultant shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion. A separate Notice to Proceed shall be issued for each Project requested by the Town hereunder.

5.2 TIME OF PERFORMANCE: The Consultant agrees to complete the services required pursuant to this Agreement by the date assigned with each individual Supplemental Task Authorization as defined for completion of the various phases and/or tasks of each individual project as set forth and described in this Agreement, and specifically as set forth in EXHIBIT "C", entitled "Time and Schedule of Performance", which EXHIBIT "C" is attached hereto and hereby incorporated by reference.

Should the Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the Consultant, or its Sub consultant(s) and/or Subcontractor(s), and not due to their fault or neglect, the Consultant shall notify the Town, in writing, within two (2) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the Consultant's time of performance. Upon receipt of the Consultant's request for an extension of time, the Town shall grant the extension if the Town determines the delay(s) encountered by the Consultant, or its Sub consultant(s) and/or Subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect, in the Town's sole judgment.

5.3 CONSULTANT WORK SCHEDULE: The Consultant shall be required as a condition of this Agreement to prepare and submit to the Town, on a monthly basis, commencing with the issuance of the NOTICE TO PROCEED, a Consultant's Work Schedule for each project. The Work Schedule shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work requiring completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in EXHIBIT "C", pursuant to this Agreement in such a manner that the Consultant's planned and actual work progress can be readily determined. The Consultant's Work Schedule of planned and actual work progress shall be updated and submitted by the Consultant to the Town on a monthly basis or as otherwise indicated by the Town in writing.

5.4 FAILURE TO PERFORM IN A TIMELY MANNER: Should the Consultant fail to commence, provide, perform, and/or complete any of the services and work required hereunder in a timely and diligent manner, the Town may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the Town at its option, may, upon written notice to the Consultant, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any Supplemental Task Authorization(s) hereto. The termination rights specified in this sub-paragraph are in addition to any termination rights set forth elsewhere herein.

ARTICLE 6.00 - SECURING AGREEMENT:

The Consultant warrants that the Consultant has not employed or retained any company or person other than a bona fide, regular, full time employee working for the Consultant to solicit or secure this Agreement and that the Consultant has not paid or agreed to pay any person, company, corporation individual, or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 7.00 - CONFLICT OF INTEREST:

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The Consultant further agrees that no person having any such interest shall be employed or engaged by the Consultant for said performance.

If Consultant, for itself and on behalf of its Sub-consultants and Subcontractors, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by Consultant or such Sub consultant or Subcontractor under this Agreement, then it will promptly bring such potential conflict of interest to the Town's attention, in writing. The Town will advise the Consultant, in writing, within ten (10) calendar days as to the period of time required by the Town to determine if such a conflict of interest exists. If the Town determines that there is a conflict of interest, Consultant or such Sub consultant shall decline the representation upon written notice by the Town.

If the Town determines that there is not such conflict of interest, then the Town shall give its written consent to such representation. If the Consultant or Sub consultant accepts such a representation without obtaining the Town's prior written consent, and if the Town subsequently determines that there is a conflict of interest between such representation and the work being performed by Consultant or such Sub consultant under this Agreement, then the Consultant or such Sub consultant agrees to promptly terminate such representation. Consultant shall require each of such Sub consultants to comply with the provisions of this Section. Should the Consultant fail to advise or notify the Town as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the Consultant fail to discontinue such representation, the Town may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 8.00 - ASSIGNMENT, TRANSFER AND SUBCONTRACTS:

The Consultant shall not assign or transfer any of its rights, benefits, or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of Consultant with a third party; or (2) the disestablishment of the Consultant's professional practice and the establishment of a successor consultant, or consulting organization. The Consultant shall not subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement, without prior written approval of the Town. The Consultant shall have the right, subject to the Town's prior written approval, to employ other persons and/or firms to serve as Sub consultants and/or Subcontractors to Consultant in connection with Consultant providing and performing services and work pursuant to the requirements of this Agreement. The Town shall have the right and be entitled to withhold such approval.

In providing and performing the services and work required pursuant to this Agreement, Consultant intends to engage the assistance of the Sub consultant(s) and/or Subcontractor(s) set forth in EXHIBIT "D", entitled "CONSULTANT'S ASSOCIATED SUB-CONSULTANTS AND SUBCONTRACTORS."

ARTICLE 9.00 - APPLICABLE LAW:

Unless otherwise specified, this Agreement shall be governed by the applicable ordinances, laws, rules, and regulations of the Town of Fort Myers Beach, Lee County, Florida, and the State of Florida. It shall be governed by the laws, rules, and regulations of the United States when the Consultant is providing services funded by the United States government.

ARTICLE 10.00 - LITIGATION

The venue for any litigation arising from this Agreement shall be in the 20th Judicial Circuit in and for Lee County, Florida. Each party shall be responsible for the payment of any attorney fees and costs incurred by the party due to litigation arising out of this agreement.

ARTICLE 11.00 - COVENANTS AGAINST DISCRIMINATION

The Consultant for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to Town hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The Consultant shall comply with state laws in the hiring of sub consultants.

ARTICLE 12.00 - WAIVER OF BREACH:

Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00 - OWNERSHIP OF DOCUMENTS

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the Consultant under this Agreement shall be property of the Consultant until the Consultant has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the Town of written Supplemental Task Authorization(s) deleting all or portions of the scope of services or task(s) to be provided or performed by the Consultant, all of the above documents, to the extent requested in writing by the Town, shall be delivered by the Consultant to the Town within seven (7) calendar days of the Town making such a request. If the Town gives the Consultant a written Notice of Termination of all or part of the services or work required, or upon the issuance to the Consultant by the Town of a written Supplemental Task Authorization deleting all or part of the services or work required, the Consultant shall deliver to the Town the requested documents as set forth hereinabove, with the mutual understanding and commitment by the Town that compensation earned or owing to the Consultant for services or work provided or performed by the Consultant prior to the effective date of any such termination or deletion will be paid to the Consultant within thirty (30) calendar days of the date of issuance of the Notice of Termination or Supplemental Task Authorization.

The Consultant, at its expense, may make and retain copies of all documents delivered to the Town for reference and internal use. The Consultant shall not, and agrees not to use any of these documents, and data and information contained therein on any other project or for any other client without the prior express written permission of the Town.

Any use by the Town of said documents, and data and information contained therein, obtained by the Town hereunder for any purpose not within the scope of this Agreement shall be at the risk of the Town, and without liability to the Consultant.

ARTICLE 14.00 - MAINTENANCE OF RECORDS

The Consultant will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices, and materials provided and performed hereunder. Said records and documentation will be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement.

The Town and its authorized agents shall have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during this Agreement, and during the period of five (5) years thereafter. Such activity shall be conducted only during normal business hours and at the expense of the Town. To the extent permitted by law, the Town shall retain all such records as confidential.

Public Records Compliance. Contractor agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.071(2) Florida Statutes: Sealed proposals, proposals or replies received by the Town pursuant to a competitive solicitation are exempt from s. 119.071(1) and s. 24(a), Art. I of the State Constitution until such time as the Town provides notice of its intended decision or until 30 days after opening the proposals, proposals, or final replies, whichever is earlier.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF THE PUBLIC RECORDS AT (239) 765-0202, FMBPUBLICRECORDS@FMBGOV.COM, 2791 OAK STREET, FORT MYERS BEACH, FLORIDA 33931.

Public Records Compliance Indemnification. Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

ARTICLE 15.00 - TERMINATION

This Agreement may be terminated by the Town without cause and/or at its convenience, or due to the fault of the Consultant, by the Town giving thirty (30) days' written notice to the Consultant. If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the Town's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the Town may, without prejudice to any other right or remedy, terminate this Agreement.

In addition to the Town's contractual right to terminate this Agreement in its entirety as set forth above, the Town may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services as set forth in EXHIBIT "A", or the Project Guidelines and Criteria as set forth in EXHIBIT "E", or as such may be established or modified by a Supplemental Task Authorization. The Town shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement, or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the Town dated not less than sixty (60) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the Town reserves the right to accept or not accept the termination request submitted by the Consultant, and no such termination request submitted by the Consultant shall become effective unless and until Consultant is notified, in writing, by the Town of its acceptance.

Upon termination, the Consultant shall deliver to the Town all papers, drawings, models, and other material in which the Town has exclusive rights by virtue hereof or of any business done, or services or work performed or provided by the Consultant on behalf of the Town.

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

Modifications and amendments to the covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed Supplemental Task Authorization(s) or written contract amendment, executed by both parties. In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written Supplemental Task Authorization(s), the latest executed Supplemental Task Authorization(s) shall take precedence.

In the event the Town issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the Town's internal control purposes only, and any terms, provisions and conditions contained therein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms hereof shall impair the rights of either party.

ARTICLE 17.00 - HEADINGS

The Headings of the Articles, Sections, Exhibits, Attachments, Phases or Tasks herein are for the purpose of convenience only and shall not be deemed to expand, limit, or change the provisions contained in such Articles, Sections, Exhibits, Attachments, Phases or Tasks.

ARTICLE 18.00 – MISCELLANEOUS

Compliance/Consistency with Section 768.28, Florida Statute. Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.

Non-appropriation. Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

E-Verify Compliance. By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement. Both parties waive any right to file an action suit or proceeding in, or remove any action, suit or proceeding to, any Federal Court.

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

Public Entities Crime or Convicted Vendor List. Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

Data Management; Notice of Breach. The contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc, which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

Environmental and Social Government and Corporate Activism. The Town has not given preference or requested documentation from the Contractor based on the Contractor's social, political or ideological interest. Contractors agree to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political, or ideological interests.

Taxes. The Town shall not be liable for any taxes and assessments imposed by a federal, state, or local governmental agency as provided in Section 11.4 of the Agreement, to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

Force Majeure. The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible.

Additional Terms. Notwithstanding any other provision to the contrary, the parties agree as follows:

A. None.

ARTICLE 19.00 - ENTIRE AGREEMENT

This Agreement, including referenced Exhibits and Attachments hereto, constitute the entire Agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect on this Agreement.

The following listed documents, which are referred to hereinbefore, are attached to and are acknowledged, understood, and agreed to be an integral part of this Agreement:

- (1) EXHIBIT "A" entitled "Scope of Professional Services", dated _____
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment" dated _____
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance", dated _____
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)", dated _____
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria", dated _____
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate", dated _____
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles", dated _____
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit", dated _____
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws", dated _____
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality", dated _____

ARTICLE 20 .00 - NOTICES AND ADDRESS OF RECORD

20.1 NOTICES BY CONSULTANT TO TOWN

All notices hereunder from the Consultant to the Town shall be in writing and shall be given by US first class mail service, postage prepaid, addressed to: Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, Florida 33931

20.2 NOTICES BY TOWN TO CONSULTANT

All notices hereunder from the Town to the Consultant shall be in writing and shall be given by U.S. first class mail service, postage prepaid, addressed to:

(Consultant's Business Name) _____

(Street/ P.O. Box) _____

(City) _____

(State) _____

(Zip Code) _____

Telephone Number: _____

Fax Number: _____

ATTENTION: _____

Project Director

20.3 CHANGE OF ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party given in accordance with the requirements of this Article.

ARTICLE 21.00 - ACCEPTANCE. Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

TOWN OF FORT MYERS BEACH

ATTEST:

By: _____
Town Manager

By: _____
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Town Attorney

PROVIDER: _____
Printed name of organization

BY: _____
Signature

Printed name of person signing

Title (printed)

Witness Signature

Printed name of Witness

EXHIBIT A - SCOPE OF PROFESSIONAL SERVICES

TYPES OF WORK

The following is a list of the Types of Work the Town of Fort Myers Beach may require. Each Type of Work states the minimum requirements to be met in order to be qualified by the Town of Fort Myers Beach.

Type of Work

To be added at time of contract

QUALIFICATION FOR TYPE OF WORK

Name of Firm: _____

Date: _____

Code: _____ Type of Work: _____

List the personnel permanently employed by your firm and indicate the groups of work that you feel they are qualified to do.

Attach supplemental sheets if necessary and attach a resume for each person which supports their ability

Name of Employee	City of Residence	Florida Registration Number	Years of Professional Experience	Type of Work

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

Date: _____

Section 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 4.04(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
	To be negotiated through each Supplemental Task Authorization issued.			

TOTAL

(Unless list is continued on next page)

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated _____, 2025, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto dated _____, 2025, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: _____

CONSULTANTS' PERSONNEL HOURLY RATE SCHEDULE

Consultant Name: _____

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate to Be Charged (Column 2x3)

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

**NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

CONSULTANT NAME:

NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C – TIME AND SCHEDULE OF PERFORMANCE

Date: _____

This EXHIBIT “C” establishes a total time for completion, detailed by times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference as Enumerated in EXHIBIT “A”	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days for Completion Of Each Phase And/or Task	Cumulative Number of Calendar Days For Completion From Date of Notice to Proceed
	Shall be negotiated through each Supplemental Task Authorization issued.		

EXHIBIT D - CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S)

Date: _____

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S)

CONSULTANT has identified the following Sub Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:
(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No

EXHIBIT E - PROJECT GUIDELINES AND CRITERIA**Date:** _____

The Town has established the following Guidelines, Criteria, Goals, Objectives, Schedule, Budget, and/or Requirements which shall serve as a guide to the Consultant in performing the professional services and work to be provided pursuant to this Agreement:

Item No. 1

Work will be negotiated, authorized, scheduled, funded, and accounted for by the issuance of Supplemental Task Authorizations, by the requesting department, division, or government entity.

Item No. 2

Any governmental entity may utilize the provisions of this contract for their specific needs.

Item No. 3

Work may be assigned at any time during the thirty-six (36) month contract duration. This contract also contains an option to renew by mutual agreement of both parties.

Item No. 4

No amount of work is guaranteed upon the execution of a Professional Services Agreement.

Item No. 5

Hourly rates and all other negotiated expenses will remain in effect throughout the duration of the contract.

Item No. 6

This Contract Document does not entitle any firm to exclusive rights to Town contracts. The Town reserves the right to perform any and all required work in house, through another firm, and/or by any means it so desires. The Consultant may be requested to complete portions of certain tasks in coordination with the Town and/or other Consultants under contract with the Town.

Item No. 7

In reference to Attachment No. 2 to Exhibit "B" of the Professional Service Agreement, vehicle travel mileage is considered incidental to the work and not an extra expense. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

Item No. 8

Town reserves the right to add or delete, at any time, any or all tasks or services associated with this agreement.

The Consultant's services may be retained for any of the tasks separately or all of the tasks collectively. The Town and the Consultant will mutually establish the specific scope of work, which will serve as the basis for the Supplemental Task Authorization (STA) and will be based on the specifics and parameters relating to the issue or concern under study.

Item No. 9

Town shall have the right to use the documents on any Town project without the Consultant's authorization. All documents created, prepared, and presented under this Agreement may be used by the Town in connection with any public offering; borrowing or other financing arrangements. The Consultant shall have the right to retain copies of all such materials.

EXHIBIT F - TRUTH IN NEGOTIATION CERTIFICATE

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the Town of Fort Myers Beach for the project known as:
 Fort Myers Beach Comprehensive Recovery and Resilience Implementation Plan

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Article 2.11.
2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth here-in-above.
3. The truth of statements made herein may be relied upon by the Town and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the CONSULTANT, doing business as:

BY: _____

TITLE: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, by means of () physical presence or () online notarization, personally appeared before me and () is personally known to me or () who has produced _____, as identification.

My Commission Expires: _____

 Signature of Notary Public

Notary Public, State of _____

 Commission/Serial No. _____

 Printed, Typed or Stamped Name

EXHIBIT "G": INSURANCE**FOR THE PROJECT KNOWN AS:****Section One. Insurance Coverage's to Be Obtained**

(1) The Consultant shall obtain and maintain such insurance as will protect it from: (1) claims under workers' compensation laws, disability benefit laws, or other similar employee benefit laws; (2) claims for damages because of bodily injury, occupational sickness or disease or death of its employees including claims insured by general personal injury liability coverage; (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees including claims insured by usual personal injury liability coverage; and (4) from claims for injury to or destruction of tangible property, including loss of use resulting there from; any or all of which claims may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of this Agreement, whether such services, work and operations are performed by the Consultant, its employees, or by any Sub consultant(s), Subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.

(2) The insurance protection set forth hereinabove shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.

(3) The Consultant, throughout the time this Agreement is in effect, shall require and ensure that any and all of its Sub-consultants and/or Sub-Contractors obtain, have, and maintain the insurance coverages required by law to be provided.

(4) The Consultant shall obtain, have, and maintain during the entire period of this Agreement all such insurance policies as are set forth and required herein.

(5) In the event that the Consultant engages Sub-consultants or Sub-Contractors to assist the Consultant in providing or performing services or work pursuant to the requirements of this Agreement, the insurance coverages required under this Article to be provided by the Consultant shall cover all of the services or work to be provided or performed by all of the Sub consultants or Subcontractors engaged by the Consultant. However, in the event the services or work of Sub consultants or Sub-Contractors engaged by the Consultant is not covered by the Consultant's insurance policy or policies, it shall be the responsibility of the Consultant to ensure that all Sub-consultants or Sub-Contractors have fully complied with the Town insurance requirements for: (1) Worker's Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; and (4) Professional Liability as required and set forth in this Exhibit.

The services or work to be provided or performed by the following Sub-consultant(s) or Sub-Contractor(s) identified elsewhere in this agreement are exempted and excluded from the Professional Liability insurance coverage requirements set forth in this Agreement:

Service and/or work to be
Provided and/or Performed

Indicate Name of
Individual or Firm

(If none, enter the word "none" in the space above.)

(6) The insurance coverage to be obtained by the Consultant or by Sub-consultants or Sub-Contractors engaged by the Consultant, as set forth in this Article for: (1) Workers' Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; and (4) Professional Liability is understood and agreed to cover any and all of the services or work set forth in this Agreement and all subsequent Supplemental Task Authorization(s). In the event the Town shall execute and issue written Supplemental Task Authorization(s) authorizing the Consultant to provide or perform services or work in addition to those set forth in this Agreement, it is agreed that the Town has the right to change the amount of insurance coverages required to cover the additional services or work. If the additional insurance coverage established exceeds the amount of insurance coverage carried by the Consultant, the compensation established for the Supplemental Task Authorization(s) shall include consideration of any increased premium cost incurred by the Consultant to obtain same.

Section Two. Consultant Required to File Insurance Certificate(s)

(1) The Consultant shall submit to the Town's RISK MANAGEMENT DIVISION all insurance certificates which are required under this Agreement for review and approval with respect to compliance with the insurance requirements. After approval by the RISK MANAGER, the Town will execute this Agreement and issue a written Notice to Proceed. The Consultant may then commence with any service or work pursuant to the requirements of this Agreement. All such Insurance Certificates shall be attached to this Agreement at the end of this EXHIBIT "G" and are hereby incorporated by reference thereto.

(2) All such insurance certificates shall be in a form and underwritten by an insurance company(s) acceptable to the Town and licensed in the State of Florida.

(3) Each Certificate of Insurance submitted to the Town shall be original and shall be executed by an authorized representative of the insurance company affording coverage.

(4) Each Certificate of Insurance shall be addressed to the TOWN OF FORT MYERS BEACH, ATTN: TOWN MANAGER, at the address listed at the beginning of this Agreement.

(5) Each Certificate of Insurance shall specifically include all of the following:

(A) The name and type of policy and coverages provided; and

(B) The amount or limit applicable to each coverage provided and the deductible amount, if any, applicable to each type of insurance coverage being provided; and

(C) The date of expiration of coverage; and

(D) The designation of the TOWN OF FORT MYERS BEACH both as an additional insured and as a certificate holder. (This requirement is excepted for Professional Liability Insurance and for Workers' Compensation Insurance); and

(E) A specific reference to this Agreement and the Project to which it pertains. (This requirement may be excepted for Professional Liability Insurance).

In the event the Consultant has, or expects to enter into an agreement for professional services with the Town in addition to those provided for in this Agreement, the Consultant may elect, in the alternative, to submit a certificate of insurance containing the following statement:

"This policy covers the services or work provided or performed by the Named Insured for any and all projects undertaken for the Town of Fort Myers Beach, pursuant to one or more written Professional Services Agreements, or written Supplemental Task Authorizations thereto, and the limit(s) of liability shown shall not be intended or construed as applying to only one project."

Upon receipt and approval of such a certificate of insurance, the Town will administer the insurance required for all such agreements utilizing the single "multi-project" certificate of insurance and a separate certificate of insurance will not be required for each separate agreement.

(F) The following clause must appear on the Certificate of Insurance:

"Cancellation - Should any of the above-described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the Certificate Holder named."

(G) A statement indicating any services or work included in or required under this Agreement that is specifically excluded or exempted from coverage under the provisions, terms, conditions, or endorsements of the Consultant's insurance policy(s). A statement which indicates any and all deductible amounts applicable to each type of insurance coverage required. In the absence of any such statements, the Town will proceed with the understanding, stipulation, and condition that there are no deductible amount(s), or exclusions or exemptions to the insurance coverage(s) provided.

(6) Each Certificate of Insurance shall be issued by an insurance agent and/or agency duly authorized to do so by and on behalf of the insurance company affording the insurance coverage(s) indicated on each Certificate of Insurance.

(7) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the work or termination of this Agreement, the Consultant shall furnish to the Town renewal or replacement Certificate(s) of Insurance, or Certified Binder(s), not later than fifteen (15) calendar days prior to the date of their expiration. Failure of the Consultant to provide the Town with such renewal certificate(s) shall be considered justification for the Town to terminate this Agreement.

(8) If any of the insurance coverage(s) required by this Agreement shall reach the date of expiration indicated on the approved Certificate(s) of Insurance without the Town having received satisfactory evidence of renewal or replacement, the Consultant shall automatically and without further notice stop performing all previously authorized services and work. During any time period that the Consultant's services or work is suspended for failure to comply with the insurance requirements set forth in the Agreement, the Consultant shall not be entitled to any additional compensation or time to provide and perform the required services or work and the Town shall not be required to make payment on any invoices submitted by the Consultant. Upon receipt and approval of renewal or replacement Certificates of Insurance, payment for any such invoices shall be made promptly by the Town.

Section Three. Insurance Coverages Required

The Consultant shall obtain and maintain the following insurance coverages as provided hereinbefore, and in the type, amounts and in conformance with the following minimum requirements:

WORKERS' COMPENSATION

Coverage to comply for all employees for statutory limits in compliance with the applicable State and Federal laws. In addition, the policy must include the following:

4.6 Employer's Liability with a minimum limit per accident in accordance with statutory requirements, or a minimum limit of \$500,000 for each accident, whichever limit is greater.

4.7 Notice of Cancellation and/or Restriction - The policy must be endorsed to provide the Town with thirty (30) days prior written notice of cancellation and/or restriction.

COMMERCIAL GENERAL LIABILITY

Coverage must be afforded on a form no more restrictive than the last edition of the Commercial General Liability Policy filed by the Insurance Services Office and must include the following:

4.8 Minimum limits of \$1,000,000 per occurrence and \$1,000,000 aggregate for Bodily Injury Liability and a minimum limit of \$1,000,000 for Property Damage Liability, or a minimum combined single limit of \$1,000,000.

- 4.9 Contractual coverage applicable to this specific Agreement including any hold harmless and/or such an indemnification agreement.
- 4.10 Such additional requirements as are set forth in the Agreement above.

BUSINESS AUTOMOBILE LIABILITY

Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy filed by the Insurance Services Office and must include the following:

- 4.11 Minimum limits of \$1,000,000 per person and \$1,000,000 per accident for Bodily Injury Liability and a minimum limit of \$1,000,000 for Property Damage Liability, or a minimum combined single limit of \$1,000,000.
- 4.12 Coverage shall include owned vehicles, hired, and leased, or non-owned vehicles.
- 4.13 Such additional requirements as are set forth in the Agreement above.

PROFESSIONAL LIABILITY

Coverage must include the following:

- 4.14 A minimum aggregate limit of \$1,000,000.00.
- 4.15 Such additional requirements as are set forth in the Agreement above.
- 4.16 Should the Professional Liability Insurance Policy issued pursuant to the above requirements and limits be written so as to provide an applicable deductible amount, or other exclusion or limitation as to the amount of coverage to be provided within the minimum coverage limits set forth above, the Town shall hold the Consultant responsible and liable for any such difference in the amount of coverage provided by the insurance policy. In the event of any such deductible amount, exclusion or limitation, the Consultant shall be required to provide written documentation that is acceptable to the Town establishing that the Consultant has the financial resources readily available to cover damages, injuries and/or losses which are not covered by the policy's deductible amounts, exclusions and/or limitations as stated above.

**EXHIBIT H - AMENDMENT TO ARTICLES
FOR THE PROJECT ENTITLED:**

Date: _____

For amending (i.e., changing, deleting from, or adding to) the articles.

(NOTE: Each Article to be amended should be set forth below and described in such a manner as to clearly indicate what the proposed changes, deletions or additions are with respect to the present Article provisions and should set forth the wording of the Article resulting from the Amendment. The following identification system should be followed: Indicate additional (new) words or phrases by inserting the words in the text and then underline, (i.e., Months) and indicate words or phrases in the text to be deleted by striking over (i.e., ~~Weeks~~).

THE PROVISIONS HEREBY SUPERCEDE ANY PROVISIONS TO THE CONTRARY
CONTAINED ELSEWHERE IN THE ARTICLES OR EXHIBITS.

AMENDMENT NO.

ARTICLE No. ____ is hereby amended as follows:

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT**SWORN STATEMENT PURSUANT TO SECTION 287.133(3) (a),
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER
OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to _____
(print name of public entity)

by _____
(print individual's name and title)

for _____
(print name of entity submitting sworn statement)

whose business address is _____

and (if applicable) its Federal Employer Identification Number (FEIN) is _____
(If the entity has no FEIN, include the Social Security Number of individual signing this sworn statement: _____.)
2. I understand that a "public entity crime" as defined in Paragraph 287.233(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any proposal, proposal or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Paragraph 287.233 (1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133 (1) (a), Florida Statutes, means:
 1. A predecessor or successor of a person convicted of a public entity crime; or
 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
5. I understand that a "person" as defined in Paragraph 287.133 (1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which proposals or applies to proposal on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

_____. Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, **FLORIDA STATUTES** FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(Signature)

Sworn to and subscribed before me this _____ day of _____, 20__.

Personally known _____

OR Produced Identification _____ Notary Public – State of _____

(Type of Identification) My Commission expires _____

(Printed typed or stamped commissioned name of notary public)

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

TOWN OF FORT MYERS BEACH WILL NOT INTENTIONALLY AWARD TOWN CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT (“INA”).

THE TOWN OF FORT MYERS BEACH SHALL CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A (e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A (e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY LEE COUNTY.**

PROVIDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name: _____

(Signature)

(Title)

(Date)

STATE OF _____

COUNTY OF _____

The foregoing instrument was signed and acknowledged before me this _____ day of _____, 20____, by _____ who has produced.
(Print or Type Name)

_____ as identification.
(Type of Identification and Number)

Notary Public Signature

Printed Name of Notary Public

Notary Commission Number/Expiration

The signee of this Affidavit guarantees, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.

**EXHIBIT K – AFFIDAVIT OF
CONFIDENTIALITY FOR THE
PROJECT ENTITLED:**

I, the undersigned, _____, am an
employee of _____,
_____, the Town's provider of professional services, and serve as a
member of the Professional Service team for the Town of Fort Myer Beach.

This is to certify that I have been informed of the Town's policy on disclosure of information, and agree to not use, disclose, or share Town information in any way, except for as directed by the Town Manager or his/her designee. I agree to use my best efforts to prevent and protect information, or any part thereof, from disclosure to any person other than the intended recipient, who is required to receive said information.

Paragraph on AI needs to be added here _____

Signature _____

Date _____

RFP FORM A

Proposer: Green Construction Technologies Inc.

QUALIFICATIONS STATEMENT

Note: Forms A, B & C are available in WORD format from the Town upon request.

THIS FORM MUST BE SUBMITTED WITH PROPOSAL TO BE DEEMED RESPONSIVE.

- a. State the full and correct name of the partnership, corporation, or trade name under which you do business and the address of the place of business. (If a corporation, state the name of the president and secretary. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do business under the trade name.)
- The correct and full legal name of the Proposer is: Green Construction Technologies Inc.
 - The business is a (Sole Proprietorship) (Partnership) (Corporation).
 - The names of the corporate officers, or partners, or individuals doing business under a trade name, are as follows: Christina L. Erwin
Patrick J. Erwin
- b. Please describe your company in detail. Woman owned general contracting company that specializes in irrigation and landscaping. We work only for governmental entities in the state of Florida. Our company has been in business since 1979.
- c. The address of the principal place of business is: 2130 NE 15 Terrace
Wilton Manors, FL 33305
We have 2 offices - one in Wilton Manors, the other in Plant City.
- d. Company telephone number and e-mail addresses: 954-914-9588 GCTECHFL@gmail.com
- e. Number of employees: 5-10
- f. Name of employees to be assigned to this Project: Patrick Erwin, Christina Erwin, Wojciech Gorski, Ela Escobar, Chris McGee.
- g. Company identification numbers for the Internal Revenue Service: 65-0802133
- h. Provide Lee County business tax receipt number, if applicable, and expiration date: n/a
- i. How many years has your organization been in business? Does your organization have a specialty? Since 1979. - our specialty is irrigation repair + installation and landscape installation.
- j. List the last three projects of this nature that the firm has completed? Please provide project description, reference, and contact information and cost of work completed. Please see attached reference sheets.
- k. Have you ever failed to complete any work awarded to you? If so, where, and why? NO

- l. Provide the following information concerning all contracts that are similar in nature or use the same project team proposed for this project that are **in progress** as of the date of submission of this Proposal for your company, division, or unit as appropriate.

Name of Project	Contract with:	Contract Amount	Estimated Completion Date	% of Completion to Date
Tree Planting Services	Manatee County	2 separate contracts 1,097,874.60	Nov. 2025	99%

(Continue list as necessary)

- m. Provide the following information for any subconsultants you will engage if awarded the contract.

Subcontractor Name	Address	Work to be Performed
None		

The foregoing list of subconsultants may not be amended after award of the contract without the prior written approval of the Town Manager, whose approval shall not be unreasonably withheld.



ADDENDUM TO CONTRACT DOCUMENTS

RFP-26-01-PW

Addendum No.: 1

CONTRACT/PROJECT NAME: Fort Myers Beach Landscaping and Irrigation

DATE OF ISSUE: October 17, 2025

ADDITION / REVISIONS TO BID DOCUMENTS

The attached forms are required with your submitted proposal, however, were not included with the bid documentation:

- Business Relationship Disclosure
- Non-Collusion Affidavit
- Conflict of Interest Disclosure

Please Print

Green Construction Technologies Inc

Company Name & Phone Number

[Signature]

Signature

Amy Baker, Town Clerk
bids@fmbgov.com
239-765-0202

FORM 3A INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS

LAST NAME - FIRST NAME - MIDDLE INITIAL N/A.			OFFICE / POSITION HELD
MAILING ADDRESS			AGENCY
CITY	ZIP	COUNTY	ADDRESS OF AGENCY

WHO MUST FILE THIS STATEMENT

Sections 112.313(3) and 112.313(7), Florida Statutes, prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. See Part III, Chapter 112, Florida Statutes, and/or the brochure entitled "A Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees" for more details on these prohibitions. However, Section 112.313(12), Florida Statutes, provides certain limited exemptions to the above-referenced prohibitions, including one where the business is awarded under a system of sealed, competitive bidding; the public official has exerted no influence on bid negotiations or specifications; AND where disclosure is made, prior to or at the time of the submission of the bid, of the official's or his spouse's or child's interest and the nature of the intended business. This form has been promulgated by the Commission on Ethics for such disclosure, *if and when applicable* to a public officer or employee.

INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS (Required by Section 112.313(12)(b), Fla. Stat.)

