



Fort Myers Beach Town Council

**Town Hall Council Chambers
6231 Estero Boulevard
Fort Myers Beach, FL 33931**

Agenda

Monday, March 16, 2026

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF FINAL AGENDA**
- V. PUBLIC COMMENT**
- VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**
- VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**
 - A. Approve the appointment of members to the Public Safety Committee (PSC).
Approve the appointment of members to the Public Safety Committee (PSC).
- VIII. APPROVAL OF MINUTES**
- IX. CONSENT AGENDA**
- X. ITEMS REMOVED FROM CONSENT AGENDA**
- XI. PUBLIC HEARINGS**
 - A. Resolution 26-020, VAR20250220- 173 Gulf Island Drive
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE 20250220, REQUESTING A VARIANCE FROM SECTION 34-638(d)(6)b.3 OF THE LAND DEVELOPMENT CODE TO REDUCE THE REQUIRED 20-FOOT SIDE STREET SETBACK BY 11.9 FEET TO ALLOW A 232-SQUARE-FOOT DECK FOR THE EXISTING SINGLE-FAMILY RESIDENCE IN THE RS ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 173 GULF ISLAND DRIVE, GENERALLY REFERRED TO AS STRAP NUMBER: 29-46-24-W2-0050C.0120 IN FORT MYERS BEACH; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

- B. Resolution 26-015, SEZ20250271, 166/168 Coconut Drive
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250271, A REQUEST TO INCREASE THE NUMBER OF BEDROOMS IN A TWO-FAMILY RESIDENCE WHILE UTILIZING THE POST-DISASTER BUILDBACK CODE OF THE LDC SECTION 34-3238(2)(E)(4)(A), FOR THE PROPERTY LOCATED AT 166/168 COCONUT DRIVE, GENERALLY REFERRED TO AS STRAP NUMBER: 29-46-24-W2-0070A.0160 IN FORT MYERS BEACH; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.
- C. Ordinance 25-20; CPD2025-0203, 175 Sterling Ave. (FMB Womans Club)
This quasi-judicial agenda item is a Second Reading and Final Public Hearing on proposed Ordinance 25-20.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/APPROVING WITH CONDITIONS/ DENYING A REZONING TO A COMMERCIAL PLANNED DEVELOPMENT (CPD) FOR THE PROPERTY LOCATED AT 175 STERLING AVENUE, A PARCEL GENERALLY IDENTIFIED AS STRAP NUMBER 33-46-24-W2-00004.0000 TOWN OF FORT MYERS BEACH FROM INSTITUTIONAL TO ALLOW FOR THE REDEVELOPMENT OF THE PROPERTY FOR THE FORT MYERS BEACH WOMANS CLUB; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND PROVIDING FOR AN EFFECTIVE DATE.

- D. Ordinance 26-06, Purchasing Ordinance Amendments
This legislative agenda item is a Second Reading and Public Hearing on proposed Ordinance 26-06.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 1 PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES OF ARTICLE V FINANCE OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES TO 1) CLARIFY AND STREAMLINE EXISTING REGULATIONS AND PROCEDURES; 2) INCORPORATE BY REFERENCE STATUTORY MANDATORY TERMS AND CONDITIONS AND STATE AND FEDERAL GRANT REQUIREMENTS; AND 3) IMPLEMENT RECOMMENDATIONS PROVIDED TO THE TOWN BASED ON THE DISASTER READINESS ASSESSMENT PREPARED BY THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

XII. ADMINISTRATIVE AGENDA

- A. Resolution 26-057; Mooring Field Office Lease
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT

MYERS BEACH, FLORIDA, APPROVING A COMMERCIAL LEASE WITH FMB MATANZAS LLC FOR DOCK SPACE, UPLAND RESTROOM FACILITIES, AND OFFICE SPACE FOR THE MATANZAS PASS MOORING FIELD AND NEIGHBORHOOD SERVICES OPERATIONS; AUTHORIZING THE MAYOR TO EXECUTE THE COMMERCIAL LEASE ON BEHALF OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

XIII. FINAL PUBLIC COMMENT

XIV. TOWN MANAGER'S ITEMS

- A. Update on Strategic Planning Session and April M&P dates
- B. Follow-Up: Lowe's Community Bucket-List Project Ideas

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: March 16, 2026

Approve the appointment of members to the Public Safety Committee (PSC).

Why the action is necessary:

Following the October 2025 Town Council appointments, one vacancy remains on the committee. One application has since been received. Council action is necessary to consider the application and make an appointment, if appropriate.

What the action accomplishes:

Fills vacancies to maintain quorum and ensure the Public Safety Committee can continue advising Town Council on significant safety and transportation issues impacting the health, safety, and welfare of the community.

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
/ REPORTS / APPOINTMENTS

3. **Requirement/Purpose:**

Res. 24-17

4. **Submitter of Information:**

Lizzette Roman, Town Clerk
Administrative Coordinator

5. **Background:**

Per Town of Fort Myers Beach [Code of Ordinances 2-94](#) as amended by Ordinance 24-17:

Qualifications and Appointment of Members:

In addition to qualifications, which may be specified for membership by state statutes, Charter, ordinance, or resolution, a person appointed to an agency, board, committee, or commission shall give preference to a registered voter within the town's jurisdiction, a property owner within the town's jurisdiction, individuals with specialized experience or knowledge, individuals who have shown interest in the subject matter, or individuals who have a Fort Myers Beach postal code. No specific experience requirements shall be necessary as a prerequisite to an appointment.

Committee Purpose

The Public Safety Committee shall address any safety and transportation issues specifically assigned to the committee by the town council for the purpose of the health, safety and welfare of the business owners, residents, and visitors to the town. The committee shall review, discuss, and evaluate the most significant safety and transportation issues within the town. The PSC shall advise the Town Council on these matters or any other topics as assigned by the Town Council.

Current Status

There is currently (1) vacancy on the Public Safety Committee. The Town Clerk's Office has received **(1) application** for appointment to the committee.

Attachments:

1. Williams, Robert PSC

Financial Impact:

None

6. **Alternative Action**

Do not appoint members and continue to advertise for the vacancies.

7. **Management Recommendations:**

8. **Recommended Approval:**

Lizzette Roman, Town Clerk Administrative Coordinator
Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 3/5/2026
Approved - 3/5/2026
Approved - 3/6/2026
Approved - 3/9/2026
Final Approval - 3/9/2026



RECEIVED

By Amy Baker at 4:15 pm, Feb 04, 2026

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 02/04/20 2026

Name: Williams Robert L
Last First Middle initial

Telephone Number: (239) 980-5499

Email Address: fmb459@gmail.com

Home Address: 6893 Estero Blvd #411, FMB, 33931

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee *must attach resume
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☐ Local Planning Agency *must attach resume
- ☐ Marine and Environmental Resources Task Force
- ☐ Nuisance Abatement Board
- ☒ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

As a fourth generation Floridian, I care deeply about FMB and want to give back by volunteering in local problem solving. As a resident, Ive seen how essential public services are to our community's quality of life, growth and resident satisfaction. Im eager to bring my perspective, listen to concerns, and provide thoughtful input to help City Council make informed decisions that keep our town efficient, responsive and fiscally

Community Involvement:

Currently active in my condo association and a local animal rescue organization.

Interests / Activities:

Born and raised in Fort Myers my primary interests are spending time with my family, feeling the sun on my face and finally being able to give back to the place that shaped who I am today.

You may attach a resume in addition to the above information.

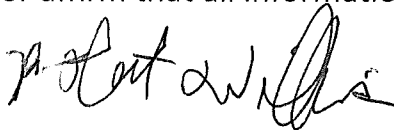
Do you qualify for Special Exemptions per § 119.071, F.S.

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed



Date

02/04/20

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 TownClerkTeam@fmbgov.com

1. **Request:**

Meeting Date: March 16, 2026

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE 20250220, REQUESTING A VARIANCE FROM SECTION 34-638(d)(6)b.3 OF THE LAND DEVELOPMENT CODE TO REDUCE THE REQUIRED 20-FOOT SIDE STREET SETBACK BY 11.9 FEET TO ALLOW A 232-SQUARE-FOOT DECK FOR THE EXISTING SINGLE-FAMILY RESIDENCE IN THE RS ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 173 GULF ISLAND DRIVE, GENERALLY REFERRED TO AS STRAP NUMBER: 29-46-24-W2-0050C.0120 IN FORT MYERS BEACH; 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:**

John Prinz, on behalf of Gordian Multistrategy Fund LLC, the owner of the property located at 173 Gulf Island Drive, is requesting a variance from the Town of Fort Myers Beach Land Development Code (LDC) Section 34-638(d)(6)b.3. This section requires single-family residences and all attached accessory structures, including decks and staircases, within the Single-Family Residential (RS) zoning district to maintain a minimum twenty-foot (20') side street setback for lots greater than seventy-five (75) feet in width.

The subject property is a corner lot developed with a single-family residence constructed in 1996. The existing residence has a nonconforming front street setback of 24.19 feet along Gulf Island Drive and a nonconforming side street setback of 8.1 feet along Bayside Road. The residence also includes an existing thirty-six (36) square-foot deck along Gulf Island Drive, which has a nonconforming side street setback of 17.57 feet.

The applicant proposes to expand the existing deck to a total of two hundred thirty-two (232) square feet and is requesting a variance of 11.9 feet to allow a side street setback of 8.1 feet for the expanded deck, where a minimum twenty-foot (20') side street setback is otherwise required for lots greater than seventy-five (75) feet in width within the RS zoning district.

During the LPA hearing on January 13, the LPA voted 7-0 to recommend denial of the variance request from LDC section 34-638(d)(6)b.3., a request to reduce the required 20-foot side street setback by 11.9 feet to allow a 232-square-foot deck for the existing single-family residence in the RS zoning district. The LPA unanimously recommended denial, finding that the request does not meet the requirements of LDC Section 34-87, and that granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare.

Attachments:

1. Final Draft TC Resolution 26-020, VAR20250220- 173 Gulf island (1)
2. Exhibit A to Resolution: Site Plan
3. Exhibit B to Resolution: Survey
4. Staff report
5. Application

Financial Impact:

Unknown

6. Alternative Action

Approve/ Approve with conditions

7. Management Recommendations:

Staff recommends **DENIAL** of VAR20250220, a request to reduce the required 20-foot side street setback by 11.9 feet to allow a 232-square-foot deck with 8.1 feet side street setback for the existing single-family residence in the RS zoning district.

8. Recommended Approval:

Jason Smalley, Senior Planner
Frankie Kropacek, Community Development Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 2/19/2026
Approved - 2/19/2026
Approved - 2/24/2026
Approved - 2/24/2026
Approved - 3/4/2026
Final Approval - 3/4/2026

TOWN COUNCIL RESOLUTION 26-020

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE 20250220, REQUESTING A VARIANCE FROM SECTION 34-638(d)(6)b.3 OF THE LAND DEVELOPMENT CODE TO REDUCE THE REQUIRED 20-FOOT SIDE STREET SETBACK BY 11.9 FEET TO ALLOW A 232-SQUARE-FOOT DECK FOR THE EXISTING SINGLE-FAMILY RESIDENCE IN THE RS ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 173 GULF ISLAND DRIVE, GENERALLY REFERRED TO AS STRAP NUMBER: 29-46-24-W2-0050C.0120 IN FORT MYERS BEACH; 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, Gordian Multistrategy Fund LLC (hereinafter "Applicant"), is the owner of real property located at 173 Gulf Island Drive, Fort Myers Beach, Florida (hereinafter "Subject Property"); and

WHEREAS, the STRAP for the Subject Property is 29-46-24-W2-0050C.0120, and the legal description for the Subject Property is shown on the Survey in "Exhibit B"; and

WHEREAS, the Subject Property is within the Low-Density Residential Future Land Use Map category according to the Town of Fort Myers Beach Comprehensive Plan; and

WHEREAS, the Subject Property is located in the Residential Single-family (RS) zoning district; and

WHEREAS, the Residential Single-family (RS) zoning district requires a minimum lot width of 75 feet and a minimum lot depth of 100 feet, with a total lot area of 7,500 square feet; and

WHEREAS, the Subject Property is an 85-foot-wide and 82-foot-deep non-conforming lot in the RS zoning district; and

WHEREAS, Section 34-638(d)(6)b.3 of the Land Development Code (“LDC”) requires a single-family home in the RS zoning district to provide a minimum 20-foot street setback for corners lots greater than 75 feet in width; and

WHEREAS, a single-family residence with a non-conforming side street setback of 8.1 feet and a 36 square foot deck with a non-conforming side street setback of 17.57 feet from Bayside Road is currently located on the Subject Property (See “Exhibit B”); and

WHEREAS, the Applicant proposes to expand the existing deck to 232 square feet and maintain the existing 8.1-foot side street setback of the single-family residence from the Bayside Road, as shown on the Site Plan in “Exhibit A”; and

WHEREAS, the Applicant requests a variance from LDC Section 34-638(d)(6)b.3, to reduce the required 20-foot side street setback by 11.9 feet to allow construction of a 232 sq. ft. deck for the existing non-conforming single-family residence in the RS zoning district; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (“LPA”) on January 13, 2026, and at the 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 7 to 0 to recommend denial of the variance request based on a finding that the request does not meet the requirements of LDC Section 34-87, and that granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare; and

WHEREAS, on March 16, 2026 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by Section 34-87 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 Applicants did/ did not meet their 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. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicants, Town staff, and interested parties and public, the Town Council **APPROVES/ APPROVES WITH CONDITIONS/ DENIES** the variance request from LDC Section 34-638(d)(6)b.3., a request to reduce the required 20-foot side street setback by 11.9 feet to allow a 232-square-foot deck for the existing single-family residence in the RS zoning district.

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. The variance shall only apply to the deck for an existing single-family home as shown on the provided site plan. Demolition or substantial damage to the residential structure shall render the variance to be null and void.
- C. This variance applies to the 232 square-foot-deck for an existing single-family structure on the Subject Property only. Any additional modification of the single-family dwelling or additional construction on the Subject Property must comply with all applicable regulations or seek a new variance.
- D. The variance applies to the modified side street setbacks along the west property boundary as shown in “Exhibit A” only. No other portion of the single-family dwelling or accessory structure(s) may be extended into a required setback.

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	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this ____ day of March, 2026 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 March, 2026.

EXHIBITS

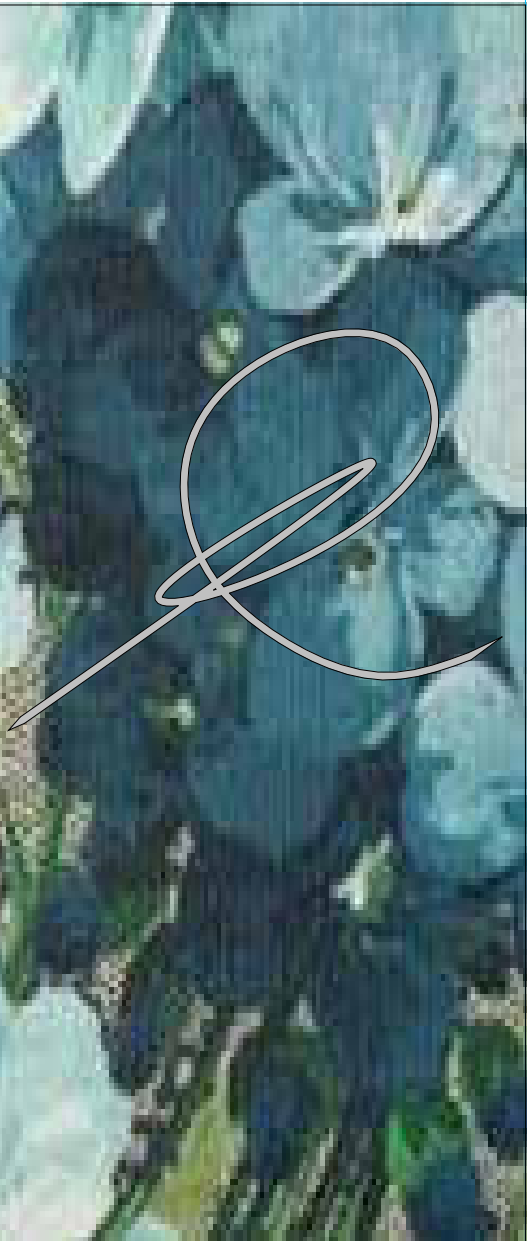
Exhibit A: Site Plan

Exhibit B: Survey

173 GULF ISLAND DR

FORT MYERS BEACH, FL

NOTE:
SCOPE OF WORK IS TO RECONSTRUTCT STIARCSES WHICH
WERE DAMAGED DURING THE HURRICANE AND EXPAND THEM.



PERMIT: 2023.09.28
REVISION: 2025.10.31

PROJECT INFORMATION

Hurricane Damage - Deck

(PROJECT ADDRESS)
173 GULF ISLAND DR
FORT MYERS BEACH

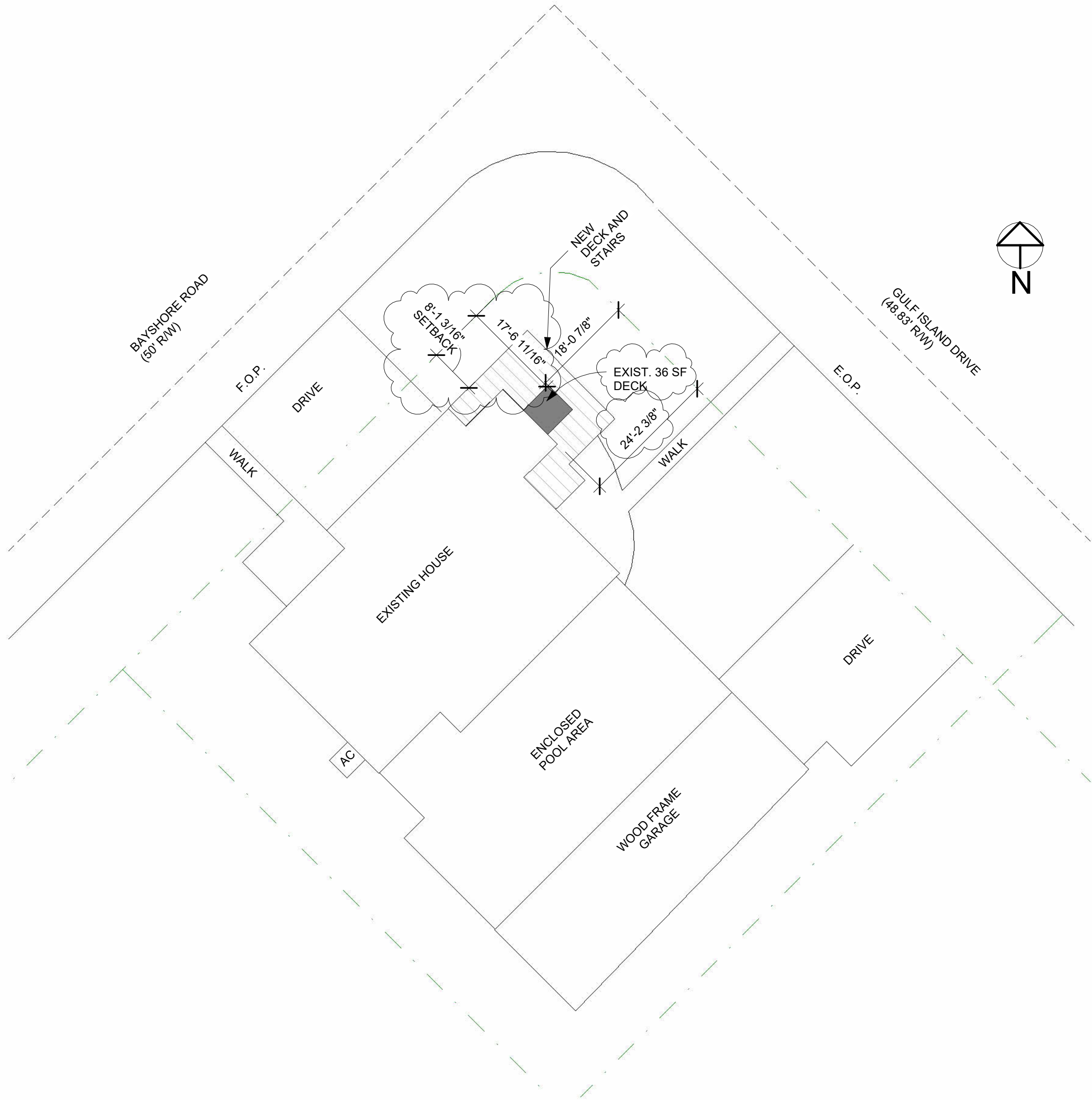
[DRAWN BY] TYN & MDS

[SHEET NAME]
[SHEET NUMBER]

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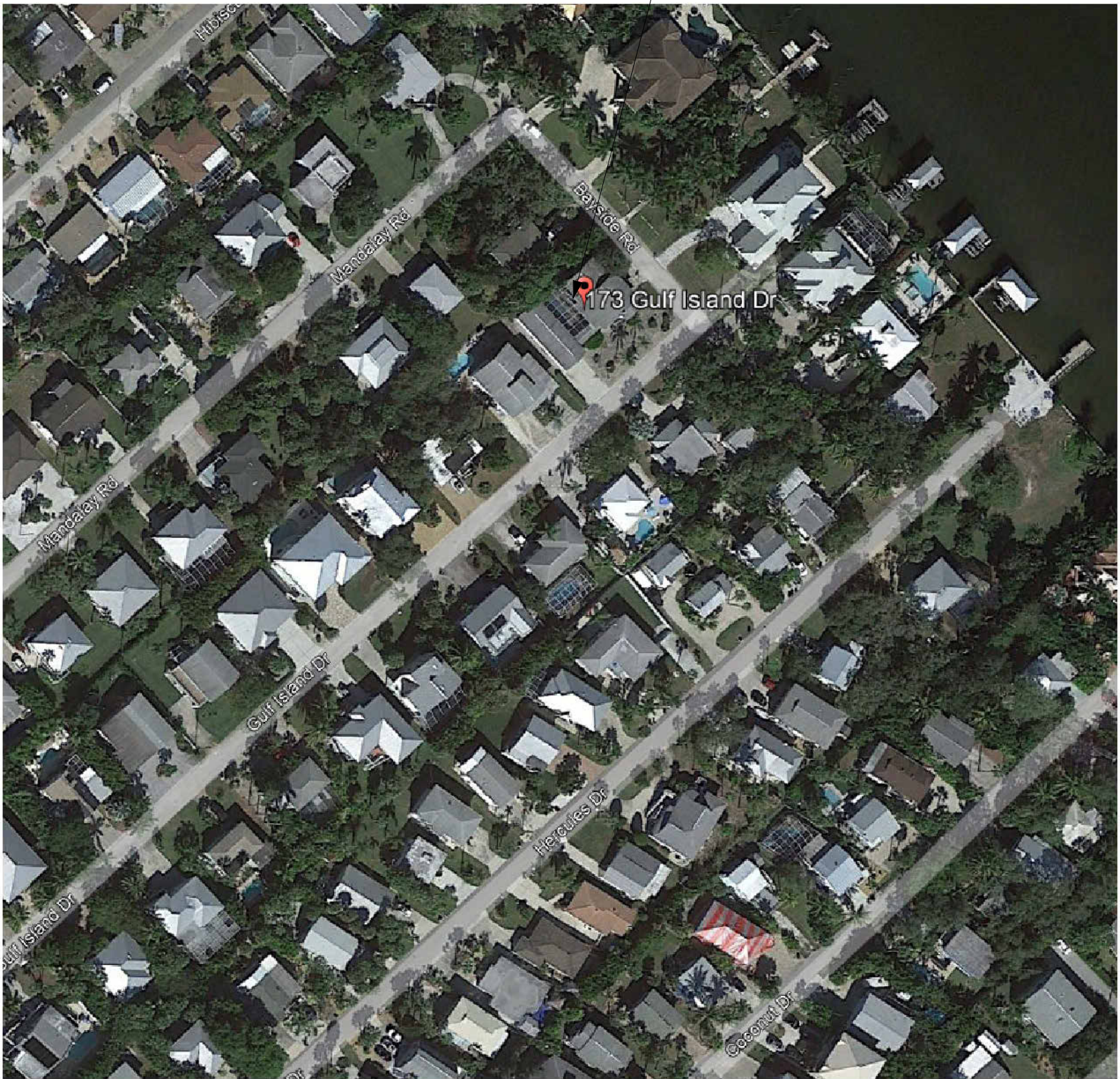
MICHAEL D. STEWART, PE
FLA REG. #72459

5330 SW 11th CT
Cape Coral, FL
Cell: (239)-292-7670
Email: MStewart@MStewartPE.com
PROFESSIONAL ENGINEERING SERVICES



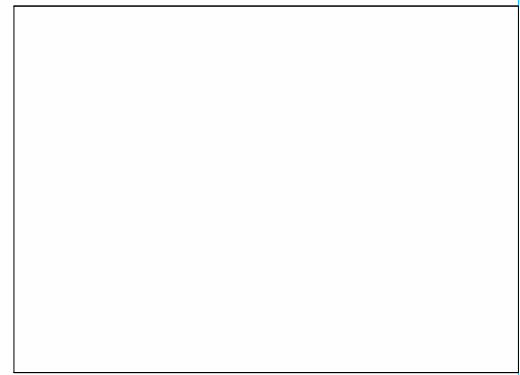
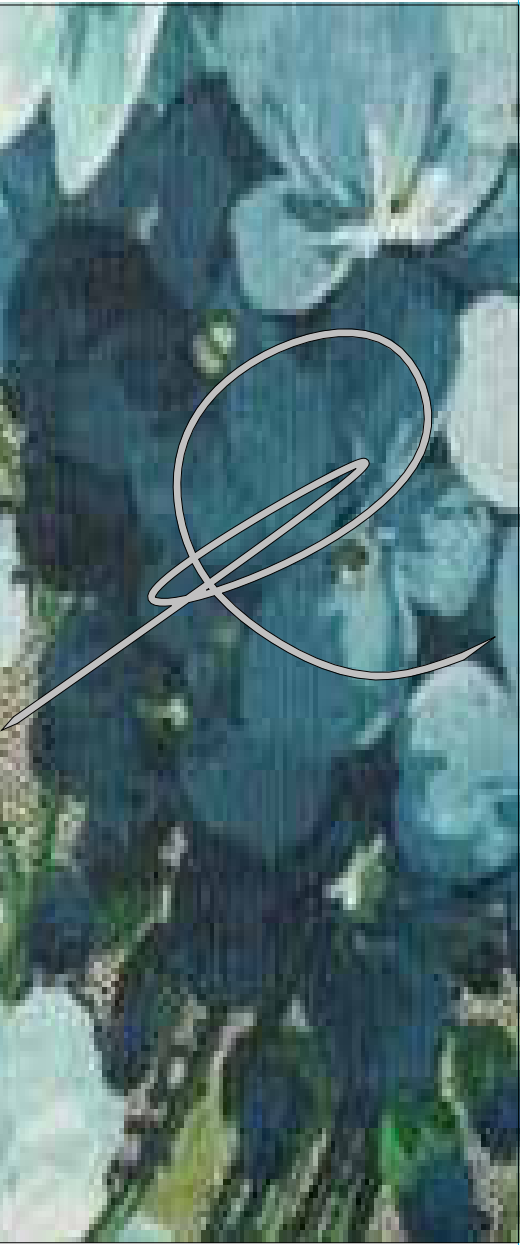
1 SITE PLAN
1/16\" = 1'-0"

SITE LOCATION





1 EXISTING FLOOR PLAN
1/4" = 1'-0"



PERMIT: 2023.09.28
REVISION 1: 2025.10.31

PROJECT
INFORMATION

Hurricane
Damage
- Deck

[PROJECT ADDRESS]
173 GULF ISLAND DR
FORT MYERS BEACH

[DRAWN BY] TYN & MDS

[SHEET NAME]

[SHEET NUMBER]

A
1.0

MICHAEL D. STEWART, PE
FLA REG. #72459

5330 SW 11th CT
Cape Coral, FL
Cell: (239)-292-7670
Email: MStewart@MStewartPE.com
PROFESSIONAL ENGINEERING SERVICES

FLOOR PLAN GENERAL NOTES:

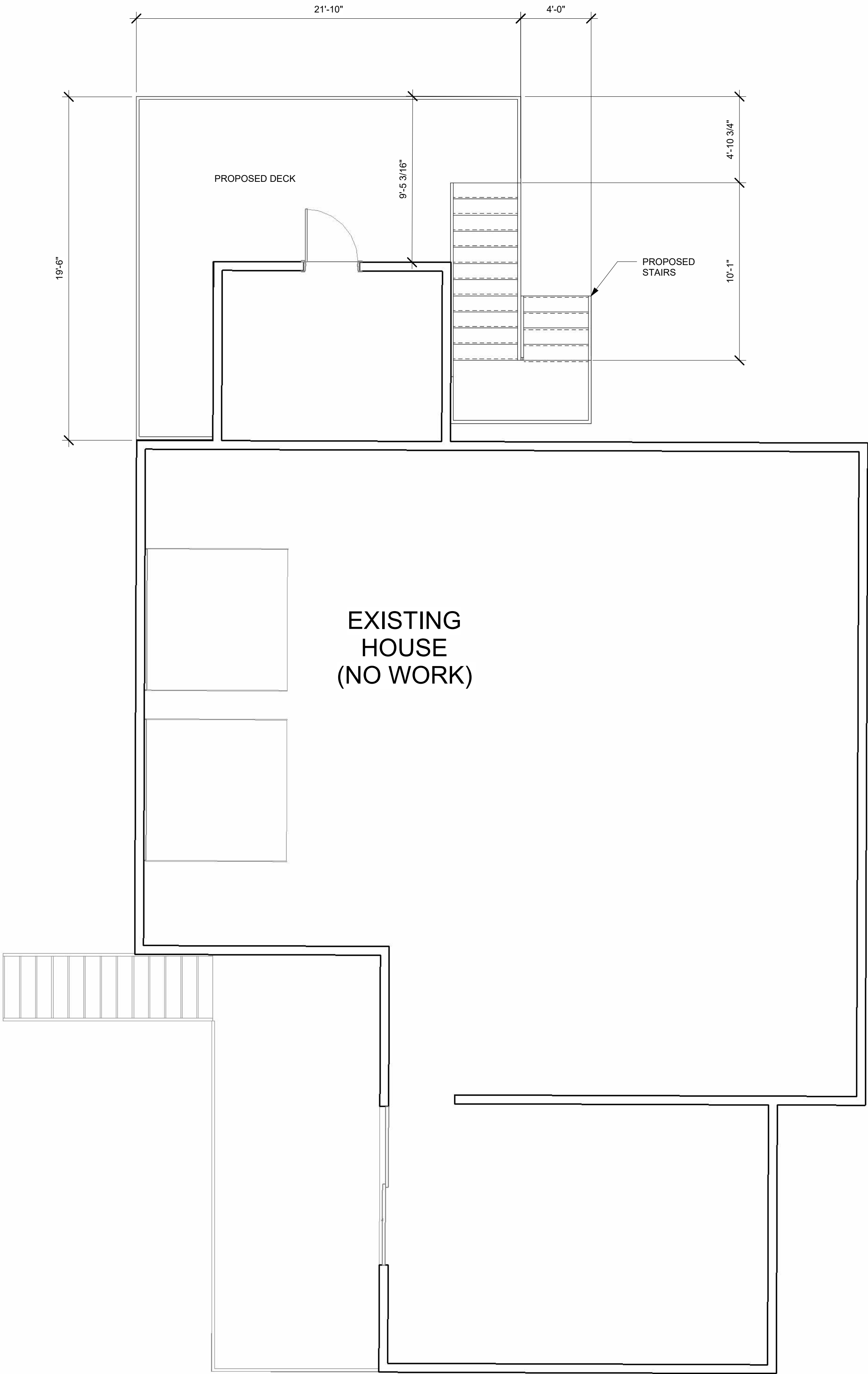
GENERAL:
VERIFY FLOOR ELEVATIONS W/ FLOOD REQUIREMENTS.