1. The competitive bid to which this statement applies has been / will be (strike one) submitted to the following government agency:		
2. The person submitting the bid is:	NAME ▼	POSITION ▼
3. The business entity with which the person submitting the bid is associated is:		
4. My relationship to the person or business entity submitting the bid is as follows:		
5. The nature of the business intended to be transacted in the event that this bid is awarded is as follows:		
a. The realty, goods, and / or services to be supplied specifically include: _____		
b. The realty, goods, and / or services will be supplied for the following period of time: _____		
c. Will the contract be subject to renewal without further competitive bidding? ☐ Yes ☐ No. If so, how often?		
6. Additional comments:		
7. SIGNATURE	DATE SIGNED	DATE FILED

FILING INSTRUCTIONS

If you are a state officer or employee required to disclose the information above, please file this form with the Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317-5709; physical address: 325 John Knox Road, Building B, Suite 200, Tallahassee, FL 32303. If you are an officer or employee of a political subdivision of this state and are subject to this disclosure, please file the statement with the Supervisor of Elections of the county in which the agency in which you are serving has its principal office.

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES SECTION 112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.



FMB:021 – NON-COLLUSION AFFIDAVIT

State of Florida

County of Polk

Christina L. Erwin being first duly sworn, deposes and says that:

- 1) He/she is the President (Owner, Partner, Officer, Representative or Agent) of Green Construction Technologies Inc. the BIDDER that has submitted the attached Bid;
- 2) He/she is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- 3) Such Bid is genuine and is not a collusive or sham Bid;
- 4) Neither the said BIDDER nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Responder, firm, or person to submit a collusive or sham Bid in connection with the Work for which the attached Bid has been submitted; or to refrain from Responding in connection with such Work; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Responder, firm, or person to fix the price or prices in the attached Bid or of any other Responder, or to fix any overhead, profit, or cost elements of the Bid price or the Bid price of any other Responder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Work;
- 5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Responder or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered in the presence of:

By:

Christina L. Erwin
(Printed Name)

ACKNOWLEDGEMENT

STATE OF Florida
COUNTY OF Polk

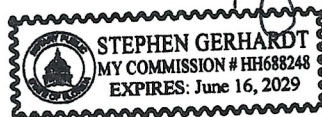
SWORN TO AND SUBSCRIBED BEFORE ME, on this 31st day of Oct., 2025, by means

of (☒) physical presence or () online notarization, personally appeared Christina L. Erwin as President of Green Construction Technologies Inc.

() who personally known to me of (☒) who has produced PL01 B345-074-06-000-0 as identification.

Notary Public Signature

My commission expires 6/16/29





FMB:102 Conflict of Interest Disclosure Form

Note: A potential or actual conflict of interest exists when commitments and obligations are likely to be compromised by the nominator(s)' other material interests, or relationships (especially economic), particularly if those interests or commitments are not disclosed.

This Conflict-of-Interest Form should indicate whether the nominator(s) has an economic interest in, or acts as an officer or a director of, any outside entity whose financial interests would reasonably appear to be affected by the addition of the nominated condition to the newborn screening panel. The nominator(s) should also disclose any personal, business, or volunteer affiliations that may give rise to a real or apparent conflict of interest. Relevant Federally and organizationally established regulations and guidelines in financial conflicts must be abided by. Individuals with conflict of interest should refrain from nominating a condition for screening.

Date:

Name:

Position:

Please describe below any relationships, transactions, positions you hold (volunteer or otherwise), or circumstances that you believe could contribute to a conflict of interest:

☒ I have no conflict of interest to report.

☐ I have the following conflict of interest to report (please specify other nonprofit and for-profit boards you (and your spouse) sit on, any for-profit businesses for which you or an immediate family member are an officer or director, or a majority shareholder, and the name of your employer and any businesses you or a family member own:

1. _____
2. _____
3. _____

I hereby certify that the information set forth above is true and complete to the best of my knowledge.

Signature: _____

Date: _____

Our Award-Winning Team is Ready for your Project!

Green Construction Technologies was initiated in 1979 as a landscape and maintenance company. During our forty-six-year history, GCT has evolved into a woman owned small business construction company concentrating on the building and beautification of communities, parks, roadways, and residences.

Our certifications as a company are:

1. Florida Certified General Contractor
2. FNGLA Certified Landscape Contractor
3. Florida Certified Irrigation Contractor
4. Florida Water Well Contractor
5. Florida Advanced Traffic Control Certification
6. Florida NPDES Stormwater Inspector Certification
7. ROW and Aquatic Restricted Use Pesticide
8. Fertilizer Applicator Certification

Our specialties and passion are landscaping, irrigation, and hardscape. We have a long history of working with many municipalities all over the state of Florida. With our top-notch team, we can assist you with your projects, big or small. Green Construction Technologies' reputation is impeccable, and we realize how important it is for a project to run efficiently and to have a lasting positive end result. GCT prides itself in finishing projects on time and on (or under) budget.

We encourage you to check our references and look forward to performing a project with **you** in the future.

Green Construction Technologies Inc.

Contact Person: Christina L. Erwin/President

2130 N.E. 15th Terrace Wilton Manors Fl 33305

E-mail: GCTECHFL@gmail.com

Phone-954-914-9588

Green Construction Technologies

Project List

MANATEE COUNTY

Tree Planting Services Addendum

Work performed included clearing, grubbing, erosion control, MOT , irrigation and landscaping installation and maintenance in five different county parks.

Contract Amount: \$602,312.71

April 2024-Present

MANATEE COUNTY

Tree Planting Services

Work performed included directional boring, clearing, grubbing, erosion control, MOT , electric, irrigation and landscaping installation in five different county parks.

Contract Amount: \$495,561.91

June 2023- November 2024

CITY OF TAMARAC

University Drive Median Landscaping Improvements

Installed irrigation system, brick pavers and landscaping.

Work performed included directional boring, clearing, grubbing, erosion control, MOT , electric, irrigation and landscaping installation in the medians on University Drive.

Contract Amount: \$645,622.67

May, 2023- September 2023

CITY OF TREASURE ISLAND

Treasure Island East Causeway Landscaping

Installed irrigation system and landscaping.

Work performed included clearing, grubbing, erosion control, MOT , aluminum edging, irrigation and landscaping installation in the medians and swales of Treasure Island East Causeway .

Contract Amount: \$209,931.60

March 2023- May 2023

CITY OF MIAMI GARDENS

Vista Verde Median Irrigation Phase 1C & 1D

Installed irrigation system. Work performed included well and pump station, fencing, electric, directional boring, irrigation system, sod, and MOT for medians on NW 39th Avenue.

Contract Amount: \$335,841.90

July 2022- March 2023

CITY OF WILTON MANORS

Wilton Drive Landscape, Irrigation Installation Maintenance and Repair Services

Repaired irrigation system and installed a new irrigation system and landscaping.

Work performed included directional boring, clearing, grubbing, erosion control, MOT , electric, irrigation and

landscaping installation in the medians and swales of Wilton Drive.

Contract Amount: \$765,861.12

May 2, 2022- September 22, 2022

CITY OF SEMINOLE

Waterfront Park Landscape and Irrigation Project

Installed a new irrigation system and landscaping.

Work performed included directional boring, clearing, grubbing, erosion control, MOT , irrigation and landscaping installation.

Contract Amount: \$423,713.37

January 10 ,2022- April 21, 2022

CITY OF FROSTPROOF

Scenic Highway Beautification

Work performed included directional boring, clearing, grubbing, erosion control, MOT, paver removal replacement, installation of irrigation system and landscaping on Scenic Highway from 2nd Street to West B Street.

Contract Amount: \$161,333.00

December 13, 2021-January 27, 2022

FDOT POLK COUNTY

E1U32 Installation and Establishment of Landscaping on SR 542

Work performed included directional boring, electric , well drilling, MOT, grading, sodding, Installing irrigation and landscaping, installation of site furniture, irrigation and landscape maintenance on swales of SR 542 ..

Contract Amount: \$376,918.40

July 2021-December 2021

CHARLOTTE COUNTY

US Median 41 from Tuckers Grade to Oil Well Road

Work performed included directional boring, electric, well drilling, MOT, grading, sodding, Installing irrigation and landscaping on over 4 miles of roadway in the medians.

Contract Amount: \$397,386.75

January 2021-July 2021

CITY OF DAYTONA BEACH

Mary McLeod Bethune Blvd Streetscape

Work performed was to remove, repair and install pavers, retrofit of tree wells to accommodate new landscape, removal of several large trees from the sidewalks, pedestrian and traffic control and installation of new trees.

Contract Amount: \$222,587.05

November 16, 2020 –December 21, 2020

CITY OF MELBOURNE BEACH

SR 508/Nasa Blvd Landscape Improvements

We installed new irrigation system, directional bores, water meter, landscape and sod along the medians. Safely maintained traffic with lane closures.

Contract Amount: \$196,022.11

Green Construction Technologies

Project List

July 27, 2020- December 16, 2020

CITY OF PEMBROKE PINES

Ben Fiorendino Park Irrigation and Pump Station

Crew installed new pump station, controller and irrigation system to provide 100 percent coverage to park.

Contract Amount: \$91,293.00

June 1, 2020- July 21, 2020

TOWN OF HYPOLUXO

US1 Landscape Improvement

We installed new landscape along US1 in the Town's right of way to provide an aesthetic buffer along the rail way.

Contract Amount: \$134,691.00

April 30, 2020- May 26, 2020

CITY OF ST. CLOUD

City Hall Landscape and Irrigation Renovation

Installed new Weathermatic controller and new heads. Removed soil from parking lot islands and replaced with planting soil. Installed new trees, shrubs and sod.

Contract Amount: \$149,996.21

March 5, 2020-April 4, 2020

CITY OF OVIEDO

SR 434 Landscape Improvements

Removed and replaced pavers, paver grates and tree rings. Installed landscape and irrigation along swales.

Contract Amount: \$132,986.64

January 6, 2020-March 18, 2020

FDOT District 1

E1S37 SR 546 Memorial Blvd

Installed new irrigation meters, backflows, electric service, directional bores and landscape along SR 546 Memorial Blvd.

Contract Amount: \$238,449.00

October 29, 2019-January 3, 2020

CITY OF DELAND

West Indiana Avenue Streetscape

Removed and reinstalled pavers, excavated 1,000 CY of soil, installed Structural Soil, new trees and new irrigation with backflow.

Contract Amount: \$413,992.00

August 5, 2019-October 3, 2019

INDIAN RIVER COUNTY

US Highway 1 Landscape

Excavated 1,200 CY of median fill and replaced with planting soil. Installed new landscape trees, palms, shrubs and groundcovers. Maintained traffic and erosion controls for the duration.

Contract Amount: \$373,659.52

March 15, 2019-May 16, 2019

CITY OF TAMARAC

SR 870 Median Grant Landscape

Install new landscape along the median of SR 870 and make repairs and modifications to existing irrigation. Installed directional bores and new water meter for new irrigation to portions of the landscaped median.

Contract Amount: \$391,602.25

December 3, 2019-March 14, 2019

OKECHOBEE COUNTY

SR 700 and SR 78 Intersection Improvements

Installed new irrigation and landscape to the County right of ways and medians. Placed irrigation conduits under highway through directional boring and installed new solar powered controller.

Contract Amount: \$170,544.00

November 5, 2018- November 21, 2018

FDOT DISTRICT 7

I-75 Median Landscape

Installed small and large landscape to the hillside medians on I-75 for three miles.

Contract Amount: \$623,997.00

May 5, 2018- October 30, 2018

CITY OF PINELLAS PARK

SR 693 Median Landscape Improvements

Excavated and cleared 33,000 SF of median. Removed and replaced the soil prior to installing a Florida friendly groundcover of Perennial Peanut.

Contract amount: \$174,085.04

Feb. 21, 2018- July 13, 2018

PEMBROKE PINES FLORIDA

Recreation Fields 1&2 Irrigation Conversion

Installed golf course irrigation on athletic fields.

Contract Amount: \$93,170.00

April 24, 2018-May 8, 2018

CITY OF FELLSMERE

Meadows Field Irrigation and Sod

Installed a new irrigation system with controller and electric. Graded field and installed 180,000 SF of sod.

Contract Amount: Sod \$74,925.00

Contract amount: Irrigation \$57,239.44

Feb 19, 2018- May 31, 2018

CITY OF LEESBURG

US 441 Median Landscape Improvements

Installed 2 miles of landscape and irrigation along the swales and medians of Hwy US 441.

Contract Amount-\$712,958.98

April 2017-September 2017

Green Construction Technologies

Project List

CITY OF TAMPA

Dale Mabry Highway Living Memorial



FNGLA AWARD WINNING PROJECT

Installed landscape, insignia designs and irrigation in the medians of Dale Mabry Highway for two miles.

Contract Amount-\$1,410,206.75

August 2016-July 2017

PASCO COUNTY

Wesley Chapel District Park Phase I and II Irrigation System Repair and Replacement

Installed 2 miles of re-use C900 DIP, pressure regulating assembly, weather stations, clocks and valves for a County park.

Contract Amount- Phase I \$210,431.00

Phase II \$246,113.00

January 2016-August 2016

MIAMI DADE COLLEGE KENDALL CAMPUS

Landscape and Irrigation System Entrances and Swimming Pool Areas

Clearing, grubbing, demolition, tree removal/relocation, installation of trees, plants sod and installation of irrigation.

Contract Amount- \$808,680.57

June 2015-December 2015

CITY OF GAINESVILLE

Sixth Street Rail Trail Landscaping

Clearing, grubbing installation of trees, plants and sod, installation of railroad ties, pavers, curbing and irrigation.

Contract Amount- \$286,644.89

February 2015-June 2015

CITY OF ORANGE CITY

US 17-92 Medians Landscape Beautification

Clearing, grubbing, sod removal, installation of trees, plants and sod on US 17-92 medians

Contract Amount- \$223,477.39

June 2014-September 2014

QUANTUM PARK OVERLAY DEPENDENT DISTRICT

Gateway Boulevard Lakes 4&5

Landscaping, tree removal, MOT and maintenance

Contract Amount- \$47,929.01

June 2014

QUANTUM PARK OVERLAY DEPENDENT DISTRICT

Gateway Boulevard Medians

Excavation, irrigation, landscaping, MOT and maintenance in medians

Contract Amount- \$115,688.62

October 2013-April 2014

QUANTUM PARK OVERLAY DEPENDENT DISTRICT

Gateway Boulevard Island Accident Restoration

Irrigation repair, landscaping and MOT in medians

Contract Amount- \$4,950.00

April 2014

QUANTUM PARK OVERLAY DEPENDENT DISTRICT

Gateway Lake Bank Restoration

Prep and landscaping

Contract Amount- \$11,680.00

March 2014

CITY OF WEST PALM BEACH

19th, 20th, 21st STREET Landscape and Irrigation

Clearing, grubbing, MOT, landscaping and irrigation in median and swales

Contract Amount- \$ 118,554.82

December 2013-February 2014

CITY OF FORT LAUDERDALE

Hortt Community Center



1ST PLACE AWARD WINNING PROJECT

Construction of community center including shell, roof, electric, plumbing, air conditioning, formwork, concrete, flooring, tiling, painting, carpentry, drywall, pavers, storefronts, windows and doors, landscaping, irrigation, grading, and asphalt.

Contract Amount- \$814,654.54

June 2011-October 2012

CITY OF DANIA BEACH

US 1 Right of Way Improvements Phase II

Demolition, landscaping, tree removal, irrigation, directional boring, MOT, asphalt, concrete curb, concrete

Green Construction Technologies Inc.

Reference List

MANATEE COUNTY

Tree Planting Services

Contact Person: David Shurmur
Division Manager
1112 Manatee Avenue West
Bradenton, FL 34205
941-792-8784 x 8203
David.shurmur@mymanatee.org

CITY OF TAMARAC

University Drive Median Landscaping Improvements

Contact Person: Eric J. Woods
Engineering Review Technician/Inspector
6011 Nob Hill Road
Tamarac, FL 33321
954-597-3713
Eric.woods@Tamarac.org

CITY OF TREASURE ISLAND

Treasure Island East Causeway Landscaping

Contact Person: Stacy Boyles, LEED AP, ENV SPC
Public Works Director & Sustainability Coord.
120 108th Avenue
Treasure Island, FL 33706
727-547-4575 x 251
Stacy.boyles@mytreasureisland.org

CITY OF MIAMI GARDENS

Vista Verde Median Irrigation Phase IC & 1D

Contact Person: Guillermo Hidalgo
Engineering Inspector III
18605 NW 27th Avenue
Miami Gardens, FL 33056
305-622-8000
ghidalgo@miamigardens-fl.gov

CITY OF WILTON MANORS

Wilton Drive Landscape, Irrigation Installation Maintenance and Repair Services

Contact Person: Stefan Bortak
Senior Landscape Architect
500 S. Australian Avenue, Suite 850
West Palm Beach, FL 33401
561-746-6900 x 1083
sbortak@chenmoore.com

CITY OF SEMINOLE

Waterfront Park Landscape and Irrigation Project

Contact Person: Rodney Due
Director of Public Works
9199 113th Street North
Seminole, FL 33772
727-397-6383 x 2549
Rdue@myseminole.com

CITY OF FROSTPROOF

Scenic Highway Beautification

Contact Person: Jonathan Haigh

JPLA/RLA
Kimley Horn
1920 Wekiva Way
West Palm Beach, FL 33411
561-840-0233 jonathan.haigh@kimley-horn.com

FDOT-POLK COUNTY

Installation and Establishment of Landscaping along SR 542

Contact Person: Tracy Fluke
Project Administrator
FDOT Bartow Operations Center
2740 SR 60 West
Bartow, FL 33830
863-519-4111 Tracy.Fluke@dot.state.fl.us

CHARLOTTE COUNTY

US Median 41 from Tuckers Grade to Oil Well Road

Contact Person: Chuck Peters, Landscape Project Manager
7000 Florida Street
Punta Gorda, FL 33948
941-575-3658 Chuck.Peters@charlottecountyfl.gov

CITY OF DAYTONA BEACH

Mary McLeod Bethune Blvd Streetscape

Contact Person: Alan Kirkland, Project Manager
950 Bellevue Avenue
Daytona Beach, FL 32114
386-671-8607 kirklandalan@codb.us

CITY OF MELBOURNE BEACH

SR 508/Nasa Blvd Landscape Improvements

Contact Person: Tami Gillen, Project Manager
900 E. Strawbridge Avenue
Melbourne Beach, FL 32901
321-608-7311 tami.gillen@mlbfl.org

PEMBROKE PINES

Ben Fiorendino Park Pump Station

Contact Person: Glen Reid
601 City Center Way
Pembroke Pines, FL 33025
305-409-2594 Greid@ppines.com

TOWN OF HYPOLUXO

US1 Landscape Improvements

Contact Person: Dixie Gualtieri, City Manager
7580 S. Federal Hwy
Hypoluxo, FL 33462
561-582-0155
Dgualtieri@hypoluxo.org

CITY OF ST. CLOUD

City Hall Irrigation Renovation

Contact Person: Venestina Cuevas, Project Manager
1300 9th street

Green Construction Technologies Inc.

Reference List

St. Cloud, FL 34769
407-301-4385
Venestina.cuevas@stcloud.org

CITY OF OVIEDO

SR 434 Landscape Improvements
Contact Person: Brenda King, Project Administrator
400 Alexandria Blvd.
Oviedo, FL. 32765
407-971-5653
Bking@cityofoviedo.net

FDOT DISTRICT 1

E1537 SR 546 Memorial Blvd
Contact Person: Jason Smith, Contract Coordinator
801 North Broadway Ave
Bartow, FL 33830
863-519-4109
Jason.smith@dot.state.fl.us

CITY OF DELAND

West Indiana Avenue Streetscape
Contact Person: Keith Riger, Public Services Director
1102 S. Garfield Ave
Deland FL. 32724
386-626-7197
Rigerk@deland.org

INDIAN RIVER COUNTY

US Highway 1 Landscape
Contact Person: Andrew Sobczak, Project Manager
1801 27th Street
Vero Beach, FL. 32960
772-453-3846
Asobczak@ircgov.com

CITY OF TAMARAC

SR 870 Median Grant Landscape
Contact Person: Tom Vreeland
Superintendent Public Services
10101 State Street
Tamarac, FL. 33321
(954)597-3731
Tom.vreeland@tamarac.org

OKEECHOBEE COUNTY

SR 700 and SR 78 Intersection Improvements
Contact Person: John Howle, County Engineer
804 NW 2nd Street
Okeechobee, FL 34972
(863) 559-1460
jhowle@civilsurv.com

FDOT DISTRICT 7

I-75 Median Landscape
Contact Person: Eric Rose, Project Administrator

16411 Springhill Drive
Brooksville, FL. 34604
941-914-6144
Eric.rose@dot.state.fl.us

CITY OF PINELLAS PARK

SR 693 Median Landscape Improvements
Contact Person: Kyle Arrison
Stormwater Supervisor
6250 82nd Ave.
Pinellas Park, FL. 33781
727-369-5621
Karrison@pinellas-park.com

PEMBROKE PINES

Pines Recreation Fields 1 & 2 Irrigation Conversion
Contact Person: Christina Sorensen
Director of Recreation and Cultural Arts
601 City Center Way
Pembroke Pines FL 33025
Phone: 954-392-2130
csorensen@ppines.com

CITY OF FELLSMERE

Meadows Field Sod and Irrigation
Contact Person: Mark Mathes
Community Development Director
22 S. Orange St.
Fellsmere FL. 32948
Phone: 772-646-6315
cdd@cityoffellsmere.org

CITY OF LEESBURG FLORIDA

US 441 Landscape Improvements
Contact Person: Mike Thornton, CPPO
Purchasing Manager
204 N. 5th Street
Leesburg FL 34748
Phone: 352-728-9880
Mike.Thornton@leesburgflorida.gov

CITY OF TAMPA

Dale Mabry Highway Living Memorial
Contact Person: James King
Contracts Administration Engineer
3808 E. 26th Avenue
Tampa, FL. 33605
813-635-3416
James.king@tampa.gov.net

PASCO COUNTY

*Wesley Chapel District Park Phase I and II
Irrigation System Repair/ Replacement*
Contact Person- Mike Smith
Parks and Recreation
4111 Land O' Lakes Blvd. Suite 202
Land O' Lakes, FL. 34639

Green Construction Technologies Inc.

Reference List

727-457-6125
msmith@pascocountyfl.net

MIAMI DADE COLLEGE KENDALL CAMPUS

Landscape and Irrigation System Entrances and Swimming Pool Areas

Contact Person: Ms. Neyda Otero
Interim Vice Provost
11011 SW 104th St Bldg L-114
Miami FL, 33176
Phone: 954-818-0246
Notero13@msn.com

CITY OF GAINESVILLE

Sixth Street Rail Trail Landscaping

Contact Person: Stephan Broadus
405 NW 39th Ave
Gainesville FL 32609
Phone: 352-393-8406
broadusm@cityofgainesville.org

CITY OF ORANGE CITY

US 17-92 Medians Landscape Beautification

Contact Person: Ben Bartlett
Public Works
205 E. Graves Ave
Orange City FL, 32763
Phone: 386-775-5450
bbartlett@ourorangecity.com

QUANTUM PARK OVERLAY DEPENDENT DISTRICT

Gateway Blvd. Medians

Contact Person: Eugene Gerlica
District Engineer
2500 Quantum Lakes Drive Suite 100
Boyton Beach, FL 33462
Phone: 561-740-2447 ext 16
gerlicape@comcast.net

CITY OF DANIA BEACH

US-1 Right of Way Improvements Phase I

Contact Person: Mr. Jed Hall
400 Columbia Drive, Suite 110
West Palm Beach, FL 33409
Phone: 561-537-4547
jhall@landdesignsouth.com

CITY OF DANIA BEACH

US-1 Right of Way Improvements Phase II

Contact Person: Mrs. Patrea St. John
2200 Park Central Blvd. North, Suite 100
Pompano Beach, FL 33064
Phone: 954-974-2200
pstjohn@ibigroup.com

WEST PALM BEACH

19th, 20th and 21st Street Landscape and Irrigation

Contact Person: Miranda Beadles
401 E. Clematis Street
West Palm Beach FL 33401
Phone: 561-494-1087
mbeadles@wpb.org

INFRASOURCE CONSTRUCTION SERVICES

SR 5 Irrigation and Landscape

Contact Person: Mr. Michael Simmons
4180 St. John's Parkway, Suite 1004
Sanford, FL 32771
Phone: 407-235-8003/ Fax 407-321-5931

CITY OF WEST PALM BEACH

Parker Avenue

Contact Person: Mrs. Miranda Beadles
Phone: 561-494-1087/Fax 561-494-1116

CITY OF FORT LAUDERDALE

Melrose Manors Elementary Sign Project/Dolphin Park/Harbordale Park

Contact Person: Mr. Herbert Stanley
Phone: 954-828-6801
HStanley@fortlauderdale.gov

BROWARD COUNTY BOARD OF COMMISSIONERS

Markham Park

Contact Person: Mr. Shobhan Smart
Phone: 954-577-4624/ Fax 954-577-2338
Ssmart@broward.org

CITY OF FORT LAUDERDALE

Hortt Park Community Center/Coral Ridge Park /Oswald Park/Mills Pond Park

Contact Person: Mrs. Irina Tocar
Registered Architect
100 N. Andrews Ave.
Ft. Lauderdale FL 33301
Phone: 954-828-6891/Fax 954-828-0745
itocar@fortlauderdale.gov

FLORIDA DEPARTMENT OF TRANSPORTATION

Fast Track Barrier Wall Repair

Contact Person: Mr. Don Frey
7900 Forest Hill Boulevard
West Palm Beach, FL 33413
Phone: 561-432-4966/Fax 561-432-4642
Don.frey@dot.state.fl.us

CITY OF PEMBROKE PINES

East and West Campus Charter School Athletic Fields Renovation

Contact Person: Mr. Shawn Denton
Director of Public Services
Phone: 954-435-6511/Fax 954-435-6755
Sdenton@ppines.com

RFP Form B

Proposer: Green Construction Technologies Inc.

REFERENCE FORM

Forms A, B & C are available in WORD format from the Contracts Manager upon request.

THIS FORM MUST BE SUBMITTED WITH PROPOSAL TO BE DEEMED RESPONSIVE.

Give names, addresses and telephone numbers of four individuals, corporations, agencies, or institutions for which you have performed work similar to what is proposed in this RFP:

1. Name of Contact: David Shurmur
Title of Contact: Division manager Email: David.Shurmur@mymanatee.org
Telephone Number: 941.792.8784 Fax Number:
X 8203
Project: Tree Planting Services
2. Name of Contact: Stefan Bortak
Title of Contact: Landscape Architect Email: stefan@bortak.design
Telephone Number: 407.304.9312 Fax Number:
Project: Wilton Drive Landscape Irrigation Installation Maintenance and Repair
3. Name of Contact: Eric J. Woods
Title of Contact: Engineering Review Technician/Inspector Email: Eric.Woods@Tamarac.org
Telephone Number: 954.597.3713 Fax Number: none
Project: University Drive Median Landscaping Improvements
4. Name of Contact: Stacy Boyles
Title of Contact: Public Works Director & Sustainability Coord. Email: Stacy.boyles@mytreasureisland.org
Telephone Number: 727.547.4575 X251 Fax Number: none
Project: Treasure Island East Causeway Landscaping.

RFP Form C

Proposer: Green Construction Technologies Inc.

PRICE PROPOSAL FORM

Note: Forms A, B & C are available in WORD format from the Contracts Manager upon request.

***THIS FORM MUST BE SIGNED AND SUBMITTED WITH PROPOSAL
TO BE DEEMED RESPONSIVE.***

Name of Proposer: Green Construction Technologies Inc.

Name of authorized representative of Proposer: Christina L. Erwin

Project Cost – No Labor to be Included

Item	Unit of Measure	Price Per Unit
#57 Rock	Per yard	\$ 99.00
#67 Rock	Yard	\$ 110.00
White River Rock	Yard	\$ 549.00
Crimson Rock	Yard	\$ 442.00
Brown River Rock	Yard	\$ 429.00
Black/White Granite	Yard	\$ 411.00
Crushed Shell	Yard	\$ 95.00
Chinese Fan Palm	Minimum 12'	\$ 60.00
Fishtail Palm	25 Gallon	\$ 412.00
Areca Palm	25 Gallon	\$ 337.00
Coconut Grey Wood	4' Tree	\$ 750.00
Maho Tree	25 Gallon	\$ 437.00
Christmas Palm	10' Tree	\$ 562.00
Silver Buttonwood	25 Gallon	\$ 487.00
Green Buttonwood	25 Gallon	\$ 475.00
Dark Pink Oleander	15 Gallon	\$ 212.00
Light Pink Oleander	7 Gallon	\$ 75.00
Variegated Ginder	7 Gallon	\$ 87.00
Calusa	25 Gallon	\$ 300.00
Variegated Arboricola	7 Gallon	\$ 55.00
Purple Lantana	1 Gallon	\$ 9.00
Yellow Lantana	1 Gallon	\$ 9.00
Floritam Grass	Sq Ft	\$ 2.25
Top Soil	Yard	\$ 100.00
Weed Mat (Coconut Fiber)	Roll	\$ 150.00

Project Cost – Include Labor

Item	Unit of Measure	Price Per Unit
#57 Rock	Per yard	\$ 180.00
#67 Rock	Yard	\$ 220.00
White River Rock	Yard	\$ 649.00
Crimson Rock	Yard	\$ 562.00
Brown River Rock	Yard	\$ 545.00
Black/White Granite	Yard	\$ 532.00
Crushed Shell	Yard	\$ 165.00
Chinese Fan Palm	Minimum 12'	\$ 190.00
Fishtail Palm	25 Gallon	\$ 532.00
Areca Palm	25 Gallon	\$ 487.00
Coconut Grey Wood	4' Tree	\$ 1,000.00
Maho Tree	25 Gallon	\$ 537.00
Christmas Palm	10' Tree	\$ 692.00
Silver Buttonwood	25 Gallon	\$ 587.00
Green Buttonwood	25 Gallon	\$ 575.00
Dark Pink Oleander	15 Gallon	\$ 272.00
Light Pink Oleander	7 Gallon	\$ 105.00
Variegated Ginder	7 Gallon	\$ 117.00
Calusa	25 Gallon	\$ 420.00
Variegated Arboricola	7 Gallon	\$ 99.00
Purple Lantana	1 Gallon	\$ 14.00
Yellow Lantana	1 Gallon	\$ 14.00
Floritam Grass	Sq Ft	\$ 3.00
Top Soil	Yard	\$ 200.00
Weed Mat (Coconut Fiber)	Roll	\$ 850.00

Project Cost – Labor Rate (Not Limited To)

Labor - By Product	Labor Rate/Hour	Supervisor Rate/Hour
Labor - Sod Installment	\$ 69.00	\$ 99.00
Labor - Mulch Installment	\$ 69.00	\$ 99.00
Labor - Tree Planting	\$ 89.00	\$ 99.00
Labor - Bush Planting	\$ 89.00	\$ 99.00
Labor - Driveway Repair	\$ 125.00	\$ 135.00
Labor - Irrigation Repair	\$ 89.00	\$ 99.00
Labor - Concrete Replacement	\$ 125.00	\$ 135.00

Instructions: Show the project cost for each deliverable your firm will provide per the requested scope of work. Include the fees associated with each proposed deliverable. Fees should be detailed to the extent possible per deliverable.

The Price Per Unit cost shall include all fees and reimbursements for out-of-pocket costs. The Town will not reimburse for any costs not actually incurred and paid for by the Proposer and included in its proposal. Reasonable proof thereof will be required.

Payments will be made on each deliverable upon receipt and acceptance by the Town.

Additional Services

The Town may have the need for additional services, which may be requested over the next 3 years.

If the Proposer is interested in additional work, please provide the hourly rate, unit rate and staff position available. The rates for the additional work will not be used for evaluation of the services required in this RFP.

Additional Work	
<u>Title:</u>	<u>Hourly Rate/Per Unit Rate</u>
Irrigation Design	125.00
Landscape Design	125.00
MOT	125.00
General Contractor	150.00
ATSSA Advanced Personnel	150.00
Water Well	175.00

By: Green Construction Technologies Inc.

Date: Oct. 31, 2025

Name: Christina L. Erwin

Title: President.

Proposer: Green Construction Technologies Inc. **RFP FORM D**

THIS FORM MUST BE SIGNED AND SUBMITTED WITH PROPOSAL TO BE DEEMED RESPONSIVE.

The undersigned guarantees the truth and accuracy of all statements and the answers contained herein.

PROPOSER'S CERTIFICATION

I have carefully examined the Request for Proposal referenced above ("RFP") and any other documents accompanying or made a part of this RFP.

I hereby propose to furnish the goods or services specified in the RFP. I agree that my proposal will remain firm for a period of 120 days in order to allow the Town adequate time to evaluate the proposals.

I certify that all information contained in this proposal, which includes the TOWN required RFP forms A, B, C and D, is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this proposal on behalf of the firm as its act and deed and that the firm is ready, willing, and able to perform if awarded the contract.

The firm and/or Proposer hereby authorizes the Town of Fort Myers Beach, its staff, or consultants, to contact any of the references provided in the proposal and specifically authorizes such references to release, either orally or in writing, any appropriate data with respect to the firm offering this proposal.

I further certify, under oath, that this proposal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a proposal for the same product or service; no officer, employee or agent of the Town or any other Proposer is interested in said proposal; and that the undersigned executed this Proposer's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

If this proposal is selected, I understand that I will be expected to execute the Town's standard professional services agreement, in the form approved by the Town Attorney.

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crimes may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in Sec. 287.017 Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

I further certify, under oath, that neither the entity submitting this sworn statement, nor to my knowledge, any of its officers, directors, executives, partners, shareholder, employees, members, or agents active in the management of the entity has been convicted of a public entity crime subsequent to July 1, 1989.

Name of Business: Green Construction Technologies Inc.

By: [Signature]
Print Name & Title Christina L. Erwin (President)

Mailing Address:
2130 NE 15 Terrace
Wilton Manors, FL 33305

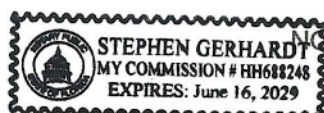
STATE OF FLORIDA)
COUNTY OF LEE POLK

SWORN TO AND SUBSCRIBED BEFORE ME, on this 31st day of October, 2025 by means of (X) physical presence or () online notarization, personally appeared Christina L. Erwin as President of the Town of Fort Myers Beach, () who is personally known to me or () who has produced FLDL E345-077-06-0025 identification.

Green Construction Technologies Inc.

My commission expires:

Rev. 5/2025



NOTARY PUBLIC - State of Florida

Stephen Gerhardt

RFP FORM A

Proposer: Tidewater Landscape of Florida LLC

QUALIFICATIONS STATEMENT

Note: Forms A, B & C are available in WORD format from the Town upon request.

THIS FORM MUST BE SUBMITTED WITH PROPOSAL TO BE DEEMED RESPONSIVE.

- a. State the full and correct name of the partnership, corporation, or trade name under which you do business and the address of the place of business. (If a corporation, state the name of the president and secretary. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do business under the trade name.)
 - i. The correct and full legal name of the Proposer is: **TideWater Landscape of Florida LLC**
 - ii. The business is a **(Corporation)**.
 - iii. The names of the corporate officers, or partners, or individuals doing business under a trade name, are as follows: **Owner Jeffrey S. Balyeat**
- b. Please describe your company in detail: **We are a full-service landscape installation company. Services offered are as follows: Landscape installation, Irrigation installation, Landscape demo, Storm Clean up, Concrete repair/replacement, Fence Installation/ repair, sod installation, In house landscape design, Paver installation/ repair.**
- c. The address of the principal place of business is: **1326 Kingswood Ct Fort Myers, FL 33919**
- d. Company telephone number and e-mail addresses: **239-770-5970
Jeff@tidewaterlandscapefl.com**
- e. Number of employees: **12 Full time employees**
- f. Name of employees to be assigned to this Project: **Jeff Balyeat, Lizandro Calderon, Jose Lopez, Agustin Sanchez Molina and Bernardo Arnoldo Gutierrez Ortega**
- g. Company identification numbers for the Internal Revenue Service: **85-1531117**
- h. Provide Lee County business tax receipt number, if applicable, and expiration date: **Number 1065276 Expiration date: 9-30-2026**
- i. How many years has your organization been in business? **5 years** Does your organization have a specialty? **Landscape Construction**

- j. List the last three projects of this nature that the firm has completed?

Please provide project description, reference, and contact information and cost of work completed.

1. **FMB North Water Plant 815 Lagoon Street. Replaced landscape, irrigation, sod and rock from Hurricane Ian. Contact Mark Aston 239-560-2081 \$67,200**
2. **FMB North Water Plant 815 Lagoon Street. Fence and 2 sliding gate from Hurricane Ian. Contact Mark Aston 239-560-2081 \$39,300**
3. **FMB 126 Gulf View Drive Repair pavers and added sod from, drainage issue with street getting repaved Contact Mark Aston 239-560-2081 \$3,365**
4. **FMB 24 Bayview. Landscape Repairs from storm drain installation. Contact Mark Aston 239-560-2081 \$2,500**
5. **FMB 315 Bayland Street. Replaced Trees removed from installation of new storm drain. Contact Mark Aston 239-560-2081 \$9,735**
6. **FMB 3597 Shell Mound Blvd. Replaced rock from new storm drain. Contact Mark Aston 239-560-2081 \$4,890**
7. **FMB North 235 Carolina Street. Repair concrete from broken water meter. Contact Mark Aston 239-560-2081 \$74,000**
8. **FMB Moss Marine parking area. Replace Concrete around town fresh. Contact Mark Aston 239-560-2081 \$74,000**
9. **CVS 7001 Estero Blvd Fort Myers Beach. Replaced landscape, irrigation and sod from Hurricane Ian. Contact Scott King GLR Construction 937-248-2955 \$32,000**
10. **Pointe South Estero Condo's 5000 Estero Blvd Fort Myers Beach Replaced landscape, irrigation and sod from Hurricane Ian Kristin Huffman 239-789-6177**

- k. Have you ever failed to complete any work awarded to you? **No**

- l. Provide the following information concerning all contracts that are similar in nature or use the same project team proposed for this project that are **in progress** as of the date of submission of this Proposal for your company, division, or unit as appropriate.

Name of Project	Contract with:	Contract Amount	Estimated Completion Date	% of Completion to Date
33 Fairview	FMB Mark Aston 2395602081	9,995	10-24-2025	50%
131 Lennel Road	FMB Mark Aston 2395602081	9,995	10-20-2025	90%
Seascapes Bonita Beach	Carbonsix Anthony 2392890804	418,000	2-10-2026	5%
Pointe South Estero	Kristin Huffman 2397896177	242,000	12-10-2025	95%

(Continue list as necessary)

- m. Provide the following information for any subconsultants you will engage if awarded the contract.

Subcontractor Name	Address	Work to be Performed
Living Gardens Irrigation	17413 Arizona Rd 33967	Irrigation Repairs
Stahlman England Irrigation	2063 Trade Center Way	Irrigation Installation
Coastal Maintenance and Restoration	1925 Trade Center Way	Door Installation
A&M Landscape Materials	17355 Pine Ridge Road	Rock, sand & shell delivery

The foregoing list of subconsultants may not be amended after award of the contract without the prior written approval of the Town Manager, whose approval shall not be unreasonably withheld.



ADDENDUM TO CONTRACT DOCUMENTS

RFP-26-01-PW

Addendum No.: 1

CONTRACT/PROJECT NAME: Fort Myers Beach Landscaping and Irrigation

DATE OF ISSUE: October 17, 2025

ADDITION / REVISIONS TO BID DOCUMENTS

The attached forms are required with your submitted proposal, however, were not included with the bid documentation:

- Business Relationship Disclosure
- Non-Collusion Affidavit
- Conflict of Interest Disclosure

Please Print Tidewater Landscape of Florida LLC

Company Name & Phone Number

Jeff Balgect

Signature

Amy Baker, Town Clerk
bids@fmbgov.com
239-765-0202



FMB:102 Conflict of Interest Disclosure Form

Note: A potential or actual conflict of interest exists when commitments and obligations are likely to be compromised by the nominator(s)' other material interests, or relationships (especially economic), particularly if those interests or commitments are not disclosed.

This Conflict-of-Interest Form should indicate whether the nominator(s) has an economic interest in, or acts as an officer or a director of, any outside entity whose financial interests would reasonably appear to be affected by the addition of the nominated condition to the newborn screening panel. The nominator(s) should also disclose any personal, business, or volunteer affiliations that may give rise to a real or apparent conflict of interest. Relevant Federally and organizationally established regulations and guidelines in financial conflicts must be abided by. Individuals with conflict of interest should refrain from nominating a condition for screening.

Date: 10-23-2025
Name: Jeffrey S. Balgeat
Position: President / owner

Please describe below any relationships, transactions, positions you hold (volunteer or otherwise), or circumstances that you believe could contribute to a conflict of interest:

☒ I have no conflict of interest to report.

☐ I have the following conflict of interest to report (please specify other nonprofit and for-profit boards you (and your spouse) sit on, any for-profit businesses for which you or an immediate family member are an officer or director, or a majority shareholder, and the name of your employer and any businesses you or a family member own:

1. _____
2. _____
3. _____

I hereby certify that the information set forth above is true and complete to the best of my knowledge.

Signature: Jeff Balgeat
Date: 10-23-2025

FORM 3A INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS

LAST NAME - FIRST NAME - MIDDLE INITIAL <i>Balyeat Jeffrey S.</i>			OFFICE / POSITION HELD <i>owner / President</i>
MAILING ADDRESS <i>1326 Kingswood Ct</i>			AGENCY <i>Tide water Landscape of FL LLC</i>
CITY <i>Fort Myers</i>	ZIP <i>33919</i>	COUNTY <i>Lee</i>	ADDRESS OF AGENCY

WHO MUST FILE THIS STATEMENT

Sections 112.313(3) and 112.313(7), Florida Statutes, prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. See Part III, Chapter 112, Florida Statutes, and/or the brochure entitled "A Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees" for more details on these prohibitions. However, Section 112.313(12), Florida Statutes, provides certain limited exemptions to the above-referenced prohibitions, including one where the business is awarded under a system of sealed, competitive bidding; the public official has exerted no influence on bid negotiations or specifications; AND where disclosure is made, prior to or at the time of the submission of the bid, of the official's or his spouse's or child's interest and the nature of the intended business. This form has been promulgated by the Commission on Ethics for such disclosure, *if and when applicable* to a public officer or employee.

INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS (Required by Section 112.313(12)(b), Fla. Stat.)

1. The competitive bid to which this statement applies has been / will be (strike one) submitted to the following government agency: <i>Town of Fort Myers Beach, FL</i>		
2. The person submitting the bid is:	NAME <i>Jeffrey Balyeat</i>	POSITION <i>President/owner</i>
3. The business entity with which the person submitting the bid is associated is: <i>N/A</i>		
4. My relationship to the person or business entity submitting the bid is as follows: <i>N/A</i>		
5. The nature of the business intended to be transacted in the event that this bid is awarded is as follows:		
a. The realty, goods, and / or services to be supplied specifically include: <i>Landscape & Irrigation</i>		
b. The realty, goods, and / or services will be supplied for the following period of time: <i>3 years</i>		
c. Will the contract be subject to renewal without further competitive bidding? ☒ Yes ☐ No. If so, how often? <i>2 year terms</i>		
6. Additional comments:		
7. SIGNATURE <i>Jeff Balyeat</i>	DATE SIGNED <i>10-23-25</i>	DATE FILED

FILING INSTRUCTIONS

If you are a state officer or employee required to disclose the information above, please file this form with the Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317-5709; physical address: 325 John Knox Road, Building E, Suite 200, Tallahassee, FL 32303. If you are an officer or employee of a political subdivision of this state and are subject to this disclosure, please file the statement with the Supervisor of Elections of the county in which the agency in which you are serving has its principal office.

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES SECTION 112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.



FMB:021 – NON-COLLUSION AFFIDAVIT

State of Florida

County of Lee

Jeffrey S. Balgeat being first duly sworn, deposes and says that:

- 1) He/she is the Jeffrey S. Balgeat owner (Owner) Partner, Officer, Representative or Agent) of Tidewater Landscape of FL LLC, the BIDDER that has submitted the attached Bid;
- 2) He/she is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- 3) Such Bid is genuine and is not a collusive or sham Bid;
- 4) Neither the said BIDDER nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Responder, firm, or person to submit a collusive or sham Bid in connection with the Work for which the attached Bid has been submitted; or to refrain from Responding in connection with such Work; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Responder, firm, or person to fix the price or prices in the attached Bid or of any other Responder, or to fix any overhead, profit, or cost elements of the Bid price or the Bid price of any other Responder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Work;
- 5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Responder or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered in the presence of:

By:

Jeffrey S. Balgeat
Jeffrey S. Balgeat
(Printed Name)

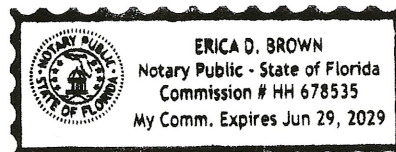
ACKNOWLEDGEMENT

STATE OF Florida
COUNTY OF Lee

SWORN TO AND SUBSCRIBED BEFORE ME, on this 24th day of October, 2025, by means of ☒ physical presence or () online notarization, personally appeared Jeffrey S. Balgeat as owner of Tidewater Landscape of FL LLC () who personally known to me of ☒ who has produced FL Driver's License as identification.

Erica D. Brown
Notary Public Signature

My commission expires June 29, 2029



Proposer: **TideWater Landscape of Florida LLC**

Forms A, B & C are available in WORD format from the Contracts Manager upon request.

Give names, addresses and telephone numbers of four individuals, corporations, agencies, or institutions for which you have performed work similar to what is proposed in this RFP:

- Page 405 of 540

RFP Form C

Proposer: TideWater Landscape of Florida LLC

PRICE PROPOSAL FORM

Note: Forms A, B & C are available in WORD format from the Contracts Manager upon request.

***THIS FORM MUST BE SIGNED AND SUBMITTED WITH
PROPOSAL TO BE DEEMED RESPONSIVE.***

Name of Proposer: TideWater Landscape of Florida LLC

Name of authorized representative of Proposer:

Jeff Balgeat - Jeffrey S. Balgeat

Project Cost – No Labor to be Included

Item	Unit of Measure	Price Per Unit
#57 Rock	Per yard	\$140.00
#67 Rock	Yard	\$140.00
White River Rock	Yard	\$620.00
Crimson Rock	Yard	\$538.00
Brown River Rock	Yard	\$420.00
Black/White Granite (AKA Fire Granite)	Yard	\$340.00
Crushed Shell	Yard	\$160.00
Chinese Fan Palm	Minimum 12'	\$1,000.00
Fishtail Palm	25 Gallon	\$210.00
Areca Palm	25 Gallon	\$270.00
Coconut Grey Wood	4' Tree	\$1,200.00
Maho Tree	25 Gallon	\$570.00
Christmas Palm	10' Tree	\$630.00
Silver Buttonwood	25 Gallon	\$190.00
Green Buttonwood	25 Gallon	\$190.00
Dark Pink Oleander	15 Gallon	\$120.00
Light Pink Oleander	7 Gallon	\$40.00
Variegated Ginder	7 Gallon	\$44.00
Calusa	25 Gallon	\$190.00
Variegated Arboricola	7 Gallon	\$40.00
Purple Lantana	1 Gallon	\$6.00
Yellow Lantana	1 Gallon	\$6.00
Floritam Grass	Sq Ft	\$1.00
Top Soil	Yard	\$110
Weed Mat (Coconut Fiber)	Roll	\$200

Project Cost – Include Labor

Item	Unit of Measure	Price Per Unit
#57 Rock	Per yard	\$210.00
#67 Rock	Yard	\$210.00
White River Rock	Yard	\$930.00
Crimson Rock	Yard	\$807.00
Brown River Rock	Yard	\$630.00
Black/White Granite	Yard	\$510.00
Crushed Shell	Yard	\$240.00
Chinese Fan Palm	Minimum 12'	\$1,500.00
Fishtail Palm	25 Gallon	\$315.00
Areca Palm	25 Gallon	\$405.00
Coconut Grey Wood	4' Tree	\$1,800.00
Maho Tree	25 Gallon	\$855.00
Christmas Palm	10' Tree	\$945.00
Silver Buttonwood	25 Gallon	\$285.00
Green Buttonwood	25 Gallon	\$285.00
Dark Pink Oleander	15 Gallon	\$180.00
Light Pink Oleander	7 Gallon	\$60.00
Variegated Ginder	7 Gallon	\$65.00
Calusa	25 Gallon	\$285.00
Variegated Arboricola	7 Gallon	\$60.00
Purple Lantana	1 Gallon	\$9.00
Yellow Lantana	1 Gallon	\$9.00
Floritam Grass	Sq Ft	\$1.20
Top Soil	Yard	\$165.00
Weed Mat (Coconut Fiber)	Roll	\$300.00

Project Cost – Labor Rate (Not Limited To)

Labor - By Product	Labor Rate/Hour	Supervisor Rate/Hour
Labor - Sod Installment	\$ 60.00	\$ 68.00
Labor - Mulch Installment	\$ 60.00	\$ 68.00
Labor - Tree Planting	\$ 60.00	\$ 68.00
Labor - Bush Planting	\$ 60.00	\$ 68.00
Labor - Driveway Repair	\$ 60.00	\$ 68.00
Labor - Irrigation Repair	\$ 64.00	\$ 68.00
Labor - Concrete Replacement	\$ 75.00	\$ 85.00

Instructions: Show the project cost for each deliverable your firm will provide per the requested scope of work. Include the fees associated with each proposed deliverable. Fees should be detailed to the extent possible per deliverable.

The Price Per Unit cost shall include all fees and reimbursements for out-of-pocket costs. The Town will not reimburse for any costs not actually incurred and paid for by the Proposer and included in its proposal. Reasonable proof thereof will be required.

Payments will be made on each deliverable upon receipt and acceptance by the Town.

Additional Services

The Town may have the need for additional services, which may be requested over the next 3 years.

If the Proposer is interested in additional work, please provide the hourly rate, unit rate and staff position available. The rates for the additional work will not be used for evaluation of the services required in this RFP.

Additional Work	
<u>Title:</u>	<u>Hourly Rate/Per Unit Rate</u>
Supervisor	\$68.00
Irrigation Tech	\$64.00
Project Manager	\$78.00
Driver	\$68.00
Labor	\$60.00

By: TideWater Landscape of Florida LLC

Date: 10-16-2025

Name: Jeffrey Balyeat

Title: President/ Owner

Proposer: Tidewater Landscape of FL LLC RFP FORM D

THIS FORM MUST BE SIGNED AND SUBMITTED WITH PROPOSAL TO BE DEEMED RESPONSIVE.

The undersigned guarantees the truth and accuracy of all statements and the answers contained herein.

PROPOSER'S CERTIFICATION

I have carefully examined the Request for Proposal referenced above ("RFP") and any other documents accompanying or made a part of this RFP.

I hereby propose to furnish the goods or services specified in the RFP. I agree that my proposal will remain firm for a period of 120 days in order to allow the Town adequate time to evaluate the proposals.

I certify that all information contained in this proposal, which includes the TOWN required RFP forms A, B, C and D, is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this proposal on behalf of the firm as its act and deed and that the firm is ready, willing, and able to perform if awarded the contract.

The firm and/or Proposer hereby authorizes the Town of Fort Myers Beach, its staff, or consultants, to contact any of the references provided in the proposal and specifically authorizes such references to release, either orally or in writing, any appropriate data with respect to the firm offering this proposal.

I further certify, under oath, that this proposal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a proposal for the same product or service; no officer, employee or agent of the Town or any other Proposer is interested in said proposal; and that the undersigned executed this Proposer's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

If this proposal is selected, I understand that I will be expected to execute the Town's standard professional services agreement, in the form approved by the Town Attorney.

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crimes may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in Sec. 287.017 Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

I further certify, under oath, that neither the entity submitting this sworn statement, not to my knowledge, any of its officers, directors, executives, partners, shareholder, employees, members, or agents active in the management of the entity has been convicted of a public entity crime subsequent to July 1, 1989.

Name of Business: Tidewater Landscape of FL LLC By: Jeffrey S. Balyeat president/owner
Print Name & Title

Mailing Address:
1326 Kingswood Ct.
Fort Myers, FL 33919

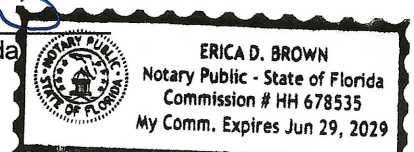
STATE OF FLORIDA)
COUNTY OF LEE)

SWORN TO AND SUBSCRIBED BEFORE ME, on this 24th day of October, 2025 by means of (X) physical presence or () online notarization, personally appeared Jeffrey S. Balyeat as Owner of the Town of Fort Myers Beach, () who is personally known to me or () who has produced FL Driver's License as identification. Tidewater Landscape of FL LLC

My commission expires: June 29, 2029

Rev. 5/2025

NOTARY PUBLIC - State of Florida



November 14, 2025

RFP-26-01-PW FMB Landscaping & Irrigation

Chadd Chustz
Georgina Cid
Jeff Hauge

TOTALS:

Green Construction Technologies	TideWater Landscape
7	10
11	8
11	12
29	30

Score from 0 - 3, 3 being highest

	Green Construction Technologies	TideWater Landscape
Expierence with irrigation repairs	2	2
Experience with flat work	1	3
Expressed undersanding of the project and proposed method of handling of the project	2	2
Qualifications based on past experience	2	3
TOTALS:	7	10

Georgina

Score from 0 - 3, 3 being highest

	Green Construction Technologies	TideWater Landscape
Expierence with irrigation repairs	3	1
Experience with flat work	3	2
Expressed undersanding of the project and proposed method of handling of the project	2	3
Qualifications based on past experience	3	2
TOTALS:	11	10 8

AB

Jeff

RFP-26-01-PW

FMB Landscaping & Irrigation

A3 Score from 0 - 3, 3 being highest	Green Construction Technologies	TideWater Landscape
Expierence with irrigation repairs	3	3
Experience with flat work	3	3
Expressed undersanding of the project and proposed method of handling of the project	3	3
Qualifications based on past experience	2	3
TOTALS:	11	12

1. **Request:**

Meeting Date: December 15, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE CHANGE ORDER #2 TO CONTRACT ITB-25-02-EN BETWEEN THE TOWN OF FORT MYERS BEACH AND EARTHBALANCE CORPORATION TO ADD 120 DAYS TO THE DEADLINE FOR COMPLETION OF THE CONTRACT AND TO ALLOW AN INCREASE OF \$500,000 TO THE TOTAL AMOUNT OF THE CONTRACT, WHICH WILL NOW AUTHORIZE A CONTRACT PRICE NOT EXCEED \$1,105,579.50 AND WILL ALLOW FOR COMPLETION OF THE DUNE PLANTING PROJECT; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Dune plantings including, grasses, forbs, shrubs and trees, will stabilize a greater area of the beach, protecting the beach from erosion and attenuate wave action during storm surge and overwash events. In addition, the dune vegetation plantings will collect sand to elevate the dune over time. which will increase resilience of upland properties and infrastructure to wave action from storm surge. Lastly, canopy trees will provide shade for residents and visitors, as well as shield light pollution onto sea turtle nesting habitat.

What the action accomplishes:

This resolution approves change order #2 to contract ITB-25-002-EN by an amount not to exceed \$500,000.00, and adds 120 days to the contract time.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

Chadd Chustz, Environmental
Projects Manager, Frankie
Kropacek, Community
Development Director

5. **Background:**

ITB-25-002-EN contracted EarthBalance to plant dune vegetation in accordance with the Town's Dune Management Plan at participating beach front properties. Town Council approved change order #1 to increased the contract price by \$95,720.00, resulting in a total contract price of \$605,579.50 to plant additional dune vegetation on participating properties to increase the width of the dune feature.

Dune plantings including, grasses, forbs, shrubs and trees, will stabilize a greater area of the beach, protecting the beach from erosion and attenuate wave action during storm surge and overwash events. In addition, the dune vegetation plantings will collect sand to elevate the dune over time. which will increase resilience of upland properties and infrastructure to wave action from storm surge. Lastly, canopy trees will provide shade for residents and visitors, as well as shield light pollution onto sea turtle nesting habitat.

Supplemental Task Order #2 of Contract # RFQ-24-06-AD between the Town of Fort Myers Beach and Coastal Engineering Consultants, Inc. will authorize surveys of the Town's Beach Accesses to establish the legal boundaries of the project. Once established, the Town will plant dune vegetation, including grasses, forbs, shrubs, and trees in the Town's beach accesses to increase the area of vegetated beach, mitigate light pollution, and provide shade.

Attachments:

1. Final 25-354, Change Order 2 ITB 25-02-EN EARTHBALANCE (1)

2. CO#2 ITB-25-002
3. 25-303, Change Order #1 ITB 25-02-EN Earthbalance Final for signatures
4. 25-209, Dune Planting Project Agreement - Earthbalance Corp Signed
5. FDEM Email re Survey Eligible
6. CO#2 ITB-25-002

Financial Impact:

FDEM Staff has confirmed that dune vegetation plantings are an eligible expense for LAP Grant D1502.

6. Alternative Action

Do not approve change order #2 to ITB-25-002-EN

7. Management Recommendations:

Authorize the Town Manager to execute change order #2 to contract ITB-25-02-EN.

8. Recommended Approval:

Chadd Chustz, Environmental Projects Manager
 Frankie Kropacek, Community Development Director
 nancy stuparich, Town Attorney
 Joe Onzick, Finance Director
 Amy Baker, Town Clerk
 William McKannay, Town Manager

Created/Initiated - 12/9/2025
 Approved - 12/9/2025
 Approved - 12/9/2025
 Approved - 12/9/2025
 Approved - 12/9/2025
 Final Approval - 12/9/2025

RESOLUTION NUMBER 25-354

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE CHANGE ORDER #2 TO CONTRACT ITB-25-02-EN BETWEEN THE TOWN OF FORT MYERS BEACH AND EARTHBALANCE CORPORATION TO ADD 120 DAYS TO THE DEADLINE FOR COMPLETION OF THE CONTRACT AND TO ALLOW AN INCREASE OF \$500,000 TO THE TOTAL AMOUNT OF THE CONTRACT, WHICH WILL NOW AUTHORIZE A CONTRACT PRICE NOT EXCEED \$1,105,579.50 AND WILL ALLOW FOR COMPLETION OF THE DUNE PLANTING PROJECT; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the Town of Fort Myers Beach recognizes the beach as a vital economic and environmental asset for the Town residents and businesses, and

WHEREAS, the Town of Fort Myers Beach recognizes the importance of the beach providing recreational space, native habitat for listed species, and storm impact reduction benefit to upland properties, and

WHEREAS, the Town of Fort Myers Beach is responsible for beach management, restoration and maintenance of the beach in its jurisdiction, and

WHEREAS, the Town of Fort Myers Beach recognizes increased dune vegetation on the beach is beneficial to the public by stabilizing beach sand from erosion and building dunes to protect upland property and infrastructure, and

WHEREAS, the Town Council approved Contract ITB-25-02-EN with EarthBalance Corporation for \$509,859.50 to be competed in 120 days; and

WHEREAS, the Town Council approved Change Order #1 to Contract ITB-25-02-EN with EarthBalance Corporation increasing the contract price by \$95,720.00, resulting in a total contract price of \$605,579.50; and

WHEREAS, it is in the best interest of the Town to approve the requested Change Order #2 of Contract ITB-25-02-EN to increase the contract price and completion deadline by 120 days in order to increase the area of dune restoration on the beach.

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

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

Section 2. The Town Council hereby approves Change Order #2 of Contract ITB-25-02-EN between the Town of Fort Myers Beach and EarthBalance, adding 120 days to the contract time, resulting in a total contract time of 240 days, and increasing the contract price by an amount not to exceed \$500,000.00, resulting in a total contract price not to exceed \$1,105,579.50. A copy of the Change Order #2 of Contract ITB-25-02-EN is attached hereto as Attachment "A".

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

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

ADOPTED this ____ day of _____, 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on _____.



TOWN of FORT MYERS BEACH

BID NO. ITB-25-02-EN

PART E

FMB:011 - CONSTRUCTION CONTRACT
CHANGE ORDERNo.: 2

(A Change Order requires approval by the Finance Director and Town Manager for expenditures under \$25,000, approval by the Town Council for expenditures over \$25,000).

CONTRACT/PROJECT NAME: DUNE PLANTING PROJECTCONTRACTOR: EarthBalance Corporation

PROJECT NO.: _____

CONTRACT NO.: ITB-25-02-ENBID NO.: ITB-25-02-ENCHANGE REQUESTED BY: DUNE PLANTING PROJECTDATE OF REQUEST: 12/15/2025

Upon the completion and execution of this Change Order by both parties to the Contract the Contractor is authorized to and shall proceed to make the following changes in the Contract Documents:

(If you need space other than what has been provided, please attach additional sheets.)

Description: The Town requested the contractor to plant additional dune vegetation at participating properties and beach accesses

Purpose of Change Order: Increase contract price and add contract time

Attachments: (List documents supporting change) _____

CHANGE IN CONTRACT PRICE:

Original Contract Price

\$509,859.50Previous Change Order No. N/A to No. N/A

Contract Price prior to this Change Order

\$605,579.50

Net Increase (Decrease) of this Change Order

Not to Exceed \$500,000.00

Contract Price with all approved Change Orders

\$605,579.50

CHANGE IN CONTRACT TIME:

Original Contract Time

120

Calendar Days

Net Change from previous Change Orders

0

Calendar Days

Contract Time prior to this Change Order

120

Calendar Days

Net Increase (Decrease) of this Change Order

120

Calendar Days

Contract Time with all approved Change Orders

240

Calendar Days

It is understood and agreed that the acceptance of this modification by the CONTRACTOR constitutes an accord and satisfaction, and represents payment in full (both time and money) for all costs arising out of, or incidental to, the above mentioned change.

RECOMMENDED:

By: _____

Consultant (if applicable)

Date _____

By: _____

Department Director

Date _____

Contracts Management

APPROVED:

Town Attorney

Date _____

ACCEPTED

By: _____

Contractor

Date Accepted: _____

(CORPORATE SEAL)

TOWN APPROVAL:

By: _____

Finance Director (Under \$25,000)

Date Approved: _____

By: _____

Town Manager (Under \$25,000)

Date Approved: _____

By: _____

Mayor, Town Council
(Over \$25,000)

Date Approved: _____

RESOLUTION NUMBER 25-303

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE CHANGE ORDER #1 TO CONTRACT ITB-25-02-EN BETWEEN THE TOWN OF FORT MYERS BEACH AND EARTHBALANCE CORPORATION INCREASING THE CONTRACT PRICE TO \$95,720.00 TO CONSTRUCT THE DUNE PLANTING PROJECT; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the Town of Fort Myers Beach recognizes the beach as a vital economic and environmental asset for the Town residents and businesses, and

WHEREAS, the Town of Fort Myers Beach recognizes the importance of the beach providing recreational space, native habitat for listed species, and storm impact reduction benefit to upland properties, and

WHEREAS, the Town of Fort Myers Beach is responsible for beach management, restoration and maintenance of the beach in its jurisdiction, and

WHEREAS, the Town of Fort Myers Beach recognizes increased dune vegetation on the beach is beneficial to the public by stabilizing beach sand from erosion and building dunes to protect upland property and infrastructure, and

WHEREAS, the Town Council approved Contract ITB-25-02-EN with EarthBalance Corporation for \$509,859.50 to be completed in 120 days; and

WHEREAS, it is in the best interest of the Town to approve the requested Change Order #1 of Contract ITB-25-02-EN to increase the area of dune vegetation on the beach.