ALL HANDRAILS AND GUARD RAILS TO BE 36" AFF U.N.O. DESIGNED AND INSTALLED TO NOT ALLOW THE PASSAGE OF A 4" SPHERE. PROVIDE TOE RAILING AS REQ'D. MAX 2" A.F.F. COORD. FINAL MATERIAL, DESIGN, AND FINISH WITH OWNER. HANDRAILS AND GUARDS MUST COMPLY WITH ALL THE REQUIREMENTS OF THE FBC.

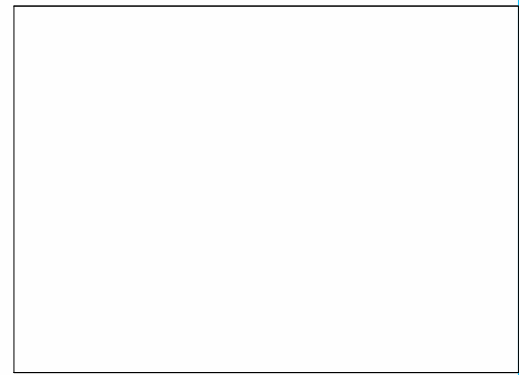
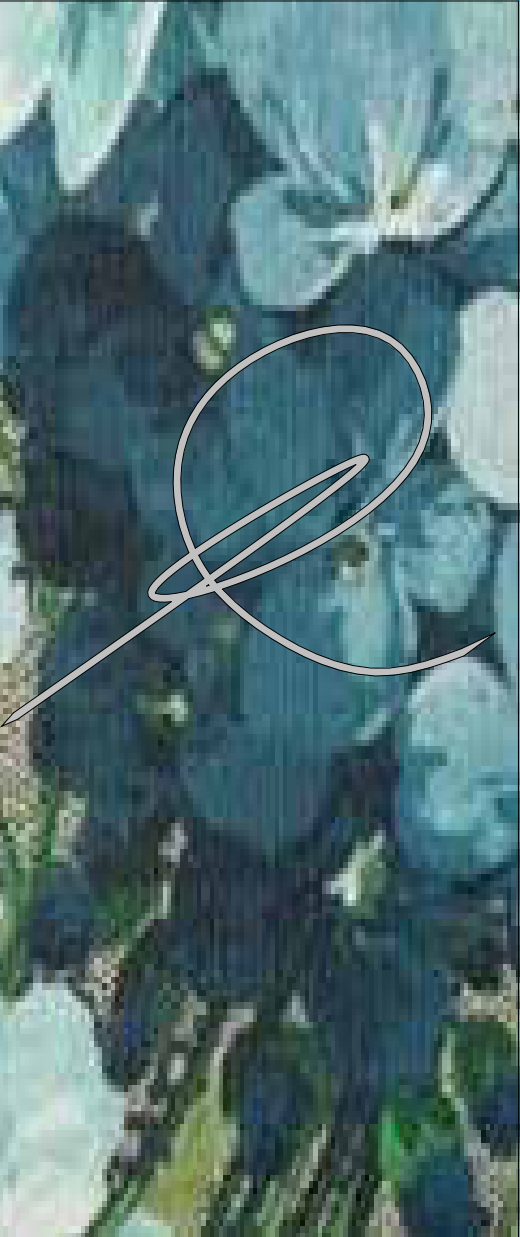
COORDINATE ATTIC ACCESS LOCATIONS W/ FINAL TRUSS LAYOUT.

SEE STRUCTURAL DRAWINGS FOR ALL LOAD BEARING WALL, COLUMN AND FILLED CELL LOCATIONS.

CONTRACTOR TO VERIFY ALL DIMENSIONS.



2 PROPOSED FLOOR PLAN
1/4" = 1'-0"



PERMIT: 2023.09.28
REVISION: 2025.10.31

PROJECT INFORMATION

Hurricane Damage - Deck

[PROJECT ADDRESS]
173 GULF ISLAND DR
FORT MYERS BEACH

[DRAWN BY] TYN & MDS

[SHEET NAME]
[SHEET NUMBER]

A
1.1

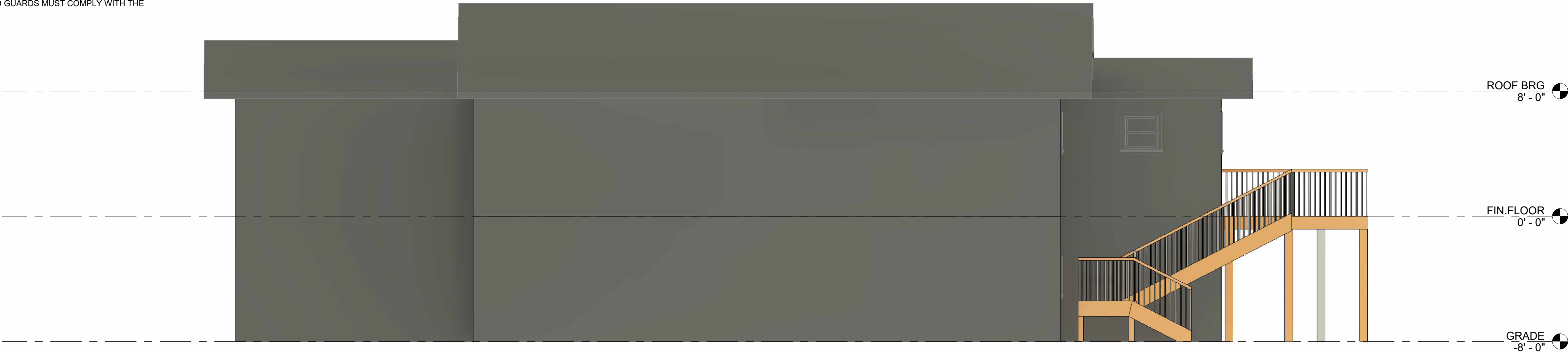
MICHAEL D. STEWART, PE
FLA REG. #72459

5330 SW 11th CT
Cape Coral, FL
Cell: (239)-292-7670
Email: MStewart@MStewartPE.com
PROFESSIONAL ENGINEERING SERVICES

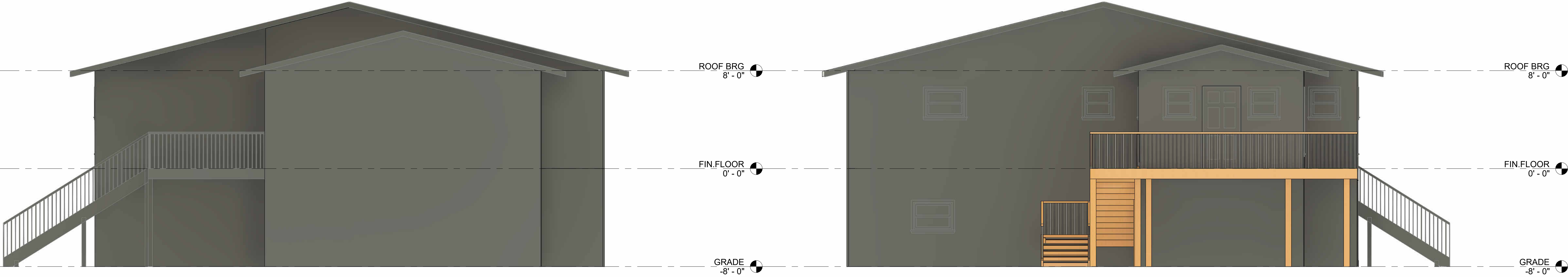
ELEVATION TYPICAL NOTES:

ROOF NOTE:
-SEE ROOF PLAN FOR GENERAL ROOF NOTES AND ROOF MATERIAL SELECTION NOTES.
TYPICAL ARCHITECTURAL NOTES:
-VERIFY ALL STRUCTURAL ELEMENTS WITH STRUCTURAL ENGINEER.
-COORDINATE ALL INTERIOR WALL, SOFFITS AND CEILING TREATMENTS WITH OWNER.
-ROOF AND BEARING HEIGHTS ARE SHOWN RELATIVE TO A REFERENCE ELEVATION BASED ON TOP OF SLAB.
U.N.O.
-ALL HANDRAILS AND GUARD RAILS TO BE 36" AFF U.N.O. W/ ALL ELEMENTS SPACED SO AS TO NOT ALLOW THE PASSAGE OF A 4" SPHERE. PROVIDE TOE RAILING AS REQ'D, MAX 2" A.F.F. COORD. FINAL MATERIAL, DESIGN, AND FINISH WITH OWNER. HANDRAILS AND GUARDS MUST COMPLY WITH THE REQUIREMENTS OF THE FBC 2020 7th EDITION.

NOTE:
CONTRACTOR TO VERIFY ALL DIMENSIONS.

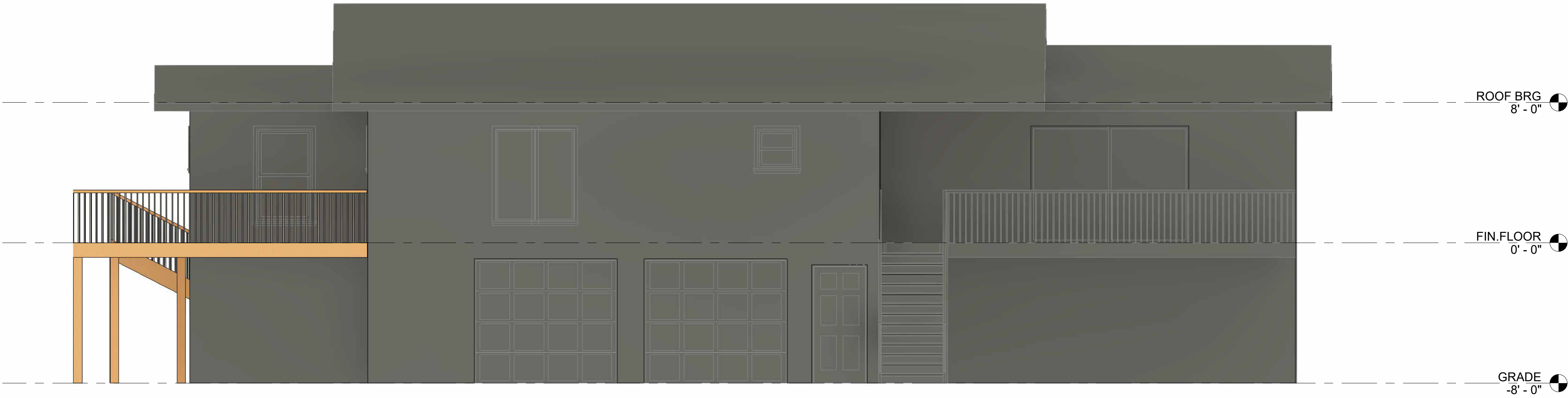


2 REAR ELEVATION
1/4" = 1'-0"

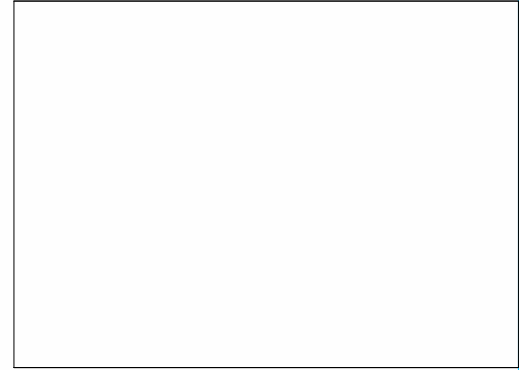
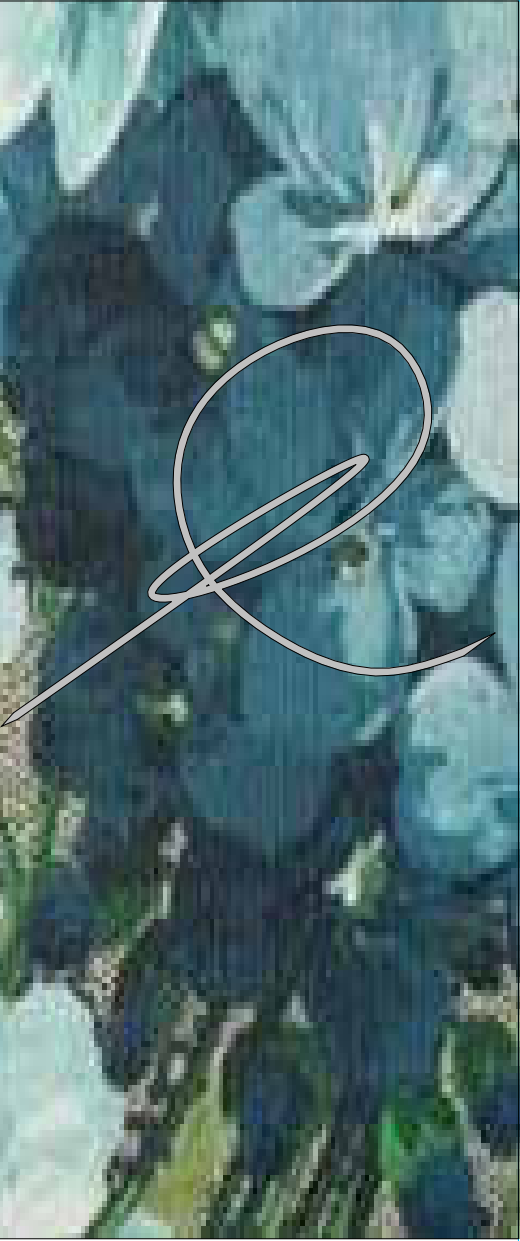


4 RIGHT ELEVATION
1/4" = 1'-0"

3 LEFT ELEVATION
1/4" = 1'-0"



5 FRONT ELEVATION
1/4" = 1'-0"



PERMIT: 2023.09.28
REVISION: 2025.10.31

PROJECT
INFORMATION

Hurricane
Damage
- Deck

[PROJECT ADDRESS]
173 GULF ISLAND DR
FORT MYERS BEACH

[DRAWN BY] TYN & MDS

[SHEET NAME]
[SHEET NUMBER]

A
2.0

MICHAEL D. STEWART, PE
FLA REG. #72459

5330 SW 11th CT
Cape Coral, FL
Cell: (239)-292-7670
Email: MStewart@MStewartPE.com
PROFESSIONAL ENGINEERING SERVICES

1. THIS SKETCH DOES NOT REFLECT OR DETERMINE OWNERSHIP.
2. DESCRIPTION AS FURNISHED BY CLIENT. NO SEARCH OF THE PUBLIC RECORDS WAS CONDUCTED BY THIS FIRM.
3. BEARINGS ARE BASED ON PLAT OR DEED.
4. ELEVATIONS AS SHOWN ARE BASED ON N.G.V.D. 1929 DATUM UNLESS OTHERWISE STATED.
5. ENCROACHMENTS ARE BASED ON PLAT OR DEED.
6. THERE MAY BE OTHER EASEMENTS NOT SHOWN HEREON RECORDED IN THE PUBLIC RECORDS OF THE GOVERNING COUNTY.
7. NO DETERMINATION OF HAZARDOUS WASTE MATERIALS HAS BEEN MADE BY THIS FIRM.
8. LOCATION OF UNDERGROUND UTILITIES OR STRUCTURES NOT SHOWN UNLESS OTHERWISE NOTED.
9. SIGNOR LIMITS LIABILITY ONLY UP TO THE COST OF SURVEY.
10. THIS SURVEY IS PROTECTED BY COPYRIGHT AND ALL RIGHTS ARE RESERVED.
11. SURVEY WAS BASED ON INFORMATION PROVIDED BY CLIENT AND EXISTING MONUMENTATION.
12. ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.
13. THE FEMA FLOOD ZONE INFORMATION INDICATED HEREON IS BASED ON MAPS SUPPLIED BY THE FEDERAL GOVERNMENT. THIS FLOOD INFORMATION MUST BE VERIFIED BY ANOTHER SOURCE.

LEGEND:

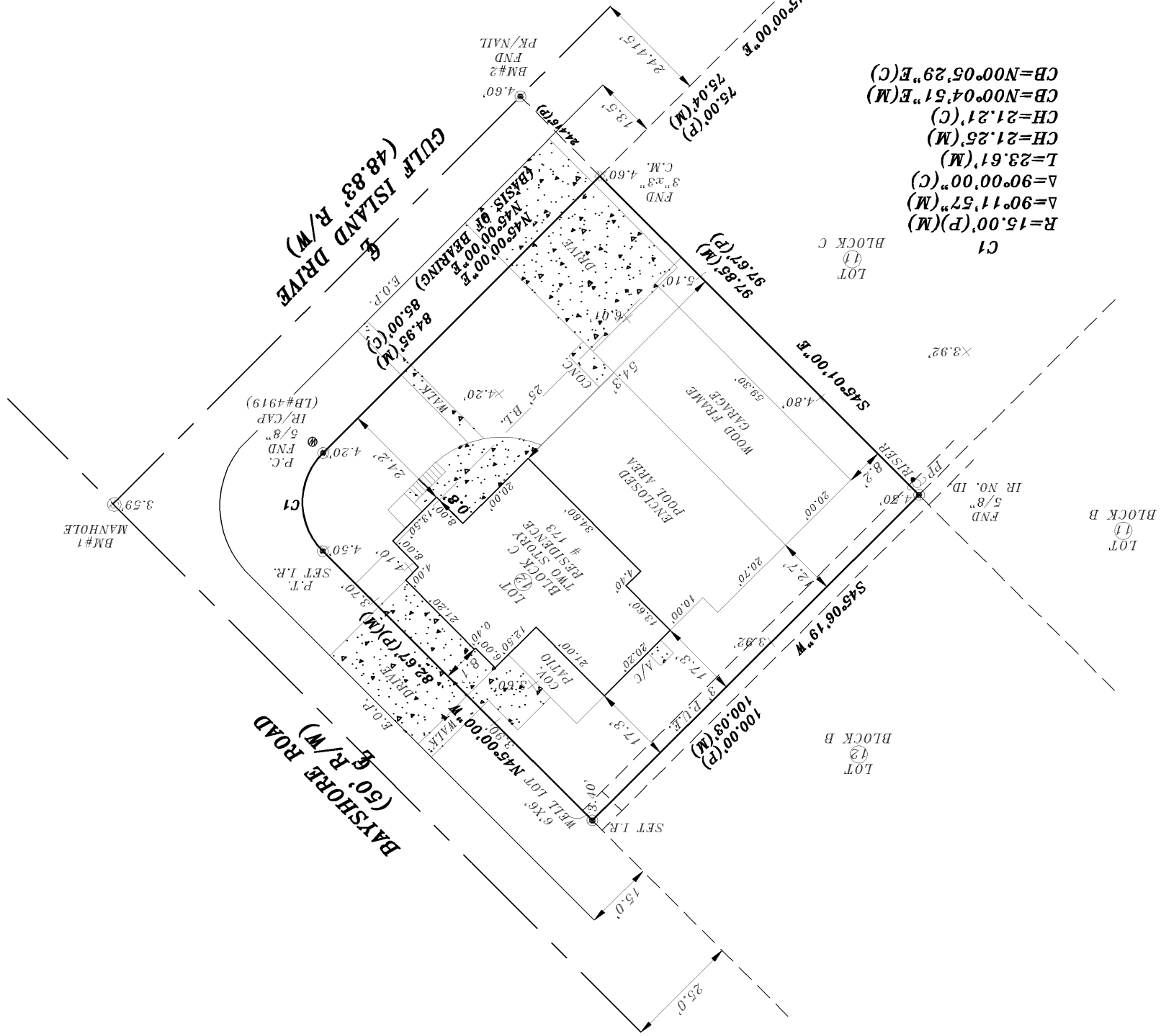
- (A) ARC LENGTH
- A/C AIR CONDITIONER
- B.L. BUILDING SETBACK LINE
- ⊙ CABLE TV
- (C) CALCULATED
- C.B. CATCH BASIN
- CB CHORD BEARING
- CH CHORD DISTANCE
- C.M. CONC. MONUMENT
- C.U.E. COUNTY UTILITY EASEMENT
- (D) DEED
- B.O.B. BASIS OF BEARINGS
- D.E. DRAINAGE EASEMENT
- D.U.E. DRAINAGE UTILITY EASEMENT
- ELEV. ELEVATION
- E.O.P. EDGE OF PAVEMENT
- BM. BENCH MARK
- FND. FOUND
- GV. GATE VALVE
- I.R. IRON ROD
- G.W. GUY WIRE
- (M) MEASURED
- N&T NAIL & TAB
- N.A.V.D. NORTH AMERICAN VERTICAL DATUM (1988)
- N.T.S. NOT TO SCALE
- (NR) NOT RADIAL
- O.R. OFFICIAL RECORD
- (P) PLAT
- P.B. PLAT BOOK
- P.C. POINT OF CURVATURE
- P.C.P. PERMANENT CONTROL POINT
- P.I. POINT OF INTERSECT
- Pg. PAGE
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- PP. POWER POLE
- P.R.C. POINT OF REVERSE CURVATURE
- P.R.M. PERMANENT REFERENCE MONUMENT
- P.T. POINT OF TANGENCY
- P.U.E. PUBLIC UTILITY EASEMENT
- (R) RADIAL
- RANGE
- R/W. RIGHT OF WAY
- SEC. SECTION
- SET I.R. SET 1/2" IRON ROD LB1478 LB2239
- V.F. VINYL FENCE
- Ⓣ TELEPHONE BOX
- T.U.E. TECHNOLOGY UTILITY EASEMENT
- TWP. TOWNSHIP
- U.E. UTILITY EASEMENT
- U.P. UTILITY PEDESTAL
- WATER METER
- Δ DELTA ANGLE
- ⊗ FIRE HYDRANT
- Ⓢ TEMPORARY BENCHMARK
- CENTERLINE
- × 4" CLF= CHAIN LINK FENCE
- 6 W.F.= WOOD FENCE
- OH+ CONCRETE PAD
- MHW MEAN HIGH WATER
- MLW MEAN LOW WATER
- (X) LOT NUMBER



LEGAL DESCRIPTION:

173 GULF ISLAND, FORT MYERS BEACH, FLORIDA 33931

LOT 12, BLOCK C, GULF ISLAND MANOR, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 8, PAGE 68, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.



CERTIFIED TO:

Nicole Pieratt
CrossCountry Mortgage, LLC, ISA04
Title Masters, LLC
Old Republic National Title Insurance Fund

BOUNDARY SURVEY REVISED:

FIELD SURVEY	04-25-19
CREW CHIEF	C. CORDISCO
DRAWN BY	SDS
SCALE	1" = 30'
LIS JOB NO	22926
SHEET: 1 OF 1	DATE: 05-07-19

LIS Land Surveying, LLC
d.b.a. S & H Land Survey Co.

21430 Palm Beach Blvd.
Alva, FL 33920
239-481-2366 239-481-2437 (Fax)
LB1057

2572 West State Road 426, Suite 2064
Oviedo, FL 32765
321-244-0402 321-244-9419 (Fax)
LB1057

APPROVED

BILL H. HYATT, JR.
2019.05.13
10:14:52 -04'00'

REGISTERED LAND SURVEYOR PSM#4636
STATE OF FLORIDA
VALID ONLY WITH EMBOSSED SEAL

I HEREBY CERTIFY THAT THIS SKETCH OF SURVEY WAS MADE UNDER MY RESPONSIBLE CHARGE AND TO THE BEST OF MY KNOWLEDGE AND BELIEF SAID SURVEY MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 5J-17 FLORIDA ADMINISTRATIVE CODE FURTHER, THIS DOCUMENT IS ELECTRONICALLY SIGNED AND SEALED PURSUANT TO SECTION 472.027, OF THE FLORIDA STATUTES AND CHAPTER 5J-17 OF THE FLORIDA ADMINISTRATION CODE.



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20250220

CASE NAME: 173 Gulf Island Drive; Resolution 26-020, requesting a variance from LDC section 34-638(d)(6)b.3., to reduce the required 20-foot side street setback by 11.9 feet to allow a 232-square-foot deck for the existing single-family residence in the RS zoning district.

LPA

HEARING DATE: January 13, 2026 9:00 am

TOWN COUNCIL

HEARING DATE: March 16, 2026 9:00 am

STAFF

RECOMMENDATION: Denial

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

I. APPLICATION SUMMARY

Applicant/Owner: John Prinz on behalf of Gordian Multistrategy Fund LLC

Request: A variance from LDC section 34-638(d)(6)b.3., a request to reduce the required 20-foot side street setback by 11.9 feet to allow a 232-square-foot deck for the existing single-family residence in the RS zoning district.

The property currently supports a nonconforming single-family residence with a non-conforming 36-square-foot deck. The house has a side street setback of 8.1 feet, and the existing 36 square feet deck has a side street setback of 17.57 feet which encroaches 2.43 feet in the required side street setback. The

Applicant is now requesting a variance to allow a 232-square-foot deck with a side street setback of 8.1 feet.

Subject Property: See attached site plan

Physical Address: 173 Gulf Island Drive

STRAP #: 29-46-24-W2-0050C.0120

FLU: Low-Density Residential

Zoning: Residential Single-family (RS)

Adjacent zoning and land uses:

North:	LOW DENSITY RESIDENTIAL Single family residential
South:	LOW DENSITY RESIDENTIAL Single family residential
East:	LOW DENSITY RESIDENTIAL Single family residential
West:	LOW DENSITY RESIDENTIAL Single family residential

II. BACKGROUND AND ANALYSIS

Background:

John Prinz on behalf of Gordian Multistrategy Fund LLC, the owner of 173 Gulf Island Drive, is requesting a variance from the Town's Land Development Code (LDC) Section 34-638(d)(6)b.3, which requires single-family homes and all attached accessory structures including decks and staircases in the RS zoning district to provide a minimum 20 feet side street setback for lots greater than 75 feet in width.

The subject property is a corner lot that currently supports a single-family residence built in 1996. The existing single-family residence has a non-conforming front street setback of 24.19 feet along Gulf Island Drive and 8.1 feet side street setback from Bayside Road. The house supports a 36 square foot deck along Gulf Island drive with a non-conforming side street setback of 17.57 feet. The Applicant now plans to expand the deck to 232 square feet and is requesting a variance of 11.9 feet to allow a side street setback of 8.1 feet for the new deck where a minimum 20 feet side street setback is required for lots greater than 75 feet in the RS zoning district.

During the LPA hearing on January 13, the LPA voted 7-0 to recommend denial of the variance request from LDC section 34-638(d)(6)b.3., a request to reduce the required 20-

foot side street setback by 11.9 feet to allow a 232-square-foot deck for the existing single-family residence in the RS zoning district. The LPA unanimously recommended denial, finding that the request does not meet the requirements of LDC Section 34-87, and that granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare.

Analysis:

The purpose of the RS zoning district is to provide stable neighborhoods where single-family detached homes are the predominant land use. A conforming lot in the RS zoning is at least 75 feet wide and 100 feet deep or 7,500 sq. ft. of area. The subject property is an 85-foot-wide and 82-foot-deep, nonconforming corner lot.

LDC Section 34-638(d)(6)b.3, requires single-family homes and all attached accessory structures including deck and staircase in the RS zoning district to provide a minimum 20 feet side street setback for lots greater than 75 feet in width. The property currently supports a single-family residence built in 1996. The existing single-family residence has a non-conforming front street setback of 24.19 feet along Gulf Island Drive and 8.1 feet side street setback from Bayside Road. The house supports a 36 square foot deck along Gulf Island drive with a non-conforming side street setback of 17.57 feet. The Applicant now plans to expand the deck to 232 square feet with the same side street setback as the existing house. The proposed deck will not encroach into the town required visibility triangles. The Applicant is therefore requesting a variance of 11.9 feet to allow a side street setback of 8.1 feet for the new deck where a minimum 20 feet side street setback is required for lots greater than 75 feet in the RS zoning district.

Neighborhood Compatibility:

The subject property is part of a older single-family residential neighborhood where most single-family homes appear to comply with the Town's required side street setbacks. The proposed expansion would maintain the same side street setback as the existing single-family residence and granting of this variance will not be injurious to 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 property is a corner lot. The subject single-family residence was built in 1996, with a non-conforming 36 square foot deck. The house has a side street setback of 8.1 feet, and the existing deck has a side street setback of 17.57 feet which encroaches 2.43 feet in the required side street setback. The Applicant

has the choice to continue using the current non-conforming deck. The request to expand the deck to 232 sq. ft. is a design choice leading to further diminution of the required side street setback.

- 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 above, the property currently supports a 36 square feet non-conforming deck with a 17.57 feet side street setback where a 20 feet side street setback along Bayside Road is required by the Town's LDC. The Applicant is now proposing to expand the non-conforming deck to an area of 232 square feet and a side street setback of 8.1 feet. The Applicant has the choice to continue using existing deck. Therefore, the requested expansion of the proposed deck and further diminution of the proposed side street setback is a result of a design choice.

- 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 Applicant has the choice to continue using the current non-conforming deck. The request to expand the deck to 232 sq. ft. is a design choice leading to further diminution of the required side street setback.

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

The proposed expansion of the deck will have the same side street setback as the existing non-conforming side street setback of the single-family residence and will not encroach into the town required visibility triangles. 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 request for a variance from LDC Table 34-638(d)(6)b.3, *a request to reduce the required 20-foot side street setback by 11.9 feet to allow a 232-square-foot deck for the existing single-family residence in the RS zoning district* and find that the variance request does not meet the requirements set-forth in sec. 34-87.

Therefore, staff recommends **DENIAL** of VAR20250220, request to allow 8.1 feet side street setback for construction of a new 232 square feet deck and staircase for an existing non-conforming single-family residence in the RS zoning district.

During the LPA hearing on January 13, the LPA voted 7-0 to recommend denial of the variance request from LDC section 34-638(d)(6)b.3., a request to reduce the required 20-foot side street setback by 11.9 feet to allow a 232-square-foot deck for the existing single-family residence in the RS zoning district. The LPA unanimously recommended denial, finding that the request does not meet the requirements of LDC Section 34-87, and that granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare.

IV. CONDITIONS

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

1. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
2. The variance shall only apply to the deck as shown on the provided site plan. Demolition or substantial damage to the residential structure shall render the variance to be null and void.
3. This variance applies to the 232-square-foot deck for an existing single-family structure on the subject property only. Any additional modification of the single-family dwelling or additional construction on the subject property must comply with all applicable regulations or seek a new variance.
4. The variance applies to the modified side street setbacks along the west property boundary as shown in "Exhibit A" only. No other portion of the single-family dwelling or accessory structure(s) may be extended into a required setback.