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

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

Section 2. The Town Council hereby approves Change Order #1 of Contract ITB-25-02-EN between the Town of Fort Myers Beach and EarthBalance, increasing the contract price by \$95,720.00, resulting in a total contract price of \$605,579.50. A copy of the Change Order #1 of Contract ITB-25-02-EN is attached hereto as Attachment "A".

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

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

ADOPTED this 20th day of October 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____.



TOWN of FORT MYERS BEACH

BID NO. ITB-25-02-EN

PART E

FMB:011 - CONSTRUCTION CONTRACT
CHANGE ORDER

No.: 4

(A Change Order requires approval by the Finance Director and Town Manager for expenditures under \$25,000, approval by the Town Council for expenditures over \$25,000).

CONTRACT/PROJECT NAME: DUNE PLANTING PROJECT

CONTRACTOR: EarthBalance Corporation

PROJECT NO.:

CONTRACT NO.: ITB-25-02-EN

BID NO.:

ITB-25-02-EN

CHANGE REQUESTED BY: DUNE PLANTING PROJECT

DATE OF REQUEST: 10/20/2025

Upon the completion and execution of this Change Order by both parties to the Contract the Contractor is authorized to and shall proceed to make the following changes in the Contract Documents:

(If you need space other than what has been provided, please attach additional sheets.)

Description: The Town requested the contractor to plant additional dune vegetation at participating properties.

Purpose of Change Order: Increase contract price

Attachments: (List documents supporting change)

CHANGE IN CONTRACT PRICE:

Original Contract Price

\$509,859.50

Previous Change Order No. N/A to No. N/A

Contract Price prior to this Change Order

\$509,859.50

Net Increase (Decrease) of this Change Order

\$95,720.00

Contract Price with all approved Change Orders

\$605,579.50

CHANGE IN CONTRACT TIME:

Original Contract Time

120

Calendar Days

Net Change from previous Change Orders

0

Calendar Days

Contract Time prior to this Change Order

120

Calendar Days

Net Increase (Decrease) of this Change Order

0

Calendar Days

Contract Time with all approved Change Orders

120

Calendar Days

It is understood and agreed that the acceptance of this modification by the CONTRACTOR constitutes an accord and satisfaction, and represents payment in full (both time and money) for all costs arising out of, or incidental to, the above mentioned change.

RECOMMENDED:

By:

Consultant (if applicable)

Date

By:

Department Director

Date

Contracts Management

APPROVED:

Town Attorney

Date

ACCEPTED

By:

Cristine Borowski

Contractor

Date Accepted: 12/01/2025

TOWN APPROVAL:

By:

Finance Director (Under \$75,000)

Date Approved:

By:

Town Manager (Under \$75,000)

Date Approved:

By:

Mayor, Town Council
(Over \$75,000)

Date Approved:

(CORPORATE SEAL)





CHANGE ORDER #1

PROJECT NAME: Estero Island Dune Planting

ATTENTION: Chadd Chustz
Project Manager, Marine Operations
Town of Fort Myers Beach
2731 Oak St
Fort Myers Beach, FL 33931
Chadd@fmbgov.com

EarthBalance® has received a request from Town of Fort Myers Beach to perform additional work for the Estero Island Dune Planting project. The original Contract was signed on August 25, 2025, in the amount of \$509,859.50. The Terms and Conditions of the original Contract shall remain in full force.

The need for additional services has caused a change in the scope of the project and has prompted us to submit this contract addendum.

PRICE QUOTED:

Task	Description	Total Price
1	STA 335-338 Planting	\$12,737.35
2	STA 298-303 Planting	\$3,406.10
3	STA 41-44 Planting	\$1,690.70
4	STA 349 and 352 Planting	\$2,740.60
5	STA 370-374 Planting	\$10,181.60
6	STA 91-95 Planting	\$18,783.20
7	STA 113-115 Planting	\$2,990.00
8	STA 127-130 Planting	\$5,544.45
9	STA 185-188 Planting	\$12,951.75
10	STA 164-165 Planting	\$2,284.25
11	STA 299-309 Planting	\$22,410.00
Total		\$95,720.00



CHANGE ORDER #1 (continued)

PROJECT NAME: Estero Island Dune Planting

SCOPE OF WORK:

Task 1 – STA 335-338 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 335-338 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (1-gal)	EA	255	\$7.25	\$1,848.75
Sea oats (4-inch)	EA	544	\$2.65	\$1,441.60
Dune sunflower	EA	1,050	\$2.65	\$2,782.50
Dune panic grass	EA	805	\$2.65	\$2,133.25
Railroad vine	EA	625	\$7.25	\$4,531.25
TOTAL COST				\$12,737.35

EarthBalance® will perform the services described in **Task 1** for a lump sum fee of **\$12,373.35**.

Task 2 - STA 298-303 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 298-303 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (1-gal)	EA	55	\$7.25	\$398.75
Sea oats (4-inch)	EA	102	\$2.65	\$270.30
Dune sunflower	EA	356	\$2.65	\$943.40
Dune panic grass	EA	406	\$2.65	\$1,075.90
Railroad vine	EA	99	\$7.25	\$717.75
TOTAL COST				\$3,406.10

EarthBalance® will perform the services described in **Task 2** for a lump sum fee of **\$3,406.10**.



CHANGE ORDER #1 (continued)

PROJECT NAME: Estero Island Dune Planting

Task 3 – STA 41-44 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 41-44 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (4-inch)	EA	150	\$2.65	\$397.50
Dune sunflower	EA	244	\$2.65	\$646.60
Dune panic grass	EA	244	\$2.65	\$646.60
TOTAL COST				\$1,690.70

EarthBalance® will perform the services described in **Task 3** for a lump sum fee of **\$1,690.70**.

Task 4 – STA 349 and 352 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 349 and 352 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (1-gal)	EA	60	\$7.25	\$435.00
Sea oats (4-inch)	EA	72	\$2.65	\$190.80
Dune sunflower	EA	108	\$2.65	\$286.20
Dune panic grass	EA	504	\$2.65	\$1,335.60
Railroad vine	EA	68	\$7.25	\$493.00
TOTAL COST				\$2,740.60

EarthBalance® will perform the services described in **Task 4** for a lump sum fee of **\$2,740.60**.



CHANGE ORDER #1 (continued)

PROJECT NAME: Estero Island Dune Planting

Task 5 – STA 370-374 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 970-374 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (1-gal)	EA	575	\$7.25	\$4,168.75
Sea oats (4-inch)	EA	288	\$2.65	\$763.20
Dune sunflower	EA	956	\$2.65	\$2,533.40
Dune panic grass	EA	300	\$2.65	\$795.00
Railroad vine	EA	265	\$7.25	\$1,921.25
TOTAL COST				\$10,181.60

EarthBalance® will perform the services described in **Task 5** for a lump sum fee of **\$10,181.60**.

Task 6 – STA 91-95 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 91-95 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (1-gal)	EA	705	\$7.25	\$5,111.25
Dune sunflower	EA	1,958	\$2.65	\$5,188.70
Dune panic grass	EA	1,505	\$2.65	\$3,988.25
Railroad vine	EA	620	\$7.25	\$4,495.00
TOTAL COST				\$18,783.20

EarthBalance® will perform the services described in **Task 6** for a lump sum fee of **\$18,783.20**.



CHANGE ORDER #1 (continued)

PROJECT NAME: Estero Island Dune Planting

Task 7 – STA 113-115 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 113-115 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Dune sunflower	EA	400	\$2.65	\$1,060.00
Dune panic grass	EA	400	\$2.65	\$1,060.00
Railroad vine	EA	120	\$7.25	\$870.00
TOTAL COST				\$2,990.00

EarthBalance® will perform the services described in **Task 7** for a lump sum fee of **\$2,990.00**.

Task 8 – STA 127-130 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 127-130 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (1-gal)	EA	80	\$7.25	\$580.00
Sea oats (4-inch)	EA	415	\$2.65	\$1,099.75
Dune sunflower	EA	633	\$2.65	\$1,677.45
Dune panic grass	EA	415	\$2.65	\$1,099.75
Railroad vine	EA	150	\$7.25	\$1,087.50
TOTAL COST				\$5,544.45

EarthBalance® will perform the services described in **Task 8** for a lump sum fee of **\$5,544.45**.



CHANGE ORDER #1 (continued)

PROJECT NAME: Estero Island Dune Planting

Task 9 – STA 185-188 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 185-188 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (1-gal)	EA	575	\$7.25	\$4,168.75
Sea oats (4-inch)	EA	500	\$2.65	\$1,325.00
Dune sunflower	EA	620	\$2.65	\$1,643.00
Dune panic grass	EA	1,100	\$2.65	\$2,915.00
Railroad vine	EA	400	\$7.25	\$2,900.00
TOTAL COST				\$12,951.75

EarthBalance® will perform the services described in **Task 9** for a lump sum fee of **\$12,951.75**.

Task 10 – STA 164-165 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 164-165 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (1-gal)	EA	45	\$7.25	\$326.25
Sea oats (4-inch)	EA	80	\$2.65	\$212.00
Dune sunflower	EA	130	\$2.65	\$344.50
Dune panic grass	EA	310	\$2.65	\$821.50
Railroad vine	EA	80	\$7.25	\$580.00
TOTAL COST				\$2,284.25

EarthBalance® will perform the services described in **Task 10** for a lump sum fee of **\$2,284.25**.



CHANGE ORDER #1 (continued)

PROJECT NAME: Estero Island Dune Planting

Task 11 – STA 299-309 Planting

EarthBalance® will provide the labor and materials necessary to supply, deliver and install native plant species on STA 299-309 in Estero Island, Florida. Please refer to the table below for plant species, size, and quantity information. All plants will be delivered disease free and in good health at the time of installation. All work will be directed by a qualified Project Manager.

Item	Unit	QTY	Unit Price	Extended Price
Sea oats (1-gal)	EA	700	\$7.25	\$5,075.00
Sea oats (4-inch)	EA	1,800	\$2.65	\$4,770.00
Dune sunflower	EA	1,500	\$2.65	\$3,975.00
Dune panic grass	EA	1,600	\$2.65	\$4,240.00
Railroad vine	EA	600	\$7.25	\$4,350.00
TOTAL COST				\$22,410.00

EarthBalance® will perform the services described in **Task 11** for a lump sum **fee of \$22,410.00.**



CHANGE ORDER #1 (continued)

PROJECT NAME: Estero Island Dune Planting

The net amount for Change Order #1 is an increase of \$95,720.00.

Original Contract Amount	\$ 509,859.50
Change Order #1	\$ <u>95,720.00</u>
New Contract Amount	\$ 605,579.50

I hereby grant authorization for the Scope of Work and Fees listed above. I understand that all terms and conditions of the standard **EarthBalance®** Professional Services Agreement still apply to these requested services. This Change Order shall remain valid for a period not to exceed thirty (30) days beyond the submittal date of **October 6, 2025**.

QUOTED BY: James Barron
Project Manager
EarthBalance®
2570 Commerce Parkway
North Port, FL 34289
jbarron@earthbalance.com

EARTHBALANCE®

By: _____

Printed: _____

Title: Vice President

Date: _____, 2025

CLIENT

By: _____

Printed: _____

Title: _____

Date: _____, 2025

**INDEPENDENT CONTRACTOR'S AGREEMENT
ITB-25-02-EN**

THIS INDEPENDENT CONTRACTOR'S AGREEMENT (hereinafter this "Agreement") is effective the 4th day of August 2025 by and between the **TOWN OF FORT MYERS BEACH**, a Florida municipal corporation (hereinafter the "TOWN") and **EARTHBALANCE CORPORATION**, a Florida corporation (hereinafter "CONTRACTOR").

WITNESSETH

WHEREAS, the TOWN is a municipal corporation in the State of Florida, having a responsibility to provide certain services to benefit the citizens of the TOWN OF FORT MYERS BEACH; and

WHEREAS, the TOWN has the full power and authority to enter into the transactions contemplated by this Agreement; and

WHEREAS, CONTRACTOR is in the business of Dune Vegetation and Planting in the TOWN and elsewhere in the State of Florida; and

WHEREAS, CONTRACTOR is competent and has sufficient manpower, training, and technical expertise to perform the services contemplated by this Agreement in a timely and professional manner consistent with the standards of the industry in which CONTRACTOR operates; and

WHEREAS, CONTRACTOR was the successful bidder for an advertised Invitation to Bid identified as ITB-25-02-EN, "ESTERO ISLAND DUNE PLANTING PROJECT," which satisfies the TOWN's Procurement Policy; and

WHEREAS, Section 286.101, Florida Statutes contains a list of "foreign countries of concern" including, the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such "foreign country of concern". Any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those "foreign countries of concern" to the Florida Department of Financial Services; and

WHEREAS, CONTRACTOR agrees to provide such goods and services as more particularly described in this Agreement, as well as in any bid or proposal documents issued in connection with this project.

NOW THEREFORE in consideration of the premises, and in consideration of the mutual conditions, covenants, and obligations hereafter expressed, the parties agree as follows:

- 1) **Recitals.** The foregoing recitals are true and correct, constitute a material inducement to the parties to enter into this Agreement, and are hereby ratified and made a part of this Agreement.
- 2) **Description of Work.**
 - a) The TOWN hereby retains CONTRACTOR to furnish goods and services as described in the Scope of Services, which is attached hereto as **Exhibit "A"** and incorporated herein by reference. Any conflict between the terms and conditions in the body of this Agreement and the terms and conditions set forth in **Exhibit "A"** will be resolved in favor of the body of this Agreement.
 - b) CONTRACTOR must provide all permits, labor, materials, equipment, and supervision necessary for the completion of the Scope of Services, unless specifically excluded.
 - c) CONTRACTOR must also comply with, and abide by, all requirements as contained in any invitation to bid (ITB) (here, ITB-25-02-EN), request for proposals (RFP), request for qualifications (RFQ), bid specifications, engineering plans, shop drawings, material lists, or other similar documents issued for this project by the TOWN, together with any addenda, hereinafter the "Bid Documents, as applicable." The Bid Documents, as applicable, are hereby incorporated into this Agreement by reference and are declared to be material part of this Agreement.
- 3) **Commencement and completion/Term.**
 - a) CONTRACTOR must commence work under this Agreement immediately upon receipt by CONTRACTOR of the Notice to Proceed and must and must complete the work not later than 120 calendar days thereafter.
 - b) Liquidated damages will be assessed against CONTRACTOR in the amount of \$500.00 per day, for each day beyond the Final Completion deadline that the work contemplated by this Agreement is incomplete. The Town shall have the right to deduct all liquidated damages due from the final payment request as well as any retainage.
- 4) **Payment.**
 - a) The TOWN agrees to compensate CONTRACTOR, for work actually performed under this Agreement, at the rate or basis described in **Exhibit "B"**, which is attached hereto and incorporated herein by reference. CONTRACTOR must perform all work required by the Scope of Services, but in no event will CONTRACTOR be paid more than the negotiated amounts set forth in **Exhibit "B."**
 - b) Progress payments, if any, will be made as set forth in **Exhibit "B"**.
 - c) The TOWN reserves the right to ratably withhold amounts in the event of the nonperformance of all or part of CONTRACTOR's obligations. CONTRACTOR must,

without additional compensation, correct and revise any errors, omissions, or other deficiencies in its work product, services, or materials arising from the error or omission or negligent act of CONTRACTOR.

5) **Acceptance of work product, payment, and warranty.**

- a) **Installment Payments.** Upon receipt of a periodic work product or notice that work has progressed to a point of payment in accordance with **Exhibit “B”** attached or the Bid Documents, if any, together with an invoice sufficiently itemized to permit audit, the TOWN will diligently review those documents. When it finds the work acceptable under this Agreement the installment payment, found to be due to CONTRACTOR, will be paid to CONTRACTOR within thirty (30) days after the date of receipt of the invoice, unless another payment schedule is provided in **Exhibit “B”**.
- b) **Final Payment.** Upon receipt of written notice that the work is ready for final inspection and acceptance, the TOWN will promptly make such inspection. When it finds the work acceptable under this Agreement and the contract fully performed, it will promptly issue a final certificate stating that the work provided for in this Agreement has been completed, and acceptance by the TOWN under the terms and the conditions thereof, is recommended and the entire balance, found to be due to CONTRACTOR, will be paid to CONTRACTOR within thirty (30) days after the date of the final certificate. Before issuance of final certificate, CONTRACTOR must submit an affidavit satisfactory to the TOWN that all payrolls, subcontractors, materialmen, and other similar bills and indebtedness connected with the work have been paid.
- c) **Warranty.** CONTRACTOR warrants that the data utilized by CONTRACTOR (other than as provided by the TOWN) is from a source, and collected using methodologies, which are generally recognized in CONTRACTOR’s industry or profession to be a reliable basis and foundation for CONTRACTOR’s work product. CONTRACTOR must notify the TOWN in writing if it appears, in CONTRACTOR’s professional judgement that the data or information provided by the TOWN for use in CONTRACTOR’s work product is incomplete, defective, or unreliable.
- d) **Performance Guarantee.** CONTRACTOR guarantees to repair, replace or otherwise make good to the satisfaction of the TOWN any defect in workmanship or material appearing in the work; and further guarantees the successful performance of the work for the service intended. Neither inspection nor payment, including final payment, by the TOWN will relieve CONTRACTOR from its obligations to do and complete the work in accordance with this Agreement. If the TOWN deems it inexpedient to require CONTRACTOR to correct deficient or defective work, the TOWN will make an equitable deduction from the contract price, or, in the alternative, the TOWN may seek damages.

6) **Termination.**

- a) **Termination at Will:** This Agreement may be terminated by the TOWN in whole or in part at any time without cause by the TOWN giving written notice to CONTRACTOR not

less than 30 days prior to the date of termination; provided, however, that in such event, neither party will be relieved from its rights or obligations of this Agreement through the date of the actual termination. Notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery.

- b) Termination for Cause: This Agreement may be terminated by either party for cause by the TOWN or CONTRACTOR giving written notice to the other party not less than 10 days prior to the date of termination; provided, however, that in such event, neither party will be relieved from its rights or obligations of this Agreement through the date of the actual termination. Notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery.

7) **Project management.**

- a) The Project Managers for this project are as follows. Any subsequent changes to the Project Manager for either party may be provided by notice as described in paragraph 8 below and does not require an amendment to this Agreement.

(1) TOWN's Project Manager is: Chadd Chustz, Environmental Projects Manager

(2) CONTRACTOR's Project Manager is: James Barron, Project Manager.

- 8) **Notices.** All notices to the parties under this Agreement must be in writing and sent certified mail to:

- a) To TOWN: Fort Myers Beach Town Council, Attention: Town Manager, 6231 Estero Blvd, FORT MYERS BEACH, Florida 33931;

b) To CONTRACTOR: EARTHBALANCE CORPORATION Attention: ~~SARAH J LAROQUE~~, CRISTINE BOROWSKI, Vice President, 2570 Commerce Parkway, North Port, FL 34289

9) **Insurance.**

- a) CONTRACTOR must maintain such insurance as will fully protect both CONTRACTOR and the TOWN from any and all claims under any Workers Compensation Act or Employers Liability Laws, and from any and all other claims of whatsoever kind or nature to the damage or property, or for personal injury, including death, made by anyone whomsoever, that may arise from operations carried on under this Agreement, either by CONTRACTOR, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them.
- b) The insurance coverage required by this Agreement must not be less than the amounts described in the Bid Documents. If the Bid Documents do not state an insurance requirement or the amount of insurance, then the amount of insurance required by this Agreement must not be less than:

- i) Workers' Compensation (unless exempt) with Employers' Liability with a limit of \$500,000.00 each accident, \$500,000.00 each employee, \$500,000.00 policy limit for disease;
 - ii) Commercial General Liability (CGL) insurance with a limit of not less than \$1,000,000.00 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location and project in the amount of \$1,000,000.00. Products and completed operations aggregate shall be \$1,000,000.00. CGL insurance shall be written on an occurrence form and include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x, c, u) exposures, personal injury, and advertising injury. Damage to rented premises shall be included at \$100,000.00.
 - iii) Commercial Automobile Liability Insurance with a limit of not less than \$1,000,000.00 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos) and such policy shall be endorsed to provide contractual liability coverage; and
 - iv) Fire damage liability shall be included at \$500,000.00.
 - c) CONTRACTOR must furnish the TOWN with Certificates of Insurance, which are to be signed by a person authorized by that insurer to bind coverage on its behalf. The TOWN is to be specifically included as an additional insured and loss payee on all policies except Workers' Compensation. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate must be issued 30 days prior to the expiration date. The policy must provide a 30-day notification clause in the event of cancellation or modification to the policy. All certificates of insurance must be on file with and approved by the TOWN before commencement of any work activities.
 - d) The insurance coverages procured by CONTRACTOR as required herein will be considered as primary insurance over and above any other insurance, or self-insurance, available to CONTRACTOR, and any other insurance, or self-insurance available to CONTRACTOR will be considered secondary to, or in excess of, the insurance coverage(s) procured by CONTRACTOR as required herein.
- 10) **General Provisions.** CONTRACTOR must comply with the following general provisions:
- a) **Bond.** If a surety bond has been required by the Bid Documents for CONTRACTOR's faithful performance and payment, and if at any time the surety is no longer acceptable to the TOWN, CONTRACTOR must, at its expense, within five (5) days after the receipt of notice from the TOWN to do so, furnish an additional bond or bonds in such form and with such Surety or Sureties as are satisfactory to the TOWN. The TOWN will not make any further payment to CONTRACTOR, nor will any further payment be deemed to be due to CONTRACTOR, until such new or additional security for the

faithful performance of the work is furnished in a manner and form satisfactory to the TOWN.

- b) **Compliance with Laws.** In providing the Scope of Services, CONTRACTOR must comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations pertaining to or regulating the provision of such services, including those now in effect and hereafter adopted.
- c) **Personal nature of Agreement; Assignment.**
 - i) The parties acknowledge that the TOWN places great reliance and emphasis upon the knowledge, expertise, training, and personal abilities of CONTRACTOR. Accordingly, this Agreement is personal and CONTRACTOR is prohibited from assigning or delegating any rights or duties hereunder without the specific written consent of the TOWN.
 - ii) If CONTRACTOR requires the services of any subcontractor or professional associate in connection with the work to be performed under this Agreement, CONTRACTOR must obtain the written approval of the TOWN Project Manager prior to engaging such subcontractor or professional associate. CONTRACTOR will remain fully responsible for the services of any subcontractors or professional associates.
- d) **Discrimination.**
 - i) CONTRACTOR shall not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, ethnicity, race, religious belief, disability, national origin, or sex. CONTRACTOR shall not exclude any person, on the grounds of age, ethnicity, race, religious belief, disability, national origin, or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under, this Agreement.
 - ii) CONTRACTOR shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management.
- e) **Independent contractor.**
 - i) CONTRACTOR is, and will be deemed to be, an independent contractor and not a servant, employee, joint adventurer, or partner of the TOWN. None of CONTRACTOR's agents, employees, or servants are, or will be deemed to be, the agent, employee, or servant of the TOWN. None of the benefits, if any, provided by the TOWN to its employees, including but not limited to, compensation insurance and unemployment insurance, are available from the TOWN to the employees, agents, or servants of CONTRACTOR. CONTRACTOR will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, and subcontractors during the performance of this Agreement. Although CONTRACTOR is an independent contractor, the work contemplated herein must meet the approval of the TOWN

and is subject to the TOWN's general right of inspection to secure the satisfactory completion thereof. CONTRACTOR must comply with all Federal, State and municipal laws, rules and regulations that are now or may in the future become applicable to CONTRACTOR, or to CONTRACTOR's business, equipment, or personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations. The TOWN will not be held responsible for the collection of or the payment of taxes or contributions of any nature on behalf of CONTRACTOR.

- ii) CONTRACTOR will bear all losses resulting to it on account of the amount or character of the work, or because of bad weather, or because of errors or omissions in its contract price.
- iii) CONTRACTOR must utilize, and must expressly require all subcontractors to utilize, the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by CONTRACTOR and any subcontractors during the Term of this Agreement.

f) Indemnification.

- i) CONTRACTOR must indemnify and hold the TOWN harmless against and from any and all claims, losses, penalties, interest, demands, judgments, costs, damages, or expenses, including attorney's fees and court costs, incurred by the TOWN, or its agents, officers, or employees, arising directly or indirectly from CONTRACTOR's performance under this Agreement or by any person on CONTRACTOR's behalf, including but not limited to those claims, losses, penalties, interest, demands, judgments, costs, damages, or expenses arising out of any accident, casualty, or other occurrence causing injury to any person or property. This includes persons employed or utilized by CONTRACTOR (including CONTRACTOR's agents, employees, and subcontractors). CONTRACTOR must further indemnify the TOWN against any claim that any product purchased or licensed by the TOWN from CONTRACTOR under this Agreement infringes a United States patent, trademark, or copyright. CONTRACTOR acknowledges that CONTRACTOR has received consideration for this indemnification, and any other indemnification of the TOWN by CONTRACTOR provided for within the Bid Documents, the sufficiency of such consideration being acknowledged by CONTRACTOR, by CONTRACTOR's execution of this Agreement. CONTRACTOR's obligation will not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance, whether such insurance is in connection with this Agreement or otherwise. Such indemnification is in addition to any and all other legal remedies available to the TOWN and not considered to be the TOWN's exclusive remedy.
- ii) In the event that any claim in writing is asserted by a third party which may entitle the TOWN to indemnification, the TOWN must give notice thereof to CONTRACTOR, which notice must be accompanied by a copy of statement of the claim. Following the notice, CONTRACTOR has the right, but not the obligation, to participate at its sole expense, in the defense, compromise or settlement of such claim with counsel of its choice. If CONTRACTOR does not

timely defend, contest, or otherwise protect against any suit, action or other proceeding arising from such claim, or in the event the TOWN decides to participate in the proceeding or defense, the TOWN will have the right to defend, contest, or otherwise protect itself against same and be reimbursed for expenses and reasonable attorney's fees and, upon not less than ten (10) days notice to CONTRACTOR, to make any reasonable compromise or settlement thereof. In connection with any claim as aforesaid, the parties hereto must cooperate fully with each other and make available all pertinent information necessary or advisable for the defense, compromise or settlement of such claim.

iii) The indemnification provisions of this paragraph will survive the termination of this Agreement.

g) **Sovereign Immunity.** Nothing in this Agreement extends, or will be construed to extend, the TOWN's liability beyond that provided in section 768.28, Florida Statutes. Nothing in this Agreement is a consent, or will be construed as consent, by the TOWN to be sued by third parties in any matter arising out of this Agreement.

h) **Public records.**

i) CONTRACTOR is a "Contractor" as defined by Section 119.0701(1)(a), Florida Statutes, and must comply with the public records provisions of Chapter 119, Florida Statutes, including the following:

- (1) Keep and maintain public records required by the TOWN to perform the service.
- (2) Upon request from the TOWN's custodian of public records, provide the TOWN with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement term and following completion of the Agreement if CONTRACTOR does not transfer the records to the TOWN.
- (4) Upon completion of this Agreement, transfer, at no cost, to the TOWN all public records in possession of CONTRACTOR or keep and maintain public records required by the TOWN to perform the service. If CONTRACTOR transfers all public records to the TOWN upon completion of this Agreement, CONTRACTOR must destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of this Agreement, CONTRACTOR must meet all applicable requirements for retaining public records. All records stored electronically must be provided to the TOWN, upon request from the TOWN's custodian of public records, in a format that is compatible with the information technology systems of the TOWN.

- ii) "Public records" is defined in Section 119.011(12), Florida Statutes, as may, from time to time, be amended.
- iii) If CONTRACTOR asserts any exemptions to the requirements of Chapter 119 and related law, CONTRACTOR will have the burden of establishing such exemption, by way of injunctive or other relief as provided by law.
- iv) CONTRACTOR consents to the TOWN's enforcement of CONTRACTOR's Chapter 119 requirements, by all legal means, including, but not limited to, a mandatory injunction, whereupon CONTRACTOR must pay all court costs and reasonable attorney's fees incurred by TOWN.
- v) CONTRACTOR's failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by CONTRACTOR will be grounds for immediate unilateral cancellation of this Agreement by the TOWN.
- vi) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, TOWN CLERK, AT (239) 765-0202, FMBPUBLICRECORDS@FMB.GOV; MAILING ADDRESS: 6231 ESTERO BLVD, FORT MYERS BEACH, FLORIDA 33931.**

- i) **Public Records Compliance Indemnification.** Contractor agrees to indemnify and hold the County harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.
- j) **Non-Appropriation.** Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year-end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.
- k) **Federal or State Funding.** If any portion of the funding for this Agreement is derived from the State of Florida, or any department of the State of Florida, or from federal funding through the State of Florida, the provisions of this sub-paragraph shall apply,

provisions elsewhere in this Agreement to the contrary notwithstanding. CONTRACTOR shall make inquiry from the TOWN's Project Manager to determine whether Federal or State funding is applicable to this Agreement.

- i) E-Verify. CONTRACTOR must utilize, and must expressly require all subcontractors to utilize, the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by CONTRACTOR during the Term of this Agreement.
- ii) Agency. CONTRACTOR agrees and acknowledges that it, its employees, and its subcontractors are not agents or employees of the Federal Government, of the State of Florida, or of any department of the Federal Government or the State of Florida.
- iii) Indemnification. To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless the TOWN, the Federal Government, the State of Florida, any department of the Federal Government or the State of Florida, and all officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of CONTRACTOR and persons employed or utilized by CONTRACTOR in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the TOWN's sovereign immunity.
- iv) Workers' Compensation Insurance. CONTRACTOR must provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, CONTRACTOR must ensure that the subcontractor(s) have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), CONTRACTOR must ensure that such employees are covered by Workers' Compensation insurance through the PEO's or other leasing entities. CONTRACTOR must ensure that any equipment rental agreements that include operators or other personnel who are employees of independent Contractors, sole proprietorships or partners are covered by insurance required under Florida's Workers' Compensation law.
- v) Liability Insurance. Contractor shall carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. CONTRACTOR shall cause the State of Florida to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the State of Florida as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general

aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Contract, and may not be shared with or diminished by claims unrelated to this Agreement. The policy/ies and coverage described herein may be subject to a deductible. CONTRACTOR shall pay all deductibles as required by the policy. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention. At all renewal periods which occur prior to final acceptance of the work, the TOWN and the State of Florida shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The TOWN and the State of Florida shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The TOWN's or the State of Florida's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the TOWN or the State of Florida may have.

- vi) Inspections. CONTRACTOR shall permit, and require its subcontractors to permit, the TOWN's and the State of Florida's authorized representatives to inspect all work, materials, payrolls, and records, to audit the books, records, and accounts pertaining to the financing and development of the Services described herein and in the bid documents.
- vii) Auditor General Cooperation. CONTRACTOR shall comply with §20.055 (5), Florida Statutes, and shall incorporate in all subcontracts the obligation to comply with §20.055 (5), Florida Statutes.
- l) **FDEP Grant Requirements.** All or a portion of this Project is being funded by the State of Florida Department of Environmental Protection ("FDEP") through FDEP Standard Grant Agreement No. LW738 ("FDEP Grant Agreement") with the TOWN, which requires that certain terms be incorporated into agreements funded thereby. This Agreement is subject to, and CONTRACTOR shall comply with, the provisions and terms set forth in **Exhibit C** ("Contract Provisions for FDEP-Funded Agreements") attached hereto and incorporated herein by reference. Any conflict between the terms and conditions in the body of this Agreement and the terms and conditions set forth in **Exhibit C** will be resolved in favor of **Exhibit C**.
- m) **Additional Federal Funding Requirements.** All or a portion of the funding for this project may be derived from federal funding, which requires that certain terms be incorporated into agreements funded thereby. This Agreement is subject to, and CONTRACTOR shall comply with, the provisions and terms set forth in **Exhibit D** ("Federal Supplemental Conditions") attached hereto and incorporated herein by reference. Any conflict between the terms and conditions in the body of this Agreement and the terms and conditions set forth in **Exhibit D** will be resolved in favor of **Exhibit D**.

- n) **State-Funded LAP Grant Requirements.** All or a portion of this Project is being funded by the State of Florida Division of Emergency Management through State-Funded LAP Grant Agreement No. D1502 ("LAP Grant Agreement") with the TOWN, which requires that certain terms be incorporated into agreements funded thereby. This Agreement is subject to, and CONTRACTOR shall comply with, the provisions and terms set forth in the LAP Grant Agreement attached hereto as **Exhibit E** incorporated herein by reference. Any conflict between the terms and conditions in the body of this Agreement and the terms and conditions set forth in **Exhibit E** will be resolved in favor of **Exhibit E**. Moreover, pursuant to the LAP Grant Agreement, CONTRACTOR hereby agrees that:
- i) CONTRACTOR is bound by the terms of the LAP Grant Agreement attached hereto as **Exhibit E**;
 - ii) CONTRACTOR is bound by all applicable state and federal laws and regulations, including those identified in Attachment B to the LAP Grant Agreement; and
 - iii) CONTRACTOR shall hold the Division and Recipient harmless against all claims of whatever nature arising out of the CONTRACTOR performance of work under this Agreement, to the extent allowed and required by law.
- o) **Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. CONTRACTOR hereby certifies that CONTRACTOR is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. CONTRACTOR further hereby certifies that CONTRACTOR is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. CONTRACTOR understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject CONTRACTOR to civil penalties, attorney's fees, and/or costs. CONTRACTOR further understands that any contract with TOWN for goods or services of any amount may be terminated at the option of TOWN if CONTRACTOR (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of TOWN if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with

Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

- p) **Disclosure Requirements for “Foreign Countries of Concern”.** CONTRACTOR shall comply with the disclosure requirements set forth in section 286.101 (3) (a), F.S., which requires “Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a “foreign country of concern” if such interest, contract, grant or gift received from a “foreign country of concern” if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable “foreign country of concern” and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services”. Pursuant to section 268.101(7), F.S.: “In addition to any fine assessed under [section 286.101(7)(a), F.S.], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause.”
- q) **Public Entities Crime or Convicted Vendor List.** CONTRACTOR agrees and assumes a continuous duty to disclose to the TOWN if the CONTRACTOR or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.
- r) **Data Management; Notice of Breach.** CONTRACTOR shall cooperate with the TOWN and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports, etc., which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.
- s) **Environmental and Social Government and Corporate Activism.** The TOWN has not given preference or requested documentation from the CONTRACTOR based on CONTRACTOR’s social, political or ideological interest. CONTRACTOR agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor’s social, political or ideological interests.
- t) **No Coercion for Labor or Services.** CONTRACTOR swears under penalty of perjury that CONTRACTOR does not use coercion for labor or services as defined as follows:

- i) "Coercion" means:
 - (1) Using or threatening to use physical force against any person;
 - (2) Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
 - (3) Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
 - (4) Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
 - (5) Causing or threatening to cause financial harm to any person;
 - (6) Enticing or luring any person by fraud or deceit; or
 - (7) Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.
- 11) **Miscellaneous Provisions.** The following miscellaneous provisions apply to this Agreement:
- a) **Binding Nature of Agreement.** This Agreement is binding upon the successors and assigns of the parties hereto.
 - b) **Entire Agreement.** This Agreement states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. CONTRACTOR recognizes that any representations, statements, or negotiations made by the TOWN staff do not suffice to legally bind the TOWN in a contractual relationship unless they have been reduced to writing, authorized, and signed by the authorized TOWN representatives.
 - c) **Amendment.** No modification, amendment, or alteration in the terms or conditions of this Agreement will be effective unless contained in a written document executed with the same formality as this Agreement.
 - d) **Severability.** If any term or provision of this Agreement is held, to any extent, invalid or unenforceable, as against any person, entity, or circumstance during the Term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity will not affect any other term or provision of this Agreement, to the extent that the Agreement will remain operable, enforceable, and in full force and effect to the extent permitted by law.
 - e) **Construction.** If any provision of this Agreement becomes subject to judicial interpretation, the court interpreting or considering such provision should not apply the presumption or rule of construction that the terms of this Agreement be more strictly construed against the party which itself or through its counsel or other agent prepared it. All parties hereto have participated in the preparation of the final form of this Agreement through review by their respective counsel, if any, or the negotiation of

specific language, or both, and, therefore, the application of such presumption or rule of construction would be inappropriate and contrary to the intent of the parties.

- f) **Headings.** All headings in this Agreement are for convenience only and are not to be used in any judicial construction or interpretation of this Agreement or any paragraph.
 - g) **Waiver.** The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement does not constitute a waiver of the provision or any portion of this Agreement, either at the time the breach or failure occurs or at any time throughout the term of this Agreement. The review of, approval of, or payment for any of CONTRACTOR's work product, services, or materials does not operate as a waiver, and should not be construed as a waiver, of any of the TOWN's rights under this Agreement, or of any cause of action the TOWN may have arising out of the performance of this Agreement.
 - h) **Force Majeure.** Notwithstanding any provisions of this Agreement to the contrary, the parties will not be held liable if failure or delay in the performance of this Agreement arises from fires, floods, strikes, embargos, acts of the public enemy, unusually severe weather, out break of war, restraint of government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. This provision does not apply if the "Scope of Services" of this Agreement specifies that performance by CONTRACTOR is specifically required during the occurrence of any of the events herein mentioned.
 - i) **Law; Venue.** This Agreement is being executed in Lee County, Florida and is governed in accordance with the laws of the State of Florida. Venue of any action hereunder will be in Lee County, Florida.
- 12) **Special Provisions.**
- a. This Agreement is a non-exclusive contract; the TOWN is not prohibited, or deemed to be prohibited, from bidding similar services either as an independent job or a component of a larger project.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Agreement effective the date first written above.

Under penalties of perjury, and pursuant to Sec. 92.525, Fla. Stat., CONTRACTOR declares that CONTRACTOR has read the foregoing Section 10(r) above and that the facts stated in it are true.

TOWN OF FORT MYERS BEACH, a
Florida municipal corporation

WB McKannay

WILLIAM B. MCKANNAY
TOWN MANAGER
AS AUTHORIZED ON: June 16, 2025

ATTEST:

Amy Baker

Amy Baker (Aug 19, 2025 14:45:01 EDT)

(Seal)

AMY BAKER, TOWN CLERK
Date signed by TOWN: 19/08/2025

EARTHBALANCE CORPORATION
a Florida Corporation

by *Cristine Borowski*

SARAH J LAROQUE as its President and
authorized agent
CRISTINE BOROWSKI, as its Vice President
and authorizer signer
(CORPORATE SEAL)

ATTEST:

Amy Provencal

_____, Secretary *Vice President*

STATE OF FLORIDA
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this 8 day of AUGUST, 2025, by ~~SARAH J LAROQUE, President~~ CRISTINE BOROWSKI, Vice President of EARTHBALANCE CORPORATION, a Florida, on behalf of the corporation, and he/she is personally known to me or has produced _____ as identification.

Lisa Stansbury

Signature of Notary Public - State of Florida

Lisa Stansbury

Printed/Typed/Stamped Name of Notary
My commission expires

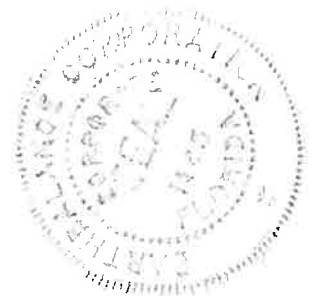


EXHIBIT A – SCOPE OF WORK



TOWN of FORT MYERS BEACH

ESTERO ISLAND PLANTING PROJECT TECHNICAL SPECIFICATIONS

TS-1.0 Scope of Work

The Project is located along Estero Island within the Town of Fort Myers Beach (Town). The purpose of Project is to transport, deliver, and plant a minimum 10-foot wide dune with native vegetation along Estero Island. The Work to be performed under the Contract consists of furnishing all labor, equipment, supplies, materials, transportation, fuel, power and water, providing environmental protection, and performing all operations in connection with the Estero Island Dune Planting Project.

Plants will be placed within the project design template. Mitigation will consist of using plants larger than 2-inches. The actual number of plants used will be determined at the time of construction based on the area available for planting and the plants available from the suppliers.

This Work must be completed according to the Contract documents within the time specified in the Contract and within compliance with the conditions of the Federal, State, and local permits (Permits) and the Town's approved Dune Management Plan, attached to the Bid Documents and incorporated therein. The Contractor is solely responsible for all construction means, methods, techniques, procedures, lay out, and the sequence of the Work except as set forth in section "Order of Work".

TS-2.0 Submittals

TS-2.1 Work Plan

Prior to commencement of Work the Contractor shall submit to the Town and Engineer for approval, a Work Plan to cover all specified operations. The Work Plan shall include, but not be limited to, the means and methods to be employed to accomplish site access and staging; mature dune vegetation purchase and growing schedule; planting installation, fertilizing, and watering; site restoration; best management practices; storm emergency plan; health and safety plan; environmental protection plan; pollution control plan; and manufacturers' specifications and certifications. The Work Plan shall also include the Progress Schedule, Schedule of Values, Construction Sequence, Quality Control, and Order of Work. The Town and Engineer shall review the Work Plan, and the Contractor shall make necessary revisions prior to acceptance of the Work Plan.

TS-2.2 Daily Reports

The Contractor, in addition to his responsibilities as set forth in the General Provisions, shall provide to the Town, "Daily Construction" Reports. These reports shall be completed and submitted to the Town by 1:00 p.m. on the day after the Work covered by the report.

TS-3.0 Construction Sequence

TS-3.1 Order of Work

In general, the Order of Work shall be as follows. Any changes in the Order of Work must be submitted in writing and approved by the Town and Engineer prior to initiation of the specific Work activity.

- (1) Pre-construction submittals and notifications
- (2) Mobilize
- (3) Prepare site access and staging areas
- (4) Implement best management practices
- (5) Plant dune vegetation
- (6) Adjust access points for select properties
- (7) Complete site restoration and staging areas
- (8) Demobilize

EXHIBIT A – SCOPE OF WORK



TOWN of FORT MYERS BEACH

The Contractor shall work cooperatively with the Town to provide public access to the beach during the Contract Time. Only one beach access shall be closed at a time unless approved otherwise in writing by the Town.

TS-3.2 Time of Operations

The Contractor is allowed to conduct work activities during daylight hours Monday through Friday, excluding weekends and Holidays, at the Contractor's discretion, provided that the Contractor complies with all applicable labor laws. The Contractor may request in writing with minimum 5-day notice to the Town to conduct work on weekends. The Town will review each request individually.

TS-4.0 Payment

TS-4.1 Dune Vegetation

Payment shall be made for materials and work specified in connection with the growing and purchasing of mature dune plants meeting the requirements of these specifications, and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract unit prices for Bid Item "Dune Vegetation." Payment shall be made for materials and work specified in connection with the transportation, installation, fertilization, and irrigation of mature dune plants meeting the requirements of these specifications, and all other appropriate costs in connection therewith or incidental thereto. The unit price per plant will be used to calculate the final payment based on the final number of planting units installed. The Engineer will determine the final number of planting units accepted as planting units eligible for payment. Fifty percent (50%) will be paid upon receipt of proof of the quantities and sizes required by the specifications. The remaining fifty percent (50%) will be paid after verification on installation.

TS-4.2 Adjustments

Payment shall be made for materials and work specified in connection with the replanting of dune plants to adjust beach access through the dune plantings on select properties, and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract unit prices for Bid Item "Adjustments."

TS-4.3 Warranty

Payment shall be made for materials and work specified in connection with the warranty and replanting meeting the requirements of these specifications, and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract lump sum for Bid Item "Dune Warranty." The Dune Warranty shall be eligible for payment after the two month replanting (25%), 4 month replanting (25%), and 6 months after achieving the success criteria (50%).

TS-5.0 Work Area

TS-5.1 Limits of Construction

Areas in the vicinity of the Project area contain sensitive environmental habitats. The Contractor shall avoid these habitats and is responsible for environmental protection. All Work must be confined to the Contractor's Work area. No plant or equipment may operate or transit outside the property boundary or Work limits. All construction areas shall be restored to pre-construction conditions, or better as part of demobilization. Existing vegetation shall be disturbed to the minimum extent necessary to complete the Work within the permitted Work limits.

TS-5.2 No Work Zones

No Work Zones are shown on the Contract Plans that correspond to property owners who have not provided the Town with temporary construction easements. The Contractor shall not encroach into the No Work Zones with any work, equipment, personnel or material.

EXHIBIT A – SCOPE OF WORK



TOWN of FORT MYERS BEACH

TS-5.3 Security

The Contractor is permitted to exclude the public from his immediate Work area subject to the provisions of the Construction Sequence and these Specifications as necessary to perform the Work and to operate in accordance with the General Conditions of the Contract. Enforcement shall be the Contractor's responsibility at no additional cost to the Town. The enforcement shall be coordinated with local enforcement agencies and will be subject to approval of the Town.

TS-5.4 Site Access and Staging

Site access and staging areas shall be confined to the Contractor's Work area and are shown on the Contract Plans. Procurement of any additional access routes for ingress and egress to the Work area shall be obtained by and at the expense of the Contractor. The Contractor shall confine his plant, equipment, materials, and operations of personnel to areas permitted by law, ordinances, permits and the requirements of the Contract Documents, and shall not unreasonably encumber the premises with plant, equipment, and materials. The Contractor must control noise and must control wind-blown sand, silt and dust while using the accesses. The Contractor is responsible for preparation and restoration of the site access and staging areas. The Contractor is required to submit a site access and staging area plan including restoration measures prior to their usage. The costs for, but not limited to, earthwork, grading, signage, fencing, walls, guardrails, curbing, paving, stairways, and vegetation removal and reinstallation, along with removal and installation of any other facilities are included in the lump sum price for Bid Item "Mobilization and Demobilization". Disposal of any cleared vegetation, debris and rubbish shall be in a manner acceptable to the Town and Engineer.

TS-5.5 Protection of Existing Facilities

During all phases of the Work including but not limited to staging, site access, dune vegetation planting, and site restoration, the Contractor shall implement best management practices to protect and stabilize the existing facilities within and adjacent to the Work Area and to prevent damage thereto by the Contractor's operations. Where existing facilities are damaged, they shall be immediately repaired in conformance with the best construction standards of practice.

TS-5.6 Noise

The Contractor shall conduct their operations to comply with all Federal, State, and local laws pertaining to noise. The Contractor shall use a decibel meter and keep records as necessary to verify the Work is being conducted accordingly.

TS-5.7 Existing Utilities

It shall be the responsibility of the Contractor to acquaint themselves with the exact location of existing underground structures and utilities and to avoid conflict with all existing facilities. The Contractor shall be responsible for notifying, in writing and in advance of construction activities, the Town and Engineer and all government and private agencies and entities that may have an area of responsibility, jurisdiction or involvement for any items of Work being constructed, or whom shall assume responsibility for the items after construction. This list of agencies and entities shall include, but is not limited to:

- a. Florida Power and Light
- b. Sprint
- c. Comcast
- d. Lee County Utilities

These agencies require a minimum of 48-hour written notice of activities within their jurisdiction. The Contractor shall also call Sunshine 811 before beginning any Work at the Work area.

Protection of all utilities shall be the responsibility of the Contractor who shall provide adequate protection to maintain proper service. The Contractor is to include within its line item bid prices, the

EXHIBIT A – SCOPE OF WORK



TOWN of FORT MYERS BEACH

costs to protect, and/or support, all underground utilities which may be in conflict with the construction of this Project. Attention is called to the Florida Underground Facility Damage Prevention and Safety Act, Chapter 556, Florida Statutes. This act provides for a one-call center charged with helping prevent damages to underground utilities.

Any expense of utility repair or other damage caused by the Contractor's operations shall be borne by the Contractor. Where existing utilities are damaged, they shall be immediately repaired by the Contractor in accordance with the requirements of the government, private agencies, and entities that may have an area of responsibility, jurisdiction or involvement for the utilities. If the Town of the utility elects to make such repairs with his own forces, the Contractor shall make sure that specific arrangements are made to protect the Town from all damages. Where such conflicts are unavoidable, every effort shall be made to construct the Work so as to cause as little interference as possible with the services rendered by the structure disturbed.

TS-6.0 Contractor's Equipment

The Contractor agrees to keep on the job sufficient equipment to meet the requirements of the Work. The equipment shall be in satisfactory operating condition and capable of safely and efficiently performing the Work as set forth in the specifications. The equipment to be utilized by the Contractor shall be submitted by the Contractor with their Bid.

TS-7.0 Transportation Facilities

The Contractor shall make his own investigation of available roads or other means of conveyance for transportation, load limits for bridges, barges and roads, and other road or waterside conditions affecting the transportation of all equipment to the Work area.

TS-8.0 Water and Sewer

The responsibility shall be upon the Contractor to provide and maintain, at his own expense, an adequate supply of water for his use, and to install and maintain necessary supply connections and piping for same, and necessary portable sanitary facilities but only at such locations and in such manner as may be approved by the Town and Engineer. The portable sanitary facilities shall be removed by the Contractor in like manner at his expense prior to completion of the construction and final acceptance.

TS-9.0 Dune Vegetation

TS-9.1 General

The Contractor shall purchase and grow mature, native dune vegetation in accordance with the species, sizes, and spacing as shown on the Contract Plans and these specifications. Table 1 presents the plant list for species, sizes, and spacings. The Contractor shall provide nursery grown plants that are of Florida #1, or superior quality pursuant to the current version of the Florida Department of Agriculture and Consumer Services (FDACS) Plant Grades and Standards. All plants shall be true to the growth habit of the species, and are to be fully rooted in the container, healthy, vigorous, well branched, and densely foliated. Plants shall be free from physical damage, or conditions that would interfere with thriving growth, and free of disease, insects, or insect eggs and larvae.

The dune vegetation shall be healthy and have a vigorous form that meets or exceeds these specifications. Substitutions of plant species are allowed provided they are pre-approved by the Town and they meet the requirements of these specifications and the Warranty provisions. Seeds and/or cuttings for all species shall originate from South Florida extending to Tampa along the West Coast and to West Palm Beach along the East Coast. Prior to commencement of planting, the Contractor shall provide the Town with written documentation as to the source of the planting units. Documentation shall include collection permits or contracts from FDACS, or other comparable documents.

EXHIBIT A – SCOPE OF WORK



TOWN of FORT MYERS BEACH

Table 1. Plant List

Common Name	Scientific Name	Container Size	Height (Minimum)	Spacings (On center, Maximum)	Quantity
Dune Sunflower	<i>Helianthus debilis</i> <i>var. vestitus</i>	4 inches	12 inches	18 inches	46,429
Dune Panic Grass	<i>Panicum Amarum</i>	4 inches	12 inches	18 inches	52,582
Railroad Vine	<i>Ipomoea Pes-caprae</i>	1 gallon	12-inch runner	24 inches	12,854
Sea Oats	<i>Uniola paniculata</i>	4 inches	18 inches	18 inches	12,645
Sea Oats	<i>Uniola paniculata</i>	1 gallon	24 inches	24 inches	11,900

The heights for species shall be measured from the top of the root ball to the tip of the longest leave and meet the minimum requirements in Table 1. Plants shall be nursery grown container stock with root development throughout the root ball. All plants shall be “healthy and vigorous” according to horticultural standards. The plants shall have a fully developed root ball, with white or light beige roots. Brown, black or rotting root balls shall be rejected. Plant roots shall be disease free, moist and milky white at the time of delivery and installation. Plants showing signs of stress, either from drought, pest infestation, disease or any visible mishandling shall be rejected. Plants not meeting these specifications will be rejected by the Town. Plants rejected under these specifications will not be considered as delivered to the site and; therefore, not eligible for payment.

The Contractor shall provide the Town with proof of achieving these specifications prior to commencement of planting. Plants can be delivered bare rooted in boxes to the site. Samples for each species shall be provided to the Town by the Contractor prior to commencement of planting. Upon approval, the samples will be used as a standard for future plants provided through the Contract. The Town shall be given appropriate notification by the Contractor prior to any and each plant delivery to allow for plant inspection. The Contractor shall install the dune vegetation as soon as practicable but no later than 48 hours after delivery to the Work area.

The Town may inspect plantings at place of growth or at site before planting for compliance with requirements for genus, species, variety, size, and quality. The Town retains the right to further inspect plantings for size and condition of root systems, insects, injuries, and latent defects, and to reject unsatisfactory or defective material at any time during progress of work. The rejected material will be immediately removed from site and replaced with suitable material at the Contractor's expense.

TS-9.2 Variations in Estimated Quantities

Where the quantity is an estimated quantity, and where the actual quantity of material placed by Contractor varies by more than twenty percent (20%) for each separate species, whether due to site conditions in the Work area as determined by a pre-construction survey, or at the discretion of Town, as set forth in the Contract Documents, an equitable adjustment in the unit price may be made upon demand of either party. The equitable adjustment will be applied based upon increase or decrease in costs due solely to the variations above one hundred twenty percent (120%) or below eighty percent (80%) of the estimated quantity individually for each separate species.

EXHIBIT A – SCOPE OF WORK



TOWN of FORT MYERS BEACH

TS-10.0 Planting

The Contractor shall price the Estero Island Dune Plantings Base Bid Spreadsheets for the North, South and Central Segments as well as the Grand Total.

TS-10.1 General

The Contractor shall plant the dune vegetation in accordance with the species, sizes, and spacing as shown on the Contract Plans and these specifications. The Town shall provide the Contractor with the dune alignment, No Work Zones, and initial beach access points in plan view drawings in electronic format (CADD and PDF).

Prior to installation, the Contractor shall furnish to the Town a plan for installing, fertilizing, and watering the plants, how the required amounts of water and fertilizer are to be applied, and an itemized list of equipment that will be used during the watering and fertilizing operations they propose to use in order to meet the Warranty requirements of the Contract Documents.

The Contractor shall remove all existing exotic vegetation prior to installation of dune vegetation. Prior to planting, the Contractor shall hand rake planting areas as necessary to remove weeds, rocks, and construction debris. Construction debris, weeds, and rocks shall be removed and disposed of in an approved off-site disposal area by the Contractor. The Contractor shall smooth out any ruts, holes or other disturbance of the sand or ground surface to a stable, pre-planting condition.

All plants delivered and stored at the installation site shall be protected against desiccation, thermal stress, disease and physical damage. Plants deemed to have been improperly handled, packed, transported, and/or stored will be rejected by the Town upon inspection and replaced by the Contractor at no additional costs to the Town.

Vehicular traffic in support of planting activities may be conducted if consistent with local and state beach driving regulations and existing beach access points are utilized. The Contractor shall utilize low impact methods that do not alter dune topography, remove native beach-dune vegetation, require new beach access, disturb coastal wildlife, obstruct public access, cause excavation of the ground, or damage adjacent properties.

TS-10.2 Planting Schemes

The Town has permitted their Dune Management Plan which is included in the Contract Documents and incorporated into these specifications. The Plan includes two planting schemes for the properties along Estero Island as follows.

Scheme #1 "Sea Oat Dune"

<u>Common name</u>	<u>Scientific name</u>	<u>Percentage</u>
Sea oats (1 Gal)	(<i>Uniola paniculata</i>)	70%
Dune Sunflower	(<i>Helianthus debilis</i> var. <i>vestitus</i>)	15%
Dune Panic Grass	(<i>Panicum Amarum</i>)	10%
Railroad Vine	(<i>Ipomoea pes-caprae</i>)	5%

Scheme #3 "Low Dune"

<u>Common name</u>	<u>Scientific name</u>	<u>Percentage</u>
Dune panic grass	(<i>Panicum amarum</i>)	40%
Dune sunflower	(<i>Helianthus debilis</i> var. <i>vestitus</i>)	35%
Sea Oats (1 Gal)	(<i>Uniola paniculata</i>)	5%
Sea Oats (4 inch)	(<i>Uniola paniculata</i>)	10%
Railroad Vine	(<i>Ipomoea pes-caprae</i>)	10%

EXHIBIT A – SCOPE OF WORK



TOWN of FORT MYERS BEACH

The quantities in Table 1 reflect the planting scheme selections as shown on the Contract Plans.

TS-10.3 Layout

The Contractor shall have on site at all time during the planting Work, an experienced foreman supervising the Work. The Town shall stake-out the alignment noting there are two planting schemes and two alternate alignments to be planted depending upon property owner request. The Contractor shall provide 72-hour written notice requesting stake-out for each section:

North: Stations 2+00 to 71+00

Central: Stations 71+00 to 261+00

South: Stations: 290+00 to 374+00

The Town reserves the right to adjust the planting to respond to existing beach access points, to align with existing vegetated areas, and any unanticipated site conditions. Minor adjustments to allow for site conditions and beach access points is permitted as approved by the Town. The Town shall review the planting layout with the Contractor and make necessary adjustments prior to planting.

The Contractor shall determine location of underground utilities and perform work in a manner which will avoid possible damage to underground utilities. Hand excavate planting holes as required when working around underground utilities. Maintain or restore finish grade set by others. When conditions detrimental to plant growth are encountered, such as adverse drainage conditions or obstructions, the Contractor shall notify the Town before planting so field adjustments in the layout can be determined. As necessary, the Town shall determine the preferred way to resolve drainage conditions or adjustment of the planting layout.

Supplemental plantings shall occur in areas within existing sparsely vegetated dunes.

Plantings shall be made in shore-parallel rows. The rows shall be staggered mid-way.

TS-10.4 Installation

Installation, fertilizing and watering methods shall be determined by the Contractor. All fertilizing and watering required which is necessary for the proper establishment of the plants and to achieve the Warranty provisions shall be included in the Contract lump sum price for Bid Item "Planting."

When plantings are completed, the Town will, upon receipt of written request, make an inspection to determine acceptability. When inspected Work does not comply with the Contract Plans or these Specifications, the Contractor shall replace rejected Work and continue maintenance until reinspected by the Town and found to be acceptable. The Contractor shall remove rejected plants and materials promptly from the Work area.

TS-11.0 Adjustments

A minimum of one 10-foot wide access shall be provided through the dune plantings per property. Some properties with longer frontage shall have more than one access. The approximate access points are shown on the Contract Plans. The Town reserves the right to adjust the access points based upon private property owners requesting reasonable changes during the Contract Time. The Town will advise the Contractor of adjustments in writing within seven (7) calendar days of the initial planting. The Contractor shall as soon as practicable remove the plants from the new access point and replant them in the original access point. The adjusted plants are subject to the same Warranty provisions.

TS-12.0 Warranty

Success is defined as 90% survivability of each individual species to the density and quality described in these specifications after 6 months from date of initial planting. Upon completion and acceptance of the Work, the Contractor shall execute and deliver a written warranty covering all Work to the Town for a 6-month period.

EXHIBIT A – SCOPE OF WORK



TOWN of FORT MYERS BEACH

Two months after the initial planting, the Contractor shall, at their expense, remove all dead plants and replant the areas and if necessary, increase the planting density. Two months after the additional planting (four months after the initial planting), the Contractor shall, at their expense, remove all dead plants and replant the areas and if necessary, increase the planting density.

Survival rates can be determined by troweling up plants and looking at the shoots and roots. Plants shall be deemed surviving if they present vigorous new leaf growth and inspection of the root zone demonstrates that new roots have migrated into the surrounding soil by no less than four inches after two months and eight inches after four months.

If the 90% success criteria for each individual species is still not achieved after 6 months, the Contractor shall propose an alternative planting plan subject to review and approval by the Town. The Contractor shall, at their expense, install the alternate planting plan within 21 calendar days after receipt of notice of Town approval.

All replanting shall be included in the Contract lump sum price for Bid Item "Warranty."

TS-13.0 Environmental Protection

TS-13.1 General

For the purpose of this specification, environmental protection is defined as the retention of the environment in its natural state to the greatest possible extent during Work activities and to enhance the natural appearance in its final condition. Environmental protection requires consideration of air, water, and land, and involves noise, and solid waste management as well as other pollutants. In order to prevent any environmental pollution arising from the Work activities in the performance of this Contract, the Contractor and their Subcontractors shall comply with all applicable Federal, State and local laws and regulations concerning environmental pollution control and abatement.

TS-13.2 Resource Protection

The environmental resources within the project boundaries and those affected outside the limits of permanent Work under this Contract shall be protected during the entire period of this Contract. The Contractor shall confine his activities to areas defined by the Contract plans and specifications.

Prior to the beginning of any construction, the Contractor shall identify all land resources to be preserved within the Contractor's Work area. The Contractor shall not remove, cut, deface, injure, or destroy land resources, including trees, shrubs, vines, grasses, topsoil, and land forms without special permission from the Town and Engineer. Vegetation damaged beyond restoration shall be removed and disposed of by the Contractor in a manner approved by the Town and Engineer. Vegetation or trees that are to be removed because of damage shall be replaced at the Contractor's expense by nursery-grown plants or trees of the same species or a species approved by the Town and Engineer. The size and quality of nursery-grown plants or trees shall also be approved by the Town and Engineer. No ropes, cables, or guys shall be fastened to or attached to any trees for anchorage unless specifically authorized. Where such special emergency use is permitted, the Contractor shall provide effective protection for land and vegetation resources at all times.

TS-13.3 Storage Facilities

The Contractor's storage areas required in the performance of the Work shall be located upon existing cleared portions of the job site or areas to be cleared and shall require written approval of the Town. The Contractor shall not store oil or fuel on-site, or equipment that is not required for the daily Work activities. Under no condition shall oil or fuel be discharged on-site or into adjacent waters.

EXHIBIT A – SCOPE OF WORK



TOWN of FORT MYERS BEACH

TS-13.4 Post-Work Cleanup or Obliteration

The Contractor shall obliterate all signs of Work areas, waste materials, or any other vestiges of construction as directed by Town and Engineer. The Project area will be restored to near natural conditions.

TS-13.5 Spillage

Special measures shall be taken to prevent chemicals, fuels, oils, greases, bituminous materials, waste washing, herbicides and insecticides, and concrete drainage from entering public waters.

TS-13.6 Disposal

Disposal of any materials, waste, effluent, trash, garbage, oil, grease, chemicals, etc., in areas adjacent to streams or other waters of the State shall not be permitted. If any waste material is dumped in unauthorized areas, the Contractor shall remove the material and restore the area to its original condition before being disturbed. If necessary, contaminated ground shall be excavated, disposed of as directed by the Town, and replaced with suitable fill material, compacted and finished with topsoil and planted as required to re-establish vegetation.

TS-13.7 Sea Turtle and Shorebird Protection

The Town will contract with agency approved sea turtle and shorebird monitors as necessary during their respective nesting seasons to conduct daily monitoring. The Contractor is responsible for cooperating with the Town and their monitors during the Work. The Contractor shall abide by the Permits and Dune Management Plan for sea turtle and shorebird protection including but not limited to hours of operation, waiting to begin work from the landward toe of the dune seaward until daily clearance is provided by the monitors, operating vehicles on the beach and dune, equipment storage, access and staging, and heavy equipment usage.

TS-14.0 Owner and Engineer's Approval of Work

By approving any payment, the Town and Engineer shall not thereby be deemed to have represented that they made exhaustive or continuous on-site inspection to check the quality or the quantity of the Work, or that they have reviewed the means, methods and techniques, sequences, and procedures of construction, or that they have made any examination to ascertain how or for what purpose the Contractor has used the money paid or to be paid to them on account of the Agreement price. The Town and Engineer may have a representative on site at different times to observe operations of Contractor. The presence of the Town and Engineer or its designated representative(s) shall not relieve the Contractor of responsibility for the proper execution of the Work in accordance with the specifications or permits applicable to the Work. In case of any doubt or difference of opinion as to the items to be furnished hereunder, the decision of Town shall be final and binding on all parties.

TS-15.0 Private Property

The Contractor shall not occupy private land outside of any easements or rights of way unless the Contractor obtains expressed consent by the property owner. In the event that the Contractor uses private property for any purpose without first having obtained the necessary approvals from the property owner or provided the necessary agreement(s) to the Town, the Town will direct the Contractor in writing to immediately cease using such property. The Town reserves the right to require that any agreement between the Contractor and the property owner for the use of private lands be furnished in writing.