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: 173 Gulf Island Drive, Fort Myers Beach, Florida 33931
STRAP Number: 29-46-24-W2-0050C.0120
Applicant: Gordian Multistrategy Fund LLC - John Prinz Phone: 224 622 6607
Contact Name: Michael Dubey Phone: 224 544 0328
Email: michael@thegordianfund.com Fax: _____
Current Zoning District: Residential
Future Land Use Map (FLUM) Category: Low Density
FLUM Density Range: Low Density 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*: John Prinz-See Operating Agreement Phone: 224 622 6607

**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: 28835 N. Herky Drive, Suite 107, Lake Bluff, IL 60044

Email: michael@thegordianfund.com Fax: _____

Contact Name: Michael Dubey Phone: 224 544 0328



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) _____ | Limited Liability Company _____ |

**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: Michael Dubey Phone: 224 544 0328
Address: 28835 N. Herky Drive, Suite 107, Lake Bluff, IL 60044
Email: michael@thegordianfund.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: _____
- ☐ 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: Variance on new deck construction setback distance from Bayshore Road
- _____
- _____

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, John Prinz 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

John Prinz

Printed Name

STATE OF _____ COUNTY OF _____

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

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

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

_____ as identification.

(SEAL)

Notary Public Signature

PART V

Property Ownership (Multiple Owners)

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

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

DISCLOSURE OF OWNERSHIP INTEREST

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

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

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

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

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

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

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

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

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

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

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

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

_____	John Prinz
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, John Prinz (name), as Managing Member (title)
of Gordian Multistrategy Fund, 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

Gordian Multistrategy Fund LLC

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

Managing Member

Signature

Title

John Prinz

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: 29-46-24-W2-0050C.0120

Property Address: 173 Gulf Island Drive, Fort Myers Beach, Florida, 33931

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

☒ Yes. Property identified in subdivision: Gulf Island Manor

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) Approximately 100 feet
Depth (please provide an average width if irregular in shape) Approximately 100 feet
Frontage on street: _____ feet. Frontage on waterbody: _____ feet
Total land area: Approximately 10,000 ☐ acres ☒ square feet

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

☐ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

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

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

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

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

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

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

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

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

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

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

Explanatory Notes – Part I

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

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

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

Explanatory Notes – Part IV

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

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

Explanatory Notes – Part VI

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

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

Explanatory Notes – Part IV & V

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

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

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

Case Number:
Project Name:
Authorized Applicant: Gordian Multistrategy Fund, LLC - John Prinz
LeePA STRAP Number: 29-46-24-W2-0050C.0120

Current Property Status:	
Current Zoning:	Residential
Future Land Use Map (FLUM) Category: Low Density	
Comp Plan Density:	Platted Overlay? ☐ Yes ☒ No

Variance is requested from:

LDC Section Number	Title of Section or Subsection

Complete the narrative statements below for EACH variance requested.





No effects on the surrounding proerties.

Current deck area outside the front door is too small.



The new deck construction will not have a negative effect on the surrounding properties. The new deck construction will not exceed the existing setback more than the existing house from Bayshore Road.

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.

1. **Request:**

Meeting Date: March 16, 2026

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SE20250271, A REQUEST TO INCREASE THE NUMBER OF BEDROOMS IN A TWO-FAMILY RESIDENCE WHILE UTILIZING THE POST-DISASTER BUILDBACK CODE OF THE LDC SECTION 34-3238(2)(E)(4)(A), FOR THE PROPERTY LOCATED AT 166/168 COCONUT DRIVE, GENERALLY REFERRED TO AS STRAP NUMBER: 29-46-24-W2-0070A.0160 IN FORT MYERS BEACH; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Why the action is necessary:

Town Council considers the recommendations made by the LPA.

What the action accomplishes:

Town Council considers the recommendations made by the LPA.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

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

5. **Background:**

Michael Martell, the applicant for 166/168 Coconut Drive, is requesting a Special Exception to increase the number of bedrooms as part of a redevelopment utilizing the Post-Disaster Buildback policy. Based on data available from the Lee County Property Appraiser's Office, the structure supported a duplex, or two-family residence, with a total of five (5) bedrooms and three (3) bathrooms prior to Hurricane Ian.

The Town's Buildback policy allows an applicant, by right, to increase the number of full bathrooms to equal the number of bedrooms that existed in the structure prior to a storm. Any additional bedrooms or bathrooms must be requested through the Special Exception process. The applicant is now proposing six (6) bedrooms and five (5) full bathrooms and is requesting a Special Exception for the additional bedroom.

The homeowner has stated that he intends to live in one of the dwelling units and rent the other dwelling unit, as permitted within his zoning district. Based on supporting data submitted by the applicant, staff confirmed that the structure was eligible to be rebuilt with two (2) living units pursuant to the Post-Disaster Buildback provisions.

The property is a nonconforming lot within the Single-Family Residential (RS) zoning district. Prior to Hurricane Ian, the primary structure was nonconforming due to a staircase encroaching into the required twenty-five-foot (25') street setback and the required seven-and-one-half-foot (7.5') side setback along the west side of the property. The applicant plans to replace the staircase in the same location and will apply for a variance prior to the issuance of building permits.

The Town's LPA reviewed the application on January 13, 2026, and unanimously voted to recommend approval with conditions for Town Council's consideration.

Attachments:

1. Final Resolution 26-015, SEZ 20250271 for 166-168 Coconut Drive (4)
2. Exhibit A to Resolution-Site plan
3. Staff report
4. Application

Financial Impact:

Unknown

6. Alternative Action

Deny

7. Management Recommendations:

Staff recommends approval, with conditions, of SEZ20250271, a request to increase the number of bedrooms from five to six in a two-family residence under the Post-Disaster Buildback code.

8. Recommended Approval:

Jason Smalley, 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 - 2/19/2026
Approved - 2/19/2026
Approved - 2/19/2026
Approved - 2/24/2026
Approved - 3/4/2026
Final Approval - 3/4/2026

RESOLUTION NUMBER 26-015

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250271, A REQUEST TO INCREASE THE NUMBER OF BEDROOMS IN A TWO-FAMILY RESIDENCE WHILE UTILIZING THE POST-DISASTER BUILDBACK CODE OF THE LDC SECTION 34-3238(2)(E)(4)(A), FOR THE PROPERTY LOCATED AT 166/168 COCONUT DRIVE, GENERALLY REFERRED TO AS STRAP NUMBER: 29-46-24-W2-0070A.0160 IN FORT MYERS BEACH; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

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

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

WHEREAS, Applicant Michael Martell, on behalf of the property owner, US Bank Trust Company NA TR, is requesting a Special Exception to increase the number of bedrooms in a two-family residence while utilizing “Post-Disaster Buildback” in Section 34-3238(2)(e)(4)(a) of the Fort Myers Beach Land Development Code (“LDC”) for the real property located at 166/168 Coconut Drive, Fort Myers Beach, Florida (hereinafter "Subject Property"); and

WHEREAS, the STRAP number for the Subject Property is 29-46-24-W2-0070A.0160; and

WHEREAS, the Subject Property is located in the “Low Density Residential” category of the Future Land Use Map of the Comprehensive Plan; and

WHEREAS, the Subject Property is located in the “Single-family residential” zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, the Single-family residential (RS) zoning district requires a minimum lot width of 75 feet and a minimum lot depth of 100 feet, with a total lot area of 7,500 square feet; and

WHEREAS, the Subject Property is a 50-foot-wide and 100-foot-deep non-conforming lot in the RS zoning district; and

WHEREAS, the Town’s “Post-Disaster Buildback” policy allows buildings that exceed the density for new buildings and that are damaged or destroyed by a disaster, including fire,

tropical storms, floods, and hurricanes, to be replaced to their pre-disaster lawful density in accordance with Policy 4-D-1 of the Fort Myers Beach Comprehensive Plan; and

WHEREAS, a duplex has been located on the Subject Property since 1958 and based on supporting data submitted by the Applicant, staff was able to confirm that the property owner was eligible to rebuild two (2) living units utilizing the “Post-Disaster Buildback” policy; and

WHEREAS, the previous structure supported 5 total bedrooms and 3 bathrooms as documented in data available from the Lee County Property Appraiser’s office prior to Hurricane Ian; and

WHEREAS, the Applicant proposes to now rebuild the duplex with 6 bedrooms while maintaining the same interior square footage above base flood elevation as the total under-roof square footage of the previous structure destroyed by Hurricane Ian (See “Exhibit A”); and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (“LPA”) on January 13, 2026, and at said hearing the LPA gave full and complete consideration to the request of the Applicant, the recommendations from Town staff, the documents in the file, and the testimony of all interested persons, as required by LDC Section 34-88(b) of the LDC, and voted 7 to 0 to recommend approval of the Special Exception request with conditions; and

WHEREAS, on March 16, 2026, 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 LDC Section 34-88(b) 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, IT IS HEREBY RESOLVED BY 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 Applicants did/ did not meet their burden of proof that the requested Special Exception does/ does not meet the requirements of the Town Comprehensive Plan and LDC, and approving the Special Exception is/ is not in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicants, Town staff, and interested parties and public, the Town Council **APPROVES/APPROVES WITH CONDITIONS/DENIES** the Special Exception request to increase the number of bedrooms in a two-family residence while utilizing the “Post-Disaster Buildback” policy in Section 34-3238(2)(e)(4)(a) of the LDC.

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

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

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

- A. Three parking spaces must be provided on site. It shall be the responsibility of the Applicant to ensure that vehicles have access to stabilized parking spaces and that on-street parking does not occur.
- B. Approval of this Special Exception does not give the Applicant an undeniable right to permit approval. Development of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
- C. Failure to comply with any of the above-mentioned conditions of approval for the Special Exception will render this approval null and void.

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

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

ADOPTED this ____ day of March, 2026 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 March, 2026.

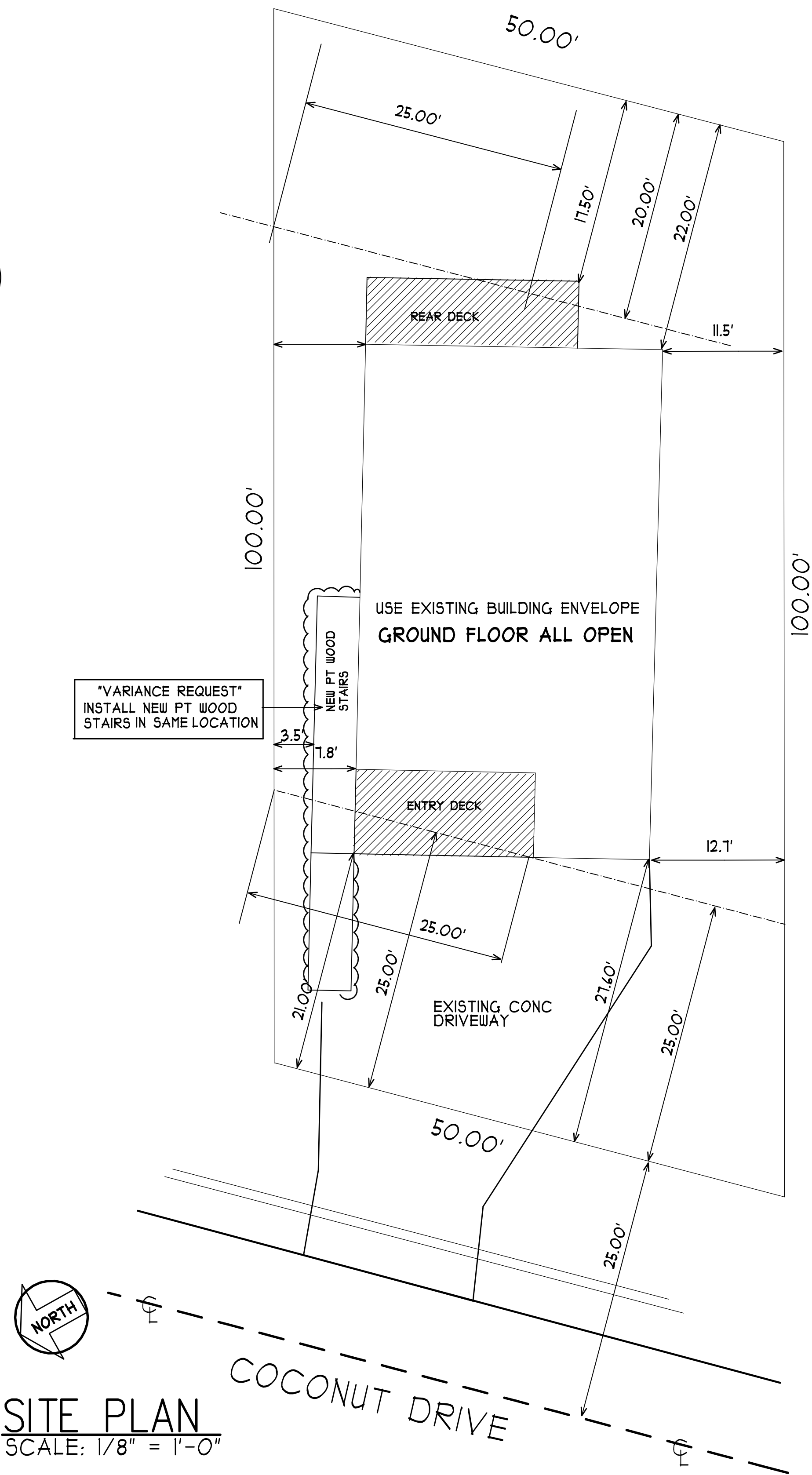
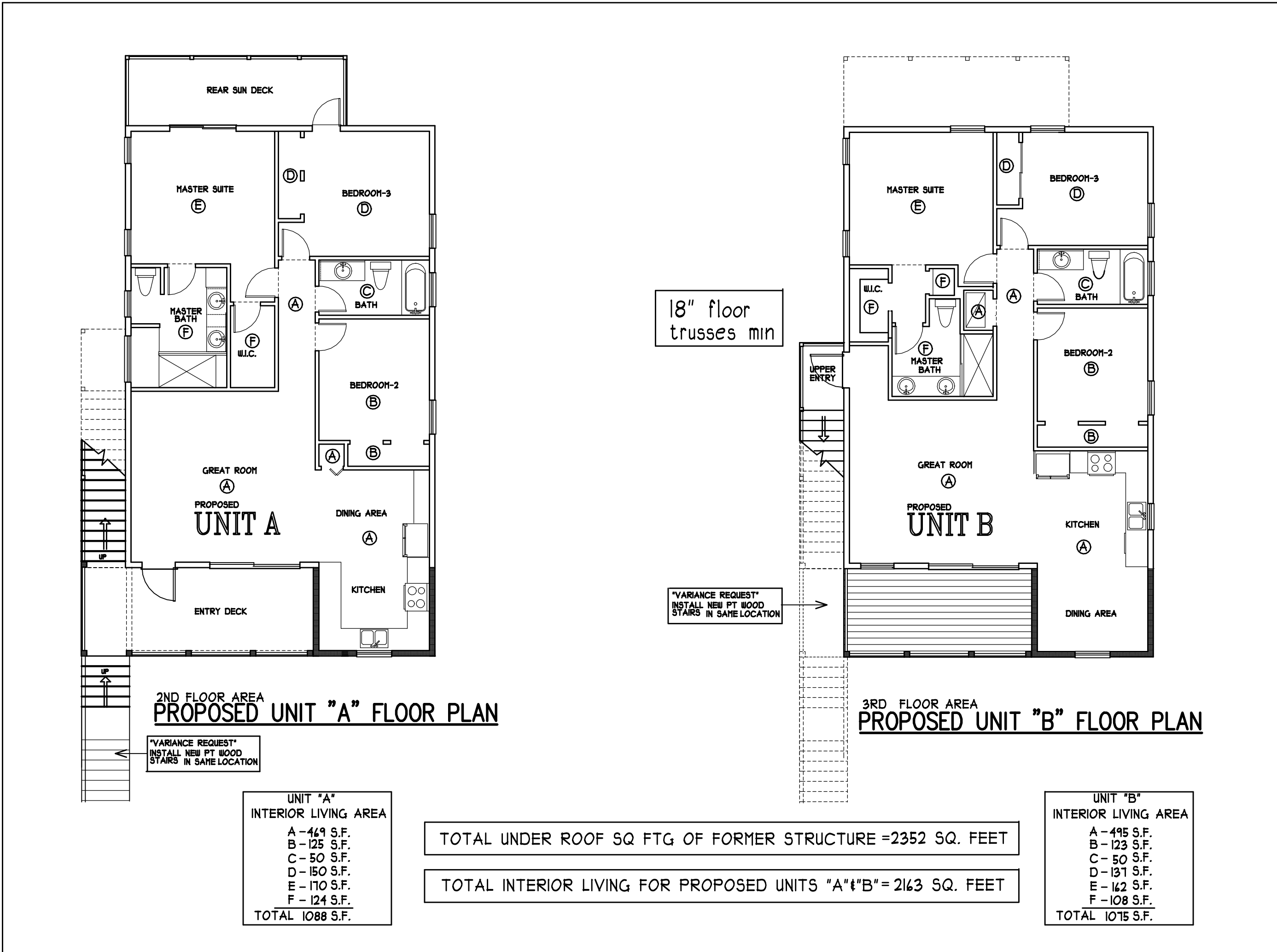
EXHIBITS

Exhibit A: Site Plan

A CONCEPTUAL DESIGN FOR MIKE MARTELL
DUPLEX
AT 166/168 COCONUT DR
FORT MYERS BEACH
FLOOD ZONE AE
BASE FLOOD ELEV. 11 NAVD

TO USE EXISTING FOOTPRINT
OF THE BUILDING AS IT SITS NOW

TOP OF BOTTOM FLOOR ELEV= 4.4
TOP OF 2ND FLOOR AS IS ELEV= 13.1



ENGINEER'S SEAL

DAN ACHAVAL
DRAFTING & DESIGN
RESIDENTIAL • NEW CONSTRUCTION • RE-MODELS

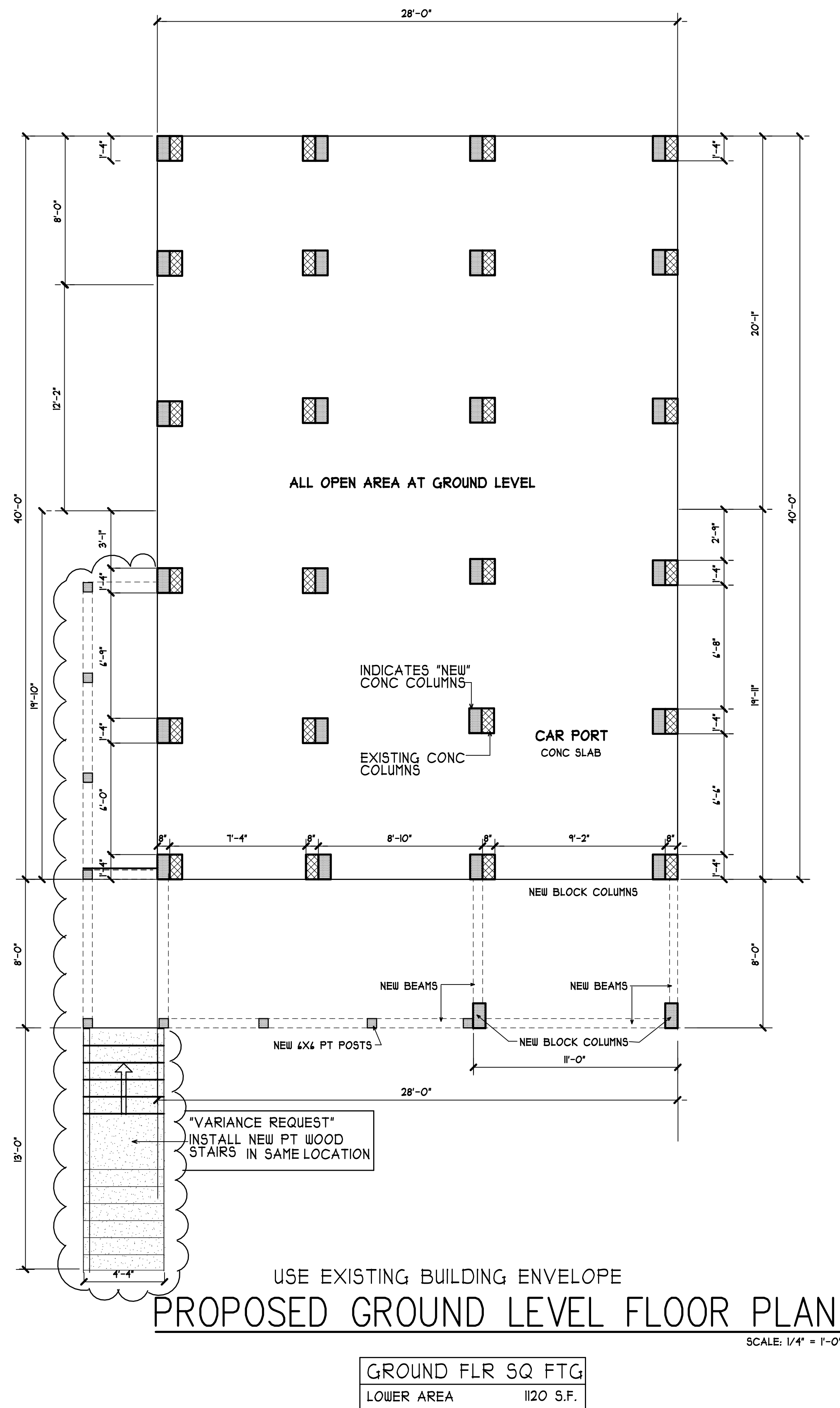
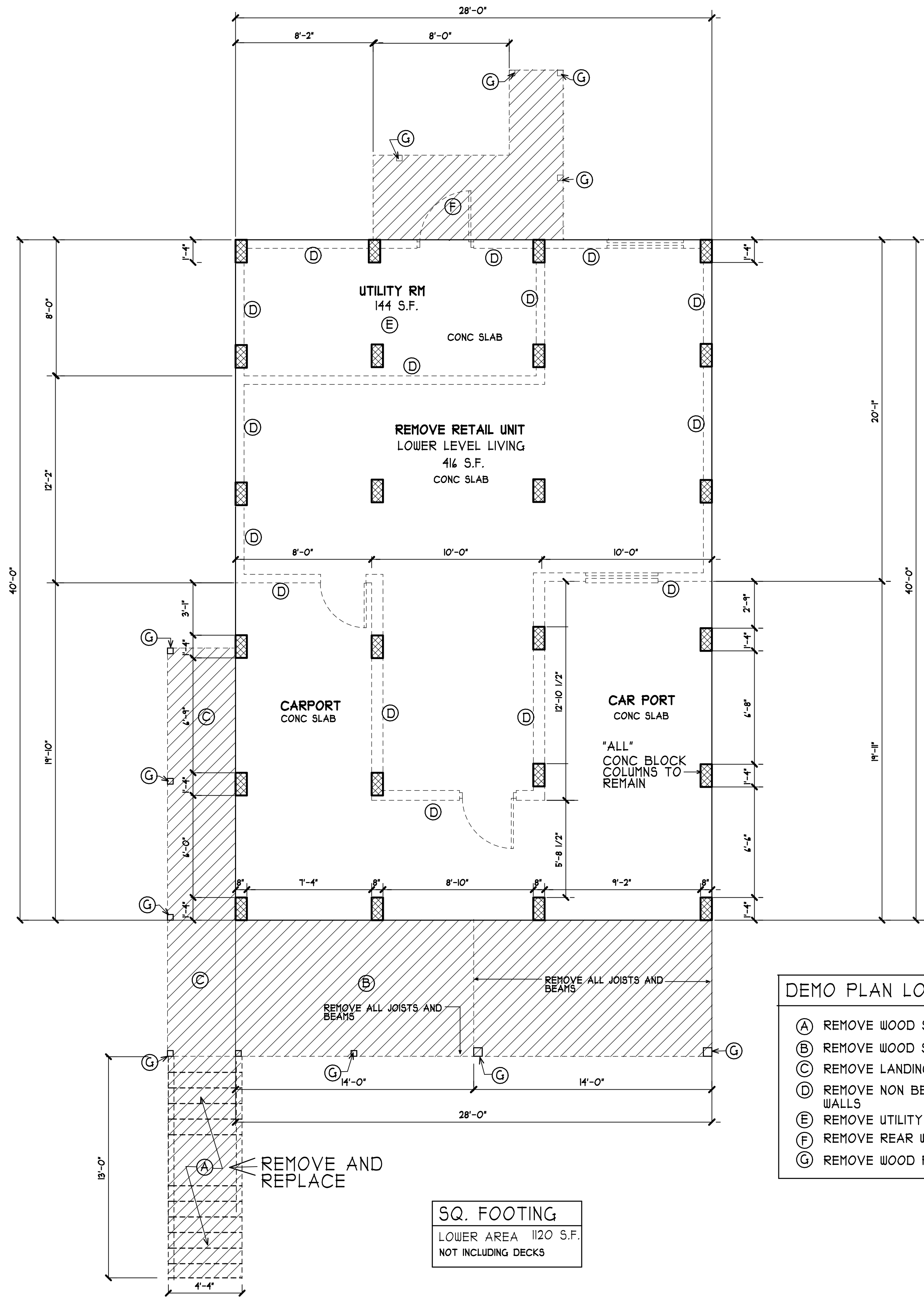
NAME: MIKE MARTELL
CONCEPT DUPLEX DESIGN
UNIT / BLK:
LOTS:
ADDRESS: 166/168 COCONUT DRIVE
CITY: FORT MYERS BEACH
COUNTY: LEE
STATE / ZIP: 33913

REVISIONS:

DATE: 9-11-25
DRWN. BY: D. ACHAVAL

SHEET NO: 1 OF 4

GulfCoast Engineering, LLC
3002 Del Prado Blvd. Ste. B / Cape Coral, FL 33904
FLCBC059991 / www.gcefl.com
Ph: (239) 458-6633 / Fax: (239) 458-6733
Toll Free: (877) 740-3366 / FL COA #9910



NAME: MIKE MARTELL
CONCEPT DUPLEX DESIGN

UNIT / BLK:
LOTS: 166/168 COCONUT DRIVE
ADDRESS: FORT MYERS BEACH
CITY: LEE
COUNTY: LEE
STATE / ZIP: 33931

REVISIONS:

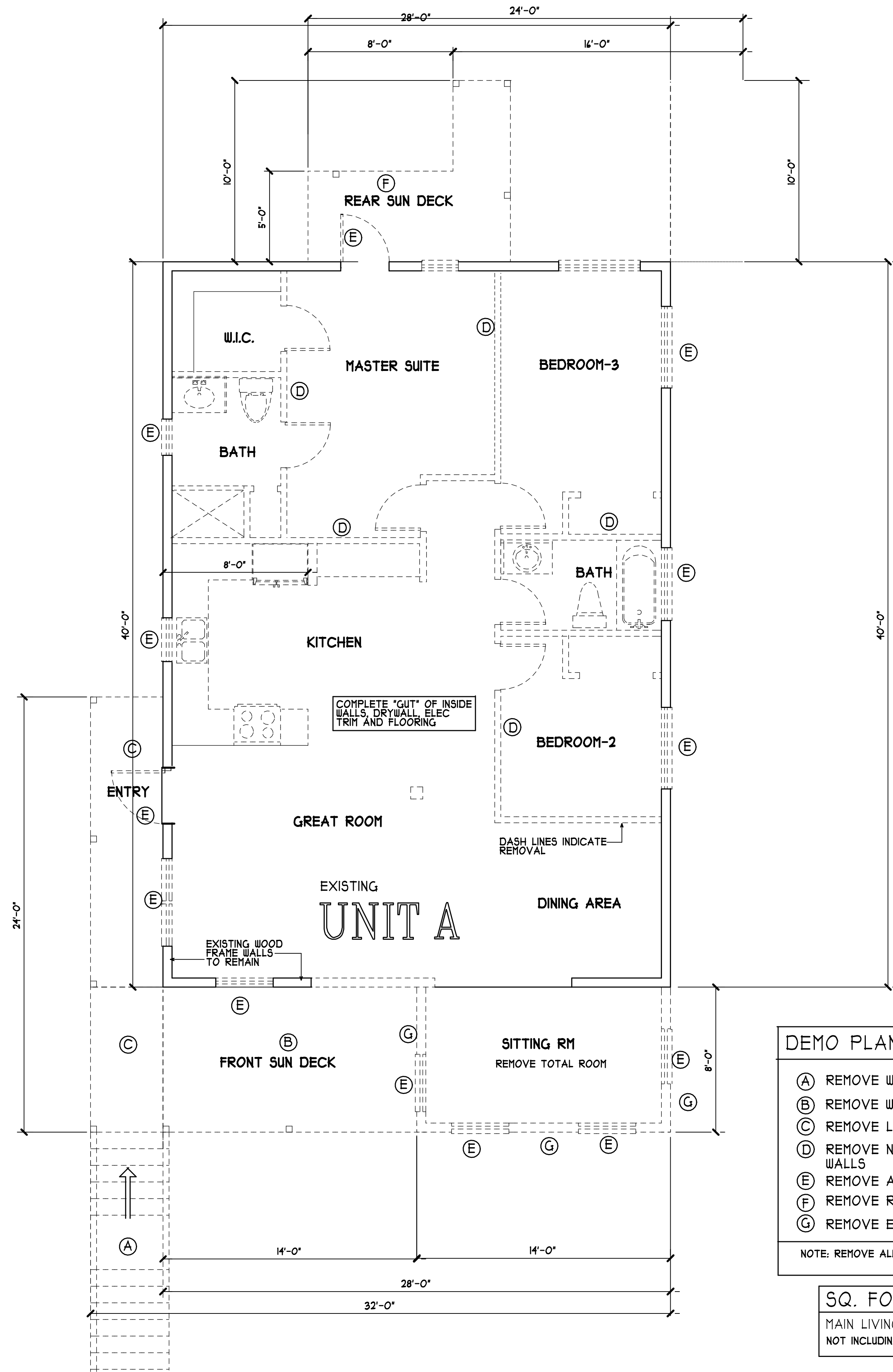
DATE: 8-25-25
DRWN. BY: D. ACHAVAL

SHEET NO: 2 OF 4

ENGINEER'S SEAL

DAN ACHAVAL
DRAFTING & DESIGN
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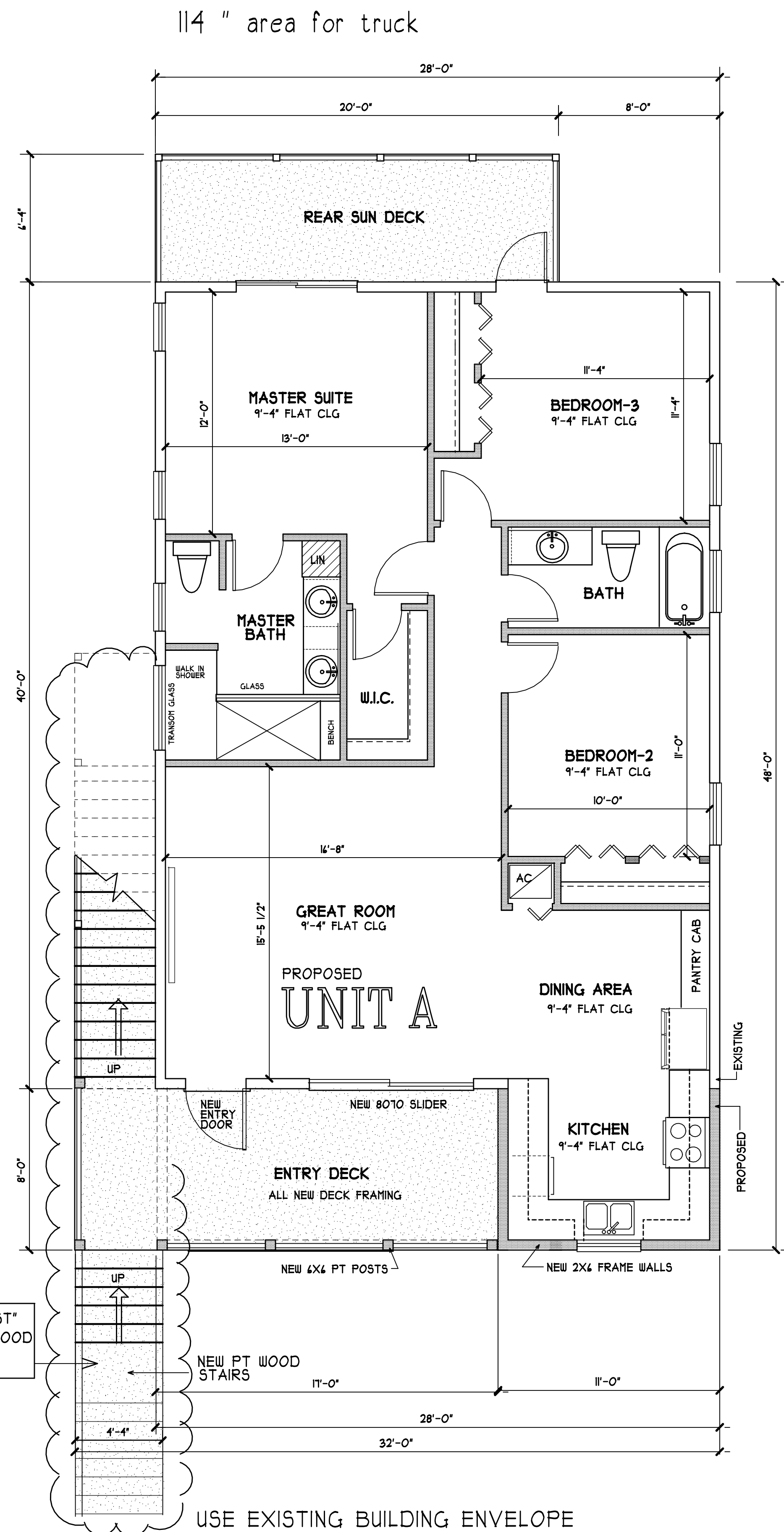


EXISTING UNIT "A" FLOOR PLAN

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

DEMO PLAN UPPER LEVEL	
(A)	REMOVE WOOD STAIRS
(B)	REMOVE WOOD SUN DECK
(C)	REMOVE LANDING
(D)	REMOVE NON BEARING FRAME WALLS
(E)	REMOVE ALL WINDOWS/DOORS
(F)	REMOVE REAR WOOD DECK
(G)	REMOVE EXTERIOR WALLS
NOTE: REMOVE ALL ROOF FRAMING	

SQ. FOOTING	
MAIN LIVING	1232 S.F.
NOT INCLUDING DECKS	



USE EXISTING BUILDING ENVELOPE

PROPOSED UNIT "A" FLOOR PLAN

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

2ND FLOOR AREA

UNIT "A" SQ. FTG	
INTERIOR LIVING	1088 S.F.
ENTRY DECK	168 S.F.
REAR SUN DECK	126 S.F.
WOOD STAIRS	170 S.F.