At a minimum, the written agreement should contain the lot legal description and street address and the names, addresses, and telephone numbers for both the legal lot owner and the Contractor. The written agreement must also provide times for completion, erosion control measures, and how the Contractor will completely restore to the owner's satisfaction and how the owner will approve of the Work. This written agreement shall be submitted to and approved by the Town prior to construction.

EXHIBIT A – SCOPE OF WORK



TOWN of FORT MYERS BEACH

The Contractor shall restore all damages to surface and underground facilities resulting from its construction operations to a condition equal to, or better than, the original condition. Prior to application for final payment, the Contractor shall provide documentation from the property owner of each piece of private property that was utilized by the Contractor, stating that each property owner is satisfied with the manner in which the Contractor has restored the property. Final payment or reduction in retainage shall not be paid until such documentation is received by the Town.

EXHIBIT B – PROJECT COST

TS-4.0 Payment

TS-4.1 Dune Vegetation

Payment shall be made for materials and work specified in connection with the growing and purchasing of mature dune plants meeting the requirements of these specifications, and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract unit prices for Bid Item "Dune Vegetation." Payment shall be made for materials and work specified in connection with the transportation, installation, fertilization, and irrigation of mature dune plants meeting the requirements of these specifications, and all other appropriate costs in connection therewith or incidental thereto. The unit price per plant will be used to calculate the final payment based on the final number of planting units installed. The Engineer will determine the final number of planting units accepted as planting units eligible for payment. Fifty percent (50%) will be paid upon receipt of proof of the quantities and sizes required by the specifications. The remaining fifty percent (50%) will be paid after verification on installation.

TS-4.2 Adjustments

Payment shall be made for materials and work specified in connection with the replanting of dune plants to adjust beach access through the dune plantings on select properties, and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract unit prices for Bid Item "Adjustments."

TS-4.3 Warranty

Payment shall be made for materials and work specified in connection with the warranty and replanting meeting the requirements of these specifications, and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract lump sum for Bid Item "Dune Warranty." The Dune Warranty shall be eligible for payment after the two month replanting (25%), 4 month replanting (25%), and 6 months after achieving the success criteria (50%).

EXHIBIT B – PROJECT COST



TOWN of FORT MYERS BEACH

ESTERO ISLAND DUNE PLANTINGS BASE BID NORTH SEGMENT

Item	Unit	Quantity	Unit Price	Extended Price
1. Dune Vegetation				
1A. Sea Oats (1-gal)	EA	7,030 (Estimated)	\$7.25	\$50,967.50
1B. Sea Oats (4 inch)	EA	2,515 (Estimated)	\$2.65	\$6,664.75
1C. Dune Sunflower	EA	10,196 (Estimated)	\$2.65	\$27,019.40
1D. Dune Panic Grass	EA	11,090 (Estimated)	\$2.65	\$29,388.50
1E. Railroad Vine	EA	2,919 (Estimated)	\$7.25	\$21,162.75
2. Adjustments	EA	10	\$500.00	\$5,000.00
3. Warranty	LS	1	\$4,000.00	\$4,000.00
			Base Bid Total	\$144,202.90

Name of Bidder: EarthBalance Corporation
 (This form to be returned)

EXHIBIT B – PROJECT COST



TOWN of FORT MYERS BEACH

DUNE PLANTINGS ALTERNATIVE NORTH SEGMENT HAZARD MITIGATION PLAN

Item	Unit	Quantity	Unit Price	Extended Price
1. Dune Vegetation				
1A. Bitter Panic Grass (2 inch)	EA	10,414 (Estimated)	\$1.70	\$17,703.80
1B. Sea Oats (2 inch)	EA	10,386 (Estimated)	\$1.70	\$17,656.20
1C. Railroad Vine (2 inch)	EA	2,722 (Estimated)	\$1.70	\$4,627.40
1D. West Coast Dune Sunflower (2 inch)	EA	9,678 (Estimated)	\$1.70	\$16,452.60
Adjustment	EA	10	\$500.00	\$5,000.00
Warranty	LS	1	\$4,000.00	\$4,000.00

Note: This bid form is to establish unit pricing for 2-inch plant sizes as required by the Town's Hazard Mitigation Grant for Dune Vegetation. Pricing for 2-inch plants will not be considered in the selection process.

Name of Bidder: EarthBalance Corporation

(This form to be returned)

EXHIBIT B – PROJECT COST



TOWN of FORT MYERS BEACH

ESTERO ISLAND DUNE PLANTINGS BASE BID CENTRAL SEGMENT

Item	Unit	Quantity	Unit Price	Extended Price
1. Dune Vegetation				
1A. Sea Oats (1-gal)	EA	2,902 (Estimated)	\$7.25	\$21,039.50
1B. Sea Oats (4 inch)	EA	6,033 (Estimated)	\$2.65	\$15,987.45
1C. Dune Sunflower	EA	21,580 (Estimated)	\$2.65	\$57,187.00
1D. Dune Panic Grass	EA	24,712 (Estimated)	\$2.65	\$65,486.80
1E. Railroad Vine	EA	5,917 (Estimated)	\$7.25	\$82,898.25
2. Adjustments	EA	20	\$500.00	\$10,000.00
3. Warranty	LS	1	\$4,000.00	\$4,000.00
			Base Bid Total	\$216,599.00

Name of Bidder: EarthBalance Corporation

(This form to be returned)

EXHIBIT B – PROJECT COST



TOWN of FORT MYERS BEACH

ESTERO ISLAND DUNE PLANTINGS BASE BID SOUTH SEGMENT

Item	Unit	Quantity	Unit Price	Extended Price
1. Dune Vegetation				
1A. Sea Oats (1-gal)	EA	1,969 (Estimated)	\$7.25	\$14,275.25
1B. Sea Oats (4 inch)	EA	4,096 (Estimated)	\$2.65	\$10,854.40
1C. Dune Sunflower	EA	14,653 (Estimated)	\$2.65	\$38,830.45
1D. Dune Panic Grass	EA	16,780 (Estimated)	\$2.65	\$44,467.00
1E. Railroad Vine	EA	4,018 (Estimated)	\$7.25	\$29,130.50
2. Adjustments	EA	15	\$500.00	\$7,500.00
3. Warranty	LS	1	\$4,000.00	\$4,000.00
			Base Bid Total	\$149,057.60

Name of Bidder: EarthBalance Corporation

(This form to be returned)

EXHIBIT B – PROJECT COST



TOWN of FORT MYERS BEACH

ESTERO ISLAND DUNE PLANTINGS

BASE BID

GRAND TOTAL

Segment	Extended Price
North	\$144,202.90
Central	\$216,599.00
South	\$149,057.60
Base Bid Total	\$509,859.50

Name of Bidder: EarthBalance Corporation

(This form to be returned)

EXHIBIT C – CONTRACT PROVISIONS FOR FDEP FUNDED AGREEMENTS

CONTRACT PROVISIONS FOR FDEP FUNDED AGREEMENTS

The Project is being funded by the State of Florida Department of Environmental Protection ("FDEP") through FDEP Standard Grant Agreement No. 23LE1 ("FDEP Grant Agreement") with the Town of Fort Myers Beach, which requires that certain terms be incorporated into agreements funded thereby. These requirements are in addition to, and do not modify or reduce, any other requirement or obligation in the Agreement.

1. Public Entity Crimes. Pursuant to Section 287.133(3)(a), Florida Statutes: A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. Contractor represents that in entering into the Agreement, the Contractor has not been placed on the convicted vendor list within the last 36 months. If the Contractor is placed on the convicted vendor list during the term of this Agreement, the Contractor shall immediately notify the Town and shall be cause for unilateral cancellation of the Agreement.

2. Discriminatory Vendors. Pursuant to Section 287.134(3)(a), Florida Statutes: An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity. Contractor represents that in entering into the Agreement, the Contractor has not been placed on the discriminatory vendor list within the last 36 months. If the Contractor is placed on the discriminatory vendor list during the term of this Agreement, the Contractor shall immediately notify the Town and shall be cause for unilateral cancellation of the Agreement.

3. Antitrust Violator Vendors. Pursuant to Section 287.137(3)(a), Florida Statutes: A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity. Contractor represents that in entering into the Agreement, the Contractor has not been placed on the antitrust violator vendor list within the last 36 months. If the Contractor is placed on the antitrust violator vendor list during the term of this Agreement, the Contractor shall immediately notify the Town and shall be cause for unilateral cancellation of the Agreement.

4. Compliance with FDEP Security and Safety Requirements and Processes. Contractor and its employees, agents, and subcontractors shall comply with any security and safety requirements and processes, if provided by FDEP, for work done at the Project location.

EXHIBIT C – CONTRACT PROVISIONS FOR FDEP FUNDED AGREEMENTS

5. Contractual Costs. Nonconsumable and/or nonexpendable personal property or equipment costing \$5,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in Chapter 274, F.S., and Chapter 69I-73, F.A.C. Contractor shall be responsible for maintaining appropriate property records for this Agreement and any subcontracts that include the purchase of equipment as part of the delivery of services. Contractor shall comply with this requirement and ensure that this requirement is imposed upon any subcontractors under this Agreement in writing.

6. Statutory Notices Relating to Unauthorized Employment and Subcontracts. FDEP considers the employment by Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the Agreement. Contractor shall include this provision in all contracts issued as a result of the Agreement.

7. Compliance with Federal, State and Local Laws. Contractor and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement. All employees, subcontractors, or agents performing work under the Agreement must comply with all security and administrative requirements of FDEP and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement. Contractor shall include this provision in all contracts issued as a result of the Agreement.

8. Record Keeping. Contractor shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. Contractor shall grant the FDEP, the State of Florida, or their authorized representatives access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. Contractor shall similarly require each of its subcontractors to maintain and allow access to such records for audit purposes.

9. Compliance with Section 20.055, Florida Statutes. the CONTRACTOR understands its duty, pursuant to section 20.055(5), F.S. to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. CONTRACTOR will comply with this duty and impose this requirement, in writing, on its subcontractors.

10. No Third-Party Rights in FDEP Grant Agreement. Contractor is advised that the FDEP Grant Agreement does not create any third-party rights, and no third parties shall rely upon any of the rights and obligations created under the FDEP Grant Agreement.

11. Insurance Requirements. At all times during the Agreement the Contractor, at its sole expense, shall maintain insurance coverage of such types and with such terms and minimum limits described below. Contractor understands and agrees that funds for the Project are conditioned upon their compliance with the insurance requirements of the Agreement. Failure to maintain the minimum insurance required herein shall be grounds for immediate termination of the Agreement. Contractor must provide proof of insurance upon request. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Agreement. All insurance policies shall be through insurers licensed and authorized to issue policies in Florida, or alternatively, Contractor may provide coverage through a self-insurance program established and operating under the laws of Florida. The minimum insurance requirements applicable to this Agreement are set forth

EXHIBIT C – CONTRACT PROVISIONS FOR FDEP FUNDED AGREEMENTS

below. However, if any other provision of the Agreement or bid documents requires insurance coverage in greater amounts or of broader scope, the greater requirements shall apply.

- a. Commercial General Liability Insurance. The Contractor shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement. The "State of Florida Department of Environmental Protection, its employees and officers" shall be named as an additional insured on any general liability policies. The minimum limits shall be \$ 250,000 for each occurrence and \$500,000 policy aggregate.
- b. Commercial Automobile Insurance. If the Contractor's duties include the use of a commercial vehicle, the Contractor shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The "State of Florida Department of Environmental Protection, its employees and officers" shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows: 200,000/300,000 Automobile Liability for Company-Owned Vehicles, if applicable 200,000/300,000 Hired and Non-owned Automobile Liability Coverage.
- c. Workers' Compensation and Employer's Liability Coverage. The Contractor shall provide workers' compensation, in accordance with Chapter 440, F.S. and employer liability coverage with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Agreement.
- d. Other Insurance. None.

13. Incorporation into Subcontracts. Contractor shall provide its subcontractors with a copy of this Exhibit, and the Contractor's obligations hereof shall be incorporated into each of Contractor's contracts with its subcontractor as obligations of the subcontractor. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth herein.

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

The supplemental conditions contained in this section are intended to cooperate with, to supplement, and to modify the general conditions and other specifications. In cases of disagreement with any other section of this contract, the Supplemental Conditions shall govern. This is an acknowledgement that FEMA financial assistance may be used to fund all or a portion of this contract.

Pursuant uniform requirements of federal awards (2 CFR Part 200.23) the definition of CONTRACTOR is an entity that receives a Contract / Purchase Order.

Compliance with Federal Law, Regulations and Executive Orders: The Sub-Recipient (Town) agrees to include in the subcontract that (i) the subcontractor is bound by the terms of the Federally- Funded Subaward and Grant Agreement, (ii) the subcontractor is bound by all applicable state and Federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

Specifically, the Contractor shall be responsible for being knowledgeable and performing any and all services under this contract in accordance with the following governing regulations along with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

- 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 44 C.F.R. Part 206
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- FEMA Public Assistance Program and Policy Guide

Access to Records: The contractor agrees to provide the Town, the Florida Department of Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract. (4) In compliance with section 1225 of the Disaster Recovery Act of 2018, the Town and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

Affirmative Socioeconomic Steps If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Changes: To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allowable, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.

DHS Seal, Logo, and Flags: The contractor shall not use the DHS seal(s), logos, crests, or reproductions

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

of flags or likenesses of DHS agency officials without specific FEMA pre- approval. The contractor shall include this provision in any subcontracts.

Domestic Preference for Procurements 200.322 As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

License and Delivery of Works Subject to Copyright and Data Rights: The Contractor grants to the Town, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the Town or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the Town data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Town.

No Obligation by Federal Government: The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Prohibition on Covered Telecommunications Equipment or Services

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for covered Telecommunications Equipment or Services As used in this clause –

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing — (i). A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii). Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to: (i). Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii). Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph(e), in all subcontracts and other contractual instruments.

Program Fraud and False or Fraudulent Statements or Related Acts: The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

Rights to Inventions Made Under a Contract or Agreement: Exempt from FEMA Public Assistance Funding

Suspension and Debarment: (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (3) This certification is a material representation of fact relied upon by the Town. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Procurement of Recovered Materials (§200.323) (Over \$10,000): In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Termination for Cause and Convenience (over \$10,000): See Standard Purchase Order and/or Contract Terms and Conditions

Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended) (over \$100,000): Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

Contractors must sign and submit a certification to the Town with each bid or offer exceeding \$100,000. See Certifications and Assurances and the end of this document.

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (over \$100,000): Where applicable, all contracts awarded by the solicitor in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Town or FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1

"Further Compliance with the Contract Work Hours and Safety Standards Act.

- (2) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (3) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

Clean Air Act (over \$150,000): 1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act (over \$150,000): 1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Administrative, Contractual, or Legal Remedies (over \$250,000): Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

(4) CONSTRUCTION ACTIVITIES

Equal Employment Opportunity Clause (§60-1.4): Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4.

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

FEDERAL CONTRACT PROVISIONS AND

union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Davis Bacon Act: Exempt under FEMA Public Assistance Funding

Copeland Anti-Kickback Act: Exempt under FEMA Public Assistance Funding

STATE OF FLORIDA PROVISIONS DEPARTMENT OF ENVIRONMENTAL PROTECTION BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM

Applicable Laws - The Town and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Town shall include this provision in all contracts issued.

Data Collection: The Project shall be conducted in accordance with the terms and conditions set forth under this Agreement, all applicable Department permits and the eligible Project task items established below. All data collection and processing, and the resulting product deliverables, shall comply with the standards and technical specifications contained in the Department's Monitoring Standards for Beach Erosion Control Projects (2014) and all associated state and federal permits, unless otherwise specified in the approved scope of work for an eligible Project item. The monitoring standards may be found at: [Project Monitoring \(floridadep.gov\)](http://ProjectMonitoring.floridadep.gov)

In order to comply with Florida Auditor General report 2014-064 regarding conflicts of interest and to be consistent with Section 287.057(17)(a)(I), F.S., all monitoring data and statistical analysis must be provided directly and concurrently from the monitoring contractor to the Florida Department of Environmental Protection/Town/permittee/engineering consultant. The Town's engineering

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

FEDERAL CONTRACT PROVISIONS AND

consultant must provide an adequate mitigation plan, consistent with Section 287.057(17)(a)(I), F.S., including a description of organizational, physical, and electronic barriers to be used by the Town's engineering consultant, that addresses conflicts of interest when contracting multi-disciplinary firms for Project engineering and post-construction environmental monitoring services, or when the Project engineering consultant firm subcontracts for post-construction environmental monitoring. Environmental monitoring includes hardbottom, seagrass, and mangrove resources.

Equal Employment Opportunity: No person on the ground of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of, otherwise subjected to discrimination.

Inspector General Cooperation: The Parties agree to comply with Section 20.055(5), Florida Statutes, for the inspector general to have access to any records, data and other information deemed necessary to carry out his or her duties and incorporate into all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

Lobbying: No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch or a state agency.

Local Preference: Pursuant to Section 255.0991, F.S. local vendor preference is not applicable

Physical Access and Inspection: Grantor personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:

- i. The Town shall provide access to any location or facility on which Town is performing work, or storing or staging equipment, materials or documents.
- ii. The Town shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
- iii. The Town shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.

Record Retention: A. The contractor shall maintain and retain sufficient records demonstrating its compliance with the terms of the Agreement for a period of at least five (5) years after final payment is

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

FEDERAL CONTRACT PROVISIONS AND

made and shall allow the Town, the State, or its authorized representatives access to such records for audit purposes upon request.

Statutory Notices Relating to Unauthorized Employment: The Town shall consider the employment by any Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement

Statutory Notices Relating to Subcontracts: Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:

- i. **Public Entity Crime.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. **Notification.** The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

FEDERAL CONTRACT PROVISIONS AND

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
and VOLUNTARY EXCLUSION**

Contractor Covered Transactions

- (1) The prospective subcontractor of the Sub-recipient, Town, certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-recipient's subcontractor is unable to certify to the above statement, the prospective contract shall attach an explanation to this form.

CONTRACTOR

By: _____
Signature

Name and Title

Street Address

City, State, Zip

UEI Unique Entity Identifier (for SAM.gov verification)

Date

Sub-Recipient Name: Town of Fort Myers Beach

DEM Contract Number: TBD

FEMA Project Number: TBD

EXHIBIT D – FEDERAL SUPPLEMENTAL CONDITIONS

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

TOWN OF FORT MYERS BEACH																					
ANTICIPATED DISADVANTAGED, MINORITY, WOMEN OR VETERAN PARTICIPATION STATEMENT																					
Status will be verified. Unverifiable statuses will require the PRIME to either provide a revised statement or provide source documentation that validates a status.																					
A. PRIME VENDOR/CONTRACTOR INFORMATION																					
PRIME NAME		PRIME FED NUMBER		CONTRACT DOLLAR AMOUNT																	
IS THE PRIME A FLORIDA-CERTIFIED DISADVANTAGED, MINORITY OR WOMEN BUSINESS ENTERPRISE? (DBE/MBE/WBE) OR HAVE A SMALL DISADVANTAGED BUSINESS BA CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? A SERVICE DISABLED VETERAN?		VETERAN Y N DBE? Y N MBE? Y N WBE? Y N SDB BA? Y N		IS THE ACTIVITY OF THIS CONTRACT ... CONSTRUCTION? Y N CONSULTATION? Y N OTHER? Y N																	
IS THIS SUBMISSION A REVISION?		Y N		IF YES, REVISION NUMBER																	
B. IF PRIME HAS SUBCONTRACTOR OR SUPPLIER WHO IS A DISADVANTAGED MINORITY, WOMEN-OWNED, SMALL BUSINESS CONCERN OR SERVICE DISABLED VETERAN, PRIME IS TO COMPLETE THIS NEXT SECTION																					
DBE	M/WBE VETERAN	SUB-CONTRACTOR OR SUPPLIER NAME	TYPE OF WORK OR SPECIALTY	ETHNICITY CODE (See Below)	SUB/SUPPLIER DOLLAR AMOUNT																
					PERCENT OF CONTRACT DOLLARS																
TOTALS:																					
C. SECTION TO BE COMPLETED BY PRIME VENDOR/CONTRACTOR																					
NAME OF SUBMITTER		DATE		TITLE OF SUBMITTER																	
EMAIL ADDRESS OF PRIME (SUBMITTER)		TELEPHONE NUMBER		FAX NUMBER																	
NOTE: This information is used to track and report anticipated DBE or MBE participation in federally-funded contracts. The anticipated DBE or MBE amount is voluntary and will not become part of the contractual terms. This form must be submitted at time of response to a solicitation. If and when awarded a County contract, the prime will be asked to update the information for the grant compliance files.																					
<table border="1"><thead><tr><th>ETHNICITY</th><th>CODE</th></tr></thead><tbody><tr><td>Black American</td><td>BA</td></tr><tr><td>Hispanic American</td><td>HA</td></tr><tr><td>Native American</td><td>NA</td></tr><tr><td>Subcont. Asian American</td><td>SAA</td></tr><tr><td>Asian-Pacific American</td><td>APA</td></tr><tr><td>Non-Minority Women</td><td>NMW</td></tr><tr><td>Other: not of any other group listed</td><td>O</td></tr></tbody></table>						ETHNICITY	CODE	Black American	BA	Hispanic American	HA	Native American	NA	Subcont. Asian American	SAA	Asian-Pacific American	APA	Non-Minority Women	NMW	Other: not of any other group listed	O
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Other: not of any other group listed	O																				
D. SECTION TO BE COMPLETED BY TOWN OF FORT MYERS BEACH																					
DEPARTMENT NAME		FMS CONTRACT # (IF RFP or PO/REQ)		GRANT PROGRAM/CONTRACT																	
ACCEPTED BY:				DATE																	

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Agreement Number: D1502

STATE-FUNDED LAP GRANT AGREEMENT

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Division"), and **Town of Fort Myers Beach**, Florida (hereinafter referred to as the "Recipient").

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

A. The Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein; and

B. The Division has received these grant funds from the State of Florida, and has the authority to subgrant these funds to the Recipient upon the terms and conditions below; and

C. The Division has statutory authority to disburse the funds under this Agreement.

THEREFORE, the Division and the Recipient agree to the following:

(1) LAWS, RULES, REGULATIONS, AND POLICIES

a. As required by section 215.971(1), Florida Statutes, this Agreement includes:

i. A provision specifying a scope of work that clearly establishes the tasks that the Recipient is required to perform.

ii. A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the Division before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

iii. A provision specifying the financial consequences that apply if the Recipient fails to perform the minimum level of service required by the agreement.

iv. A provision specifying that the Recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.

v. A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the Division.

vi. A provision specifying that any funds paid in excess of the amount to which the Recipient is entitled under the terms and conditions of the agreement must be refunded to the Division.

b. In addition to the foregoing, the Recipient and the Division shall be governed by all applicable State and Federal laws, rules and regulations, including those identified in Attachment B. Any express reference in this Agreement to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.

(2) CONTACT

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

a. In accordance with section 215.971(2), Florida Statutes, the Division's Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Recipient. As part of his/her duties, the Grant Manager for the Division shall:

- i. Monitor and document Recipient performance; and,
- ii. Review and document all deliverables for which the Recipient requests payment.

b. The Division's Grant Manager for this Agreement is:

Berenice Hernandez Avila
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399
Telephone: 850-815-4206
Email: Berenice.Hernandez@em.myflorida.com

c. The name and address of the representative of the Recipient responsible for the administration of this Agreement is:

Cheri Russ
2525 Estero Boulevard
Fort Myers Beach, FL 33931
Telephone: 239-765-0202
Email: cheri.russ@fmbgov.com

d. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided to the other party.

(3) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(4) EXECUTION

This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(5) MODIFICATION

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(6) SCOPE OF WORK

The Recipient shall perform the work in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

(7) PERIOD OF AGREEMENT

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

This Agreement shall begin upon execution by both parties and shall end on **March 31, 2026** unless terminated earlier in accordance with the provisions of Paragraph (16) TERMINATION. In accordance with section 215.971(1)(d), Florida Statutes, the Recipient may expend funds authorized by this Agreement "only for allowable costs resulting from obligations incurred during" the period of agreement.

(8) FUNDING

- a. This is a one-time grant Agreement, subject to the availability of legislatively appropriated funds.
- b. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with either chapter 216, Florida Statutes, or the Florida Constitution.
- c. The Division will grant funds to the Recipient only for allowable costs that will be incurred by the Recipient in the successful completion of each deliverable or for loss of revenue.
- d. The Division will review any request for grant funding by comparing the documentation provided by the Recipient against a performance measure, outlined in Attachment A, which clearly delineates:
 - i. The required minimum acceptable level of service to be performed; and,
 - ii. The criteria for evaluating the successful completion of each deliverable.
- e. The Division's Grant Manager, as required by section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the period of agreement and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Recipient.
- f. For the purposes of this Agreement, the term "improper payment" means or includes:
 - i. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and,
 - ii. Any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.
- g. All funds shall be placed in an interest-bearing account and the interest shall be returned to the Division quarterly until the completion of all deliverables. The interest shall be returned to the Division's General Revenue Fund.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

(9) RECORDS

a. As a condition of receiving state financial assistance, and as required by sections 20.055(6)(c) and 215.97(5)(b), Florida Statutes, the Division, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives, shall enjoy the right of access to any documents, financial statements, papers, or other records of the Recipient which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Recipient's personnel for the purpose of interview and discussion related to such documents. For the purposes of this section, the term "Recipient" includes employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement.

b. The Recipient shall maintain all records related to this Agreement for the period of time specified in the appropriate retention schedule published by the Florida Department of State. Information regarding retention schedules can be obtained at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>.

c. Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) provides the citizens of Florida with a right of access to governmental proceedings and mandates three, basic requirements: (1) all meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and (3) minutes of the meetings must be taken and promptly recorded. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the open government requirements. However, the Government in the Sunshine Law applies to private entities that provide services to governmental agencies and that act on behalf of those agencies in the agencies' performance of their public duties. If a public agency delegates the performance of its public purpose to a private entity, then, to the extent that private entity is performing that public purpose, the Government in the Sunshine Law applies. For example, if a volunteer fire department provides firefighting services to a governmental entity and uses facilities and equipment purchased with public funds, then the Government in the Sunshine Law applies to board of directors for that volunteer fire department. Thus, to the extent that the Government in the Sunshine Law applies to the Recipient based upon the funds provided under this Agreement, the meetings of the Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board may be subject to open government requirements. These meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with chapter 119, Florida Statutes.

d. Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the public record requirements. However, when a public entity delegates a public function to a private entity, the records generated by the private entity's performance of that duty become public records. Thus, the nature and scope of the services provided by a private entity determine whether that entity is acting on behalf of a public agency and is therefore subject to the requirements of Florida's Public Records Law.

e. The Recipient shall maintain all records for the Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work - Attachment A - and all other applicable laws and regulations.

IF THE RECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE RECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (850) 815-4156, Records@em.myflorida.com, or 2555 Shumard Oak Boulevard, Tallahassee, FL 32399.

(10) AUDITS

a. In accounting for the receipt and expenditure of funds under this Agreement, the Recipient shall follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R. §200.49, GAAP "has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB)."

b. When conducting an audit of the Recipient's performance under this Agreement, the Division shall use Generally Accepted Government Auditing Standards ("GAGAS"). As defined by 2 C.F.R. §200.50, GAGAS, "also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits."

c. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of this Agreement, the Recipient shall be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the Division has notified the Recipient of such non-compliance.

d. The Recipient shall have all audits completed by an independent auditor, which is defined in section 215.97(2)(i), Florida Statutes, as "an independent certified public accountant licensed

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

under chapter 473." The independent auditor shall state that the audit complied with the applicable provisions noted above. The audits must be received by the Division no later than nine (9) months from the end of the Recipient's fiscal year.

e. The Recipient shall send copies of reporting packages required under this paragraph directly to each of the following:

i. The Division of Emergency Management

DEMSingle_Audit@em.myflorida.com

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General

2555 Shumard Oak Boulevard

Tallahassee, Florida 32399-2100

ii. The Auditor General

Room 401, Claude Pepper Building

111 West Madison Street

Tallahassee, Florida 32399-1450

(11) REPORTS

a. The Recipient shall provide the Division with quarterly reports and a close-out report. These reports shall include the current status and progress by the Recipient and all Sub-Recipients and subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Division.

b. Quarterly reports are due to the Division no later than thirty (30) days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30, and December 31.

c. The close-out report is due sixty (60) days after termination of this Agreement or sixty (60) days after completion of the activities contained in this Agreement, whichever occurs first.

d. If all required reports and copies are not sent to the Division or are not completed in a manner acceptable to the Division, the Division may withhold further payments or FEMA Public Assistance funds until they are completed or may take other action as stated in Paragraph (15) REMEDIES. "Acceptable to the Division" means that the work product was completed in accordance with the Budget and Scope of Work.

e. The Recipient shall provide additional program updates or information that may be required by the Division.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

f. The Recipient shall obtain engineering inspection reports for any new construction or installation. The Recipient shall furnish the reports to the Division within fifteen (15) days of receipt of the completed report.

(12) MONITORING

a. The Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are being met, the Schedule of Deliverables and Scope of Work are being accomplished within the specified time periods, and other performance goals are being achieved. A review shall be done for each function or activity in Attachment A to this Agreement and reported in the quarterly report.

b. In addition to reviews of audits conducted in accordance with paragraph (10) AUDITS above, monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope audits, or other procedures. The Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division. In the event that the Division determines that a limited scope audit of the Recipient is appropriate, the Recipient agrees to comply with any additional instructions provided by the Division to the Recipient regarding such audit. The Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Division will monitor the performance and financial management by the Recipient throughout the period of agreement to ensure timely completion of all tasks.

(13) LIABILITY

a. Unless Recipient is a state agency or subdivision, as defined in section 768.28, Florida Statutes, the Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement and shall hold the Division harmless against all claims of whatever nature by third parties arising from the work performed under this Agreement. For purposes of this Agreement, Recipient agrees that it is not an employee or agent of the Division but is an independent contractor.

b. Any Recipient which is a state agency or subdivision, as defined in section 768.28, Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of this agreement.

(14) DEFAULT

If any of the following events occur ("Events of Default"), all obligations on the part of the Division to make further payment of funds shall, if the Division elects, terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (15) REMEDIES. However, the Division may make

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

payments or partial payments, if applicable, after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment:

- a. If any warranty or representation made by the Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the Division and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;
- b. If material adverse changes occur in the financial condition of the Recipient at any time during the period of agreement, and the Recipient fails to cure this adverse change within thirty (30) days from the date written notice is sent by the Division.
- c. If any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information;
- d. If the Recipient has failed to perform and complete on time any of its obligations under this Agreement.

(15) REMEDIES

If an Event of Default occurs, then the Division shall, after thirty (30) calendar days written notice to the Recipient and upon the Recipient's failure to cure within those thirty (30) days, exercise any one or more of the following remedies, either concurrently or consecutively:

- a. Terminate this Agreement, provided that the Recipient is given at least thirty (30) days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (2) CONTACT herein;

- b. Begin an appropriate legal or equitable action to enforce performance of this Agreement;
- c. Withhold or suspend payment of all or any part of a request for payment;
- d. Require that the Recipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.
- e. Exercise any corrective or remedial actions, to include but not be limited to:
 - i. request additional information from the Recipient to determine the reasons for or the extent of non-compliance or lack of performance,
 - ii. issue a written warning to advise that more serious measures may be taken if the situation is not corrected,
 - iii. advise the Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or
 - iv. require the Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible;
- f. Exercise any other rights or remedies which may be available under law.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Recipient.

(16) TERMINATION

a. The Division may terminate this Agreement for cause after thirty (30) days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, and refusal by the Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under chapter 119, Florida Statutes, as amended.

b. The Division may terminate this Agreement for convenience or when it determines, in its sole discretion, that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Recipient with thirty (30) calendar days prior written notice.

c. The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of this Agreement.

d. In the event this Agreement is terminated, the Recipient will not incur new obligations for the terminated portion of this Agreement after the Recipient has received the notification of termination. The Recipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Recipient shall not be relieved of liability to the Division because of any breach of this Agreement by the Recipient. The Division may, to the extent authorized by law, withhold payments to the Recipient for the purpose of set-off until the exact amount of damages due the Division from the Recipient is determined.

(17) SUBCONTRACTS

If the Recipient subcontracts any of the work required under this Agreement, a copy of the unsigned subcontract must be forwarded to the Division for review and approval before it is executed by the Recipient. The Recipient agrees to include in the subcontract that (i) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Division and Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The Recipient shall document in the quarterly report the subcontractor's progress in performing its work under this Agreement.

For each subcontract, the Recipient shall provide a written statement to the Division as to whether that subcontractor is a minority business enterprise, as defined in section 288.703, Florida Statutes.

(18) ATTACHMENTS

a. All attachments to this Agreement are incorporated as if set out fully.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

b. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

c. This Agreement has the following attachments:

Exhibit 1 - Funding Sources

Attachment A – Proposed Budget and Scope of Work

Attachment B – Program Statutes and Regulations

Attachment C – Statement of Assurances

Attachment D – Warranties and Representations

Attachment E – Certification Regarding Debarment

Attachment F – Foreign Country of Concern Affidavit

(19) PAYMENTS

a. Invoices shall be submitted at least quarterly and shall include the supporting documentation for all costs of the project or services. The final invoice shall be submitted within sixty (60) days after the expiration date of the agreement. An explanation of any circumstances prohibiting the submittal of quarterly invoices shall be submitted to the Division grant manager as part of the Recipient's quarterly reporting as referenced in paragraph (11) REPORTS of this Agreement.

b. If the Recipient is a county or municipality that is a rural community or rural area of opportunity as those terms are defined in section 288.0656(2), Florida Statutes, the Division may issue payment of submitted invoices for verified and eligible performance that has been completed in accordance with the terms and conditions set forth in this Agreement to the extent that federal or state law, rule, or other regulation allows such payments. The Recipient may elect in writing to exercise this provision as long as the Recipient is a county or municipality which is a rural community or rural area of opportunity, as defined in section 288.0656(2), Florida Statutes, and demonstrates financial hardship. A county or municipality located within a financially constrained county, as defined in section 288.67(1), Florida Statutes, is deemed to have demonstrated a financial hardship for the purposes of this provision.

c. If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, the State Chief Financial Officer or under paragraph 8 of this Agreement, all obligations on the part of the Division to make any further payment of funds shall terminate, and the Recipient shall submit its closeout report within thirty (30) days of completion of the last deliverable.

(20) REPAYMENTS

All refunds, repayments, or interest due to the Division under this Agreement are to be made payable to the order of "Division of Emergency Management," and mailed directly to the following address:

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Division of Emergency Management
Cashier
2555 Shumard Oak Boulevard
Tallahassee FL 32399-2100

In accordance with section 215.34(2), Florida Statutes, if a check or other draft is returned to the Division for collection, Recipient shall pay the Division a service fee of \$15.00 or 5% of the face amount of the returned check or draft, whichever is greater.

(21) MANDATED CONDITIONS

a. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Recipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials is incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Division and with thirty (30) days written notice to the Recipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Recipient.

b. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

c. Any power of approval or disapproval granted to the Division under the terms of this Agreement shall survive the term of this Agreement.

d. This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

e. The Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.

f. Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

contract with a public entity, and may not transact business with any public entity in excess of \$25,000.00 for a period of thirty-six (36) months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

g. Any Recipient which is not a local government or state agency, and which receives funds under this Agreement from the state government, certifies, to the best of its knowledge and belief, that it and its principals:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;

ii. Have not, within a five-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph (21)(g)(ii) of this certification; and

iv. Have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

If the Recipient is unable to certify to any of the statements in this certification, then the Recipient shall attach an explanation to this Agreement.

In addition, the Recipient shall send to the Division (by email or by facsimile transmission) the completed "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" (Attachment E) for each intended subcontractor that Recipient plans to fund under this Agreement. The form must be received by the Division before the Recipient enters into a contract with any subcontractor.

h. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with Chapter 216, Florida Statutes, or the Florida Constitution.

i. All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

j. Use of grant funds for travel is not authorized.

k. The Division reserves the right to unilaterally cancel this Agreement if the Recipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, which the Recipient created or received under this Agreement.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

l. If the Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Division or be applied against the Division's obligation to pay the contract amount.

m. The State of Florida will not intentionally award publicly funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Division shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Division.

n. The Recipient is subject to Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) with respect to the meetings of the Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board. All of these meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with chapter 119, Florida Statutes.

o. All expenditures of state financial assistance shall be in compliance with the laws, rules and regulations applicable to expenditures of State funds, including but not limited to, the Reference Guide for State Expenditures.

p. This Agreement may be charged only with allowable costs resulting from obligations that will be incurred during the period of agreement.

q. Any balances of unobligated cash that have been advanced or paid that are not authorized to be retained for direct program costs in a subsequent period must be refunded to the State.

r. Section 287.05805, Florida Statutes, requires that any state funds provided for the purchase of or improvements to real property are contingent upon the contractor or political subdivision granting to the state a security interest in the property at least to the amount of state funds provided for at least five (5) years from the date of purchase or the completion of the improvements or as further required by law.

s. The Division may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

t. The Recipient shall attest in Attachment F of this agreement, it is not an entity owned by the government of a Foreign Country of Concern, no government of a Foreign Country of Concern has a controlling interest in the entity, and the entity has not been organized under the laws of or has its principal place of business in a Foreign Country of Concern pursuant to Section 287.138, Florida Statutes.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

(22) LOBBYING PROHIBITION

a. Section 216.347, Florida Statutes, prohibits “any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.”

b. No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

(23) COPYRIGHT, PATENT AND TRADEMARK

EXCEPT AS PROVIDED BELOW, ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA. ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE RECIPIENT TO THE STATE OF FLORIDA.

a. If the Recipient has a pre-existing patent or copyright, the Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless this Agreement provides otherwise.

b. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with it, the Recipient shall refer the discovery or invention to the Division for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Recipient shall notify the Division. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Recipient to the State of Florida.

c. Within thirty (30) days of execution of this Agreement, the Recipient shall disclose all intellectual properties relating to the performance of this Agreement that he or she knows or should know could give rise to a patent or copyright. The Recipient shall retain all rights and entitlements to any pre-existing intellectual property that is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (b), have the right to all patents and copyrights that accrue during performance of this Agreement.

d. If the Recipient qualifies as a state university under Florida law, then, pursuant to section 1004.23, Florida Statutes, any invention conceived exclusively by the employees of the Recipient shall become the sole property of the Recipient. In the case of joint inventions, that is inventions made jointly by one or more employees of both parties hereto, each party shall have an equal, undivided interest in and to such joint inventions. The Division shall retain a perpetual, irrevocable, fully paid, nonexclusive license, for its use and the use of its contractors of any resulting patented, copyrighted or trademarked

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

work products, developed solely by the Recipient, under this Agreement, for Florida government purposes.

(24) LEGAL AUTHORIZATION.

The Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Recipient also certifies that the undersigned person has the authority to legally execute and bind Recipient to the terms of this Agreement.

(25) ASSURANCES.

The Recipient shall comply with any Statement of Assurances incorporated as Attachment C.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

RECIPIENT: Town of Fort Myers Beach, Florida

By:  _____

Name and Title: Dan Allers Mayor

Date: 1/31/2021

FID# 65-0632312

**STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT**

By:  _____

Name and Title: **Kevin Guthrie, Director, or Ian Guidicelli, Response Bureau Chief,
as Authorized Representative.**

Date: 3/5/2021

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

EXHIBIT – 1

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

SUBJECT TO S SB 2500 (2023), ITEM 2676A:

State Project -

State awarding agency **Florida Division of Emergency Management**

Amount of State Funding: **\$350,000,000**

2676A LUMP SUM
HURRICANE RECOVERY GRANT PROGRAM
FROM GENERAL REVENUE FUND 350,000,000

Funds in Specific Appropriation 2676A are provided for hurricane repair and recovery related to projects within counties designated in the Federal Emergency Management Agency disaster declarations for Hurricanes Ian and Nicole. The Executive Office of the Governor, Division of Emergency Management is authorized to request budget amendments up to \$350,000,000 requesting release of funds pursuant to chapter 216, Florida Statutes, to provide resources to fund gaps in: mitigation of local and county revenue losses and operating deficits; infrastructure repair and replacement, including road, sewer, and water facilities; beach renourishment; and debris removal. The division is authorized to approve requests for resources by local governments, independent special districts, and school boards, including charter schools. A local government may submit a request for resources to administer infrastructure repair or beach renourishment grants within the jurisdiction of the local government, provided that the grant program requires matching funds by grantees of at least 50 percent of project costs. Requests for the release of funds shall include certification that includes, but is not limited to:

1. That funding requested by the local government, independent special district, and school board, including a charter school, is necessary to maintain services or infrastructure essential to support health, safety, and welfare functions, and to reimburse the local government, independent special district, school board, or charter school for unanticipated expenses related to responding to Hurricane Ian or Nicole or for the loss of revenues related to the impact of Hurricane Ian or Nicole.

2. That insufficient state funds, federal funds, private funds, or insurance proceeds are available and that should sufficient funds subsequently become available to meet the need of the original budget amendment, the local government or entity has agreed to reimburse the state in the amount of such funds subsequently received.

The division shall coordinate with other state agencies and the local government or entity to ensure there is no duplication of benefits between these funds and other funding sources such as insurance proceeds and any other federal or state programs, including Public Assistance requests to the Federal Emergency Management Agency and Community Development Block Grant Disaster Recovery grants. Requests approved by the division for funding that are for projects ineligible for any other funding sources, whether federal or state programs, may be provided as grants. Requests approved by the division for funding that are for projects that are eligible for other funding sources shall be provided as loans which shall be repaid up to the amount of funds subsequently received. Any funds reimbursed to the state shall be deposited in the General Revenue Fund.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

ATTACHMENT A

Proposed Budget and Scope of Work

I. PROPOSED BUDGET

Project	Anticipated Expenditure Amount
Beach Renourishment	\$8,000,000.00
Legislative Appropriation Funds	\$8,000,000.00
Total Expenditures	\$8,000,000.00

II. BACKGROUND

As documented by the Hurricane Ian and Nicole Grant Recovery Program, \$350 million dollars were appropriated to help local governments mitigate local and county revenue losses and operating deficits; make infrastructure repairs and replacements including road and sewer and water facilities; conduct beach nourishment; and complete debris removal. Funding can be requested by local governments, independent special districts, and school boards, including charter schools.

The Town of Fort Myers Beach sustained significant damage to their beaches due to major Hurricane Ian. The Town of Fort Myers Beach is awarded a one-time advance payment of \$8,000,000 for their Beach Renourishment Project excluding Cat-G project areas. They will place and grade beach compatible sand along the central and south segments of Estero Island which was lost due to major Hurricane Ian.

Below is the project that will be funded under this funding agreement:

Beach Renourishment:

The Town of Fort Myers Beach seeks to contract with a qualified contractor to purchase, transport, place, and grade beach compatible sand along segments of Estero Island, Fort Myers Beach, FL. The Town of Fort Myers Beach will contract professional services for the design, engineering, monitoring, environmental and willing costs associated with the beach renourishment. Funds will be used to dredge sand to place on beach for beach restoration for damage caused by major Hurricane Ian. Additionally, a dune will be built along the central and south segments of Estero Island where the FEMA Cat-B project Emergency Berm was created from 182S-210. The Town also experienced additional sand loss due to major Hurricane Ian along Estero Island, the mitigation work consists of filling in scour holes and filling in beach public access areas that got eroded out. Cat-G project areas will not be funded under this agreement.

III. SCOPE OF WORK

- A. Funds have been allocated to the Recipient for the Beach Renourishment Project on Estero Island, Florida. Funds shall be utilized in accordance with all local, state, and federal regulations.
- B. Eligible costs include all eligible costs under State Department of Environmental Protection Agreement Number 23LE4 excluding Cat-G project areas. Eligible costs include engineering reports, permitting, inspections, required environmental studies, design and construction costs for beach management, the creation of sand dunes, filling scours, and dredging along Estero Island.
- C. The project's measurable outcome is Estero Island Beach Restoration to satisfy Florida Department of Environmental Protection Agreement Number 23LE4 excluding Cat-G project areas.
- D. The Recipient shall provide an initial timeline. Table SW-1, "Initial Timeline and Estimated Allocation Schedule" or other similar instrument as approved by the Division may be used.

IV. TASK PRODUCTS

- A. Per Scope-of-Work Item III.D, Recipient shall prepare an initial timeline with key milestone activities/tasks schedule, including estimated start and end dates for each activity. Table SW-1 may be used to meet this deliverable.
- B. The Recipient shall provide the Division with copies of before photographs to document site conditions, site work progress, and completed site work.
- C. The Recipient shall provide the Division with the procurement documents, if the Recipient went out to bid for the projects listed and receipts for all purchases.
- D. The Recipient shall provide the Division with copies of pertinent site work regulatory reviews and permits for all projects under this agreement.
- E. The Recipient shall provide the Division with copies of all task products submitted to the Florida Department of Environmental Protection Agreement Number 23LE4.
- F. The Recipient shall provide the Division with copies of bid-ready construction documents and specifications for review and comment by the Division as applicable for all projects under this agreement. The site work documents shall be signed by the applicable registered or licensed design professional(s) of record.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

- G. The Recipient shall provide the Division with copies of as-built documents for review by the Division as applicable for all projects under this agreement. The site work documents shall be signed by the applicable registered or licensed design professional(s) of record.
- H. The Recipient shall provide a completion report. The completion report shall demonstrate that the project meets the requirements for the projects.

V. FINANCIAL CONSEQUENCES

If Recipient fails to comply with any term of the grant, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- 1. Temporarily withhold cash payments pending correction of the deficiency by the recipient;
- 2. Disallow all or part of the cost of the activity or action not in compliance;
- 3. Withhold further funding; or,
- 4. Take other remedies that may be legally available.

VI. SCHEDULE OF WORK

- A. No later than 30 days after the agreement's execution date, the Recipient shall provide the Division with Task Product IV.A for review and approval. Failure to supply the required documentation, or disapproval of this documentation by the Division, shall result in denial or reduction of funds at the sole discretion of the Division.
- B. By April 30, 2024, and at least on a quarterly basis thereafter, Recipient shall report on progress in relation to the initial timeline and submit an invoice for work accomplished in accordance with the Division approved cost allocation table referenced in Task Product IV.A.
- C. By mutually agreed upon date(s), the Recipient shall provide the Division with Task Products IV.B through F for review and approval. Failure to supply the required documentation, or disapproval of this documentation by the Division, shall result in denial or reduction of funds at the sole discretion of the Division.
- D. By March 31, 2026, the Recipient shall provide a copy of the certificate of occupancy or completion or other appropriate written acceptance of completed work, or certification letter from the civil engineer showing that work meets specification of design, close-out documentation and final payment invoice.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Table SW-1. Initial Timeline and Estimated Allocation Schedule			
Project Name(s): Beach Renourishment			
PROJECT PHASE	Start Date	End Date	LAP Funds (FY 2023-2024)
Board Contract Approval			
Architectural & Engineering Services Firm Selection			
Site Survey and Soil Testing			
Spatial Needs Assessment			
Preliminary Design, 100% complete			
Permits			
Regulatory Review			
Bid Document(s) Development & Award			
Notice to Proceed/Mobilization			
Construction Project Management & Special Inspections			
Construction 25% Complete			
Construction 50% Complete			
Construction 100% Complete			
Sub-Totals		\$8,000,000	
TOTAL Estimated Project Cost			

A/E - Architectural and Engineering; DEM – Division of Emergency Management; FY - Fiscal Year

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Attachment B

Program Statutes and Regulations

Section 215.422, Florida Statutes	Payments, warrants, and invoices; processing time limits; dispute limitation; agency or judicial branch compliance
Section 215.97, Florida Statutes	Florida Single Audit Act
Section 215.971, Florida Statutes	Agreements funded with federal and state assistance
Section 216.347, Florida Statutes	Disbursement of grant and aids appropriations for lobbying prohibited
Section 216.3475, Florida Statutes	Maximum rate of payment for services funded under General Appropriations Act or awarded on a noncompetitive basis
Section 287.056, Florida Statutes	Purchases from purchasing agreement and state term contract
Section 287.057, Florida Statutes	Procurement of commodities or contractual services
CFO MEMORANDUM NO. 04 (2005-06)	Compliance Requirements for Agreements
Section 553.844, Florida Statutes	Requirements for Roofs and Opening Protection
SB 2500 (2023), ITEM 2676A	Requirements for Hurricane Recovery Grant Program

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Attachment C **Statement of Assurances**

To the extent the following provisions apply to this Agreement, the Recipient certifies that:

- (a) It possesses legal authority to enter into this Agreement and to carry out the proposed program;
- (b) Its governing body has duly adopted or passed as an official act of resolution, motion or similar action authorizing the execution of the hazard mitigation agreement with the Division of Emergency Management (DEM), including all understandings and assurances contained in it, and directing and authorizing the Recipient's chief administrative officer or designee to act in connection with the application and to provide such additional information as may be required;
- (c) No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall receive any share or part of this Agreement or any benefit. No member, officer, or employee of the Recipient or its designees or agents, no member of the governing body of the locality in which this program is situated, and no other public official of the locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year after, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds, for work be performed in connection with the program assisted under this Agreement. The Recipient shall incorporate, in all contracts or subcontracts a provision prohibiting any interest pursuant to the purpose stated above;
- (d) All Recipient contracts for which the State Legislature is in any part a funding source, shall contain language to provide for termination with reasonable costs to be paid by the Recipient for eligible contract work completed prior to the date the notice of suspension of funding was received by the Recipient. Any cost incurred after a notice of suspension or termination is received by the Recipient may not be funded with funds provided under this Agreement unless previously approved in writing by the Division. All Recipient contracts shall contain provisions for termination for cause or convenience and shall provide for the method of payment in such event;
- (e) It will comply with:
 - (1) Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work week; and
 - (2) Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., requiring that covered employees be paid at least minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed workweek.
- (f) It will comply with
 - (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient received Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Recipient, this assurance shall obligate the Recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;

- (2) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualifies handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973;
- (3) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship;
- (g) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties pursuant to Section 112.313 and Section 112.3135, Florida Statutes;
- (h) It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Section 51 which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities;
- (i) It will comply with the provisions of 18 U.S.C. 594, 598, 600-605 (further known as the Hatch Act) which limits the political activities of employees;
- (j) It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4002-4107, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;

For sites located within Special Flood Hazard Areas (SFHA), the Recipient must include a FEMA Model Acknowledgement of Conditions of Mitigation of Property in a Special Flood Hazard Area with FEMA Grant Funds executed by the title holder with the closeout request verifying that certain SFHA requirements were satisfied on each of the properties. The Model Acknowledgement can be found at www.fema.gov/government/grant/sfha_conditions.shtm

- (k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with the "Uniform Federal Accessibility Standards," (AS) which is Appendix A to 41 CFR Section 101-19.6 for general type buildings and Appendix A to 24 CFR, Part 40 for residential structures. The Recipient will be responsible for conducting inspections to ensure compliance with these specifications by the contractor;
- (1) It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (U.S.C. 470), Executive Order 11593, 24 CFR, Part 800, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. 469a-l, et seq.) by:

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

- (1) Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR, Section 800.8) by the proposed activity; and
- (2) Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties.
- (3) Abiding by the terms and conditions of the "Programmatic Agreement Among the Federal Emergency Management Agency, the Florida State Historic Preservation Office, the Florida Division of Emergency Management and the Advisory Council on Historic Preservation, (PA)" which addresses roles and responsibilities of Federal and State entities in implementing Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(£), and implementing regulations in 36 CFR, Part 800.
- (4) When any of the Recipient's projects funded under this Agreement may affect a historic property, as defined in 36 CFR, Part 800.16 (l)(1), the Federal Emergency Management Agency (FEMA) may require the Recipient to review the eligible scope of work in consultation with the State Historic Preservation Office (SHPO) and suggest methods of repair or construction that will conform with the recommended approaches set out in the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards), the Secretary of the Interior's Guidelines for Archeological Documentation (Guidelines) (48 Federal Register 44734-37), or any other applicable Secretary of Interior standards. If FEMA determines that the eligible scope of work will not conform with the Standards, the Recipient agrees to participate in consultations to develop, and after execution by all parties, to abide by, a written agreement that establishes mitigation and recondition measures, including but not limited to, impacts to archeological sites, and the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished.
- (5) The Recipient agrees to notify FEMA and the Division if any project funded under this Agreement will involve ground disturbing activities, including, but not limited to: subsurface disturbance; removal of trees; excavation of footings and foundations, and installation of utilities (such as water, sewer, storm drains, electrical, gas, leach lines and septic tanks) except where these activities are restricted solely to areas previously disturbed by the installation, replacement or maintenance of such utilities. FEMA will request the SHPO's opinion on the potential that archeological properties may be present and be affected by such activities. The SHPO will advise the Recipient on any feasible steps to be accomplished to avoid any National Register eligible archeological property or will make recommendations for the development of a treatment plan for the recovery or archeological data from the property.

If the Recipient is unable to avoid the archeological property, develop, in consultation with SHPO, a treatment plan consistent with the Guidelines and take into account the Advisory Council on Historic Preservation (Council) publication "Treatment of Archeological Properties". The Recipient shall forward information regarding the treatment plan to FEMA, the SHPO and the Council for review. If the SHPO and the Council do not object within fifteen (15) calendar days of receipt of the treatment plan, FEMA may direct the Recipient to implement the treatment plan. If either the Council or the SHPO object, Recipient shall not proceed with the project until the objection is resolved.
- (6) The Recipient shall notify the Division and FEMA as soon as practicable: (a) of any changes in the approved scope of work for a National Register eligible or listed property; (b) of all changes to a project that may result in a supplemental DSR or modify a HMGP project for a National Register eligible or listed property; (c) if it appears that a project funded under this Agreement will affect a previously unidentified property that may be eligible for inclusion in the National Register or affect

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

a known historic property in an unanticipated manner. The Recipient acknowledges that FEMA may require the Recipient to stop construction in the vicinity of the discovery of a previously unidentified property that may eligible for inclusion in the National Register or upon learning that construction may affect a known historic property in an unanticipated manner. The Recipient further acknowledges that FEMA may require the Recipient to take all reasonable measures to avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. The Recipient also acknowledges that FEMA will require, and the Recipient shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.

- (7) The Recipient acknowledges that, unless FEMA specifically stipulates otherwise, it shall not receive funding for projects when, with intent to avoid the requirements of the PA or the NHP A, the Recipient intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse effect to occur.
- (m) It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
- (n) It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4521-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- (o) It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (p) It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C. 4821 et seq.) which prohibits the use of lead-based paint in construction of rehabilitation or residential structures;
- (q) It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the State Energy Conservation Plan adopted pursuant thereto;
- (r) It will comply with the Laboratory Animal Welfare Act of 1966, (7 U.S.C. 2131-2159), pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by an award of assistance under this Agreement;
- (s) It will comply with Title VIII of the Civil Rights Act of 1968, (42 U.S.C 2000c and 42 U.S.C. 3601-3619), as amended, relating to non-discrimination in the sale, rental, or financing of housing, and Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin;
- (t) It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7642;
- (u) It will comply with the Clean Water Act of 1977, as amended, 42 U.S.C. 7419-7626
- (v) It will comply with the endangered Species Act of 1973, 16 U.S.C. 1531-1544;
- (w) It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4728-4763;
- (x) It will assist the awarding agency in assuring compliance with the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 270;
- (y) It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347;

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

- (z) It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 469a, et seq.;
- (aa) It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination;
- (bb) It will comply with the environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j, regarding the protection of underground water sources;
- (cc) It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs;
- (dd) It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system;
- (ee) It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice);
- (ff) It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3510;
- (gg) It will assure project consistency with the approved State program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-1464; and
- (hh) It will comply with the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-666.
- (ii) With respect to demolition activities, it will:
 - (1) Create and make available documentation sufficient to demonstrate that the Recipient and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.
 - (2) Return the property to its natural state as though no improvements had ever been contained thereon.
 - (3) Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in the Recipient's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection and the County Health Department.
 - (4) Provide documentation of the inspection results for each structure to indicate:
 - a. Safety Hazard Present
 - b. Health Hazards Present
 - c. Hazardous Materials Present
 - (5) Provide supervision over contractors or employees employed by the Recipient to remove asbestos and lead from demolished or otherwise applicable structures.
 - (6) Leave the demolished site clean, level and free of debris.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

- (7) Notify the Division promptly of any unusual existing condition which hampers the contractor's work.
- (8) Obtain all required permits.
- (9) Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.
- (10) Comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).
- (11) Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR, Part 15 and 61). This clause shall be added to any subcontracts.
- (12) Provide documentation of public notices for demolition activities.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Attachment D **Warranties and Representations**

Financial Management

Recipient's financial management system must include the following:

- (1) Accurate, current and complete disclosure of the financial results of this project or program
- (2) Records that identify the source and use of funds for all activities. These records shall contain information pertaining to grant awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
- (3) Effective control over and accountability for all funds, property and other assets. Recipient shall safeguard all assets and assure that they are used solely for authorized purposes.
- (4) Comparison of expenditures with budget amounts for each Request For Payment. Whenever appropriate, financial information should be related to performance and unit cost data.
- (5) Written procedures to determine whether costs are allowed and reasonable under the provisions of the applicable OMB cost principles and the terms and conditions of this Agreement.
- (6) Cost accounting records that are supported by backup documentation.

Competition

All procurement transactions shall be done in a manner to provide open and free competition. The Recipient shall be alert to conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure excellent contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the Recipient, considering the price, quality and other factors. Solicitations shall clearly set forth all requirements that the bidder or offeror must fulfill in order for the bid or offer to be evaluated by the Recipient. Any and all bids or offers may be rejected when it is in the Recipient's interest to do so.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Codes of Conduct

The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by public grant funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the Recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The standards of conduct shall provide for disciplinary actions to be applied for violations of the standards by officers, employees, or agents of the Recipient.

Business Hours

The Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, from _____

Licensing and Permitting

All subcontractors or employees hired by the Recipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Recipient.

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

Attachment E

Certification Regarding
Debarment, Suspension, Ineligibility
And Voluntary Exclusion

Subcontractor Covered Transactions

- (1) The prospective subcontractor, _____, of the Recipient certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Recipient's subcontractor is unable to certify to the above statement, the prospective subcontractor shall attach an explanation to this form.

SUBCONTRACTOR:

By: _____
Signature

Recipient's Name

Name and Title

DEM Contract Number

Street Address

Project Number

City, State, Zip

Date

EXHIBIT E – STATE FUNDED LAP GRANT AGREEMENT (No. D1502)

ATTACHMENT E
FOREIGN COUNTRY OF CONCERN AFFIDAVIT –
PERSONAL IDENTIFYING INFORMATION CONTRACT

Section 287.138, Florida Statutes, prohibits a Florida "Governmental entity"¹ from entering into or extending contracts with any other entity whereby such a contract, or extension thereof, could grant the other entity access to an individual's personal identifying information if that entity is associated with a "Foreign Country of Concern."² Specifically, section 287.138(2), Florida Statutes, prohibits such contracts with any entity that is owned by the government of a Foreign Country of Concern, any entity in which the government of a Foreign Country of Concern has a "controlling interest,"³ and any entity organized under the laws of or which has its principal place of business in a Foreign Country of Concern.

As the person authorized to sign on behalf of Recipient, I hereby attest that the company identified below in the section entitled "Recipient" is not an entity owned by the government of a Foreign Country of Concern, no government of a Foreign Country of Concern has a controlling interest in the entity, and the entity has not been organized under the laws of or has its principal place of business in a Foreign Country of Concern.

I understand that pursuant to section 287.138, Florida Statutes, I am submitting this affidavit under penalty of perjury.

Recipient Name: _____

Recipient FEIN: _____

Recipient's Authorized Representative Name and Title: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____

Email Address: _____

Certified By: _____

AUTHORIZED SIGNATURE

Print Name and Title: _____

Date: _____

¹ As defined in Section 287.138 (1)(d), Florida Statutes.

² As defined in Section 287.138 (1)(c), Florida Statutes.

³ As defined in Section 287.138 (1)(a), Florida Statutes.

ICA Dune Planting Agreement

Final Audit Report

2025-08-19

Created:	2025-08-19
By:	Amy Baker (AMY@FMBGOV.COM)
Status:	Signed
Transaction ID:	CBJCHBCAABAAm8QCNkI4QG7wK7fFvq5z2e88WHDiPyS0

"ICA Dune Planting Agreement" History

-  Document created by Amy Baker (AMY@FMBGOV.COM)
2025-08-19 - 5:39:48 PM GMT
-  Document emailed to William B. McKannay (Will.McKannay@fmbgov.com) for signature
2025-08-19 - 5:40:04 PM GMT
-  Document emailed to Amy Baker (AMY@FMBGOV.COM) for signature
2025-08-19 - 5:40:04 PM GMT
-  Email viewed by William B. McKannay (Will.McKannay@fmbgov.com)
2025-08-19 - 5:43:47 PM GMT
-  Document e-signed by William B. McKannay (Will.McKannay@fmbgov.com)
Signature Date: 2025-08-19 - 5:52:14 PM GMT - Time Source: server
-  Document e-signed by Amy Baker (AMY@FMBGOV.COM)
Signature Date: 2025-08-19 - 6:45:01 PM GMT - Time Source: server- Signature captured from device with phone number XXXXXXXX0014
-  Agreement completed.
2025-08-19 - 6:45:01 PM GMT

Chadd Chustz

From: Paige Lay <Paige.Lay@em.myflorida.com>
Sent: Monday, November 17, 2025 11:23 AM
To: Michael Poff
Cc: Chadd Chustz
Subject: RE: 23LE4 Eligible Expense

⚠ WARNING: This email originated from outside your organization.

Good Morning,

Thank you for the quick response.

Since DEP is allowing the expense as it is part of the project scope and design, we are okay with it being an allowable cost.

Thank You,



Paige Lay, FCCM

Infrastructure Program Manager
Bureau of Response
Florida Division of Emergency Management
2555 Shumard Oak Blvd, Tallahassee, FL 32399-7018
paige.lay@em.myflorida.com
Mobile: (850)591-9933

From: Michael Poff <mpoff@cecifl.com>
Sent: Monday, November 17, 2025 11:07 AM
To: Paige Lay <Paige.Lay@em.myflorida.com>
Cc: Chadd Chustz <Chadd@fmbgov.com>
Subject: FW: 23LE4 Eligible Expense

You don't often get email from mpoff@cecifl.com. [Learn why this is important](#)

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Paige

Please see FDEP's response the survey services are eligible for their grant.

thanks

Michael Poff, P.E., President
Coastal Engineering Consultants, Inc
28421 Bonita Crossings Blvd
Bonita Springs, Florida 34135

(239) 643-2324, extension 126
(239) 643-1143 (fax)
mpoff@cecifl.com
website: coastalengineering.com



CONFIDENTIALITY STATEMENT

The information contained in this transmission and any attachments may contain privileged and/or confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, use, dissemination, or duplication of this communication or any attachments hereto is strictly prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: Irving, John <John.Irving@FloridaDEP.gov>
Sent: Monday, November 17, 2025 10:52 AM
To: Michael Poff <mpoff@cecifl.com>
Cc: Chadd Chustz <Chadd@fmbgov.com>
Subject: RE: 23LE4 Eligible Expense

Good Morning Michael,

The survey services would be eligible under an FDEP grant as it would be a needed service for the project to proceed as it essentially determines a legal project design/placement area.

Thank you,



John Irving, MSc.
Environmental Administrator
Florida Department of Environmental Protection
Office of Resilience and Coastal Protection
Beach Management Funding Assistance Program
John.Irving@FloridaDEP.gov
Office: 850-245-8355

From: Michael Poff <mpoff@cecifl.com>
Sent: Monday, November 17, 2025 10:29 AM
To: Irving, John <John.Irving@FloridaDEP.gov>
Cc: Chadd Chustz <Chadd@fmbgov.com>
Subject: 23LE4 Eligible Expense

EXTERNAL MESSAGE

This email originated outside of DEP. Please use caution when opening attachments, clicking links, or responding to this email.