NAME: MIKE MARTELL
CONCEPT DUPLEX DESIGN
UNIT / BLK:
LOTS:
ADDRESS: 144/148 COCONUT DRIVE
CITY: FORT MYERS BEACH
COUNTY: LEE
STATE / ZIP: 33931

REVISIONS:
DATE: 8-25-25
DRWN. BY: D. ACHAVAL
SHEET NO: 3 OF 4

ENGINEER'S SEAL

DAN ACHAVAL
DRAFTING & DESIGN
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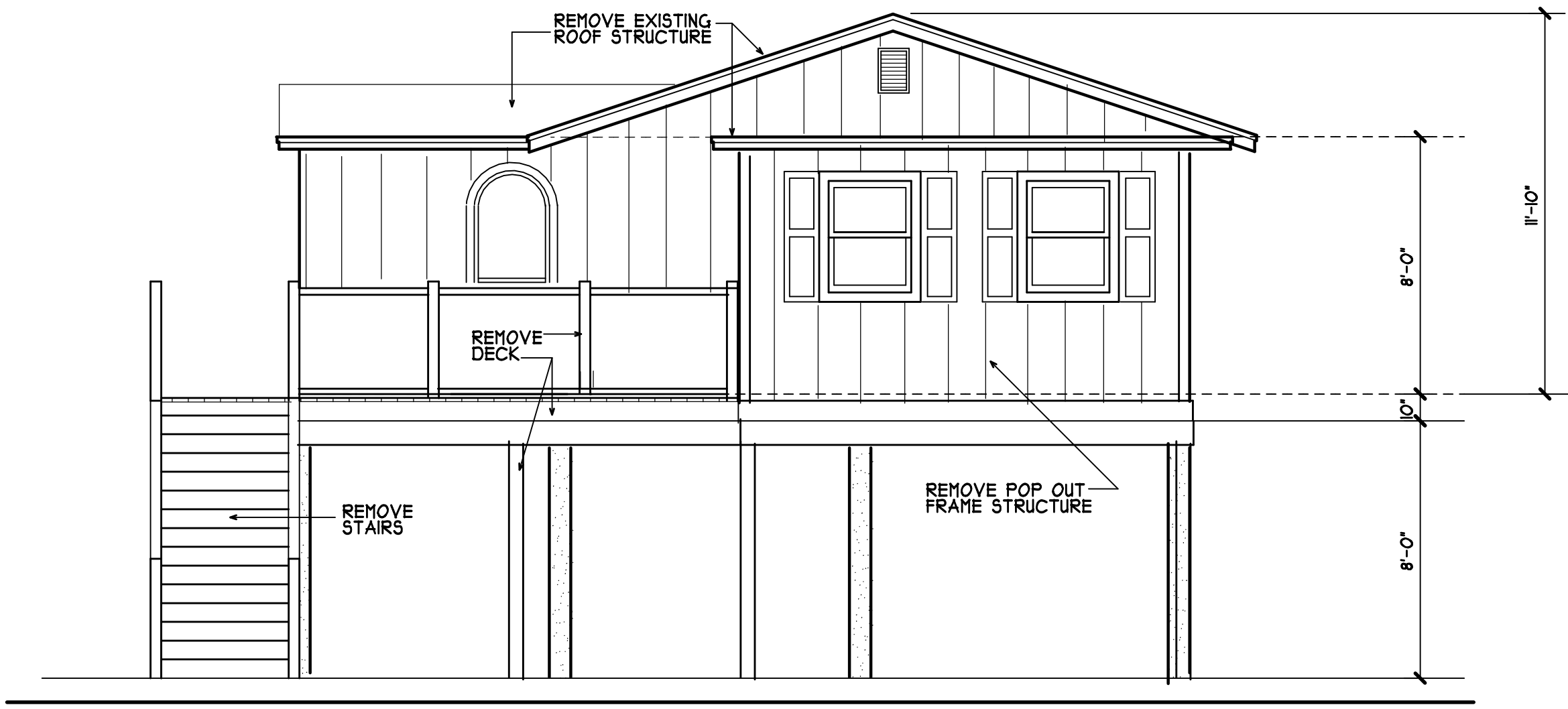
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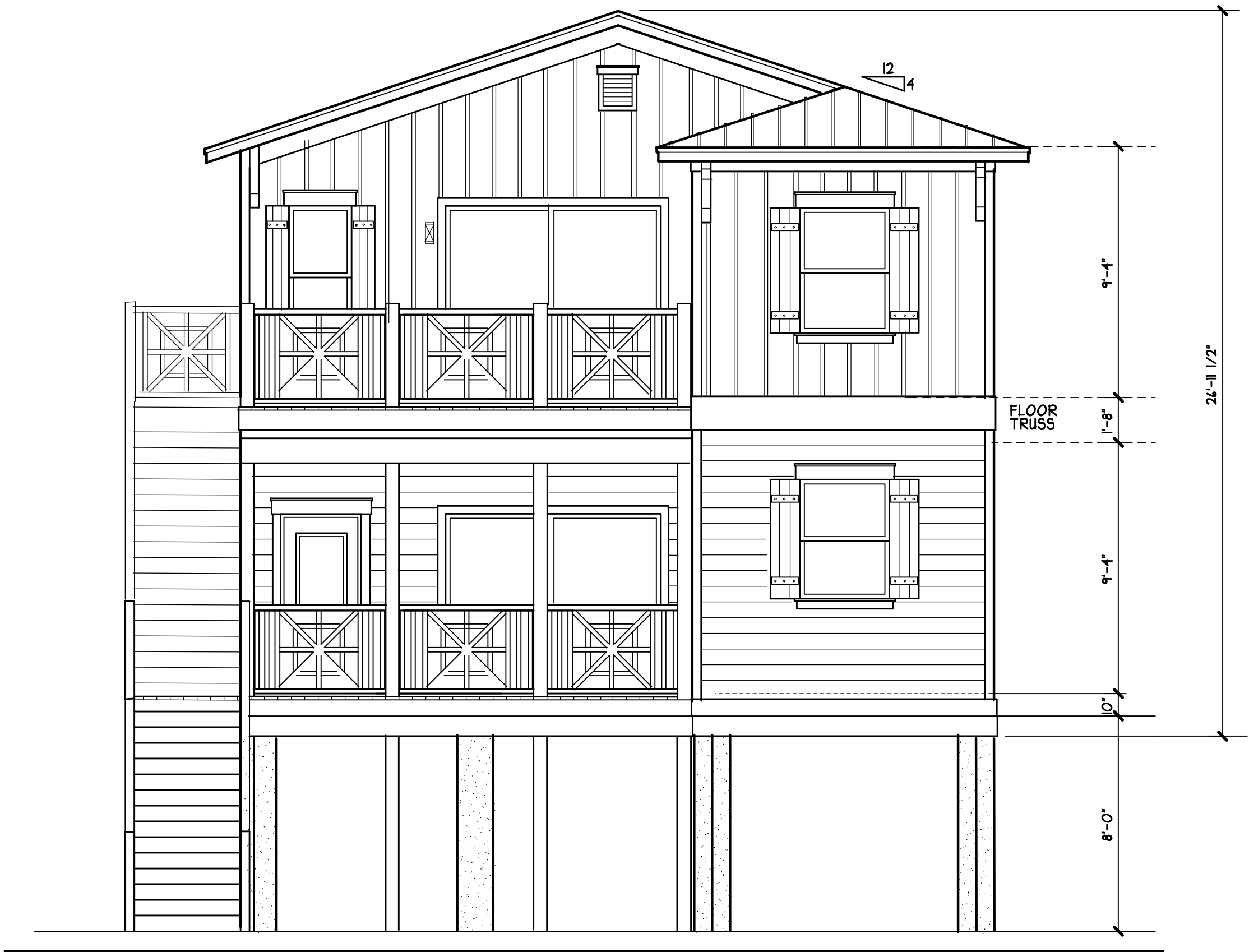
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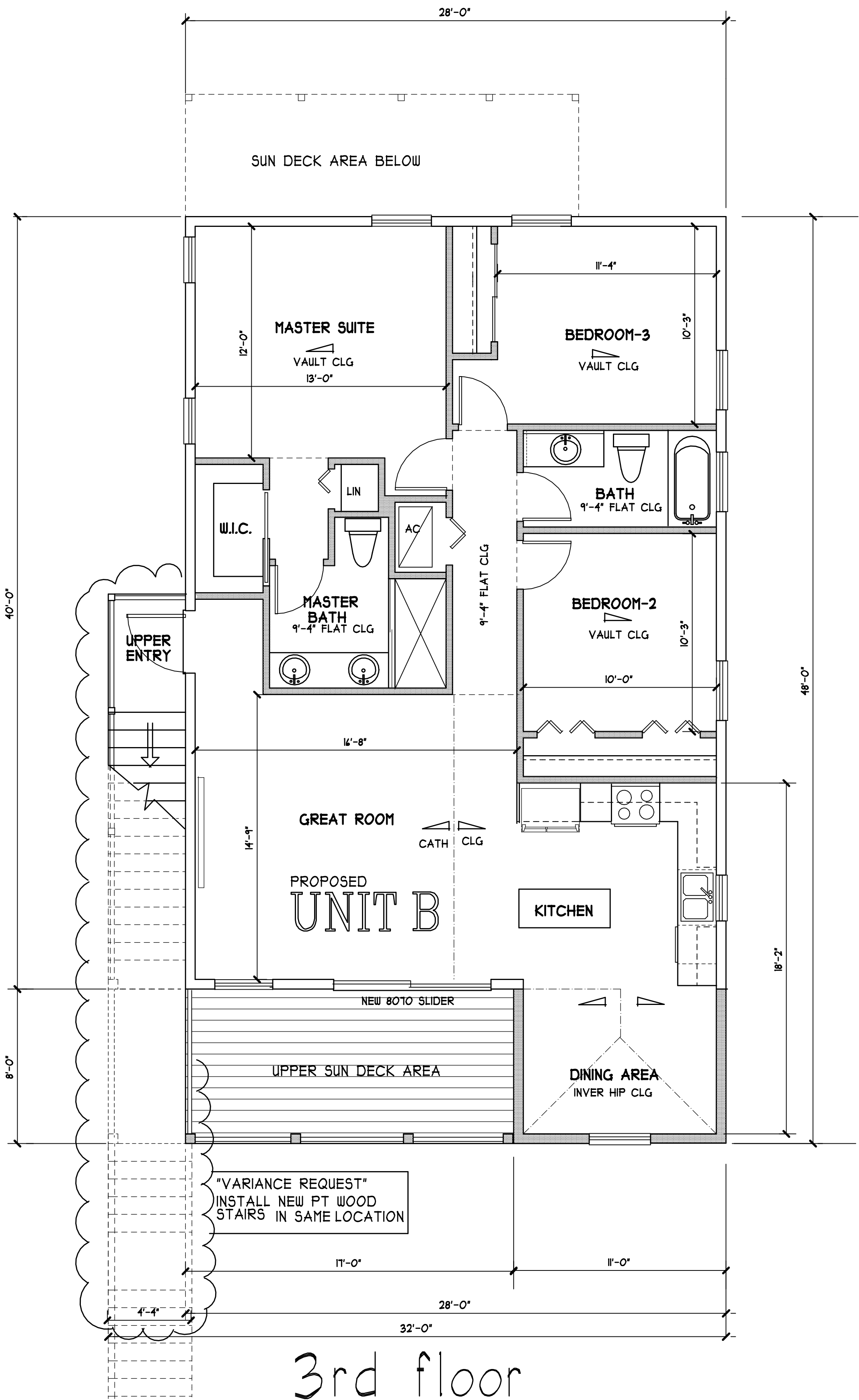
EXISTING FRONT ELEVATION

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



PROPOSED FRONT ELEVATION

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



3rd floor
PROPOSED UNIT "B" FLOOR PLAN

3RD FLOOR AREA

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

UNIT "B" SQ. FTG
INTERIOR LIVING 1075 S.F.
UPPER SUN DECK 136 S.F.

NAME: MIKE MARTELL
CONCEPT DUPLEX DESIGN
UNIT / BLK:
LOTS:
ADDRESS: 166/168 COCONUT DRIVE
CITY: FORT MYERS BEACH
COUNTY: LEE
STATE / ZIP: 33913

REVISIONS:
DATE: 8-25-25
DRAWN BY: D. ACHAVAL
SHEET NO: 4 OF 4

ENGINEER'S SEAL

DAN ACHAVAL
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Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

TYPE OF CASE: Special Exception

CASE NUMBER: SEZ20250271

CASE NAME: 166/168 Coconut Drive; Resolution 26-015, requesting a Special Exception to increase the number of bedrooms in a two-family residence while utilizing the Post-Disaster Buildback code of the LDC Section 34-3238(2)(e)(4)(a).

LPA

HEARING DATE: January 13, 2026; 9:00 am

TOWN COUNCIL

HEARING DATE: March 16, 2026; 9:00 am

STAFF

RECOMMENDATION: Approval with conditions

PREPARED/

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

I. APPLICATION SUMMARY

Applicant/Owner: Michael Martell, One Sunshine State, LLC/ US Bank Trust Company NA TR

Request: a Special Exception to increase the number of bedrooms in a two-family residence while utilizing the Post-Disaster Buildback code of the LDC sec. 34-3238(2)(e)(4)(a).

Subject Property: See attached site plan

Physical Address: 166/168 Coconut Drive

STRAP #: 29-46-24-W2-0070A.0160

FLU: Low Density Residential

Zoning: Single-Family Residential (RS)

Adjacent zoning and land uses:

North:	LOW DENSITY RESIDENTIAL Single family residential
South:	LOW DENSITY RESIDENTIAL Single family residential
East:	LOW DENSITY RESIDENTIAL Single family residential
West:	LOW DENSITY RESIDENTIAL Single family residential

II. BACKGROUND AND ANALYSIS

Background:

Michael Martell, the Applicant for 166/168 Coconut Drive, is requesting a Special Exception to increase the number of bedrooms as part of redevelopment utilizing the Post-Disaster Buildback policy. Based on data available from the Lee County Property Appraiser's office, the structure supported a duplex or two-family residence with 5 total bedrooms and 3 bathrooms prior to Hurricane Ian. The Town's Buildback policy allows the Applicant to increase the number of full bathrooms, by right, to equal the number of bedrooms in the structure before a storm. Any additional bedrooms and bathrooms may only be requested through a Special Exception process. The Applicant is now proposing 6 bedrooms and 5 full bathrooms and is requesting a Special Exception for the additional bedroom. The homeowner has stated that he intends to live in one of the dwelling units and rent the other dwelling unit as allowed for in his zoning district. Based on supporting data submitted by the Applicant, staff was able to confirm that the structure was eligible to rebuild two (2) living units utilizing the Post-Disaster Buildback language.

The property is a non-conforming lot in the RS zoning district. Prior to Hurricane Ian, the primary structure was non-conforming due to the staircase encroaching into the required 25-foot street setback and the required 7.5-foot side setback along the west side of the property. The Applicant plans to replace the staircase in the same location and apply for a variance for the same prior to building permits.

The Town's LPA reviewed the application on January 13, 2026, and unanimously voted to recommend approval with conditions for Town Council's consideration.

Analysis:

The purpose of the RS zoning district is to provide stable neighborhoods where single-family detached homes are the predominant land use. A conforming lot in the RS zoning is at least 75 feet wide and 100 feet deep, or 7,500 square feet of area. The subject property is a 50-foot-wide and 100-foot-deep, nonconforming lot.

Town's Buildback policy allows buildings that exceed the density for new buildings and that are damaged or destroyed by a disaster, including fire, tropical storms, floods, and hurricanes, to be replaced to their pre-disaster lawful density in accordance with Policy 4-D-1 of the Fort Myers Beach Comprehensive Plan. The subject property is part of a single-family residential neighborhood. Based on data available from the Lee County Property Appraiser's office, the subject property has supported a duplex since 1958. Based on supporting data submitted by the Applicant, staff was able to confirm that the structure was eligible to rebuild two (2) living units utilizing the Post-Disaster Buildback language. The Applicant has also provided sufficient information to confirm that the reconstructed duplex will maintain the same total interior square footage above base flood elevation as the total under-roof square footage of the previous structure.

Based on data available from the Lee County Property Appraiser's office, the structure supported 5 total bedrooms and 3 bathrooms documented prior to Hurricane Ian. Town's Buildback policy allows the Applicant to increase the number of full bathrooms to equal the number of bedrooms in the structure before storm by right. Additional bedrooms and bathrooms may only be requested through a Special Exception process. The Applicant is proposing 6 total bedrooms and 5 full bathrooms. The Applicant is, therefore, requesting a Special Exception for an additional bedroom.

Neighborhood Compatibility:

The proposed duplex has been at this location since 1958. The proposed replacement of the duplex is similar to pre-Ian conditions. Granting a Special Exception to increase the number of bedrooms to six, while maintaining same total interior square footage above base flood elevation as the total under-roof square footage of the previous structure will not adversely affect the character of the neighborhood.

Findings and Conclusions:

Special Exception Findings

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

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

The existing duplex was damaged during Hurricane Ian.

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

The request is consistent with goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.

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

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

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

The reconstructed duplex will maintain the same total interior square footage above base flood elevation as the total under-roof square footage of the previous structure. Staff does not anticipate any additional negative impact on the environment, critical areas, or natural resources if the Special Exception were to be approved.

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

The proposed two-family use has existed on this property since 1958. The request to reconstruct the previously existing duplex is compatible with the existing use and will not cause damage, hazard, nuisance, or other detriment to persons or property.

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

The proposed reconstruction of the duplex will be completed in compliance with the Town's Land Development Code.

III. RECOMMENDATION

Staff finds that the Special Exception request *to increase the number of bedrooms in a two-family residence while utilizing the Post-Disaster Buildback code of the LDC sec. 34-3238(2)(e)(4)(a)* is in compliance with LDC Sec. 34-88(b).

Therefore, staff recommends **approval with conditions** for SEZ20250271, a request to increase the number of bedrooms to six bedrooms in a two-family residence utilizing the Post-Disaster Buildback code.

The Town's LPA reviewed the application on January 13, 2026, and unanimously voted to recommend approval with conditions for Town Council's consideration.

III. CONDITIONS OF APPROVAL

If Town Council recommends approval for the requests, staff recommends the following conditions of approval.

- 1) Three parking spaces must be provided on site. It shall be the responsibility of the Applicant to ensure that vehicles have access to stabilized parking spaces and that on-street parking does not occur.
- 2) Approval of this Special Exception does not give the Applicant an undeniable right to permit approval. Development of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
- 3) Failure to comply with any of the above-mentioned conditions of approval for the Special Exception will render this approval null and void.



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: 166/168 Coconut Drive Fort Myers Beach, FL 33931

STRAP Number: 29-46-24-W2-0070A.0160

Applicant: Michael Martell / One Sunshine State LLC Phone: 954-449-3535

Contact Name: Michael Martell Phone: 954-449-3535

Email: mike@martellconstruction.co Fax: _____

Current Zoning District: RS- Duplex

Future Land Use Map (FLUM) Category: Low Density

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: _____

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*: Michael Martell / One Sunshine State LLC Phone: 954-449-3535

**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: 122 NE 20th Court Cape Coral, FL 33909

Email: mike@martellconstruction.co Fax: _____

Contact Name: Michael Martell Phone: 954-449-3535



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: Michael Martell Phone: 954-449-3535
Address: 122 NE 20th Court Cape Coral, FL 33909
Email: mike@martellconstruction.co Fax: _____

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

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

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

PART II - Nature of Request

Requested Action (each request requires a separate application)

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☐ Easement

☐ Other. Please Explain: _____

PART III - Waivers

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

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV - Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Michael Martell 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.

Michael R. Martell
Signature

Michael Martell
Printed Name

STATE OF Florida COUNTY OF Lee

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

presence OR _____ online notarization, this 10th day of October, 2025, by

Michael R. Martell

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

Drivers License as identification.

(SEAL)



Pablo Reynoso
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

US Bank Trust Company NA TR 3900 Capital Blvd Lansing MI 48906

100

_____	_____
_____	_____
_____	_____
_____	_____

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

One Sunshine State LLC 122 NE 20th Court Cape Coral, FL 33909

Mike Martell (Member) 122 NE 20th Court Cape Coral, FL 33909

100

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: 07-25-25

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

Michael Martell

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, Michael Martell (name), as MGR (title)
of One Sunshine State 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

One Sunshine State LLC

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

Michael Martell

Signature

Michael Martell

Typed or Printed Name

MGR

Title

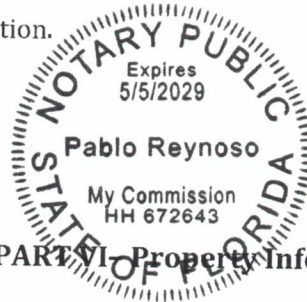
10-08-25

Date

STATE OF Florida COUNTY OF Lee

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 10th day of October, 2025, by Michael R. Martell ☐ who is personally known to me OR ☒ who has produced Drivers License as identification.

Seal



Pablo Reynoso

Notary Public Signature

PART VI - Property Information

A. Legal Description:

STRAP: 29-46-24-W2-0070A.0160

Property Address: 166-168 Coconut Drive 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: Gulf View Plaza

Book: 6 Page: 64 Unit: _____ Block: A Lot(s): 16

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) 50 feet
Depth (please provide an average width if irregular in shape) 100 feet
Frontage on street: 50 feet. Frontage on waterbody: _____ feet
Total land area: 5000 ☐ acres ☒ square feet

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

From Sky Bridge continue on Estero Blvd until you come to Coconut Drive on left.
Make Left on Coconut Drive. Parcel on the right hand side two houses from the end.

☐ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

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

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

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

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

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

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

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

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

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

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

Explanatory Notes – Part I

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

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

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

Explanatory Notes – Part IV

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

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

Explanatory Notes – Part VI

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



COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

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

Explanatory Notes – Part IV & V

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



Case# _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-A

Additional Required Information for a Special Exception Application

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

Project Name: 166-168 Coconut Drive Fort Myers Beach, FL 33931
Authorized Applicant: Michael Martell / One Sunshine State LLC
LEOPA STRAP Number(s): 29-46-24-W2-0070A.0160

Current Property Status: Duplex
Current Zoning: RS
Future Land Use Map (FLUM) Category: Low Density
Platted Overlay? ☐ yes ☐ no FLUM Density Range:

Requested Action:

☐	Use of premises in the EC (Environmentally Critical) zoning district for:
☒	Use of premises in the <u>Low Density</u> zoning district for:
	An additional bedroom for our designated Unit B on our submitted drawings.
	No increase in total square footage or building footprint.

PART I

Narrative Statements

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

One additional bedroom to be added to Unit B as reflected on the
drawings submitted with this application. We are relocating the ground floor unit
that is in a flood zone and relocate it to a proposed 3rd level on top of Unit A.
The existing ground floor unit as it is built now contains two bedrooms and one
bath. We are requesting the third bedroom to accommodate my family including
my elderly mother. We will not increase the allowable square footage or building
footprint. The proposed relocation of unit B will now be above the flood plain and
conforming to flood zone requirements.
This property currently has a total of five bedrooms. This special exemption is to
change the property to a total of six bedrooms from five. Three bedrooms for
Unit A and three bedrooms for unit B.

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

The property qualifies for a Special Exception because:
We are not exceeding the existing footprint and square footage. A third bedroom
would not add square footage to the structure and would not cause damage,
hazard, nuisance, or other detriment to persons or property in the neighborhood.
We intend to acknowledge and intend to adhere to all applicable general zoning
provisions and supplemental regulations pertaining to our request for a special exemption.
We hereby request a third bedroom in Unit B of our duplex.

Granting the requested Special Exception could impact surrounding properties as follows:
The impact would be minimal as the square footage would not be increased on
our duplex. An additional bedroom would be added to the existing footprint of Unit B.
We are currently approved for a total of five bedrooms. We request one additional
bedroom for a bedroom total sum of six bedrooms for our duplex. Three bedrooms
total in each unit.

PART 2

Submittal Requirements

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

Required Items

- Public Hearing Request Form
- Supplemental form PH-A
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; all proposed structures and uses for the site; and any proposed fencing and screening.
- Fee in the amount of \$3800.00/\$3300.00 for an amendment

For New Communication Towers:

- a. Lee County Application for Communication Tower
- b. Shared-Use Plan Agreement

For Consumption of Alcoholic Beverages (COP) license approval:

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

For transit terminals:

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

For use of the EC zoning district:

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

Guide to Filing Supplement PH-A for Special Exceptions

Case Number will be inserted by Community Development staff.

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

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

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

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

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

Part 1 Narrative Statements:

“Request for...”

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

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

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

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

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

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

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

Submittal Requirements Check List and Filing Guide

☐

A completed Public Hearing Application Form.

☐

A completed Supplemental form PH-A.

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

Guide to Filing Supplement PH-A for Special Exceptions

Case Number will be inserted by Community Development staff.

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

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

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

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

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

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

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

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

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

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

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

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

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

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

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

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

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

Explanatory Notes – Part I

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

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

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

Explanatory Notes – Part IV

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

Explanatory Notes – Part V

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

Explanatory Notes – Part VI

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

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

Explanatory Notes – Part IV & V

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

1. **Request:**

Meeting Date: March 16, 2026

This quasi-judicial agenda item is a Second Reading and Final Public Hearing on proposed Ordinance 25-20.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/APPROVING WITH CONDITIONS/ DENYING A REZONING TO A COMMERCIAL PLANNED DEVELOPMENT (CPD) FOR THE PROPERTY LOCATED AT 175 STERLING AVENUE, A PARCEL GENERALLY IDENTIFIED AS STRAP NUMBER 33-46-24-W2-00004.0000 TOWN OF FORT MYERS BEACH FROM INSTITUTIONAL TO ALLOW FOR THE REDEVELOPMENT OF THE PROPERTY FOR THE FORT MYERS BEACH WOMANS CLUB; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The action is necessary to formally evaluate and decide on the rezoning request, insuring that the Town Council reviews prior recommendations, addresses key conditions, and provides legal authorization for the redevelopment of the Fort Myers Beach Womens Club in a manner consistent with Planning, Zoning, and Community objectives.

What the action accomplishes:

The action ensures that the Town Council considers the local planning agency's and public recommendation from the first reading when deciding whether to rezone the property from Institutional to Commercial Plan Development, guiding the redevelopment of the Fort Myers Beach Womens Club while addressing conditions such as COP area inclusion and continued non-profit use.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Jason Green, Community
Development Services

5. **Background:**

James Ink of Ink Engineering, Inc., representing the applicant, is requesting rezoning of the property located at 175 Sterling Avenue from Institutional to Commercial Planned Development (CPD) for the redevelopment of the Fort Myers Beach Womens Club.

The subject property at 175 Sterling Avenue housed the Fort Myers Beach Womens Club in a building constructed in 1947 and occupied beginning in 1950. The current zoning of the property is

Institutional, and the future land use category is Boulevard. The property is located at the rear end of the Boulevard and runs parallel to Estero Boulevard, making it suitable for rezoning to CPD without requiring a comprehensive plan amendment.

On December 16, 2025, the Local Planning Agency (LPA) voted unanimously (6-0) to recommend approval with conditions for CPD Amendment Request No. 20250203, which proposes rezoning the subject property from Institutional to Commercial Planned Development for the redevelopment of the Fort Myers Beach Womens Club.

On January 20, 2026, Town Council heard CPD Request No. 20250203 to rezone the subject property from Institutional to Commercial Planned Development for the redevelopment of the

Fort Myers Beach Womens Club. The Council voted unanimously, identifying two items to be addressed prior to the second reading:

1. Reconsideration of the COP area to include the entire property as a COP permit area.
2. Discussion of language in the approval limiting uses of the property, which may create adverse impacts on adjacent property owners, rather than restricting ownership to a non-profit entity or non-profit activities. Ownership is irrelevant to a use that may be adverse to the neighborhood.

Attachments:

1. Final Ordinance 25-20 Second Reading CPD FMB Womens Club_March 6
2. Exhibit A: Master Concept Plan
3. Exhibit B: Schedule of Uses
4. Exhibit C: Architectural Rendering & Boundary Survey
5. Exhibit D: Conditions for Approval
6. Staff Report-Feb17CPD FMB Womens Club
7. Application Packet
8. Applicant LPA Presentation
9. CPD 25-20- Womens Club- BIE
10. Deed for 175 Sterling

Financial Impact:

Unknown

6. Alternative Action

Deny

7. Management Recommendations:

Staff recommends approval with conditions of CPD20250203

8. Recommended Approval:

Jason Smalley, 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 - 3/3/2026
Approved - 3/3/2026
Approved - 3/3/2026
Approved - 3/6/2026
Approved - 3/9/2026
Final Approval - 3/9/2026

ORDINANCE 25-20
(FMB Woman's Club)

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/REPEALING WITH CONDITIONS/ DENYING A REZONING TO A COMMERCIAL PLANNED DEVELOPMENT (CPD) FOR THE PROPERTY LOCATED AT 175 STERLING AVENUE, A PARCEL GENERALLY IDENTIFIED AS STRAP NUMBER 33-46-24-W2-00004.0000 TOWN OF FORT MYERS BEACH FROM INSTITUTIONAL TO ALLOW FOR THE REDEVELOPMENT OF THE PROPERTY FOR THE FORT MYERS BEACH WOMAN'S CLUB; 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, the Fort Myers Beach Woman's Club and Ink Engineering Inc. are the applicants and agents for the property owner, Fort Myers Beach Woman's Club, and are requesting to rezone the property located at 175 Sterling Avenue and identified as STRAP number 33-46-24-W2-00004.0000 ("Subject Property") in the Town of Fort Myers Beach, from Institutional to Commercial Planned Development ("CPD"); and

WHEREAS, the Subject Property is located in the Boulevard Future Land Use Category of the Town of Fort Myers Beach Comprehensive Plan ("Comprehensive Plan"); and

WHEREAS, the rezoning request was reviewed by the Fort Myers Beach Local Planning Agency ("LPA") at a public hearing on December 16, 2025; and

WHEREAS, at the public hearing, the LPA gave full and complete consideration to the requested rezoning, the recommendations by staff, the documents in the record, and the testimony of the property owner and all interested persons, as required by Section 34-85 of the Town's Land Development Code ("LDC") and found the request to be consistent with the Comprehensive Plan and the requirements of the LDC and voted 6 to 0 recommending approval with conditions; and

WHEREAS, the members of the LPA unanimously agreed to include the architectural rendering presented at the LPA hearing as an exhibit to any subsequent approval by the Town Council as Exhibit C; and

WHEREAS, on January 20, 2026, the Town Council held a first reading of the title to

proposed Ordinance 25-20 and gave full and complete consideration to the request of the applicants, 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 approve Ordinance 25-20 for a second reading of the title to Ordinance 25-20 and adoption hearing on 17th February 2026, which was continued to March 16, 2026; and

WHEREAS, notice of the second reading of the title to Ordinance 25-20 and the adoption hearing was properly noticed and published in the Fort Myers News-Press on the _____ day of _____, 2026, which is more than 10 days prior to the Town Council's final public hearing on the 17th day of February, 2026 and continued to a date certain; and

WHEREAS, there are no outstanding fees associated with notice, advertisement, and consulting services required by the Town related to this rezoning request; and

WHEREAS, a Business Impact Estimate was prepared and posted on the Town's website on the ____ day of _____, 2025, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, with additional terms, conditions, and requirements, the application is consistent with and in compliance with the Comprehensive Plan and the LDC; and

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

WHEREAS, Exhibit B provides the approved development regulations and the schedule of uses during the development process; and

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

1. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
2. The testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public was competent and substantial evidence.
3. The rezoning is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
4. The rezoning will meet or exceed all performance and locational standards set forth for the proposed use.

5. Urban services are available and adequate to serve the proposed use.
6. The rezoning will protect, conserve, or preserve environmentally critical areas and natural resources.
7. The rezoning is compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
8. The rezoning will 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.
9. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Comprehensive Plan, LDC, and other applicable town ordinances or codes.
10. The proposed use or mix of uses is appropriate at the location.
11. Sufficient safeguards to the public interest are provided by the recommended special conditions to the MCP and by other applicable regulations.
12. 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 finds that approval of Ordinance 25-20 with conditions is, consistent with the Comprehensive Plan and LDC and voted to **approve/approve with conditions/deny** 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 met its burden of proof that the request to approve Ordinance No. 25-20 **does/does not** meet the requirements of the Town's Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVES/APPROVES WITH CONDITIONS/DENIES** the requested application.

Section 3. Ordinance 25-20 is adopted by this vote and Exhibits A - Master Concept Plan (MCP), Exhibit B - Schedule of Uses, Exhibit C - Architectural Rendering and boundary survey, and

Exhibit D - Conditions for Approval are attached hereto and incorporated herein by this reference, and 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 _____ and seconded by _____ and upon being put to a roll call vote, the result was as follows:

DULY PASSED AND ADOPTED on this ____ day of ____ 2026.

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

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 TOWN OF FORT MYERS BEACH ONLY:**

Vose Law Firm, LLP, Town Attorney

This ordinance was filed in the Office of the Town Clerk on _____.

EXHIBITS

- Exhibit A: Master Concept Plan (MCP)
- Exhibit B: Schedule of Uses
- Exhibit C: Architectural Rendering and boundary survey
- Exhibit D: Conditions for Approval

PROPERTY REGULATIONS

STRAP: 33-46-24-W2-00004.0000

FLU: BOULEVARD

ZONING: INSTITUTIONAL

MAX DENSITY: 6 UNITS PER ACRE

PARCEL SIZE: 1.4 ACRES

ALLOWABLE FAR: 0.8 (48,787 SF)

FEMA FLOOD: AE: COASTAL EL 11.0' - FRONT BLDG
AE: EL 11.0' - REAR BLDG

FEMA MAP: 12071C0566G 11/17/2022

LANDSCAPING BUFFER REQUIREMENTS PER USE:

COM TO SFR - 15' WITH WALL OR 30' WITHOUT WALL

PRKG TO SFR - 15' WITH WALL OR 30' WITHOUT WALL

DEV TO ROW - 15' WITHOUT WALL

PROPERTY REGULATIONS IN INSTITUTIONAL DISTRICT

FRONT SETBACK: 20 FT (STERLING) 25' (LA)

MINIMUM REAR SETBACK: 20 FT

MINIMUM SIDE SETBACK: 7 FT

MAXIMUM FAR: 0.8 (48,787 SF)

MAXIMUM BUILDING HEIGHT: 30 FT ABOVE BASE FLOOD

MAXIMUM NUMBER OF STORIES: 3

ALLOWABLE USES

ADMINISTRATIVE OFFICE (ACCESSORY USE ONLY)

OFFICES: GENERAL

ATM

MEMBERSHIP ORGANIZATION

RECREATIONAL FACILITY

TEMPORARY USES

OUTDOOR CONSUMPTION OF ALCOHOL (RESTRICTED AREA)

RECREATION FACILITY (PRIVATE AND PUBLIC)

FAMILY DAY CARE

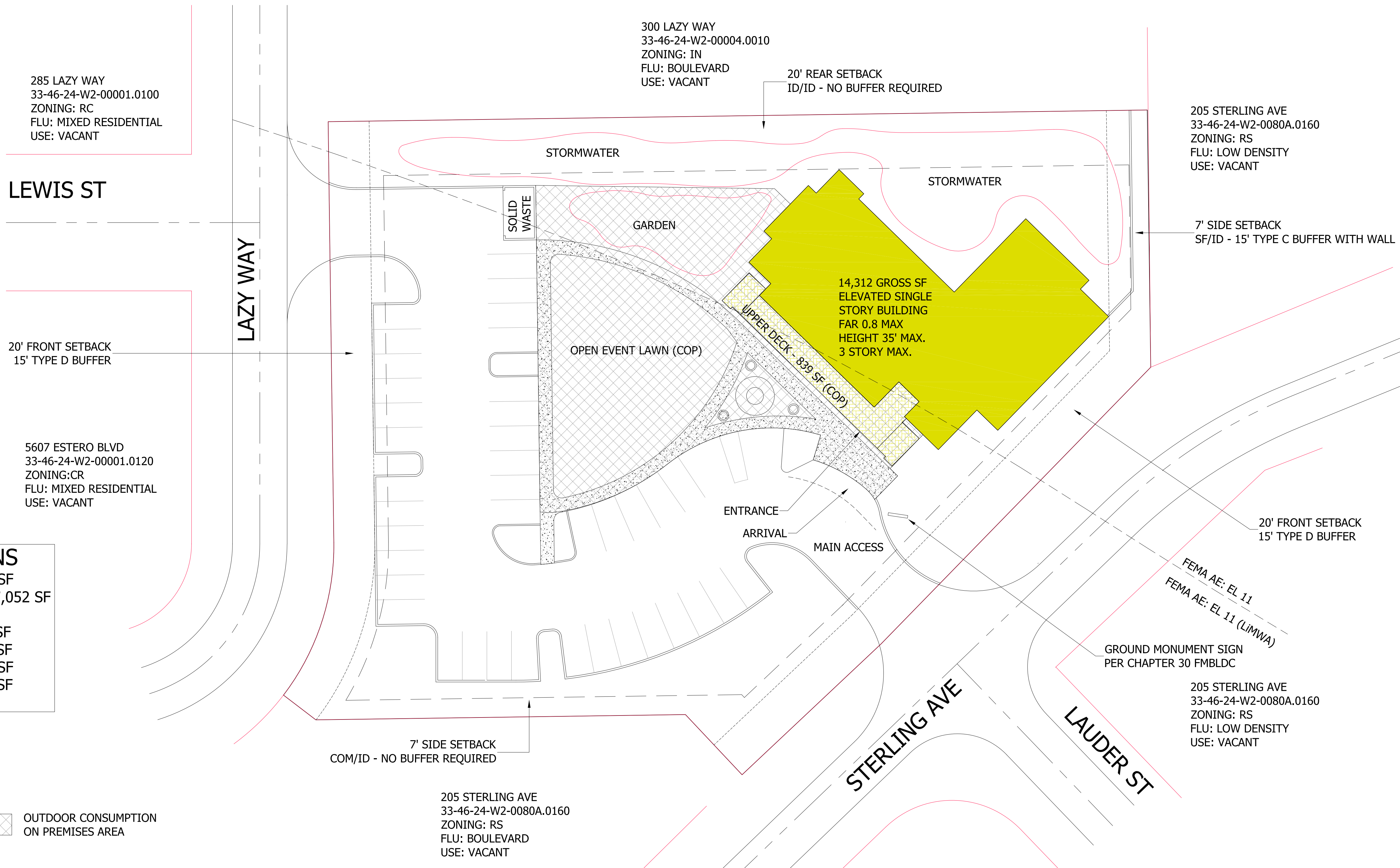
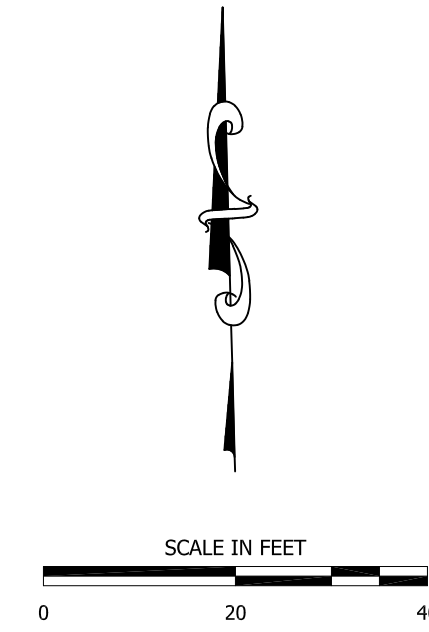
CULTURAL FACILITY

PLACE OF WORSHIP

PARKING SUMMARY				
USE	UNITS	REQUIRED RATIO	SPACES REQUIRED	SPACES PROVIDED
ASSEMBLY	132	1 SPACE PER 4 SEATS	33	33
BACK OF HOUSE	1.4	2 SPACES PER 1,000 SF	3	3
OFFICE	0.66	3 SPACES PER 1,000 SF	2	2
EMPLOYEES	3	1 SPACE PER EMPLOYEE	3	3
NOTES:			41	41
1. TOTAL PROVIDED PARKING INCLUSIVE OF 2 ADA ACCESSIBLE SPACES.				

LAND DATA			
	PROJECT TOTAL (SF.)	PROJECT TOTAL (AC.)	% TOTAL
IMPERVIOUS			
BUILDING	4,000	0.092	6.6%
ASPHALT	17,200	0.395	28.2%
DECK	1,600	0.037	2.7%
CONCRETE	0.064	4.0%	
IMPERVIOUS TOTAL	2,775	0.568	42.1%
IMPERVIOUS		0.812	57.9%
		1.4	100%

MASTER CONCEPT PLAN
COMMERICAL PLANNED DEVELOPMENT
FMB WOMENS CLUB FACILITY
175 STERLING AVE
FORT MYERS BEACH, FL 33931



FAR CALCULATIONS	
LOT SIZE	58,815 SF
FAR ALLOWED (0.8)	47,052 SF
PROPOSED BUILDING UNDER AIR	6,737 SF
UPPER DECK	839 SF
GROUND FLOOR	7,575 SF
TOTAL BUILDING	15,151 SF
PROPOSED FAR	0.25

OUTDOOR CONSUMPTION ON PREMISES AREA

NO.	DATE	DESCRIPTION
1	07/2025	ADD GROUND MONUMENT SIGNAGE
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

MASTER CONCEPT PLAN
FMB WOMEN'S CLUB FACILITY
FORT MYERS BEACH WOMENS CLUB
175 STERLING AVE, FORT MYERS BEACH FL 33931

James Ink P.E.
Florida Reg. No. 4466
DATE
INFORMATIONAL COPY ONLY, THIS PLAN IS PROVIDED WITH ASSURED DESIGN SERVICES ONLY.

INK ENGINEERING INC.
CONSULTING ENGINEERS • PLANNING
2025 WEST FIRST STREET
FORT MYERS, FL 33901
JINK@INKENGINEERINGINC.NET

PROJECT NO.	23027
PROJECT MANAGER	James Ink P.E.
DRAWN BY	BWM
DATE	07.2025
SCALE	1"= 20'
SHEET NO.	1
OF	1



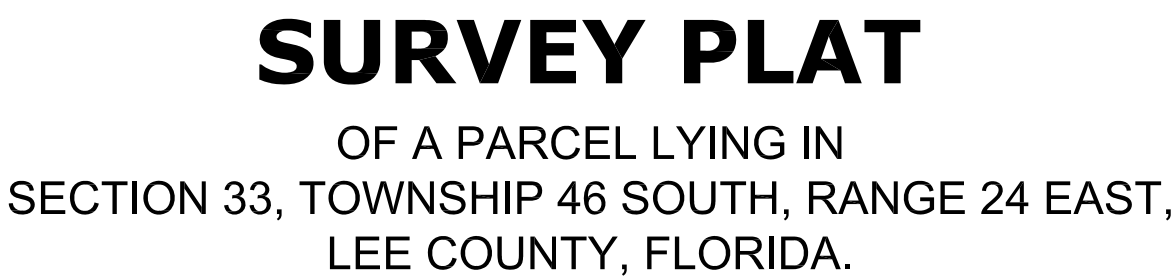
FMB Women's Club CPD Schedule of Uses

The Fort Myers Beach Women's Club schedule of uses are:

- Membership Organization – Principal Use
- Administrative Offices
- On-premises consumption of alcoholic beverages – per MCP
- ATM
- Temporary Uses
- Commercial accessory uses

Exhibit C: FMB Women's Club Architectural Rendering





OF A PARCEL LYING IN
SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
LEE COUNTY, FLORIDA.

BENCHMARK
SET NAIL & DISK, #B9450
SET 5/8" IRON ROD, #B8450
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
ELECTRIC SERVICE
P.O.B.
P.O.C.
L.S.
LB
RCD
PLS
FNP
EOP
N/D
C.M.
I.D.
(M)
(P)
OR
ORI
PB
PG
CONC.
R/W
O/H
x 5.11

POINT OF BEGINNING
POINT OF COMMENCEMENT
LICENSED SURVEYOR
LICENSED BUSINESS
REINFORCED CONCRETE PIPE
PROFESSIONAL LAND SURVEYOR
FOUND
EDGE OF PAVEMENT
IRON ROD
NAIL & DISK
CONCRETE MONUMENT
IDENTIFICATION
AS MEASURED
AS PER DESCRIPTION
OFFICIAL RECORDS
OFFICIAL RECORDS INSTRUMENT
PLAT BOOK
PAGE
CONCRETE
RIGHT OF WAY
OVERHEAD UTILITIES
ELEVATION POINT

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1(M)	90.00'	59.87'	58.77'	N18°17'15"E	38°06'55"
C1(D)	90.00'	60.00'			
C2(M)	39.93'	62.76'	56.49'	N45°47'43"W	90°03'01"
C2(D)	39.93'	62.96'			

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1(M)	90.00'	59.87'	58.77'	N18°17'15"E	38°06'55"
C1(D)	90.00'	60.00'			
C2(M)	39.93'	62.76'	56.49'	N45°47'43"W	90°03'01"
C2(D)	39.93'	62.96'			

No.	Date	Revision	Description	By

AS PER OR 231, PG 686

BEGINNING AT THE NW CORNER OF GOV'T. LOT 2, SEC. 33, T46 S., R24 E., LEE COUNTY, FLORIDA, THENCE SOUTH ALONG THE W. LINE OF SAID LOT 2, A DISTANCE OF 153.04 FEET; THENCE AT 90'00" LEFT, A DISTANCE OF 200 FEET EAST TO A POINT, SAID POINT BEING THE POINT OF BEGINNING OF LAND HEREIN DESCRIBED. THENCE AT 90'00" LEFT A DISTANCE OF 336.56 FEET NORTH; THENCE DEFLECTING 89'57" RIGHT A DISTANCE OF 300 FEET EAST; THENCE DEFLECT 90'03" RIGHT A DISTANCE F 276.56 FEET SOUTH; THENCE DEFLECTING 44'56" RIGHT A DISTANCE OF 141.55 FEET SWLY; THENCE DEFLECTING 44'56" RIGHT A DISTANCE OF 159.92 FEET WEST; THENCE ON THE ARC OF A CURVE, HAVING A RADIUS OF 39.93 FEET DEFLECTING 90'03" RIGHT A DISTANCE OF 62.69' TO THE P.O.B.

ADDED TO DESCRIPTION BY SURVEYOR AS ASSUMED.

ALSO:

PART OF THE VACATED STREET AS DESCRIBED IN OFFICIAL RECORDS BOOK 260, PAGE 26, LEE COUNTY PUBLIC RECORDS.

LESS:

THE PARCEL AS DESCRIBED IN OFFICIAL RECORDS BOOK 231, PAGE 688, LEE COUNTY PUBLIC RECORDS.

THIS PLAT WAS PREPARED AS A BOUNDARY AND TOPOGRAPHIC SURVEY.

THIS SURVEY PREPARED BASED ON THE DESCRIPTIONS OF RECORD, AND EXISTING MONUMENTATION. BEARINGS ARE BASED ON NORTH AMERICAN DATUM OF 1983/2011; THE NORTHWESTERLY RIGHT OF WAY LINE OF STERLING AVENUE AS BEARING N46°44'35"E.

ELEVATIONS ARE BASED ON NORTH AMERICAN DATUM OF 1988, FROM NATIONAL GEODETIC SURVEY BENCHMARK 872 5351 E, ELEVATION: 6.76 FEET.

PARCEL LIES IN THE FLOOD ZONE AE, WITH A BASE FLOOD ELEVATION OF 11 FEET. THIS INFORMATION TAKEN FROM FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP NO. 12071C0566G, EFFECTIVE DATE NOVEMBER 17, 2022.

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

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

SAID PARCEL CONTAINS 58814.77 SQUARE FEET, OR 1.35 ACRES, MORE OR LESS.

SURVEYOR'S CERTIFICATION:

HEREBY CERTIFY TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, THAT THIS
 MAP OF THE HEREON DESCRIBED PROPERTY IS A TRUE REPRESENTATION OF
 A FIELD SURVEY MADE UNDER MY DIRECTION AND CONFORMS TO THE STANDARD
 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

NOTICE:

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

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

K.E. Trask, P.A.

Land Surveyors

Florida Licensed Business No. LB84

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

Exhibit D: CONDITIONS OF APPROVAL

1. A local development order is required prior to any development of the site, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. All landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131.



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Commercial Planned Development

CASE NUMBER: CPD Rezoning, 20250203

CASE NAME: 175 Sterling Avenue, rezone the property from Institutional to Commercial Planned Development for the redevelopment of the Womans Club.

LPA

HEARING DATE: December 16, 2025, at 9 AM

STAFF

RECOMMENDATION: Approve with conditions

**PREPARED/
SUBMITTED BY:** Uma Sarmistha, Ph.D.

I. APPLICATION SUMMARY

Applicant/Owner: FMB Womans Club C/o Ink Engineering, Inc.

Request: The applicant is requesting to rezone the property from Institutional Zoning to Commercial Planned Development for the redevelopment of Womans Club

Physical Address: 175 Sterling Avenue

STRAP #: 33-46-24-W2-00004.0000

FLU: Boulevard

Zoning: Institutional District

Proposed Zoning: CPD

Adjacent zoning and land uses:

North: Residential Conservation (RC) and Institutional
/ Mixed Use and Boulevard

South: Residential Conservation (RC)
/ Mixed Use

East: Residential Single-family (RS)
/ Low Density

West: Residential Conservation (RC)
/ Mixed Use

II. BACKGROUND AND ANALYSIS

Background:

James Ink, Ink Engineering, Inc, applicant for 175 Sterling Avenue, is requesting a James Ink of Ink Engineering, Inc., representing the applicant, requests rezoning of 175 Sterling Avenue from Institutional to Commercial Planned Development (CPD) for redevelopment of the Fort Myers Beach Womans Club.

The subject property at 175 Sterling Avenue housed the Fort Myers Beach Womans Club in 1950 in a building built in 1947. The present zoning of the property is Institutional, and the future land use category is Boulevard. The location of the property is at the rear end of the Boulevard and parallel to Estero which makes this property sufficient for rezoning to CPD without a comprehensive plan amendment.

On December 16, 2025, LPA voted unanimously (6-0) to recommend approval with conditions for CPD Amendment request 20250203, a request to rezone the subject property from Institutional Zoning to Commercial Planned Development for the redevelopment of FMB Womans Club.

On January 20, 2026, Town Council heard the CPD 20250203, request to rezone the subject property from Institutional Zoning to Commercial Planned Development for the redevelopment of FMB Womans Club. The council voted unanimously with two major topics to discuss before the second reading:

1. Reconsidering the COP area to include the whole property as a COP permit area.
2. Adding conditions/ language in the approval regarding the property to remain a non-profit.

Analysis:

The Fort Myers Beach Womans Club has operated at this location for over 50 years. The club used to operate out of the historic building (first schoolhouse) built in 1938 which was destroyed by Hurricane Ian in 2022. The previous structure on the property was approximately 2792 square feet in size. The newly proposed redevelopment consists of 15,151square foot of building with parking and improvements.

The property has the Future Land Use designation of Boulevard which allows a maximum of 0.8 FAR (with a lot size of 58,815, the approximate building size of 47,052 SF). The proposed building consists of a total of 15,151Square foot of building with 6,737 SF under air, 838 SF of deck and 7,575 SF of ground floor (that will make a FAR of 0.25). The maximum building height allowed by code is 30 feet above base flood and three stories.

The allowable use proposed in the CPD includes Membership organization as the principle use Additionally, an administrative office, ATM, commercial accessory uses will be allowed under accessory use. An on-premises consumption of alcoholic beverages use has been marked in the Master Concept Plan.

The master concept plan includes parking with 2 ADA parking spots, stormwater garden and landscaping around the premises. The proposed building will meet all building regulations and will be designed to be FEMA compliant with dry floodproofing. The master plan also displays the monument sign.

No deviations from the Land Development Code are requested with this CPD application.

Neighborhood Compatibility:

The property housed the Fort Myers Beach Womans Club since it was created. and was destroyed by Hurricane Ian in 2022. The application is to rebuild the facility, which will be larger, modern, resilient, elevated and sustainable. The use of the building was non-conforming the current code. The rezoning will make the use conforming and consistent with the Comprehensive plan and Florida Building Code.

The rebuilt of the Womans Club is not likely to have an adverse impact on the neighborhood.

Findings and Conclusions:

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

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

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

Staff response: No errors or ambiguities exist.

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

Staff response: The site housed Fort Myers Beach Womans Club operating since the 1950's. The historic structure was destroyed by Hurricane Ian and redevelopment of the site will bring back the Womans Club on the Island and consistent with the Land Development Code of the Town of Fort Myers Beach.

(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.

Staff response: Satisfactory

(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 intensity of the

district. The use is permitted use by right in CPD. The proposed site development will be more compliant with the site development requirements than the previous development. Additionally, the new structure will be designed to current building and flood requirements which is supported by the comprehensive plan.

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

Staff response: The proposed development will meet performance standards set forth in 34-2031.

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

Staff response: The urban services exist in this location.

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

Staff response: The request will have no impact on environmentally critical areas and natural resources.

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

Staff response: The proposed use has been in existence in this location for many years. It is not anticipated to have any detrimental impact on existing or planned uses.

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

Staff response: This use in this location will not place an additional burden on the transportation network or other facilities and services.

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

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

(1) The Fort Myers Beach Comprehensive Plan.

Staff response: The proposed use for the CPD complies with the Comprehensive Plan.

(2) This chapter.

Staff response: The proposed use complies with this chapter.

(3) Any other applicable town ordinances or codes.

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

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

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

Staff Response: Satisfactory. The proposed use provided in the schedule of uses is consistent with Land Development Code.

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 impact 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: Not applicable.

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

Staff response: The proposed structure will be a single-story building.

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

Staff response: Not applicable.

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

Staff response:

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

Staff response: The proposed development has a similar use to the previous development and as reflected in the traffic study, no adverse impact on traffic is anticipated.

Findings for Deviation Requests:

Per Sec. 34-216(4) all deviations must be approved, approved with modification, or rejected based upon a finding that:

No deviations requested.

III. RECOMMENDATION

Staff find that the CPD meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends **approval with conditions** of DCI20250203 with the attached conditions.

IV. CONDITIONS OF APPROVAL

1. A local development order is required prior to any development of the site, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. All landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131.



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: 175 Sterling Ave
STRAP Number: 33-46-24-W2-00004.0000
Applicant: FMB Women's Club c/o Ink Engineering, Inc Phone: (239) 940-2504
Contact Name: James Ink Phone: (239) 940-2504
Email: jink@inkengineeringinc.net Fax: _____
Current Zoning District: Civic
Future Land Use Map (FLUM) Category: Boulevard
FLUM Density Range: 6 units/acre Platted Overlay: ☐ YES ☒ NO

ACTION REQUESTED

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

SUPPLEMENTAL FORM REQUIRED

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

PART I – General Information

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

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

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

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

Name: James Ink c/o Ink Engineering Inc Phone: (239) 940-2504

Address: 2055 West First Street, Fort Myers, FL 33901

Email: jink@inkengineeringinc.net 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 Civic to ☒ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☐ Easement

☐ Other. Please Explain: _____

PART III – Waivers

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

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Dawn Thomas 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

Dawn Thomas, Past President
Printed Name

STATE OF FLORIDA COUNTY OF LEE

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

presence OR _____ online notarization, this 11 day of JULY, 2025, by

DAWN THOMAS, ☒ who is personally known to me OR ☐ who has produced

_____ as identification.



MEGAN ZELENAC ALLERS
Notary Public
State of Florida
Comm# HH436895
Expires 8/23/2027


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

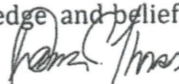
Date of Contract: _____

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

Dawn Thomas - Past President
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, Dawn Thomas (name), as Past President/Current Board Member (title)
of Fort Myers Beach Womens Club, Inc (company), swear or affirm under oath, that I am the
owner or the authorized representative of the owner(s) of the property and that:

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

4/30/2021

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

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COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

Fort Myers Beach Woman's Club

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

Dawn Thomas

Signature

Dawn C Thomas

Typed or Printed Name

Past President

Title

7/2/2025

Date

STATE OF FLORIDA COUNTY OF LEE

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 11 day of JULY, 2025, by

DAWN THOMAS ☒ who is personally known to me OR ☐ who has produced _____ as identification.



MEGAN ZELENAC ALLERS
Notary Public
State of Florida
Comm# HH436895
Expires 8/23/2027

[Signature]
Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 33-46-24-W2-00004.0000

Property Address: 175 Sterling Ave

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.

4/30/2021

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

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COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 300 feet
Depth (please provide an average width if irregular in shape) 170 feet
Frontage on street: 406 feet. Frontage on waterbody: 0 feet
Total land area: 1.35 ☒ acres ☐ square feet

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

south on Estero from the Sky Bridge 3.1 miles, left on Sterling site on left at
intersection of Sterline and Lauder Street.

☒ 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.



FORT MYERS BEACH WOMEN'S CLUB

Public Hearing Application for a
Commercial Planned Development

Prepared by:





FMB Women's Club CPD Zoning Application

Request Statement

Request to rezone 1.4+/- acres with existing zoning district of Institution (ID), for a membership organization as the primary zoning district at 175 Sterling Ave, Fort Myers Beach, FL 33931.

Introduction and Project Information

Fort Myers Beach women's club was established over 50 years ago. The published mission is: "*The mission of the Woman's Club is to support educational and recreational activities for non-profit, charitable and community organizations operating with the greater Fort Myers Beach Community.*" The club operated out of the island's first schoolhouse built in 1938 until Hurricane Ian on September 28, 2022, destroyed this historical building. The club survives and underway with fund raising to reconstruct the original site with a new modern facility to provide a place for many nonprofits to meet and promote these critical uses for the community.

Applicant (Property Owner): Fort Myers Beach Woman's Club, Inc
P.O. Box 2786
Fort Myers Beach, FL 33931
Dawn@2sunsmt.com
(615) 337-7671

Agent (Contact): Ink Engineering, Inc
James Ink PE
2055 West First Street
Fort Myers, FL 33901
jink@inkengineeringinc.net
(239) 940-2504

Design Consultant: Studio AD
Albert Dambrose
6202 Presidential Court, Suite D
Fort Myers, FL 33919
apd@studioad.net
(239) 292-4098

Property:

Strap #	Address	Zoning
33-46-24-W2-00004.0000	175 Sterling Ave	Institutional



Part I - Narrative Statements

A: Comprehensive Plan Amendments:

The future land use of Boulevard is sufficient for rezoning from ID to CPD. No Comprehensive Plan amendment is required.

B: Phasing Plan:

The proposed project is to be constructed in a single phase.

C: Comprehensive Plan Compliance:

The following narrative is an analysis of the Fort Myers Beach Comprehensive Plan and Goals, Objectives that show consistency and support of the requested rezoning application.

OBJECTIVE 2-B SIDE STREETS — Encourage residents to achieve a higher ambition for their residential streets, improving their walkability, comfort, beauty, interconnectedness, and safety.

The development of the site has green space and walkways that interact with the surrounding area to create an unrestricted access green space for residents.

Goal 4: To keep Fort Myers Beach a healthy and vibrant "small town", while capitalizing on the vitality and amenities available in the 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.

Unfortunately, on September 28, 2022, Hurricane Ian swept ashore with a large storm surge that caused catastrophic damage to the island. In one day, the old schoolhouse from the 1800's and home of the Fort Myers Beach Women's Club since 1950 was gone. This application is to rebuild with a larger facility to continue the mission of the Women's Club in a modern, resilient, elevated, and sustainable structure to continue the non-profit community involvement that has been on the site for 75 years.

POLICY 4-A-3 The town shall protect residential neighborhoods from intrusive commercial activities.

The subject property is at the rear of the Boulevard FLU commercial uses that parallel Estero Blvd. The historical use is a limited and less intense commercial use that remains perfect as the transition from the more intense commercial directly on Estero Blvd and residential uses on Sterling and Lazy Way. Proper buffering as required in the Land Development Code is sufficient and appropriate to provide the transition from commercial to residential uses.



POLICY 4-A-7 Estero Bay also provides great benefits to the town and can be enhanced by improving public access and reversing the decline in water quality. The Conservation and Coastal Management Elements of this plan outline the town's efforts on these matters.

The original Women's Club did not have a stormwater management system. This redevelopment will provide a stormwater management system to enhance the pre-Ian condition on the island to treat stormwater before discharge into the nearby canal system and into Estero Bay a FDEP Aquatic Preserve.

POLICY 4-B-5 "BOULEVARD": a mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types. This category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanently. For new residential 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 legally existing dwelling units). To obtain approval for new or expanded commercial activities, proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 46.9% of the land in this category, and this percentage shall not exceed 70%.

This application is to add the zoning use of membership organization that has been only allowed in Retail districts on the island. Membership Organization by LDC definition is an organization operating with formal membership requirements with the intent to pursue common goals and activities. The women's club qualifies for this purpose as it is a non-profit organization to support the community through events and support of other non-profit organizations that support the island. This mission has been in place on this site since 1950.

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.

This CPD application does not propose the change to any existing institutional use commercial intensity regulated criteria. The FAR will remain at 0.8 and the building height will remain at 35 feet and 3 stories. The presented master concept plan FAR is



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iv. In the "Boulevard" category, where mixed-use development including some commercial uses may be permissible, landowners may seek commercial rezoning only through the planned development process. Proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code.

This application is consistent with this Policy by the application is a request for a planned Development rezoning just to add the membership organization zoning use.

Note: other subcategories in the Plan under Policy 4-C-3 Commercial Locations are not relevant to this application.

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 Policy 4-D-1 and 4-E-1), and different heights may be applied to officially designated redevelopment areas such as Times Square, Red Coconut/Gulf View Colony, and Villa Santini Plaza.) In those case where individual parcels of land are so surrounded by tall buildings on lots that contiguous (or directly across a street) that this two-story height limit would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notifications of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to the Gulf or Bay waters that could be provided in exchange for allowing buildings to be taller than two stories. In each case, the town shall balance the public benefits of the height limit against other public benefits that would result from the specific proposal.

The proposed project is within the allowable heights of the Land Development Code for the existing zoning district and remains a single-story use but is elevated as required by FEMA FIRM requirements.



OBJECTIVE 7-B CONVENTIONAL SOLUTIONS – The usual response to traffic congestion is widening roads or building alternate routes. Estero Island's long narrow shape, frequent navigable canals, sensitive environmental, and highly urbanized character preclude these solutions. Congestion management at Fort Myers Beach must aim to reduce delays and improve safety, not just for motorists but for pedestrians and bicyclists as well.

Transportation is a main concern of any new or redevelopment in the town. One of the requirements of the zoning application is to provide an acceptable Traffic Impact Statement (TIS) addressing the impacts of the proposed development and how it integrates into the existing transportation network. The TIS must be consistent with the Comprehensive Plan, Land Development Code and Levels of Service that are stated as a minimum for any new trip generation. Methodology and typical Traffic Engineering principles will demonstrate redevelopment of the site will not cause any detrimental impact to Estero Blvd.

OBJECTIVE 8-9 LEVELS OF SERVICE – Maintain minimum acceptable levels of service for potable water, sanitary sewer, and solid waste disposal.

The service providers have been requested to provide service ability letters as included in the application that there is sufficient Potable Water (Town of Fort Myers Beach), Sanitary Sewer (Lee County Utilities), and Solid Waste (Lee County Solid Waste) capacity to service the proposed project. First responders for Fire, EMS and Sheriff have also provided letters of availability to serve.

GOAL 9: to provide optimal flood protection and improved stormwater quality within the constraints imposed by location and existing land-use patterns.

During the Development Order and Building Permit process the project will demonstrate that it has been designed compliant with FEMA FIRM, SFWMD stormwater, and Land Development Code regulations.

D: Design Standards Compliance:

The design standards listed in Division 7, Commercial Design Standards shall comply. The CPD documents have elevations as the Architectural Exhibits and shall be primary per 34-992(b).

E: Decision-making Compliance:

The application shall consist of sufficient documentation, plans, and reports such that Town staff can find the application sufficient and prepare a recommendation to the boards having jurisdiction. The application will be heard before the Local Planning Agency to review and determine a recommendation to the Town Council considering substantial competent evidence presented by applicants, staff and public. Town Council will hold two public hearings to hear and consider submitted substantial competent evidence presented by applicants, staff and public. A determination will be issued at the close of the second hearing. Section 34-85 FMBLDC addresses the following requirements. Commentary of compliance is provided.

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

Any errors or ambiguities will be resolved during staff review, LPA hearing and recommendations, and during Town Council public hearings.

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

Hurricane Ian drastically changed the conditions on the island. Prior to the storm the Women's Club operated as legal non-conforming use within the town. The use was a carryover from the club operating since the 1950's and the town's incorporation and creation of the Land Development Code in the 1990's. This application is to provide membership organization zoning use to have the project consistent with the Land Development Code moving forward.

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

The Women's Club is consistent with the Purpose of the zoning chapter by providing present and future needs of the Town and providing safe, healthy, convenient, prosperity and welfare of the citizens of the Town of Fort Myers Beach.

(4) The testimony of the applicant

Women's Club has retained the best consultants in the field to design a development. Studio AD for Architecture and Ink Engineering for Planning and Civil Engineering services has demonstrated the experience to design projects that are consistent with the vision of the Town of Fort Myers Beach to remain a small-town character. There will be substantial competent evidence and testimony that will be introduced into the record during the review and public hearing process that will be without question.

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

The application and public hearing testimony of applicant, staff and public will be considered in the recommendations provided by staff and LPA.

(6) The testimony of the public

The public will be afforded an opportunity to comment at the public hearings to voice their opinions. This testimony will be considered, as appropriate, to the request in the decisions and recommendations of the Council and LPA.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

As presented in Section C of this narrative, commentary has been provided of how the proposed application is consistent with the Comprehensive Plan.



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

The Women's Club has operated on this property since the 1950's. The Location of this low intensive use is still compatible with the existing surrounding Institutional, Commercial and Residential uses.

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

Public providers of Potable Water, Sanitary Sewer, Solid Waste, Public Transportation, Fire, EMS, and Sheriff have all provided documentation that service can be provided for the intent use.

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

The subject property does not have any critical areas or natural resources on the site. Compliance with the Land Development Code and SFWMD Handbook will ensure during the Development Order Design and Permitting phase that all environmental compliance is met.

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

The proposed project is to codify a use that has been in place since the 1950's and is only required due to Hurricane Ian impacts.

(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.

Service for providers for Potable water, Sanitary sewer, Solid Waste, Fire, EMS, Lee Tran has provided documentation that service is available. These letters are in the application. A Traffic Impact Statement is provided in the application to demonstrate compliance with Town of Fort Myers Beach Land Development Code and Comprehensive Plan requirements.

(13) For Planned Development rezonings See 34-216 for additional considerations.

The analysis for this section is included in 34-216(2) as follows:

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

The Schedule of Uses are listed in a separate exhibit. These uses are to provide a historical legal non-conforming use (membership organization) that has existed since 1950 and pre-dates the Land Development Code.

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

The existing historical use will have added compliance with the Land Development Code with Buffers and Setback that are appropriate for safeguarding the adjacent properties and neighborhood area.

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

There are no Special Conditions requested that deviates from the Land Development Code.

- d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development.*

The attached Zoning Narrative with Comprehensive Plan compliance demonstrates the proposed project meets all specific requirements of the Comprehensive Plan.

F: Deviations and written justification:

There are no requested deviations.

G: Administrative amendments to approved Master Concept Plan:

There are no administrative amendments.

Schedule of Uses:

The schedule of uses is provided on separate exhibit that are part of the application.

Property Development Regulations:

The property development regulations are provided on separate exhibit that are part of the application.

Summary:

The Commercial Planned Development singular request to allow a membership organization use on the subject property and the reconstruction of the clubhouse which was over 100 years old. The Women's Club will continue to function as they have since the 1950's but in a new resilient, sustainable, and consistent with current Florida Building Code, FEMA FIRM guidelines, and Fort Myers Beach Land Development Code.

FMB Women's Club CPD CPD Development Regulations

SETBACKS:

Front Setback (Sterling)	20 feet
Front Setback (Lazy Way)	20 feet
Side setback	7 feet
Rear setback	20 feet
Waterbody	Not Applicable

FAR (max) 0.8

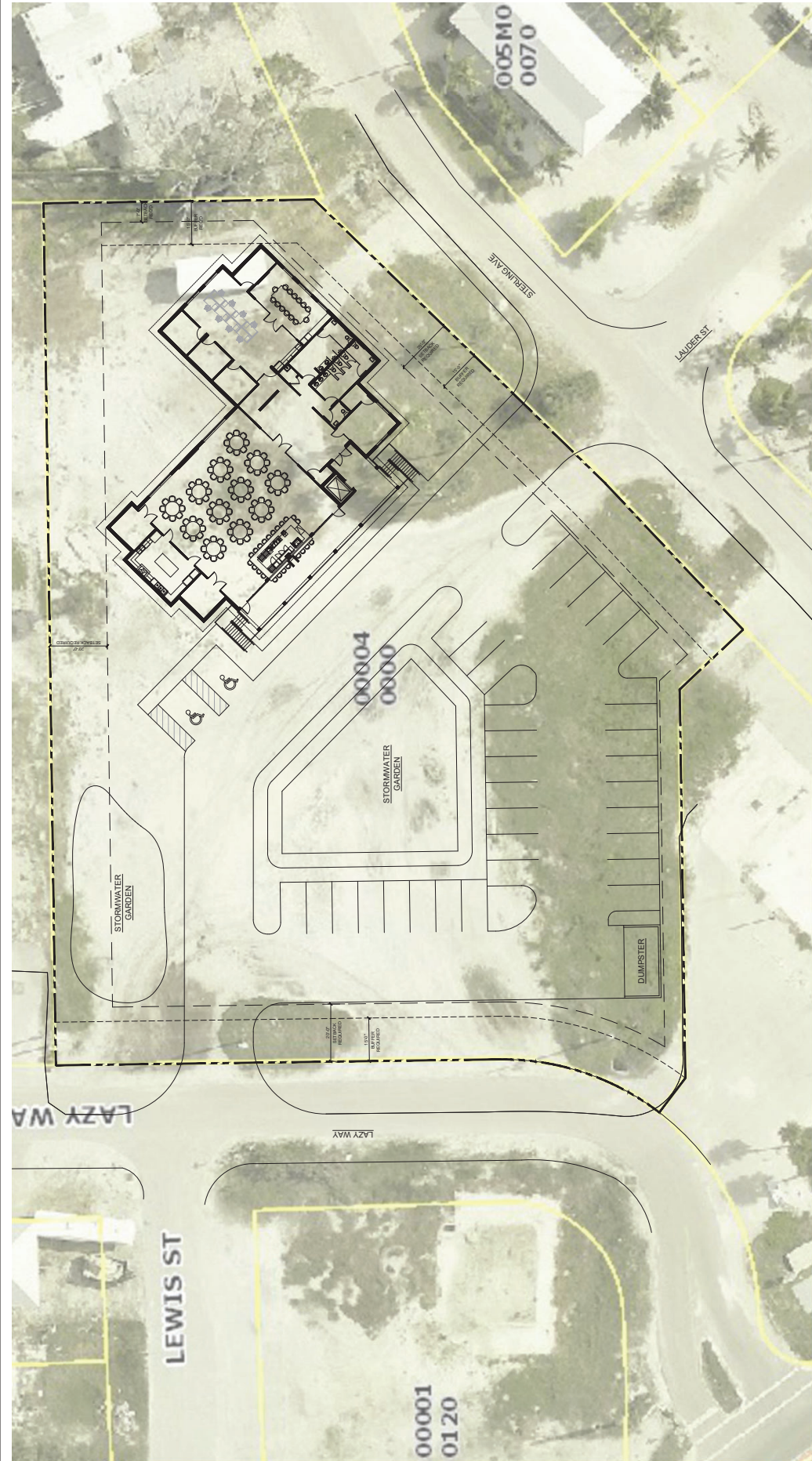
BUILDING COVERAGE: Not Applicable

HEIGHT:

30 feet above design flood elevation (DFE) and no taller than three stories

BUFFERS:

Right of Way	15' Type D buffer
Site Setback (Com)	No buffer required
Side Setback (Res)	15' Type C buffer with wall
Rear Setback (ID)	No Buffer Required



FAR CALCULATIONS

LOT SIZE = 58,815 SQ. FT.
 F.A.R. PERCENTAGE = 0.8 ALLOWED PER ZONING
 = 47,052 SQ. FT. ALLOWED
 ENCLOSED UNDER AIR = 6,737 SQ. FT.
 UPPER EXTERIOR DECK = 839 SQ. FT.
 GROUND FLOOR = 7,575 SQ. FT.
 TOTAL BUILDING = 15,151 SQ. FT. WHICH IS LESS
 THAN 47,052 ALLOWED





WEST ELEVATION (VIEW FROM LAZY WAY)



EAST ELEVATION (VIEW FROM STERLING AVE)

LPA, December 16, 2025, A Public
Hearing for rezoning
DCI20250203 Agenda Item VII.B
a CPD rezoning request



2021



Fort Myers Beach Women's Club



Team Members

Owner/Developer

Fort Myers Beach Women's Club

Planning and Engineering

Ink Engineering, Inc

Architecture

Studio AD





What this request would do:

- Allow the rebuild of the Fort Myers Beach Women's Club facility with a vision of the 21st century civic clubhouse to meet the philanthropic and social needs of the island during reconstruction after the devastation of Hurricane Ian. Request is only to add membership organization to the schedule of uses and allow for consumption on premises outside in the event space.

Why grant the request

- Granting the request will allow the Fort Myers Beach Women's Club to provide a modern facility for non-profit organizations space for meetings, fund raising, and events to promote the civic needs of the island.

Local Planning Agency consideration for the recommendation of approval to town council consideration to rezone 175 Sterling Ave from Institutional conventional zoning district to Commercial Planned Development with conditions.

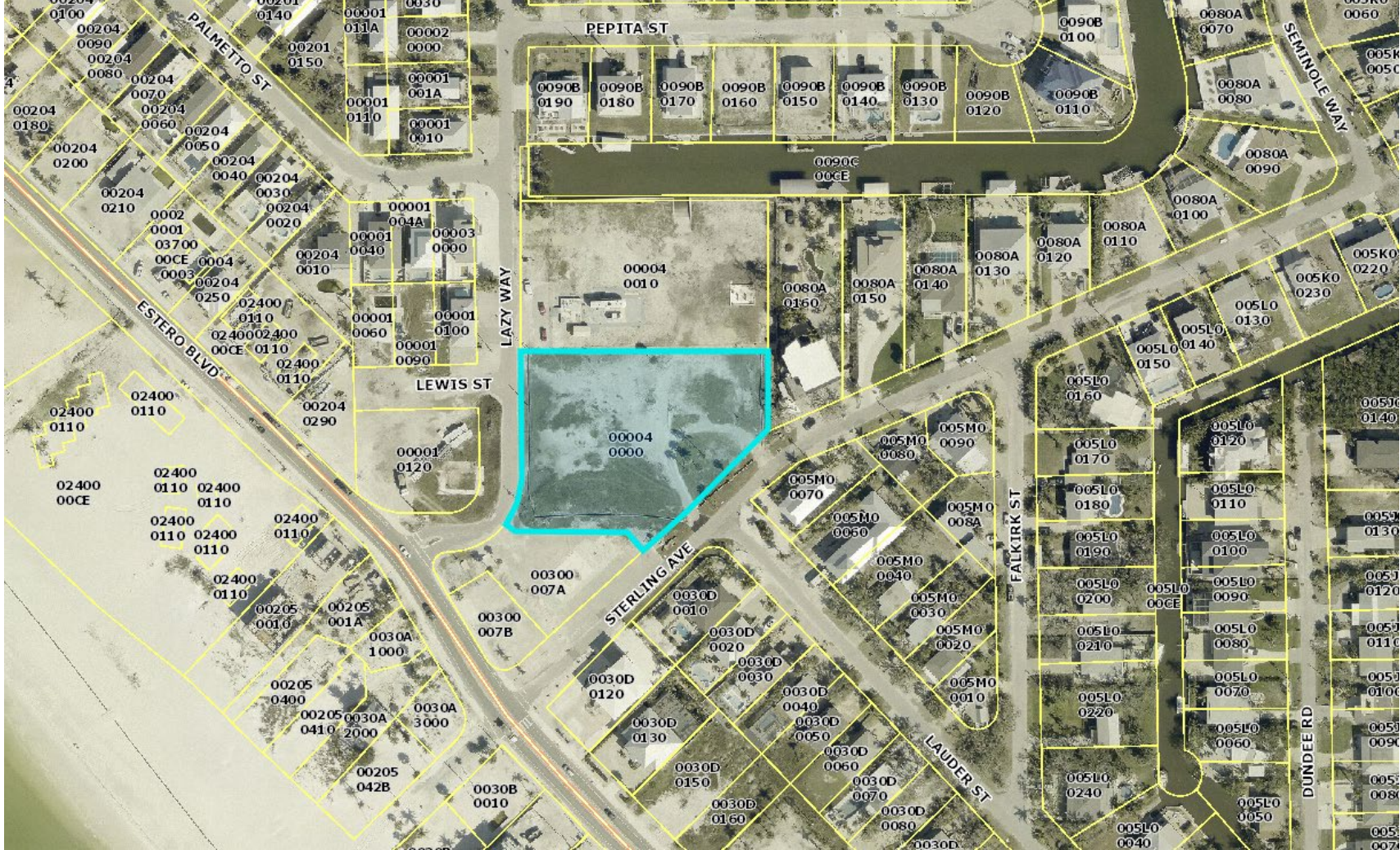
The Women's Club has operated at this location for over 60 years and when the town was incorporated in 1995 from Lee County. The town adopted a Comprehensive Plan in 1999 and the town Land Development Code followed being adopted in 2003. Adoption of the LDC set zoning districts and uses for parcels on the island. This adoption assigned the Institutional zoning district for the subject parcel but the zoning district did not include "membership organization" as a permitted land use. This created a legal non-conforming use which presently due the necessity needs rebuilding after Hurricane Ian. Staff determination is requiring rezoning. The Commercial Planned Development process is the most appropriate to allow the land use restrictions and remain compatible with the surrounding community by restricting other uses that are in appropriate in conventional districts.



Presentation Outline

1. Introduction of the Property
2. Design
3. Request Analysis
4. Findings and Conclusions
5. Questions and Discussion

- North: Institutional (IN) Mosquito Control
- South: Residential Multi-Family (RM) and Commercial Resort (CR)
- East: Residential Single Family (RS)
- West: Residential Conservation (RC)



Pre-Ian Site

- Location: 175 Sterling Ave
- Future Land Use: Boulevard
- Zoning District: Institutional District
- Property size: 1.35 acres
- Aerial Date: 2021
- Land Use: Membership Organization
- Property Appraiser Building Data
 - Year Built - 1947
 - Building Size – 2,792 SF



Post Ian Site

- Location: 175 Sterling Ave
- Future Land Use: Boulevard
- Zoning District: Institutional District
- Property size: 1.35 acres
- Aerial Date: 2025
- Land Use: Vacant





Proposed Property Regulations and Land Use.

FMB Women’s Club CPD CPD Development Regulations

SETBACKS:

Front Setback (Sterling)	20 feet (IN – 20 feet)
Front Setback (Lazy Way)	20 feet (IN – 20 feet)
Side setback	7 feet (IN – 7 feet)
Rear setback	20 feet (IN – 20 feet)
Waterbody	Not Applicable

FAR (allowable) 0.8 (IN – 0.8 (47,045 SF))

BUILDING COVERAGE: Not Applicable

HEIGHT:

30 feet above design flood elevation (DFE) and no taller than three stories (same as IN)

BUFFERS: (same as IN zoning district)

Right of Way	15’ Type D buffer
Site Setback (Com)	No buffer required
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FMB Women’s Club CPD Schedule of Uses

The Fort Myers Beach Women’s Club schedule of uses are:

- Membership Organization – Principal Use
- Administrative Offices
- On-premises consumption of alcoholic beverages – per MCP
- ATM
- Temporary Uses
- Commercial accessory uses

Design Criteria

- Reimagine the Women's Club sense of place in the community to expand and enhance the ability to support non-profit and philanthropic endeavors to support the community
- Retain the sensitivity and compatibility to the surrounding residential uses.
- Design a resilient, survivable, and sustainable building.
- Create interior and exterior uses to support the Women's Club mission.



Elevations



WEST ELEVATION (VIEW FROM LAZY WAY)

Elevations



EAST ELEVATION (VIEW FROM STERLING AVE)

B: Phasing Plan:

The proposed project is to be constructed in a single phase.

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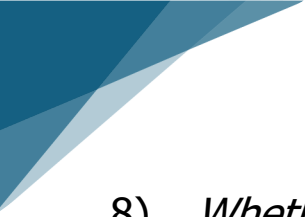
Local Planning Agency consideration for the recommendation of approval to town council consideration to rezone 175 Sterling Ave from Institutional conventional zoning district to Commercial Planned Development with conditions.

Substantial competent evidence has been submitted in the application documents and presentation that support the request statement provided Findings and Conclusion statements of 34-85 and 34-216(a) are met.



Findings and Conclusions per 34-85 FMBLDC

- 1) *Whether there exists an error or ambiguity which must be corrected.*
No errors or ambiguity exist.
- 2) *Whether there exist changed or changing conditions which make approval of the request appropriate.*
The rezoning request is to rectify a legal non-conforming use since before LDC adoption to allow redevelopment.
- 3) *The impact of a proposed change on the intent of this chapter.*
The proposed change improves the town and meets the intent of this chapter.
- 4) *The testimony of any applicant.*
Substantial competent evidence has been presented by expert witness during application, support and this hearing to demonstrate consistency with the Comprehensive Plan and Land Development Code.
- 5) *The recommendation of staff and of the local planning agency.*
Staff report indicates support of this application. Presentation of staff will provide their recommendation. This hearing will determine the recommendation of the local planning agency.
- 6) *The testimony of the public.*
To be determined and applicant requests the right of rebuttal to address this requirement.
- 7) *Whether the request is consistent with the goals, objective, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.*
Substantial competent evidence has been presented by expert witness during application, support and this hearing to demonstrate consistency with the Comprehensive Plan and Land Development Code.



Findings and Conclusions per 34-85 FMBLDC

- 8) *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*
As discussed in Comprehensive Plan analysis Policy 4-C-3 this request is consistent with performance and location standards.
- 9) *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*
All urban services are in place and existing to serve the design.
- 10) *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*
There are no environmental or natural resources on the site.
- 11) *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance or other detriment to persons or property.*
The proposal as presented will codify and continue the historical use on the property for over 60 years.
- 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 capacity to carry traffic generated by the development.*
During Development Order process a Traffic Impact Statement will be provided to show there is no undue burden on transportation or other existing services.
- 13) *For planned development rezonings, see 34-216 for additional considerations.*
See additional slide for comment on consistency of this requirement.



CPD Findings and Conclusions per 34-216(a) FMBLDC

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

Substantial competent evidence has been submitted in application and presentation for a finding of consistent with this requirement.

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

Substantial competent evidence has been submitted in application and presentation for a finding of consistent with this requirement.

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

Substantial competent evidence has been submitted in application and presentation for a finding of consistent with this requirement

d) *The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development.*

Substantial competent evidence has been submitted in application and presentation including Policy 4-B-5 (Boulevard FLU) and 4-C-3 (Location Standards) for a finding of consistent with this requirement.



Suggested Motion

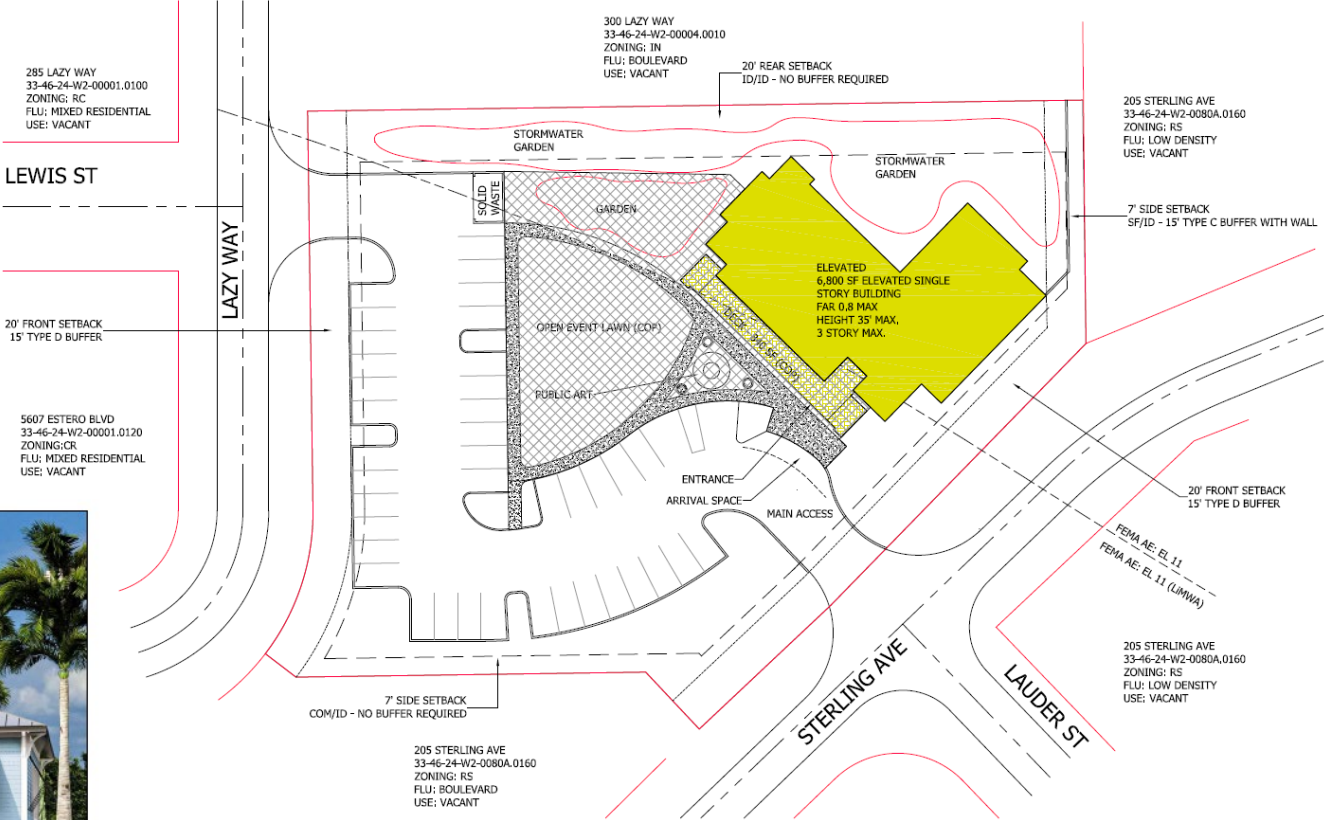
Recommend APPROVAL to town council that DCI20250203 based on a finding of consistency with the Comprehensive Plan and Land Development Code, with the following conditions:

1. Development of the property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
2. Development Order shall be substantially consistent with the Master Concept Plan exhibit and building elevation renderings in DCI20250203.
3. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to commencement of site development.
4. All landscaping must meet the Vehicle Visibility at Intersection requirements found in 34-3131.

Questions?



WEST ELEVATION (VIEW FROM LAZY WAY)





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: (25-20)

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/APPROVING WITH CONDITIONS/ DENYING A REZONING TO A COMMERCIAL PLANNED DEVELOPMENT (CPD) FOR THE PROPERTY LOCATED AT 175 STERLING AVENUE, A PARCEL GENERALLY IDENTIFIED AS STRAP NUMBER 33-46-24-W2-00004.0000 TOWN OF FORT MYERS BEACH FROM INSTITUTIONAL TO ALLOW FOR THE REDEVELOPMENT OF THE PROPERTY FOR THE FORT MYERS BEACH WOMANS CLUB; 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:
 - 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;

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

- 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 rezone and rebuilt the Fort Myers Beach Women's Club at 175 Sterling Avenue. The Rezoning to Commercial Planned Development (CPD) will make the use of the property compliant to current comprehensive plan, Land Development Code and Florida building standard

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:

NA

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

336418

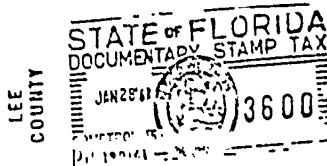
FEE SIMPLE DEED

THIS INDENTURE made this 2nd day of January, 1964, between THE BOARD OF PUBLIC INSTRUCTION OF LEE COUNTY, FLORIDA, a Quasi-Public Corporation under the laws of the State of Florida, party of the first part, and FORT MYERS BEACH WOMAN'S CLUB, INC., a Florida Corporation, as party of the second part,

WITNESSETH, that the party of the first part, for and in consideration of the sum of TWELVE THOUSAND AND NO/100 (\$12,000.00) DOLLARS paid by the party of the second part, receipt of which is hereby acknowledged, does hereby grant, bargain, sell and transfer unto the said party of the second part, its successors and assigns forever, the following described land situate, lying and being in the County of Lee, State of Florida, to-wit:

Beginning at the South Meander Corner between Government lots two (2) and three (3) of Section thirty-three (33), T forty-six (46) South, Range twenty-four (24) East, Lee County, Florida, said point being 1607.4 feet South of the Northwest Corner of said Government lot two (2); thence North along the West line of said Government lot two (2) a distance of 454.36 feet to a point 13.65 feet North of North side of Estero Boulevard; thence East at an angle of 90 degrees a distance of 200 feet to the point of beginning of land herein described; thence South to East along a curve whose radius is 40 feet a distance of 62.83 feet (the radius point of said curve is 40 feet East of the aforesaid point of beginning), thence East 160 feet; thence Northeast at an included angle of 135 degrees a distance of 141.4 feet; thence North at an included angle of 135 degrees a distance of 250.21 feet; thence West at an angle of 90 degrees a distance of 300 feet; thence South at an angle of 90 degrees a distance of 336.56 feet to the point of beginning, containing 2.45 acres, more or less.

SUBJECT to existing easements and restrictions of record.



TO HAVE AND TO HOLD THE SAME, together with all and singular the appurtenances thereto belonging or in anywise incident or appertaining, and all the estate, right, title, interest and claim whatsoever of the party of the first part, in law or in equity, to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns.

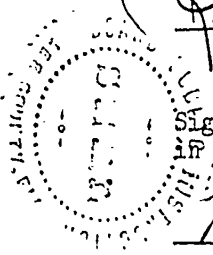
IN WITNESS WHEREOF the said party of the first part has executed these presents the day and year first above written.

BOARD OF PUBLIC INSTRUCTION OF
LEE COUNTY, FLORIDA

By *Ed. S. H. S.*
Chairman

ATTEST:

Robert N. Kregan
Secretary



Signed, Sealed and Delivered
in the Presence of:

Norma C. Spivey

Jerry Bryant

STATE OF FLORIDA

COUNTY OF LEE

I HEREBY CERTIFY that before me personally appeared EARL HORD as Chairman and ROBERT N. KREAGER as Secretary of the Board of Public Instruction of Lee County, Florida, a body corporate, and acknowledged the execution of the foregoing instrument to be their free act and deed as such officers of said body corporate and that they affixed thereto the official and corporate seal of said body corporate by due corporate authority, and that said instrument is the act and deed of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 2nd day of January, 1964.



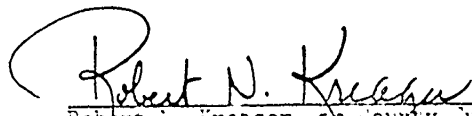
Ernest M. Little
Notary Public

Notary Public, State of Florida at Large
My Commission Expires Apr. 12, 1965

C E R T I F I C A T E

I, ROBERT N. KREAGER, do hereby certify that I am the Superintendent of Public Instruction of Lee County, Florida, and as such, the Secretary to the Board of Public Instruction of Lee County, Florida; and that all of the provisions of Section 235.04, Florida Statutes of 1963 have been complied with in connection with the sale of the land described in the foregoing Deed.

This the 2nd day of January, 1964.


Robert N. Kreager, as County Superintendent of Public Instruction of Lee County, Florida

STATE OF FLORIDA, COUNTY OF LEE

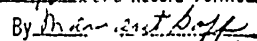
FILED FOR RECORD

This 28th Day of Jan 1964 Record in 89

Book 231 Page 692 and Record Verified

D. T. FARABEE

Clerk Circuit Court

By  Deputy Clerk

1. **Request:**

Meeting Date: March 16, 2026

This legislative agenda item is a Second Reading and Public Hearing on proposed Ordinance 26-06.

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 1 PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES OF ARTICLE V FINANCE OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES TO 1) CLARIFY AND STREAMLINE EXISTING REGULATIONS AND PROCEDURES; 2) INCORPORATE BY REFERENCE STATUTORY MANDATORY TERMS AND CONDITIONS AND STATE AND FEDERAL GRANT REQUIREMENTS; AND 3) IMPLEMENT RECOMMENDATIONS PROVIDED TO THE TOWN BASED ON THE DISASTER READINESS ASSESSMENT PREPARED BY THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Provides updates to strengthen efficiency and disaster readiness and compliance with requirements mandated by the Federal Emergency Management Agency (FEMA),

What the action accomplishes:

The draft ordinance aims to address clarification of existing procedures, further define procedures for services, incorporate grant and federal funding requirements for applicable purchases, and to implement revisions based on recommendations from the Town's Disaster Readiness Assessment.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

5. **Background:**

The Town's current procurement policies were last updated in 2024 through Ordinance 24-11. The Town has undergone many changes including continuing recovery efforts with Hurricane Ian and staff believe it is in the best interest of the Town and public to update these policies.

Since the 2024 revision, the Town has received feedback from various agencies such as the Florida Division of Emergency Management, on ways that the procurement procedures could be updated to follow ongoing best practices.

Also, as part of the participation in the Florida Division of Emergency Management's F-ROC (Florida Recovery Obligation Calculation) program, the Town received customized abatement recommendations to strengthen our debris and emergency protective measures. This updated policy helps to address these recommendations to increase the Town's preparedness and potential to receive more future funding upfront through a higher score for expenses related to Category A (Debris Removal) and Category B (Emergency Protective Measures).

The draft ordinance aims to address clarification of existing procedures, further define procedures for services, incorporate grant and federal funding requirements for applicable purchases, and to implement revisions based on recommendations from the Town's Disaster Readiness Assessment.

Attachments:

1. Ord 26-06, Purchasing Ordinance Amendments
2. Exhibit A to Ordinance 26-06, Procurement Ordinance Updates
3. 26-06, Business Impact Estimate Purchasing Policies
4. 24-11 Purchasing Ordinance Amendments Final - signed
5. TFMB Suggestions on Lost Points

Financial Impact:

N/A

6. Alternative Action

Deny the Ordinance and continue with current procedures.

7. Management Recommendations:

Approve

8. Recommended Approval:

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

Created/Initiated - 3/2/2026
Approved - 3/5/2026
Approved - 3/6/2026
Approved - 3/9/2026
Final Approval - 3/9/2026

ORDINANCE 26-06

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 1 PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES OF ARTICLE V FINANCE OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES TO 1) CLARIFY AND STREAMLINE EXISTING REGULATIONS AND PROCEDURES; 2) INCORPORATE BY REFERENCE STATUTORY MANDATORY TERMS AND CONDITIONS AND STATE AND FEDERAL GRANT REQUIREMENTS; AND 3) IMPLEMENT RECOMMENDATIONS PROVIDED TO THE TOWN BASED ON THE DISASTER READINESS ASSESSMENT PREPARED BY THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND 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, for purposes of greater efficiency and alignment with industry best practices, Town staff have provided amendments to the existing policies and procedures ; and

WHEREAS, the Town continues to apply for and administer projects funded through grants at both the state and federal levels which often require additional requirements; and

WHEREAS, as part of its response to implementation of feedback from the Town's 2026 Disaster Readiness Assessment and improve upon disaster readiness and compliance with requirements mandated by the Federal Emergency Management Agency (FEMA), the town desires to further clarify and emphasize certain existing procurement policies; and

WHEREAS, on March 2, 2026 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to recommendations of staff and the testimony of all interested persons; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City's website on the ____ day of March, 2026, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in the Fort Myers News-Press on the ____ day of March, 2026, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041; and

WHEREAS, on the 16th day of March, 2026, the Town Council held a second reading of the Ordinance; at which time the Town Council gave full and complete consideration to the recommendations of staff, and the testimony of all interested persons; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors to update and amend the Town's procurement ordinances.

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

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

Section 2. The Town Council determines that adoption of the following changes to Division 1 Purchasing of Goods and Services Policies and Procedures of Article V Finance are in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors, and shall read as amended in attached Exhibit A.

Section 3. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted Town Code provision or ordinance, this Ordinance 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 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 to a roll call vote, the result was as follows:

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

ADOPTED this 16th day of March 2026, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this _____ day of _____ 2026.

TOWN OF FORT MYERS BEACH
PURCHASING POLICIES AND PROCEDURES

DIVISION 1. - PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES

Sec. 2-476. - Purpose.

The purpose of the ordinance codified in this division is to provide for a fair and equitable method of administering purchases of goods and services in order to maximize the purchasing value of public funds and to provide procedures and guidelines governing said purchases. The ordinance is intended to supplement the provisions pertaining to procurement of goods and services set forth in Florida Statutes.

Sec. 2-477. - Applicability.

This division applies to all purchases of supplies and services and construction by the Town of Fort Myers Beach as of the effective date. In the event of a conflict between the provisions of this division and any applicable state or federal law or the ~~town~~-Town Charter, the most restrictive provisions will prevail, unless the Town is otherwise pre-empted from regulation.

Sec. 2-478. - Responsibilities for procurement of goods and services.

The Town Manager or designee is authorized to promulgate procedures for the requisition of supplies, goods and services; and, all purchases of goods and services must be processed accordingly. The procedures shall include a requirement for the completion of an analysis of whether it is in the Town's best interest to purchase or lease needed equipment.

For purchases of \$500.00 or more, the finance department will certify to the Town Manager or designee that the purchase request has sufficient unencumbered funds to cover the purchase, or a transfer is in process for approval by the ~~T~~town ~~C~~council. The Town Manager or designee shall remain responsible for ensuring that proper purchasing procedures have been followed.

Sec. 2-479. - Definitions.

"Brand name or equal specification" means a specification limited to one or more items by manufacturers' names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet the town's requirements, and which provides for the submission of equivalent products.

"Brand name specification" means a specification limited to one or more items by manufacturers' names or catalog numbers.

"Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, association, or any other legal entity currently licensed to do business in the State of Florida and doing business in the State of Florida.

"Change order" means a written change to a contract after the contract has been awarded.

"Confidential information" means any information that is available to any employee only because of the employee's status as an employee of the town and is not a matter of public knowledge or available to the public on request.

"Construction" means the process of building, altering, repairing, improving, or demolishing any structure or building, or other public improvement of any kind to any structure or building, or other public improvements of any kind to any real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, real property.

"Contract" means all types of town agreements, regardless of what they may be called, for the procurement of supplies, services or construction.

"Equipment" means all property, including but not limited to, town capitalized equipment.

TOWN OF FORT MYERS BEACH
PURCHASING POLICIES AND PROCEDURES

"Firm" or "vendor" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, association, or any other legal entity, currently licensed to do business in the State of Florida and doing business in the State of Florida.

"Indirect" or "indirect interest" means an interest in which legal title is held by another as trustee or other representative capacity, but the equitable or beneficial interest is held by the employee or town official.

"Invitation to bid" (ITB) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting sealed bids.

"Invitation to negotiate" (ITN) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting proposals.

"Material interest" means direct or indirect ownership of more than five percent of the total assets or capital stock of any business or firm.

"Purchase" means A purchase is the acquisition of goods and/or services from a single supplier or provider. When associated with a specific project, a purchase shall include all goods and/or services required from that supplier to complete the project or fulfill the intended scope of work. Purchases shall not be artificially divided, fragmented, or subdivided for the purpose of avoiding applicable competitive solicitation requirements or procurement thresholds. Accordingly, a project may not be separated into smaller components, nor may the procurement of goods or services be split into multiple purchases of lesser value, when such division would circumvent the competitive procurement procedures established by this policy.

"Request for proposals" (RFP) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting proposals.

"Request for qualifications" (RFQ) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting statements of qualifications under the Consultants Competitive Negotiations Act or otherwise.

"Responsible offeror" means a person or firm who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit that will assure good faith performance of the contract.

"Responsive bidder" means a person or firm who has submitted a bid that conforms in all material respects to the requirements set forth in the invitation to bid.

"Selection advisory committee" means a committee of staff members, town members with expert knowledge and contracted professionals of the town, not in conflict with the commodity being bid, who evaluate professional service contract submittals to the town manager and/or council for approval.

"Sole source" means only one available source for supply, equipment, service or construction items.

"Specification" means any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

"Supplies" means property, including but not limited to materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

"Town official" means any town council member, the mayor, or any other person who is elected to fill a position with the Town of Fort Myers Beach.

Sec. 2-480. - Purchasing procedures.

Any purchase in excess of \$75,000 must be approved by Town Council. Any subsequent change orders that increase the project total above \$75,000 shall also require approval by the town council.

Purchase Orders and Encumbrance of Funds

Purchase orders are required to encumber funds within the Town's financial system, ensuring that appropriated funds are properly reserved, tracked, and authorized prior to expenditure. Except as in emergency or exigency circumstances or otherwise provided herein, a purchase order shall be issued and approved before a commitment is made or an expenditure is incurred.

A purchase order is generally required for **all** purchases of goods and services, except for the following categories of expenditure, which are exempt due to their recurring, statutory, contractual, administrative, or non-discretionary nature:

- a. Purchasing Card (P-Card) transactions.
- b. Check requests.
- c. Travel reimbursements and approved employee expense reimbursements.
- d. Utilities (e.g., electricity, water, sewer, waste removal, recycling, cable, internet, telephone, cellphone).
- e. Court-ordered payments.
- f. Payroll and payroll-related expenditures, including employee benefits, retirement contributions, garnishments, workers compensation, and other statutory withholdings.
- g. Refunds of revenue collected (e.g., permit fees, license fees, or similar revenues).
- h. Pass-through revenue distributions (e.g., sewer revenues, impact fees, or similar restricted collections).
- i. Payments mandated by federal, state, or local law.
- j. Debt service payments (bond principal, interest, and related fiscal agent or trustee fees).
- k. Lease and rental payments made pursuant to fully executed agreements.
- l. Intergovernmental transfers made pursuant to agreements or statutory requirements.
- m. Petty cash reimbursements.
- n. Bank fees, merchant service fees, and other financial institution charges.
- o. Settlement payments and legally approved claims.
- p. Fuel purchases through authorized fleet fuel systems or bulk fuel programs.
- q. Other Commodities or Services as determined by the Town Council.

Executed Contracts and Encumbrance of Funds

When the Town Council or authorized official approves a written contract for goods or services, the fully executed agreement shall be attached to a purchase order. The contract terms and conditions shall take precedence over the terms and conditions of the purchase order.

Blanket Purchase Orders

Blanket or annual purchase orders may be issued for recurring operational expenses not otherwise exempted, in accordance with established procurement procedures and budgetary controls.

Purchase Order versus Formal Contract

1. Purchase Order ("PO")

A purchase order ("PO") is the town's official administrative document committing to buying goods or services at authorized pricing, quantities, terms, and conditions.

A purchase order must be generated and approved with all internal approvals before goods/services are ordered unless otherwise exempted, and it binds the town financially once issued.

A purchase order alone may be issued with standard terms and conditions in the following situations:

- When only quotes or informal bids are required for standard commodity purchases or routine services that do not involve complex performance terms; and
- When an executed **framework or master contract** already exists with a vendor and future orders under that contract may proceed using purchase orders that reference that contract.

2. Formal Contract

A formal contract is the negotiated legal agreement with broader terms needed when the procurement is complex, high-value, multi-year, or legally required by county policy or statute.

Formal contracts are generally required in the following situations:

- If the purchase meets or exceeds formal competitive procurement thresholds (e.g., large-dollar purchases), the town must use a formal contract executed with the vendor.
- When the procurement involves significant financial commitments, multi-year performance, complex services, or ongoing deliverables, a contract is generally required. Such contracts contain more detailed legal terms (performance standards, renewal provisions, indemnification, etc.).
- Construction, professional services, consultant engagements, maintenance, leases, or federal/state-funded work often require formal contracts instead of simple POs because of legal, compliance, insurance, and performance obligations.

Purchase Threshold Requiring Town Council Approval

Any purchase in excess of \$75,000.00 must be approved by town council. Any subsequent change orders to a project that increase the project total above \$75,000 shall require approval by town council.

(a) Competitive sealed bidding (*Invitation to Bid "ITB"*).

- (1) *Applicability.* Except as otherwise authorized herein, all contracts for the purchase of goods or contractual services in excess of \$35,000 for state/federal funding and \$75,000 for all others within a fiscal year shall be awarded by competitive sealed bid.
- ~~(2)~~ *Invitation to bid.* For all purchases subject to competitive bidding, the Town Manager or designee, with assistance from the affected departments, will issue an invitation to bid that includes specifications, and all contractual terms and conditions applicable to the anticipated purchase. In the event of any conflict between the invitation to bid and this division, the provisions of this division will prevail.
- ~~(3)~~ *a. Addendum.* After an invitation to bid is issued and before the bid opening, the affected department may request that the Town Manager or designee issue one or more written addendum for the purpose of clarifying specifications or other matters relating to the bid.

- (4)b. *Public notice.* All invitations to bids must be published at least once in a newspaper of general circulation in the Town for a minimum of 30 calendar days preceding the last day set for the opening of bids. The public notice must state the place, date, and time of the bid opening; a general description of the subject matter of the bid; and where bid forms and specifications may be obtained.
- (5) *Bid bond.* The invitation to bids may specify that a form of bid security, as a guarantee that all provisions of the specifications will be met, is required. The bid bond must provide that if the bid is: (a) rejected by the town; or (b) accepted and the bidder executes the contract and furnishes an appropriate bond, then the bid bond is void; otherwise, it remains in full force and effect. As an alternative to a bid bond, the required bid security may be provided in the form of a certified check, a cashier's check, ~~treasurer's check~~ or bank draft of any national or state bank made payable solely to the Town of Fort Myers Beach. No third-party endorsed payments are acceptable for this purpose. If the town permits a bidder to withdraw its bid, no action shall be taken against the bidder or the bid security.
- (6) *Bid opening.*
- a. Bids will be opened publicly at the time and place designated in the invitation to bid. The amount of each bid, and such other relevant information as the Town Manager or designee deems appropriate, together with the name of each bidder will be recorded and made available for public inspection. ~~(see Exhibit A).~~
- ~~b. Bid openings must be scheduled a minimum of 30 calendar days after the date that the invitation to bid is advertised.~~
- (7) *Bid acceptance.* Bids will be unconditionally accepted without alteration or correction, except as may be authorized in this division. All bids will be deemed to be held open and irrevocable for the time period set forth in the invitation to bid.
- (8) *Bid evaluation.* Bids will be evaluated based on a bidder's ability to satisfy the requirements set forth in the invitation to bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered as part of the evaluation for the award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation to bid must set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation to bid.
- (9) *Bid mistakes.* Mistakes discovered before the bids are opened may be modified by the bidder ~~prior to the bid deadline. via written notice from the bidder specifically identifying the modification and the reason the modification is necessary.~~ In lieu of modification, the bidder may also withdraw the bid submittal. ~~The written notice as to modification or withdrawal must be received in the office designated in the invitation to bid prior to the time set for bid opening.~~
- (10) *Bid withdrawal.* After bids are opened, corrections or modification to bids are not permitted, but a bidder may be permitted to withdraw an erroneous bid, prior to the bid award by the town, if the following is established to the satisfaction of the town manager. In the Town's sole judgment:
- a. The bidder acted in good faith in submitting the bid;
- b. In preparing the bid there was an error of such magnitude that enforcement of the bid would work severe hardship upon the bidder;
- c. The error was not the result of gross negligence or willful inattention on the part of the bidder;
- d. The error was discovered and communicated to the town manager or designee within eight business hours of bid opening, along with a written request for permission to withdraw the bid; and
- e. The bidder submits documentation acceptable to the town and an explanation of how the bidding error was made.

- (11) *Cancellation of invitation to bid.* An invitation to bid may be cancelled, or any or all bids or proposals may be rejected, in whole or in part, with or without cause. Notice of cancellation will be sent to all businesses solicited or submitting bids. The following ~~may be~~ considered good cause for rejection of all bids:
- All bids exceed the estimated or budgeted amount.
 - The specifications contain an error which causes confusion and misunderstanding among bidders.
 - The item(s) or services are no longer needed.
 - Lack of adequate competition.
 - ~~e. Notice of cancellation will be sent to all businesses solicited or submitting bids.~~
- (12) *Bid award.*
- All bids will be awarded by town as soon as practical after the bids are opened. Bids shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid. The town reserves the right to reject any and all bids and to waive minor irregularities in an otherwise valid bid. A minor irregularity is a variation from the bid invitation that does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by the other bidders, or does not adversely impact the interests of the town.
 - In the event the lowest responsive and responsible bid for a construction project exceeds available funds, as certified by the finance department director, and such bid does not exceed such funds by more than ten percent, the town manager is authorized, when time or economic considerations preclude re-solicitation of work of reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment may be obtained only by eliminating independent deductive items specified in the invitation to bid.
- (13) *Tie bids.* In the event two or more bids are equal with respect to price, quality and service, preference will be given in the following order (except when federal funding is used):
- The bidder who has its principal place of business in the Town of Fort Myers Beach, Florida.
 - The bidder who has its principal place of business in Lee County, Florida.
 - The bidder who has its principal place of business in the State of Florida.
- (14) *Selection advisory committee.*
- A selection advisory committee, consisting of a minimum of three members, may be established by the Town Manager for the purpose of evaluating bids submitted to the town and will follow all selection advisory committee procedures as set forth in Section (h). ~~The selection advisory committee may consist of: town department directors or their designees, and in the discretion of the Town Manager or designee, members of the town and Lee County community that are deemed as having special or expert knowledge in the area being solicited.~~
 - ~~All members of the selection advisory committee are prohibited from speaking, answering questions or having contact with any potential bidder. During this process the selection advisory committee will operate in a "cone of silence" decorum beginning on the date of the bid posting and ending when council approves the contract.~~
 - ~~All meetings of the selection advisory committee will be open to the public and notices containing the date, time, place and purpose of all selection advisory committee meetings will be conspicuously posted in Town Hall. All meetings of the selection advisory committee will be recorded and recordings will be available for public inspection.~~

- ~~d. The selection advisory committee will review the bid and response materials prior to the selection committee meeting. The committee will evaluate each firm's qualifications based on past experience, expressed understanding of the project and proposed method of handling of the project and any other criteria included for evaluation in the invitation to bid. The committee shall perform a cost or price analysis for any bid greater than \$250,000.~~
- ~~e. After evaluation, the committee will formulate a recommendation consisting of a list, in order of preference, of no fewer than three firms deemed to be the most highly responsive and qualified to perform the required services, unless noted above. The town manager, after review, will forward the recommendation to the town council for consideration during a regularly scheduled council meeting.~~
- ~~f. If no more than two firms submit proposals, the town manager will determine whether to proceed with only two proposals, based on availability of alternatives and qualifications.~~
- ~~g. In determining whether a firm is responsive and qualified, the committee will consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm. The selection advisory committee may not request, accept, or consider proposals for compensation to be paid under the contract.~~

(15) *Recommendation.*

- a. The town council will carefully consider the recommendations of the town manager as well as other responses received, and thereafter authorize the Town Manager or their designee to execute an agreement with the lowest responsive and responsible bidder, and selection advisory committee, review the qualifications of the firms, and vote to accept or reject the ranking of the firms as proposed by the town manager.
- ~~b. After the ranking of the firms has been determined by the town council, the council will direct the town manager or designee to initiate negotiations with the number one ranked firm. The town council may reject the ranking order recommended by the town manager and propose an alternative ranking or require re-solicitation.~~

(16) *Negotiation.*

- a. The town manager will negotiate a contract with the most qualified firm for compensation the town manager determines is fair, competitive, reasonable, and for which funds are available. In making such determination, the town manager may conduct a detailed analysis of the cost of the products and/or services required in addition to considering the scope and complexity of the project.
- ~~b. For any lump sum or cost plus a fixed fee contract in excess of \$60,000.00, the firm receiving the contract must execute a truth in negotiation certificate confirming that wage rates and other unit costs are accurate, complete and correct. The contract must include a provision indicating that the original contract price, and any additions thereto, may be adjusted to exclude increases in the contract price demonstrably related to inaccurate or incomplete billing information, or based upon wage rates and/or unit costs not agreed to as part of the contract.~~
- ~~c. If the town manager is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm will be formally terminated; and, the town manager will undertake negotiations with the second ranked firm. If the town manager fails to reach an agreement with the second ranked firm, negotiations with the third ranked firm will be undertaken.~~
- d. If the town manager is unable to negotiate a satisfactory contract with any of the selected firmbidders, the town manager shall recommend an alternative bidder based on their may select additional firms in the order of their competence and qualification and submit them to town council for consideration and selection determination and ranking and and thereafter authorize the town manager to initiate continue selection and negotiations as specified in this division until an agreement is reached_ or reissue the request for qualifications.

(17) *Town council approval.* The town manager will seek town attorney review of the negotiated, partially executed contract prior to ~~forwarding~~ placing the contract ~~onto~~ the Town Council agenda for approval.

(18) Exemptions.

a. The requirement for Competitive Sealed Bidding may be waived as otherwise authorized by this code.

b. The requirement for Competitive Procurement is waived for the following Purchases unless the Procurement Manager, Finance Department, and Town Manager determine that a Competitive Procurement or written Quotation is warranted in the best interest of the Town for a specific Purchase. The procurement thresholds established in this Ordinance will determine approval authority.

1. All books, periodicals, software intended primarily for direct use by the general public, printed materials, photographs, film, disk or similar materials in either physical or electronic format;

2. All Purchases of used Equipment having a value of \$49,999.99 or less; however, each such Purchase shall be supported by one independent estimate of value;

3. Cooperative Procurement;

4. Except as required by other applicable law, all Town purchases related to the sale, lease, or other interest in real property, including appraisals and title insurance, except as required by other applicable law;

5. Single and Sole Source Purchases;

6. Dues and memberships in trade or professional organizations;

7. Fees and costs of job-related seminars and training;

8. Travel;

9. Artists, music ensembles (bands) and other entertainment providers;

10. Emergency or Exigency Procurement;

11. Procurements where another process is required by statute;

12. Interlocal governmental Contracts

13. Studies conducted by institutions of higher education, such as state universities;

14. Other Commodities, Services or Construction, as determined by the Town Council ;

15. Revenue-generating contracts that have a fee schedule adopted by the Town Council or that are non-exclusive;

16. Advertising;

17. Commodities purchased for the sole purpose of resale. Town Departments intending to sell commodities must maintain a current Annual Resale Certificate for Sales Tax.

18. Postage, courier services, filing fees, recording fees, permit fees, taxes, and similar governmental charges.

19. Public utilities services whose rates are determined and controlled by the Public Service Commission or other governmental authority, including but not limited to electricity, water, sewer telephone and cable television services;

20. Court ordered payments;

21. Lobbyist services

22. The Town Manager is authorized to approve the purchase of legal services, including but not limited to attorney, paralegal, expert witness, appraisal, or mediator services in accordance with small purchase procedures

(b) *Small purchases.*

- (1) *Applicability.* Any purchase of goods in the amount of \$75,000 or less may be made in accordance with the small purchase procedures authorized in this section unless state or federally funded in whole or in part. Contract requirements may not be artificially divided so as to constitute a small purchase under this section by the same vendor. In the event a purchase inadvertently results in a splitting of goods or services that when otherwise combined exceeds the small purchase threshold, the Town Manager shall bring the purchase order to the Town Council for ratification Any purchase in excess of \$75,000.00 must be approved by town council. All small purchases shall be accompanied by a quote sheet indicating the names of the businesses submitting quotations, and the date and amount of each quotation. The quote sheet shall be maintained in the Town's records. (see Exhibit B). Change orders to existing contracts may be made in accordance with the small purchase procedures authorized in this section up to \$75,000. Any subsequent changes orders shall require approval by the town council.
- (2) *Purchases over \$10,000 and not greater than \$75,000.* For smaller purchases greater than of \$10,000 and less than or equal to \$75,000 and over, no less than three written quotations must be obtained, if available (e.g., not not a sole source situation or change order). The award will be made by the department director and town manager, with review by the procurement manager and finance department director, to the business offering the lowest acceptable quotation as documented on the quote sheet. The names of the businesses submitting quotations, and the date and amount of each quotation, must be recorded and maintained in the town's records. For items purchased on an ongoing basis, contracts may not be for a term in excess of two years without obtaining new quotations to determine if the price is still the lowest.
- (3) *Purchases over \$5,000 and not greater than \$10,000.* For purchases greater than \$5,000 but less than or equal to \$10,000, a minimum of three verbal, telephone, facsimile or electronic written quotations may must be obtained, if available, if available. The award may will be made by the department director, with review by the finance department director procurement manager and budget manager, to the business offering the lowest acceptable quotation as documented on the quote sheet. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained in the town's records.
- (4) *Purchases for \$5,000 and under.* For purchases less than of \$5,000 and under, one verbal written quotation is required, provided the quotation is fair and reasonable as determined by the department director or designee and documented on the quote sheet.
- (5) *Tie bids.* In the event two or more bids are equal with respect to price, quality and service, preference will be given in the following order (unless utilizing state or federal funding):
 - a. The bidder who has its principal place of business in the Town of Fort Myers Beach, Florida.
 - b. The bidder who has its principal place of business in Lee County, Florida
 - c. The bidder who has its principal place of business in the State of Florida.

(c) *Sole source purchases.*

- (1) *Basis for sole source purchase.*

- a. A contract may be awarded without competition when the town manager with the recommendation of the ~~finance director~~ and department director and procurement manager determines, in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, equipment, service, or construction item. The requisitioning department must submit to the town manager written justification as to why there is only one source, including documentation provided from the vendor declaring sole source. (see Exhibit C). A notice of sole source must be publicly noticed prior to the issuance of a contract or purchase order.
 - b. The town manager or designee will conduct negotiations, as appropriate, as to price, delivery, and terms. The contract must be approved by the town manager. A record of sole source contracts must be maintained by the town clerk. Sole source contracts may not be automatically renewed.
 - c. At the beginning of each fiscal year, the town manager or designee, in conjunction with the department director, will determine whether the item is still only available from a sole source. If additional sources are discovered, then bids or quotations must be obtained before the item is purchased under a new contract.
- (2) *Town council approval.* The town manager will submit all sole source purchases of \$20,000.00 or more to the town attorney for review and submit the contract to the town council for approval.
- (d) *Emergency or exigency purchases.*
- (1) *Basis for emergency or exigency purchase.* Notwithstanding any other provisions of this division, the town manager or designee may make, or authorize others to make, emergency purchases of supplies, services or construction items when there exists a threat to life, public health, welfare, safety, or improved property, or when there is a need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise; provided that such emergency or exigency purchases are made with such competition as is practicable under the circumstances. The director of the affected department will notify the town manager, who will certify the threat to life, public health, welfare, safety, or improved property, or the need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise in writing and authorize the purchase of the needed items(s). The director will send a purchase order request to the procurement manager, together with a written explanation of the basis for the emergency or exigency purchase. The town manager or designee must approve all emergency or exigency requisitions.
 - (2) *Town council approval.* The town manager will submit any emergency or exigency purchase in excess of \$75,000.00 to the town attorney for review and submit the contract to the town council for approval, as soon as practicable after the purchase.
 - (3) If the emergency or exigency circumstances are expected to continue beyond the length of time required to competitively procure similar goods and services, then immediately upon awarding the non-competitive contract, the procurement manager shall begin the process of competitively procuring similar goods and services to transition to a competitively procured contract as soon as the emergency or exigency ceases to exist.
 - ~~(1) *Basis for emergency purchase.* Notwithstanding any other provisions of this division, the town manager or designee may make, or authorize others to make, emergency purchases of supplies, services or construction items when there exists a threat to public health, welfare or safety; provided that such emergency purchases are made with such competition as is practicable under the circumstances. The director of the affected department will notify the town manager, who will certify the threat to public health, welfare or safety in writing and authorize the purchase of the needed items(s). The director will send a purchase order request to the finance department, together with a written explanation of the basis for the emergency purchase (see Exhibit D). The town manager or designee must approve all emergency requisitions.~~
 - ~~(2) *Town council approval.* The town manager will submit any emergency purchase in excess of \$75,000.00 to the town attorney for review and submit the contract to the town council for approval, as soon as practicable after the purchase.~~

(e) *Purchases from other governmental entities.*

- (1) *Basis for purchase.* Purchases of goods from the federal government, any state or political subdivision thereof, or any municipality are exempt from the competitive bid requirements of this division. There must be proof of proper procedural documentation to support the other governmental agencies purchasing policy provides for competitive bidding similar to the town's competitive bid process and in cases of piggybacking contracts, certification that the other governmental entity's contract allows for this conduct (~~see Exhibit E~~).
- (2) *Town council approval.* The town manager will submit any individual purchases in an amount in excess of \$75,000.00 to the town attorney for review and submit the contract to the town council for approval.

(f) *Purchases of goods from contracts awarded by other governmental entities by competitive bid (aka: "piggybacking").*

- (1) *Basis for purchase.* The purchase of goods under a contract awarded by another governmental entity or cooperative purchasing entity is authorized provided the town manager or designee makes a written determination that time and expense factors make it financially advantageous for the town to do so. In making this determination, the town manager or designee will consider the number of bids so solicited by the other governmental entity or cooperative purchasing entity. There must be proof of proper procedural documentation to support the other entity's purchasing policy and, in cases of piggybacking contracts, certification that the other entity's contract allows for this conduct (see Exhibit E).
- (2) *Town council approval.* The town manager will submit any contract(s) awarded by the town based upon another governmental entity's procurement process in an amount in excess of \$75,000.00 to the town attorney for review and submit the contract to the town council for approval.

(g) *Cooperative purchasing.*

- (1) *Basis for purchase.* The town may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any goods, services or construction with one or more other governmental units or cooperative purchasing entities.
- (2) *Town council approval.* Cooperative purchasing agreements must be authorized pursuant to an interlocal agreement with a governmental entity or other agreement approved by town council and executed by all participating governmental units. The town manager will forward the proposed interlocal agreement to the town attorney for review and submit the interlocal agreement to the town council for approval.
- (3) The town manager may purchase goods or services through cooperative purchasing in lieu of a competitive bid as provided in this Division.

(h) *Competitive negotiation for professional services.*

- (1) *Applicability.* Contracts for professional services consisting of architecture, professional engineering, landscape architecture, or registered land surveying must be competitively negotiated in accordance with the requirements of F.S. § 287.055 (the "Consultant's Competitive Negotiation Act" or "CCNA") and within statutory thresholds.
- (2) *Request for qualification.* The department director will prepare, with the assistance of the town manager or designee, a request for qualification for the particular project. The request will include:
 - a. A delineation of the required scope of services. The description must be sufficient to assure that all firms have the same understanding of the requested basic services.
 - b. A request for specific and general information on how the firm will proceed with the project. Specific instructions on how, when and where the proposal must be submitted.
 - c. A requirement that the proposal be submitted as a sealed package. The proposer must, if required for the particular solicitation process, submit a project price in a separate sealed

envelope, clearly marked as "Project Price". The pricing envelope may not be opened unless the proposer is selected by the town to engage in negotiations.

(3) *Addenda.*

- a. After a request for qualifications (RFQ) is issued and before the submission deadline, ~~town manager or designee~~ the contracts manager, with assistance from the affected department, may issue one or more written addendum for the purpose of clarifying specifications or providing further information or other matters relating to the RFQ.
- b. Any firm or individual desiring to provide professional services to the town must first be certified by the town as qualified pursuant to the law and the regulations of the town. The town will make a finding that the firms or individuals to be employed are fully qualified to render the required service. The factors to be considered include but are not limited to the capabilities, adequacy of personnel, past record, and experience of the firm or individual.

(4) *Public notice and qualification procedures.* The town clerk must publish, in a newspaper of general circulation, as such is defined in the Florida Statutes, a notice on each occasion when professional services are required to be purchased for a project whose projected basic construction cost is estimated by the town to be in excess of statutory thresholds, or for planning or study activities when the fee for professional services is in excess of statutory thresholds, other than as permitted by the CCNA. The notice must include a general description of the project, shall indicate how interested parties may apply for consideration, and the closing date for receipt of proposals, and contain such other information as the town deems pertinent. Publications of statewide and national distribution may be utilized for notices when the magnitude of the project so merits in the town's discretion. The submission deadline must be a minimum of 30 calendar days after the date the RFQ is first published.

(5) *Selection advisory committee.*

- a. A selection advisory committee, consisting of a minimum of three members, ~~may~~ must be established for the purpose of evaluating ~~bids~~ qualifications submitted to the town. The selection advisory committee may consist of: town department directors or their designees and in the discretion of the Town Manager or designee, members of the town and Lee County community that are deemed as having special or expert knowledge in the area being solicited.
- b. All members of the selection advisory committee are prohibited from speaking, answering questions or having contact with any potential bidder. During this process the selection advisory committee will operate in a "cone of silence" decorum beginning on the date of the bid posting and ending when council approves the contract.
- c. All meetings of the selection advisory committee will be open to the public and notices containing the date, time, place and purpose of all selection advisory committee meetings will be conspicuously posted in Town Hall. All meetings of the selection advisory committee will be recorded, and recordings will be available for public inspection.
- d. The selection advisory committee will review the bid solicitation and response materials prior to the selection committee meeting. The committee will evaluate each firm's qualifications based on past experience, expressed understanding of the project and proposed method of handling of the project and any other criteria included for evaluation in the invitation to bidsolicitation. The committee shall perform a cost or price analysis for any bid greater than \$250,000.
- e. After evaluation, the committee will conduct discussions with, and may require public presentations by, no fewer that three firms regarding their qualifications, approach to the project, and ability to furnish the required services and formulate a recommendation consisting of a list, in order of preference, of no fewer than three firms deemed to be the most highly responsive and qualified to perform the required services, unless noted above. The town manager, after review, will forward the recommendation to the town council for consideration during a regularly scheduled council meeting.

- f. If no more than two firms submit proposals, the town manager will determine whether to proceed with only two proposals, based on availability of alternatives and qualifications.
- g. In determining whether a firm is responsive and qualified, the committee will consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm. The selection advisory committee may not request, accept, or consider proposals for compensation to be paid under the contract.

(6) *Recommendation.*

- a. The town council will carefully consider the recommendation of the town manager and review the qualifications of the firms and vote to accept, reject, or modify the ranking of the firms by the town manager.
- b. After the ranking of the firms has been determined by the town council, the council will direct the town manager or designee to initiate negotiations with the number one ranked firm. The town council may reject the ranking order recommended by the town manager and propose an alternative ranking or require re-solicitation.

(7) *Negotiation.*

- a. The town manager will negotiate a contract with the most qualified firm for professional services for compensation the town manager determines is fair, competitive, reasonable, and for which funds are available. In making such determination, the town manager may conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity.
- b. For any lump-sum or cost-plus-a-fixed-fee contract in excess of ~~\$60,000.00~~ the threshold amount established in s. 287.017 for CATEGORY FOUR, the firm receiving the contract must execute a truth-in-negotiation certificate confirming that wage rates and other unit costs are accurate, complete and correct. The contract must include a provision indicating that the original contract price, and any additions thereto, may be adjusted to increases due to inaccurate, or incomplete billing information, or based upon wage rates and/or unit costs not agreed to as part of the contract.
- c. If the town manager is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm will be formally terminated and the town manager will undertake negotiations with the second ranked firm. If the town manager fails to reach an agreement with the second ranked firm, negotiations with the third ranked firm will be undertaken.
- d. If the town manager is unable to negotiate a satisfactory contract with any of the selected firms, the town manager may select additional firms in the order of their competence and qualification and submit them to council for determination and ranking; and, thereafter continue selection and negotiations as specified in this division until an agreement is reached or reissue the request for qualifications.

(8) *Town council approval.* The town manager will submit the negotiated contract to the town attorney for review and the contract to the town council for approval.

(9) *Prohibition against contingent fees.* Each contract entered into by the town for professional services must contain a prohibition against contingent fees as follows: "The architect (or registered land surveyor or professional engineer as applicable) warrants that he/she has not employed, or retained any company or person, other than a bona fide employee working solely for the architect (or registered land surveyor or professional engineer, as applicable) nor offered any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement." For the breach or violation of this provision, the town has the right to terminate the agreement without liability and, at its discretion, deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

- (10) *Reuse of existing plans.* There is no public notice requirement or utilization of the selection process for projects in which the town is able to reuse existing plans from a prior project. However, with plans that the town intends to reuse at some future time, the original public notice must contain a statement that the plans are subject to reuse in accordance with F.S. § 287.055(11).
 - (11) *Exception to CCNA process—Emergencies.* Under emergencies as defined by F.S. § 287.055, as amended, the procedure set forth in the statute must be followed and supersedes anything to the contrary set forth in this subsection (h).
 - (12) *Exception to CCNA process—Continuing contracts.* In the event that the continuing contract provisions of F.S. § 287.055 apply to acquisition of professional services, the procedure set forth in the statute will be followed and supersedes anything to contrary set forth in this subsection (h).
- (i) *Request for proposal.*
- (1) *Applicability.* Contracts for goods and/or services, which are not subject to the Consultant's Competitive Negotiation Act and for which uniform detailed specifications cannot be provided, may be obtained in accordance with this section. At the option of the town manager, said contracts may be negotiated by utilizing the selection advisory committee as specified in subsection (h)(53) above.
 - (2) *Request for proposal.* The department director will prepare, with the assistance of the contracts manager and town manager or designee, a request for qualification for the particular project. The request shall include:
 - a. A delineation of the required scope of services. The description must be sufficient to assure that all firms have the same understanding of the requested basic services.
 - b. A request for specific and general information on how the firm will proceed with the project. Specific instructions on how, when, and where the proposal must be submitted.
 - c. A requirement that the proposal be submitted as an electronically sealed package. ~~The proposer must, if required for the particular solicitation process, submit a project price in a separate sealed envelope, clearly marked as "Project Price". The pricing envelope may not be opened unless the proposer is selected by the town to engage in negotiations.~~
 - (3) *Addenda.* After a request for proposals is issued and before the submission deadline, the town manager or designee may issue one or more written addendum for the purpose of clarifying specifications or other matters relating to the RFP/~~RFQ.~~
 - (4) *Statement of qualifications.* Persons and firms interested in providing goods and/or services to the town in response to an RFP issued pursuant to this section may submit statements of qualification and expressions of interest in providing such goods and/or services.
 - (5) *Public notice.* The town will provide reasonable notice of the need for such goods and/or services through a request for proposals (RFP). The RFP must describe the goods and/or services required, list the types of information and data required of each offeror, and state the relative importance of particular specifications or qualifications.
 - (6) *Selection advisory committee.*
 - a. A selection advisory committee, consisting of a minimum of three members, may be established for the purpose of evaluating bids submitted to the town. The selection advisory committee may consist of: town department directors or their designees and in the discretion of the Town Manager or designee, members of the town and Lee County community that are deemed as having special or expert knowledge in the area being solicited.
 - b. All members of the selection advisory committee are prohibited from speaking, answering questions or having contact with any potential bidder. During this process the selection advisory committee will operate in a "cone of silence" decorum beginning on the date of the bid posting and ending when council approves the contract.

- c. All meetings of the selection advisory committee will be open to the public and notices containing the date, time, place and purpose of all selection advisory committee meetings will be conspicuously posted in Town Hall. All meetings of the selection advisory committee will be recorded, and recordings will be available for public inspection.
- d. The selection advisory committee will review the bid and response materials prior to the selection committee meeting. The committee will evaluate each firm's qualifications based on past experience, expressed understanding of the project and proposed method of handling of the project and any other criteria included for evaluation in the invitation to bid. The committee shall perform a cost or price analysis for any bid greater than \$250,000.
- e. After evaluation, the committee will formulate a recommendation consisting of a list, in order of preference, of no fewer than three firms deemed to be the most highly responsive and qualified to perform the required services, unless noted above. The town manager, after review, will forward the recommendation to the town council for consideration during a regularly scheduled council meeting.
- f. If no more than two firms submit proposals, the town manager will determine whether to proceed with only two proposals, based on availability of alternatives and qualifications.
- g. In determining whether a firm is responsive and qualified, the committee will consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm. The selection advisory committee may not request, accept, or consider proposals for compensation to be paid under the contract.

(7) *Recommendation.*

- a. The town council will carefully consider the recommendation of the town manager and review the qualifications of the firms and vote to accept, reject, or modify the ranking of the firms by the town manager.
- b. After the ranking of the firms has been determined by the town council, the council will direct the town manager or designee to initiate negotiations with the number one ranked firm. The town council may reject the ranking order recommended by the town manager and propose an alternative ranking or require re-solicitation.

(8) *Negotiation.*

- a. The town manager shall negotiate a contract with the most qualified firm for compensation the town manager determines is fair, competitive, reasonable and for which funds are available. In making such determination, the town manager may conduct a detailed analysis of the cost of the services required in addition to considering their scope and complexity.
- b. For any lump-sum or cost-plus-a-fixed-fee contract in excess of ~~\$60,000.00~~ the threshold amount established in s. 287.017 for CATEGORY FOUR, the firm receiving the contract must execute a truth-in-negotiation certificate confirming that wage rates and other unit costs are accurate, complete and correct. The contract must include a provision indicating that the original contract price and any additions thereto may be adjusted to exclude increases due to inaccurate, incomplete billing information, or based upon wage rates and unit costs not agreed to as part of the contract.
- c. If the town manager is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm will be formally terminated and the town manager will undertake negotiations with the second ranked firm. If the town manager fails to reach an agreement with the second ranked firm, negotiations with the third ranked firm will be undertaken.
- d. If the town manager is unable to negotiate a satisfactory contract with any of the selected firms, the town manager may select additional firms in the order of their competence and qualification and submit them to council for determination and ranking continue selection and negotiations as specified in this division until an agreement is reached or reissue the request for proposals.

- (9) *Discussions.* The town manager or the selection advisory committee may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. These discussions must be conducted at a duly notice meeting and be open to the public.
- (10) *Award.*
- a. Proposed awards above \$75,000.00 must be formally approved by the town council. The award should be made to the offeror determined to be best qualified based on the evaluation factors set forth in the RFP and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.
 - b. Nothing in this division may be construed to prevent the hiring of expert witnesses and other professionals necessary to assist the town manager or town attorney in representing the town, but such hiring may be subject to council approval.
- (11) *Town council approval.* The town manager will submit the proposal award of \$75,000.00 or more to the town attorney for review and then submit the contract to the town council for approval.
- (12) *Cancellation of request for proposals.* A request for proposal, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part with or without cause. The following is considered good cause for rejection of all proposals:
- a. All bids exceed the estimated or budgeted amount.
 - b. The specifications contain an error which causes confusion and misunderstanding among bidders.
 - c. The items or services are no longer needed.
 - d. Lack of adequate competition.
 - e. Notice of cancellation will be sent to all businesses solicited or submitting bids.

Sec. 2-481. - Vendor list.

Vendor list. The finance department does not maintain a "vendor list" of vendors who desire to receive invitations of bids and/or requests for proposals by mail.

Sec. 2-482. - Specifications for all solicitations.

- (a) *General.* All specifications must be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the town's needs, and may not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to, those prepared for the town by architects, engineers, designers, and draftsmen.
- (b) *Brand name or equal specification.*
- (1) *Use.* Brand name or equal specifications may be used when the department director and town manager or designee determines in writing that:
 - a. No other design or performance specification or qualified products list is available;
 - b. Title does not permit the preparation of another form of purchase description, not including a brand name specification;
 - c. The nature of the product or nature of the town's requirements makes use of a brand name or equal specification suitable; or

- d. Use of a brand name or equal specification is in the town's best interest.
- (2) *Designation of several brand names.* Brand name or equal specifications will seek to designate three, or as many different brands as practicable, as "or equal" references and further state that substantially equivalent products to those designated will be considered for award.
- (3) *Required characteristics.* Unless the town manager or designee and the affected department director determine in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications must include a description of the particular design, functional, or performance characteristics which are required.
- (4) *Nonrestrictive use of brand name or equal specifications.* When a brand name or equal specification is used in a solicitation, the solicitation should contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.
- (c) *Brand name specification.* Since use of a brand name specification is restrictive of product competition, it may be used only when the town manager or designee makes a written determination that only the identified brand name items will satisfy the town's needs.
- (d) *Competition.* The town manager or designee, in conjunction with the department director, will seek to identify sources from which the designated brand name items can be obtained and solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the purchase will be made in accordance with subsection 2-480(c) (Sole source purchases).

Sec. 2-483. - Performance bond and insurance requirements.

The town manager or designee will determine and may require a public construction bond for all contracts listed in subsection 2-480(c) (Sole source purchases) and may require a performance bond and/or evidence of sufficient insurance for other contracts when necessary to protect the town.

Sec. 2-484. - Construction contracts and supporting documents.

- (a) *Construction contracts.* All construction contracts will be reviewed by the town attorney and be executed by the mayor and town clerk and by either the president or vice-president of the contractor. Other signatories may sign on behalf of the contractor provided there is an attached certified copy of a corporation resolution authorizing that person to sign. The corporate seal of the contractor must be affixed to the contract.
- (b) *Insurance.* All construction contracts must be accompanied by a certificate of insurance indicating coverage in the amounts required by the bid specifications and name the Town of Fort Myers Beach as an additional insured, not just a certificate of holder.
- (c) *Public construction bond.* Any person entering into a contract for the construction of a public building or public work, or for repairs upon a public building or a public work must, before commencing work, execute, deliver to the town, and record in the public records of Lee County, Florida, a public construction bond issued by a surety authorized to do business in the State of Florida.
- (1) *Form.* The bond must be in substantially the following form:

PUBLIC CONSTRUCTION BOND

BY THIS BOND, We, _____, as Principal and _____, a corporation, as Surety, are bound to the Town of Fort Myers Beach, herein called Owner, in the sum of \$_____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

Performs the contract dated _____, between Principal and Owner for construction of _____, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and promptly makes payments to all claimants, as defined in F.S. § 255.05(1), supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract: and ~~Pays Moller all~~ ~~lesses~~ ~~pays Owner all~~; damages, expenses, costs and attorney's fees, including appellate proceedings that owner sustains because of default by Principal under the contract; and p

~~P~~erforms the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise, it remains in full force.

Any changes in or under the contract documents and compliance or non-compliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

(2) *Waiver of bond.* Town council may waive the public construction bond requirement for project with a total contract amount of \$200,000.00 or less.

(3) *Alternative form of security.*

- a. In lieu of a public construction bond, a contractor may file with the town an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, an irrevocable letter of credit, or a security of a type listed in F.S. ch. 652, pt. II.
- b. Any such alternative form of security must be for the same purpose and be subject to the same conditions as those applicable to the public construction bond. The determination of the value of an alternative form of security will be made by the town.

(d) *Change orders.*

- (1) No work outside the scope of the original contract may be performed prior to approval of a change order by the town council; provided, however, that town council may delegate this authority, up to a specified amount, for contracts where council approval of all change orders would hinder or delay work progress.
- (2) This does not include contingency changes with a contract which fall within the contingency amount of that contract. These are approved by the department director and town manager.
- (3) All change orders must be in writing and have the town manager approval.

Sec. 2-485. - Disqualification of vendors and bidders.

(a) *Procedure for disqualification.* After reasonable notice to the person or firm involved and a reasonable opportunity for the person or firm to respond, the town manager is authorized to disqualify that person or firm for cause from consideration for award of contracts. The disqualification may be for a period of not more than four years.

(b) *Grounds for disqualification.* Grounds for disqualification include, but are not limited to:

- (1) Conviction for commission of a criminal offense as an incident to obtaining;
- (2) Attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (3) Conviction under state or federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects the person or firm's ability to perform work for the town;

- (4) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (5) Deliberate failure without good cause to perform in accordance with contract specifications or within the time limit provided in a contract;
- (6) Financial irresponsibility;
- (7) Unethical conduct; disciplinary action against the person or firm's professional or contractors;
- (8) License; or
- (9) Findings under bid protest that the firm acted fraudulently or in bad faith.
- (c) *Notice of decision.* A copy of a decision to disqualify must be mailed to the affected person or firm by certified mail, return receipt requested.
- (d) *Appeal.* Any person or firm who is disqualified may appeal the decision to the town council, provided a notice of appeal is filed within 30 calendar days of the date the decision to disqualify is rendered.

Sec. 2-486. - Appeals and remedies.

(a) *Bid protests.*

- (1) *Right to protest.* Any person or firm who is affected adversely by the town's decision may protest to the town council.
- (2) *Time limits and form of protest.*
 - a. A protest with respect to an invitation to bids or request for proposals must be submitted in writing to the town clerk prior to the opening of bids or the closing date of proposals.
 - b. Written notice of intent to a protest a bid be filed with the town clerk within 72 hours (excluding Saturday, Sundays, and legal holidays) after the posting of the bid tabulation or after receipt of the notice of award or notice of intent to award the contract, whichever is later.
 - c. A formal written protest must be filed within ten calendar days after the filing of the initial written notice of intent to protest. The formal written protest must state with particularity the fact and law upon which the protest is based.
 - d. Failure to file a notice of intent to protest or failure to file a formal written protest within the time limits proscribed herein will constitute a waiver of the right to protest.
 - e. The protestor must post a bond, payable to the Town of Fort Myers Beach in an amount equal to five percent of the total bid or \$20,000.00, whichever is greater, but not to exceed the value of the bid.
 - f. The protest bond will be designated and held for payment of any costs that may be levied against the protesting entity by the Town of Fort Myers Beach as a result of a frivolous protest.
- (3) *Hearing.*
 - a. If the subject of a protest is not resolved by mutual agreement within 14 calendar days after receipt of a formal written protest, the matter may, at the option of the town council, be referred to a hearing officer who will conduct a hearing within 15 calendar days of receipt of the referred formal written protest.
 - b. The hearing officer will render a written recommended order within 30 calendar days after the hearing. The recommended order will be scheduled on the next council agenda for final action.
 - c. If the council elects, the protest may be heard directly by the town council.
- (b) *Stay of action.* Upon receipt of a formal written protest that has been timely filed, the town will stop the bid solicitation process or the contract award process until the subject of the protest is resolved

either informally or by town council action, unless the town manager sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety or welfare.

- (c) *Appeal of decision.* If a protest is denied, the protestor will have 30 calendar days to file for relief in Circuit Court in Lee County, Florida.

Sec. 2-487. - Remedies for solicitations or awards in violation of law.

- (a) *Closing date for receipt of proposals.* If prior to the bid opening or closing date for receipt of proposals, the town manager or designee and the affected department director, after consultation with the town attorney, determines that a solicitation is in violation of federal, state or municipal law, then the solicitation may be cancelled or revised to comply with applicable law.
- (b) *Prior to award.* If after bid opening or the closing date for receipt of proposals, the town manager or designee and the affected department director, after consultation with the town attorney, determines that a solicitation or proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award will be cancelled.
- (c) *After award.* If, after an award the town manager or designee and the affected department director, after consultation with town attorney, determines that a solicitation or award of a contract was in violation of applicable law, then:
 - (1) If the person or firm awarded the contract has not acted fraudulently or in bad faith;
 - (2) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the town; or
 - (3) The contract may be terminated and the person awarded the contract will be compensated for any costs reasonably incurred under the contract, plus a reasonable amount for overhead, prior to the termination; or
 - (4) If the person or firm awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interest of the town.

Sec. 2-488. - Standard of conduct for town officials and employees.

All town officials and employees shall adhere to the Code of Ethics for Public Officers and Employees, adopted by the Florida Legislature as Part III of Chapter 112, Florida Statutes, as amended from time to time ("Ethics Code"). In the event of a conflict between any term, condition or requirement in this Section and the Ethics Code, the Ethics Code shall be followed.

- (a) *Failure to follow proper purchasing procedures.* It is a violation of this division for any employee to order, contract for, or purchase any materials, supplies, or services except in strict compliance with all purchasing procedures as provided herein or as established by the town manager or designee.
- (b) *Solicitation or acceptance of gifts.* No town official or employee may solicit or accept anything of value from any vendor or bidder, including gift, loan, reward promise of future employment, favor, or service, based upon any understanding that the actions of said official or employee would be influenced thereby.
- (c) *Doing business with the town.*
 - (1) No employee or public official acting in his/her official capacity may either directly or indirectly purchase, rent, or lease any realty, goods, or services for the town from any business entity or which he/she or his/her spouse or child is an officer, partner, director, or proprietor or in which such official or employee or his/her spouse or child, or any combination of them, has a material interest.

- (2) No town official or employee, acting in a private capacity, may rent, lease, or sell any realty, goods, or services to the town.
- (d) *Unauthorized compensation.* No town official or employee or his/her spouse or minor child may, at any time, accept any compensation payment, or thing of value when that person knows, or with the exercise of reasonable care, should know, that it was given to influence action in which the official or employee was expected to participate in his/her official capacity.
- (e) *Conflicting employment or contractual relationship.* No town official or employee may have or hold any employment or contractual relationship with any business entity that is doing business with the town; provided however, that this section may not be construed to prevent any officer or employee from accepting any other employment or following any pursuit that does not interfere with the full and faithful discharge of the officer or employee's duties in his/her employment with the town.
- (f) *Contingent fees.* No town official or employee may be retained, or retain a person, to solicit or secure a town contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.
- (g) *Confidential information.* No town official or employee may disclose or use any information not available to members of the general public and gained by reason of his/her official position for his/her personal gain or benefit of any other person or business entity.
- (h) *Penalties.* Violation of any provision of this section may subject the officer or employee to discipline in the form of one or more of the following:
- (1) *In the case of a town official:*
- Forfeiture of office as provided in the town Charter.
 - Restitution of any pecuniary benefit received because of the violation committed.
- (2) *In the case of a town employee:*
- Dismissal from employment, provided that if the employee is found guilty of willful violation, then dismissal from employment is mandatory.
 - Suspension from employment for not more than 90 days without pay.
 - Demotion.
 - Reduction in salary level.
 - Oral or written reprimands or warnings.
 - Any discipline imposed shall be subject to the town's personnel rules.
- (i) *Contracts voidable.* If a violation of any of the prohibitions contained in this section occurs, then the contract involved may, at the option of the town, be declared null and void or voidable.

I have read, understand and acknowledge the Town's purchasing policy and my responsibilities under this policy as a Town Employee. I acknowledge that if I have questions I will contact the Town Manager.

_____	_____
Name	Date

Sec. 2-489. - Cone of silence.

- (a) *Purpose and intent.* The requirements of section, "cone of silence", as amended, are applicable to the town. It is the intent of this division to prevent potential bidders, offerors or service providers from

communicating with town department heads, their staff, town council or selection and evaluation committee members during the period of time in which the cone of silence is imposed.

(1) *Meaning.* "Cone of silence" is defined to mean a prohibition on:

- a. Any communication regarding a particular RFP, RFQ or ~~IFB/ITB~~ between a potential offeror, service provider, bidder, lobbyist, or consultant and the town's professional staff including, but not limited to, the town manager and his or her staff;
- b. Any communication regarding a particular RFP, RFQ or ~~IFB/ITB~~ between the mayor, town council or their respective staffs and any member of the town's professional staff including, but not limited to, the town manager and his or her staff;
- c. Any communication regarding a particular RFP, RFQ or ~~IFB/ITB~~ between a potential offeror, service provider, bidder, lobbyist, or consultant and any member of the selection committee or evaluation committee;
- d. Any communication regarding a particular RFP, RFQ or ~~IFB/ITB~~ between the mayor, town council or their respective staffs and any member of the selection committee or evaluation committee;
- e. Any communication regarding a particular RFP, RFQ or ~~IFB/ITB~~ between a potential offeror, service provider, bidder, lobbyist, or consultant and the mayor, town council and their respective staffs; and
- f. The town manager ~~and the chairperson of the selection committee~~ may communicate about a particular selection committee recommendation, but only after the committee has submitted an award recommendation to the town manager and, provided that should any change occur in the committee recommendation, the content of the communication and of the corresponding changes must be described in writing and filed by the town manager.

(2) *Allowed communications.* Notwithstanding the foregoing, the cone of silence does not apply to:

- a. Communications with the town attorney and his or her staff;
- b. Duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the town manager makes a written recommendation;
- c. Communications regarding a particular RFP, RFQ or ~~IFB/ITB~~ between any person and the ~~finance department director town manager~~ or designee, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document; and
- d. Communications regarding a particular proposal, quotation or bid between the town manager or designee and a member of the selection committee or evaluation committee provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.

(b) *Procedure.*

- (1) A cone of silence will be imposed upon each RFP, RFQ and ~~IFB/ITB~~ after the advertisement of the RFP, RFQ or ~~IFB/ITB~~. At the time of imposition of the cone of silence, the town manager or designee will provide for public notice of the cone of silence. The town manager or designee will issue a written notice thereof to the affected departments, file a copy of such notice with the town clerk, with an email copy thereof to each town council member, and include in any public solicitation for supplies or services a statement disclosing the requirements of this division. Notwithstanding any other provision of this section, the imposition of a cone of silence on a particular RFP, RFQ or ~~IFB/ITB~~ will not preclude procurement staff from obtaining industry comment or performing market research provided all communications related thereto with a potential offeror, service provider, bidder, lobbyist, or consultant are in writing or are made at a duly noticed public meeting.

- (2) The cone of silence terminates at the time town council votes to award the contract.
- (3) If the town manager rejects all bids or proposals submitted in response to an RFP or ~~IFB/ITB~~ and concurrently requests the re-issuance of an RFP or ~~IFB/ITB~~, the rejected bids or proposals will remain under the cone of silence until such time the town manager issues a written recommendation of award or until the town manager withdraws the re-issued RFP or ~~IFB/ITB~~.

Sec. 2-490. - ~~Exhibits.~~ Grant, State, and Federal Funding

~~All exhibits referenced in this division including:~~

~~Exhibit A Bid Tally Sheet~~

~~Exhibit B Quote Sheet~~

~~Exhibit C Sole Source Purchase~~

~~Exhibit D Emergency Purchase; and~~

~~Exhibit E Cooperative Purchase Justification;~~

~~are on file with the town.~~

~~Secs. 2-491—2-505. Reserved.~~ (a) Grants

(1) Expenditures from funds awarded to the Town through a grant or government loan may require special processing because of specific legal terms and conditions placed by the funding agency. Grants often have certain purchasing requirements that are different or additional to the Town's procurement ordinance and they require special purchasing procedures. It is the responsibility of the using Department to identify any special purchasing requirements or provisions, notify the Procurement Management Department of them, and to ensure that all requirements are followed.

(2) For federal and State grant funded projects the Town shall follow the procurement process required by the funding agency and grant agreement. Unless otherwise specified in the grant, all grant funded purchases shall follow the Town's procurement ordinance.

(3) The provisions of Title 2 of the Code of Federal Regulations (CFR) Part 200 and Chapter 73C-23, Florida Administrative Code (F.A.C.), as amended from time to time, are hereby incorporated herein by reference and shall be applicable to procurements funded pursuant to a grant agreement that is governed by those provisions. When procuring property and services under a Federal award, the Town will follow the procurement standards as outlined in the 2 CFR Part 200.318 through 2 CFR Part 200.327 and its Appendix II provisions, as applicable and unless waived by the awarding agency. Such standards are outlined in Exhibit 1 attached hereto and incorporated herein by reference as Exhibit 1 of this article and are current as the published date listed thereon. Amendments made by the federal government to the regulations and standards of the 2 CFR Part 200.318 through 2 CFR