John

Good Morning – hope all is well

FDEM provided a grant to the Town for Hurricane Ian recovery that extends along Estero Island less the north segment that is eligible for FEMA public assistance. Their grant extends from R182 to R210.

FDEP grant 23LE4 covers the beach project limits from R174 to R198 and R203 to R207.

The Town is in the process of planting dune vegetation along the beach and the public rights-of-way to restore the dunes to pre-Ian conditions consistent with their approved dune management plan.

Dune restoration is an eligible expense under both the FDEM grant and FDEP grant.

Due to the private property issues on Estero Island, most notably, beach front property owners who refuse to sign temp. construction easements, the Town asked CEC to provide survey services to accurately determine the Town's right-of-way limits so the plantings are placed on public property and not on private property.

The Town asked FDEM to confirm the survey services were an eligible expense under their grant. They verbally indicated Yes provided the survey services are eligible under the FDEP grant. They noted the FDEM grant states their grant must be consistent with your grant.

Would you kindly review the above and confirm that survey services to establish planting limits within Town rights-of-way are an eligible expense under 23LE4.

thanks!

PS Chadd and I can hop on a quick call if that would help streamline your review.

Michael Poff, P.E., President
Coastal Engineering Consultants, Inc
28421 Bonita Crossings Blvd
Bonita Springs, Florida 34135
(239) 643-2324, extension 126
(239) 643-1143 (fax)
mpoff@cecifl.com
website: coastalengineering.com



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Under Florida law, correspondence with the Florida Division of Emergency Management concerning agency business that is neither confidential nor exempt pursuant to Florida Statutes is a public record and will be made available to the public upon request.

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.



TOWN of FORT MYERS BEACH

BID NO. ITB-25-02-EN

PART E
FMB:011 - CONSTRUCTION CONTRACT
CHANGE ORDER

No.: 4

(A Change Order requires approval by the Finance Director and Town Manager for expenditures under \$25,000, approval by the Town Council for expenditures over \$25,000).

CONTRACT/PROJECT NAME: DUNE PLANTING PROJECT

CONTRACTOR: EarthBalance Corporation PROJECT NO.: _____

CONTRACT NO.: ITB-25-02-EN BID NO.: ITB-25-02-EN

CHANGE REQUESTED BY: DUNE PLANTING PROJECT DATE OF REQUEST: 12/15/2025

Upon the completion and execution of this Change Order by both parties to the Contract the Contractor is authorized to and shall proceed to make the following changes in the Contract Documents:
(If you need space other than what has been provided, please attach additional sheets.)

Description: The Town requested the contractor to plant additional dune vegetation at participating properties and beach accesses

Purpose of Change Order: Increase contract price and add contract time

Attachments: (List documents supporting change) _____

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIME:
Original Contract Price	Original Contract Time
<u>\$509,859.50</u>	<u>120</u> Calendar Days
Previous Change Order No. N/A to No. <u>N/A</u>	Net Change from previous Change Orders
	<u>0</u> Calendar Days
Contract Price prior to this Change Order	Contract Time prior to this Change Order
<u>\$605,579.50</u>	<u>120</u> Calendar Days
Net Increase (Decrease) of this Change Order	Net Increase (Decrease) of this Change Order
<u>Not to Exceed \$500,000.00</u>	<u>120</u> Calendar Days
Contract Price with all approved Change Orders	Contract Time with all approved Change Orders
<u>\$605,579.50</u>	<u>240</u> Calendar Days

It is understood and agreed that the acceptance of this modification by the CONTRACTOR constitutes an accord and satisfaction, and represents payment in full (both time and money) for all costs arising out of, or incidental to, the above mentioned change.

RECOMMENDED:

By: _____
Consultant (if applicable) Date

By: _____
Department Director Date

Contracts Management

APPROVED:

Town Attorney Date

ACCEPTED

By: _____
Contractor

Date Accepted: _____

(CORPORATE SEAL)

TOWN APPROVAL:

By: _____
Finance Director (Under \$25,000)

Date Approved: _____

By: _____
Town Manager (Under \$25,000)

Date Approved: _____

By: _____
Mayor, Town Council
(Over \$25,000)

Date Approved: _____

1. **Request:**

Meeting Date: December 15, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE SUPPLEMENTAL TASK AUTHORIZATION #2 OF CONTRACT RFQ-24-06-AD BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR SURVEY SERVICES FOR DUNE VEGETATION PLANTING PURPOSES IN THE TOWN'S BEACH ACCESS RIGHT OF WAY FOR A COST OF \$69,900; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The Estero Island North Berm Project is needed to provide storm surge protection for the upland properties.

What the action accomplishes:

STA #2 of Contract RFQ-24-06-AD for Coastal Engineering Consultants to provide survey services for the Estero Island Dune Planting Project.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Chadd Chustz, Environmental
Projects Manager

5. **Background:**

Attachments:

1. RESOLUTION 25-336 CEC STA 2 RFQ-24-06-AD Beach Access Survey
2. Attachment A 25264 Town of Fort Myers Beach Dune Planting Project 20251105
3. FDEM Email re Survey Eligible

Financial Impact:

STA #2 will be 100% paid for by the FDEM LAP Grant D1502.

6. **Alternative Action**

Do not approve STA #2 of Contract RFQ-24-06-AD for Coastal Engineering Consultants to provide survey services for the Estero Island Dune Planting Project.

7. **Management Recommendations:**

Approve STA #2 of Contract RFQ-24-06-AD.

8. **Recommended Approval:**

Chadd Chustz, Environmental Projects Manager
Frankie Kropacek, Community Development Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 11/21/2025
Approved - 11/22/2025
Approved - 11/24/2025
Approved - 11/24/2025
Approved - 12/8/2025
Final Approval - 12/8/2025

RESOLUTION NUMBER 25-336

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE SUPPLEMENTAL TASK AGREEMENT #2 OF CONTRACT RFQ-24-06-AD BETWEEN THE TOWN OF FORT MYERS BEACH AND COASTAL ENGINEERING CONSULTANTS, INC. FOR SURVEY SERVICES FOR DUNE VEGETATION PLANTING PURPOSES IN THE TOWN'S BEACH ACCESS RIGHT OF WAY FOR A COST OF \$69,900; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, The Town of Fort Myers Beach recognizes the beach as a vital economic and environmental asset for the Town residents and businesses, and

WHEREAS, The Town of Fort Myers Beach recognizes the importance of dune vegetation to stabilize beach sand to minimize erosion, to build dune elevation, to shield light pollution, and to provide habitat to native wildlife, and

WHEREAS, The Town of Fort Myers Beach is responsible for beach management, restoration and maintenance of the beach in its jurisdiction, and

WHEREAS, survey services are required to determine the legal project area for planting dune vegetation in the beach access right of way, and

WHEREAS, the Town Council has determined it is in the best interest of the Town to approve the requested Supplemental Task Order #2 of Contract # RFQ-24-06-AD.

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

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

Section 2. The Town Council hereby approves the Supplemental Task Order #2 of Contract # RFQ-24-06-AD between the Town of Fort Myers Beach and Coastal Engineering Consultants, Inc., for \$ \$69,900. A copy of the Supplemental Task Order #2 of Contract # RFQ-24-06-AD is attached hereto as Attachment "A".

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

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
Jim Atterholt	_____
Rebecca Link	_____
John R. King	_____

ADOPTED this ____ day of _____, 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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

**TOWN OF FORT MYERS BEACH SERVICE AGREEMENT
SUPPLEMENTAL TASK AUTHORIZATION**

X Supplemental Task Authorization

NO.: 02

CONTRACT/PROJECT NAME: Town of Fort Myers Beach Dune Planting Project

CONSULTANT: Coastal Engineering Consultants, Inc.

PROJECT NO.: _____

SOLICIT NO.: ONGOING MISC. PROF. SERVICES

CONTRACT NO.: RFQ-24-06-AD

REQUESTED BY: Chadd Chustz, Project Manager DATE OF REQUEST: October 30, 2025

Upon the completion and execution of this Supplemental Task Authorization by both parties, the Consultant/Provider is authorized to and shall proceed with the following:

EXHIBIT "A" SCOPE OF PROFESSIONAL SERVICE: DATED: November 5, 2025

EXHIBIT "B" COMPENSATION & METHOD OF PAYMENT: DATED: November 5, 2025

EXHIBIT "C" TIME AND SCHEDULE OF PERFORMANCE: DATED: November 5, 2025

EXHIBIT "D" CONSULTANT'S/PROVIDER'S ASSOCIATED
SUB-CONSULTANT(S)/SUB-CONTRACTORS: DATED: November 5, 2025

It is understood and agreed that the acceptance of this modification by the CONSULTANT/PROVIDER constitutes an accord and satisfaction.

RECOMMENDED:

By: _____
Department Director Date

By: _____
Contracts Manager Date

ACCEPTED:

By: _____ November 5, 2025
Consultant/Provider Date

TOWN APPROVAL:

By: _____
Town Manager Date

EXHIBIT A

Date: November 5, 2025

SCOPE OF PROFESSIONAL SERVICES
TOWN OF FORT MYERS BEACH DUNE PLANTING PROJECT

The Beach Access locations (28) are as follows:

Albatross Street	Beach Access # 23 = Seaview Street
Beach Access # 11 = Flamingo Street	Beach Access # 24 = Pompano Street
Gulf Road (Shelby) Beach Access	Beach Access # 25 = Gulf Beach Road
Beach Access # 12 = Gulf Drive	Beach Access # 26 = Chapel Street
Beach Access # 13 = Lanark Avenue	Beach Access # 27 = Mango Street
Beach Access # 14 = Aberdeen Avenue	Beach Access # 28 = Delmar Avenue
Beach Access # 15 = Sterling Avenue	Beach Access # 30 = Palm Avenue
Beach Access # 16 = Dakota Avenue	Beach Access # 31 = Miramar Street
Hyde Park Beach Access	Beach Access # 32 = Avenue E
Beach Access # 17 = Strandview Avenue	Beach Access # 33 = Alva Drive
Beach Access # 18 = Gulfview Avenue	Beach Access # 34 = Avenue C
Beach Access # 19 = Bayview Avenue	Beach Access # 35 = Avenue A
Beach Access # 20 = Coconut Drive	Beach Access # 36 = Canal Street (Wastin Way)
Beach Access # 22 = Connecticut Street	
Lovers Lane Beach Access	

Task A –Estero Boulevard Right of Way Map

- Calculate the location of each beach access using the 2010 Bean Whitaker ROW Map;
- Locate any improvements, encroachments, and visible above-ground utilities within each access;
- Stake each beach access for dune planting purposes.

Task B – Sketch and Legal Descriptions

- Prepare a sketch and legal description for each beach access.

Task C – Deliverable

- Prepare a signed and sealed survey map set of the thirty (28) beach accesses.

EXHIBIT B

Date: November 5, 2025

COMPENSATION AND METHOD OF PAYMENT

Section 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
Task A	ROW Survey / Stakeout / As-builts	\$34,260	LS	W.I.P.P.
Task B	Sketches and Legal Descriptions	\$18,320	LS	W.I.P.P.
Task C	Deliverable	\$17,320	LS	W.I.P.P.
TOTAL		\$69,900	LS	

(Unless list is continued on next page)

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated 11/5/2025, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto dated 11/5/2025, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

Date: November 5, 2025CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE *** FORTown of Fort Myers Beach Dune Planting ProjectConsultant or Sub-Consultant Name: Coastal Engineering Consultants, Inc.

(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Principal Engineer			\$255
Principal Surveyor			\$255
Coastal Modeler			\$185
Managing Consultant			\$195
Project Consultant			\$175
Staff Consultant			\$155
2-Man Survey Crew			\$193
1-Man Survey Crew			\$155
Crew Chief			\$125
Crew Member			\$ 95
Construction Manager			\$128
Senior Designer			\$140
Senior Coordinator			\$100
Laborer			\$ 55

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

**NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

***NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: November 5, 2025

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

Town of Fort Myers Beach Dune Planting Project

CONSULTANT OR SUB-CONSULTANT NAME: Coastal Engineering Consultants, Inc.

(A separate Attachment No. 2 should be included for each Sub-Consultant)

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Postage and Shipping	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Vehicle Travel Allowance (N.T.E. 50 miles one-way) (or)	\$0.405/mile
Vehicle Rental/Gas	Actual Cost
Lodging (Per Person)	Actual Cost or NTE \$100.00
Meals:	
	Breakfast
	Lunch
	Dinner
In accordance with the Runzheimer rate service for Travel utilizing the "average", dated 5/4/06	\$12.01 \$11.82 \$24.72
Reproduction (Photocopy) 8 1/2" x 11"	\$0.15/Page
8 1/2" x 14"	\$0.20/Page
11" x 14"	\$0.35/Page
Reproduction (Blue/White Prints)	\$0.20/Sq. Ft.
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Tolls	Actual Cost
*List other specific project related reimbursables (i.e. film/developing):	
Permit Fees	Actual Cost
RTK (per day)	\$200
Survey Boat (day)	\$430
Bathymetric Survey System (day)	\$600
NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).	
Administrative Services Fee – Applicable only when specifically authorized by the Town, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	

*NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C

Date: November 5, 2025

TIME AND SCHEDULE OF PERFORMANCE

Town of Fort Myers Beach Dune Planting Project

This EXHIBIT "C" establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number of Calendar Days for Completion from Date of Notice to Proceed
Task A	ROW Survey / Stakeout / As-builts	120	120
Task B	Sketches and Legal Descriptions	30	150
Task C	Deliverable	30	180

EXHIBIT D

Date: November 5, 2025

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S)

Town of Fort Myers Beach Dune Planting Project

CONSULTANT has identified the following Sub-Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No

Chadd Chustz

From: Paige Lay <Paige.Lay@em.myflorida.com>
Sent: Monday, November 17, 2025 11:23 AM
To: Michael Poff
Cc: Chadd Chustz
Subject: RE: 23LE4 Eligible Expense

⚠ WARNING: This email originated from outside your organization.

Good Morning,

Thank you for the quick response.

Since DEP is allowing the expense as it is part of the project scope and design, we are okay with it being an allowable cost.

Thank You,



Paige Lay, FCCM

Infrastructure Program Manager
Bureau of Response
Florida Division of Emergency Management
2555 Shumard Oak Blvd, Tallahassee, FL 32399-7018
paige.lay@em.myflorida.com
Mobile: (850)591-9933

From: Michael Poff <mpoff@cecifl.com>
Sent: Monday, November 17, 2025 11:07 AM
To: Paige Lay <Paige.Lay@em.myflorida.com>
Cc: Chadd Chustz <Chadd@fmbgov.com>
Subject: FW: 23LE4 Eligible Expense

You don't often get email from mpoff@cecifl.com. [Learn why this is important](#)

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Paige

Please see FDEP's response the survey services are eligible for their grant.

thanks

Michael Poff, P.E., President
Coastal Engineering Consultants, Inc
28421 Bonita Crossings Blvd
Bonita Springs, Florida 34135

(239) 643-2324, extension 126
(239) 643-1143 (fax)
mpoff@cecifl.com
website: coastalengineering.com



CONFIDENTIALITY STATEMENT

The information contained in this transmission and any attachments may contain privileged and/or confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, use, dissemination, or duplication of this communication or any attachments hereto is strictly prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: Irving, John <John.Irving@FloridaDEP.gov>
Sent: Monday, November 17, 2025 10:52 AM
To: Michael Poff <mpoff@cecifl.com>
Cc: Chadd Chustz <Chadd@fmbgov.com>
Subject: RE: 23LE4 Eligible Expense

Good Morning Michael,

The survey services would be eligible under an FDEP grant as it would be a needed service for the project to proceed as it essentially determines a legal project design/placement area.

Thank you,



John Irving, MSc.
Environmental Administrator
Florida Department of Environmental Protection
Office of Resilience and Coastal Protection
Beach Management Funding Assistance Program
John.Irving@FloridaDEP.gov
Office: 850-245-8355

From: Michael Poff <mpoff@cecifl.com>
Sent: Monday, November 17, 2025 10:29 AM
To: Irving, John <John.Irving@FloridaDEP.gov>
Cc: Chadd Chustz <Chadd@fmbgov.com>
Subject: 23LE4 Eligible Expense

EXTERNAL MESSAGE

This email originated outside of DEP. Please use caution when opening attachments, clicking links, or responding to this email.

John

Good Morning – hope all is well

FDEM provided a grant to the Town for Hurricane Ian recovery that extends along Estero Island less the north segment that is eligible for FEMA public assistance. Their grant extends from R182 to R210.

FDEP grant 23LE4 covers the beach project limits from R174 to R198 and R203 to R207.

The Town is in the process of planting dune vegetation along the beach and the public rights-of-way to restore the dunes to pre-Ian conditions consistent with their approved dune management plan.

Dune restoration is an eligible expense under both the FDEM grant and FDEP grant.

Due to the private property issues on Estero Island, most notably, beach front property owners who refuse to sign temp. construction easements, the Town asked CEC to provide survey services to accurately determine the Town's right-of-way limits so the plantings are placed on public property and not on private property.

The Town asked FDEM to confirm the survey services were an eligible expense under their grant. They verbally indicated Yes provided the survey services are eligible under the FDEP grant. They noted the FDEM grant states their grant must be consistent with your grant.

Would you kindly review the above and confirm that survey services to establish planting limits within Town rights-of-way are an eligible expense under 23LE4.

thanks!

PS Chadd and I can hop on a quick call if that would help streamline your review.

Michael Poff, P.E., President
Coastal Engineering Consultants, Inc
28421 Bonita Crossings Blvd
Bonita Springs, Florida 34135
(239) 643-2324, extension 126
(239) 643-1143 (fax)
mpoff@cecifl.com
website: coastalengineering.com



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Under Florida law, correspondence with the Florida Division of Emergency Management concerning agency business that is neither confidential nor exempt pursuant to Florida Statutes is a public record and will be made available to the public upon request.

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

1. **Request:**

Meeting Date: December 15, 2025

Approval for FMB Lions Club Shrimp Festival

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Requesting approval for the Annual Shrimp Festival that will be held at 401 & 420 Old San Carlos on March 6th & 7th, 2026. The event includes a 5k race, Craft & Food Expo and a parade. Requesting waiver of the amplified sound and waiver of open container for the beer tent. Matanzas Pass bridge will be closed from 9am- 12pm on Saturday 3/7/26 for 5K run. parade will utilize the bridge from San Carlos Blvd at Main St & Estero Blvd to the base of bridge to Bay St on the island. Aso, would like to add a drone that will be operated by Matt Santoro of Pink Shell and he has a pilots license and insurance policy. All approvals will be needed in order to issue permit. This event has been approved many times in the past.

Attachments:

1. Addendum to Shrimp Festival Letter 2026

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Tracie Raski, Magistrate Coordinator
Thomas Yozzo, Emergency Services Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 12/5/2025
Approved - 12/5/2025
Approved - 12/8/2025
Approved - 12/8/2025
Approved - 12/8/2025
Final Approval - 12/8/2025



Fort Myers Beach Lions Club
P.O. Box 5019
Fort Myers Beach, Florida 33932

November 26, 2025

Addendum

Drone coverage of the parade and expo will be provided by Matt Santoro of Pink Shell Resort and Marina Fort Myers Beach Florida.

Matt's drone pilot license and insurance policy have been verified and are included with this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Diane Clifton', written over the printed name.

Diane Clifton

Fort Myes Beach Lions Club Shrimp Festival 2026
Expo and Parade Coordinator

1. **Request:**

Meeting Date: December 15, 2025

Approval for Buffalo Grill to have Live Music

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Buffalo Grill would like approval to play live music between 1pm -10pm everyday.

Attachments:

1. Music permit

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Tracie Raski, Magistrate Coordinator
Thomas Yozzo, Emergency Services Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 12/5/2025
Approved - 12/5/2025
Approved - 12/8/2025
Approved - 12/8/2025
Approved - 12/8/2025
Final Approval - 12/8/2025



Town of Fort Myers Beach

2525 Estero Boulevard, Fort Myers Beach, Florida 33931
Tel: (239) 765-0202 Email: Specialevents@fmbgov.com

Name of event Live Music / Buffalo Grill

Attach separate sheet of paper with detailed description of event

Date(s) and times of event ASAP 1pm - 10pm

Address of event 1021 Estero Blvd

Expected # of participants/attendees 20 - 50

Sponsoring Organization Buffalo Grill

Organization address 1021 Estero Blvd

Contact Person/Phone# 716-583-4418

E-mail FRED@theBuffGrill.com

Amplified Music Y ☒ N ☐ 500 Ft Notifications ☐ Copy of Letter ☐

Renting Town Property Y ☒ N ☐ Renting Parking Spaces Y ☐ N ☒

How many Spaces? 0 How many hours 1 - 10pm

Extension of Premises? Y ☐ N ☒ ABT Form ☐ How many days? 7 (Over 3 days needs to go to Council)

Letters of Permission to use Property Lease

Letters of Permission to use Parking N/A Parking Plan N/A

Site Plan X Insurance ☐ (Naming Town of FMB as Certificate Holder) ?

Requesting Water Y ☐ N ☒ Electric Y ☐ N ☒

Requires Council Approval:

Waiver of open container Y ☐ N ☒ Waiver of Town parking fees Y ☐ N ☒

Waiver of Noise Ordinance Y ☐ N ☐ Recurring Event Y ☒ N ☐

Applicant Signature

Printed Name

FRED MAKONE

This permit is subject to the applicant meeting all requirements contained in Fort Myers Beach Code of Ordinance Book Part 2 Chapter 22 and in compliance with all items in the special event application.

Applicant to Complete:

Company managing trash removal: Buffalo Grill

No. of dumpsters: N/A Type of dumpsters: Several CANS

Who is responsible for clean-up and payment: Buffalo Grill

City right-of-way Parking Use: N/A Number of spaces: N/A

To be completed by Town Hall employees:

FMB Public Works:

Public Works remarks: _____

Approval: _____ Date: _____

FMB Environment Science: Tel (239)765-0202

FMB Environmental Sciences remarks: _____

Approval: _____ Date: _____

Please forward the completed application and site plan along with the individual approval request to each identified agency below. Once complete return all to our office.

Florida DEP: DEP now provides an online application process for minor event approval

Self Certification for CCCL Permit Guidance Document: <http://www.dep.state.fl.us/beaches/>

FOR MAJOR EVENTS ONLY CONTACT

Kelly Cramer

Tel (239)770-7502 Fax(850)412-0590

Email: kelly.cramer@floridadep.gov

Florida DEP remarks: _____

Check list: Application _____ Site Plan _____ Description _____

Florida DEP approval: _____ **Date:** _____

Turtle Time Inc.: Eve Haverfield

Tel (239)481-5566 eve@turtletime.org

Turtle Season is May 1 through October 31

Turtle Time remarks: _____

Turtle Time approval: _____ **Date:** _____

FORT MYERS BEACH FIRE DEPT

100 Voorhis Street • Fort Myers Beach, Florida 33931

Tel (239) 590-4210

Fire Guards: (how many?) _____

Fee: _____

Flammable Vegetation: _____

First Aid Equipment: _____

Fire Extinguishing Equipment: _____

Special Arrangements: _____

Print Name

Approval Signature

Date

prevention@fmbfire.org – For Fire Department Handbook and additional application.

LEE COUNTY SHERIFF'S DEPT

Tel (239)477-1830 Fax (239)432-0268
15650 Pine Ridge Road, Fort Myers, FL 33908

Parking: _____

Deputies (how many?) _____

Traffic Control: _____

Fees: _____

Special Arrangements: _____

Print Name

Approval Signature

Date



Fort Myers Beach Fire Control District

Life Safety Branch

100 Voorhis Street • Fort Myers Beach, Florida 33931
Phone (239) 590-4210 • Email: prevention@FMBFirefl.gov

Special Events Application and Guidebook

Event Type:

☒ Small Outdoor/Indoor Event	☐ Large Outdoor/Indoor Event	☐ Firework Display
Date of Application: 11-1-2025		Date of Event: ONGOING
Location: 1021 Estero Blvd		
Event Start Date/Time: ASAP 1:00 pm		Event End Date/Time: ONGOING 10 pm
Setup Date: ASAP	Setup Time: ASAP	Inspection Time:
Event Sponsor: Buffalo Grill		
Sponsor Contact: FRED MALLONE	Sponsor Phone #: 216 583 4418	Sponsor Email: FRED@theBuffGrill.com
Anticipated Number of Attendees: 50	Anticipated Number of Event Workers: 3-5	
Will there be carnival or mechanical rides: NO	Number of Stages: NONE	
Total Number of Vendors: 0	Total Number of Hot Food Vendors: 1 Buffalo Grill	
Number of Tents larger than 20 x 20: 0	Number of 10 x 10 Tents: Pop up 1-2 maybe	

Every vendor with a booth will receive a fire inspection and is responsible for paying an inspection fee. Please list the contact information for the responsible party below.

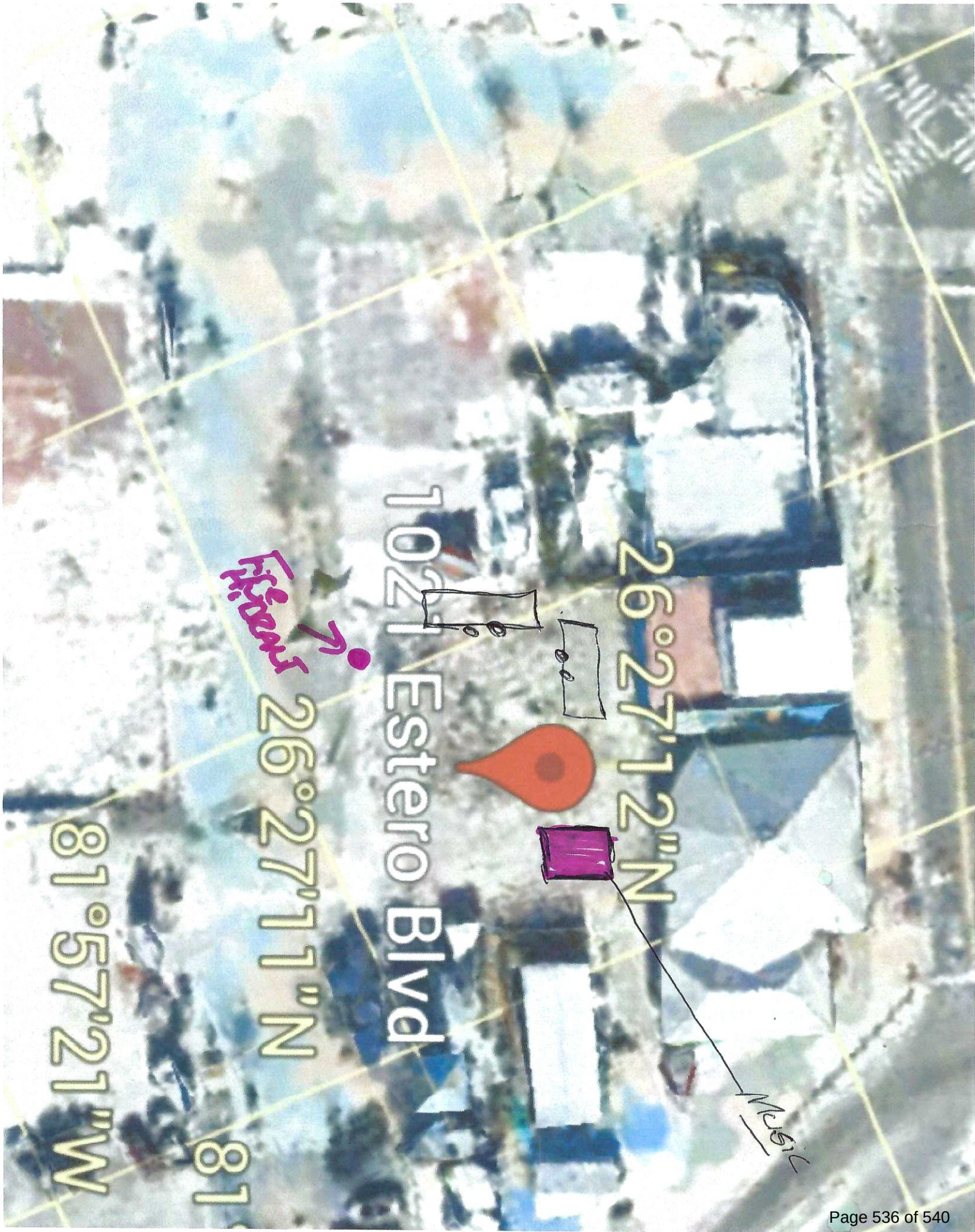
Please Note: If the event sponsor elects not to pay the vendor's inspection fee, a list of vendors, with full contact information, must be provided to the Fort Myers Beach Fire District. This information shall include contact name, number, and e-mail. All inspection fees will be due at time of service, and must be paid prior to release of any approvals.

Event applications submitted less than thirty (30) days prior to the event will be subject to additional fees. An expedited review may be requested and will be based upon availability, additional fees will apply.

Applications shall include the following:

1. A legible site plan to include proposed layout of the event; fire hydrant locations; fire/emergency access; and distances to any structures.
2. A life safety evaluation may be required based on the size of the event in accordance with the fire code.
3. All vendors should review FMBFD guidelines, on our website at www.FMBFirefl.gov
4. Failure to comply with requirements of the FMBFD may result in additional fees and/or shutdown of the vendor(s).

FRED MALLONE	
Submitting Party Name (Print)	Submitting Party Name (Sign)
Date: 11-1-2025	





Pop up
tent
for music

1. **Request:**

Meeting Date: December 15, 2025

Approval of 3rd Annual New Year Eve 5K run

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Beach Talk Radio would like permission to hold a 5K on the beach starting and ending at Diamondhead on Dec 31,25. This event has been approved in the past.

Attachments:

1. 28871671-Race page 1
2. 28871674-Race page 2

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Tracie Raski, Magistrate Coordinator
Thomas Yozzo, Emergency Services Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 12/5/2025
Approved - 12/5/2025
Approved - 12/8/2025
Approved - 12/8/2025
Approved - 12/8/2025
Final Approval - 12/8/2025



Town of Fort Myers Beach

2525 Estero Boulevard, Fort Myers Beach, Florida 33931
Tel: (239) 765-0202 Email: Specialevents@fmbgov.com

①

Name of event 3rd Annual New Years Eve 5K
Attach separate sheet of paper with detailed description of event
Date(s) and times of event December 31, 2025
Address of event Diamondhead Resort 2000 ESTERO BOULEVARD
Expected # of participants/attendees 100-150
Sponsoring Organization BEACH TALK RADIO
Organization address 12700 Vista Pine Circle, FM FL 33913
Contact Person/Phone# ED RYAN
E-mail EDRYAN@BEACHTALKRADIO.COM
Amplified Music Y ☐ N ☒ 500 Ft Notifications _____ Copy of Letter _____
Renting Town Property Y ☐ N ☒ Renting Parking Spaces Y ☐ N ☒
How many Spaces? _____ How many hours _____
Extension of Premises? Y ☐ N ☒ ABT Form _____ How many days? _____ (Over 3 days needs to go to Council)
Letters of Permission to use Property _____
Letters of Permission to use Parking _____ Parking Plan _____
Site Plan _____ Insurance _____ (Naming Town of FMB as Certificate Holder)
Requesting Water Y ☐ N ☒ Electric Y ☐ N ☐
Requires Council Approval:
Waiver of open container Y ☐ N ☒ Waiver of Town parking fees Y ☐ N ☐
Waiver of Noise Ordinance Y ☐ N ☒ Recurring Event Y ☐ N ☐
Applicant Signature Edward Ryan
Printed Name EDWARD RYAN 10-7-25

This permit is subject to the applicant meeting all requirements contained in Fort Myers Beach Code of Ordinance Book Part 2 Chapter 22 and in compliance with all items in the special event application.

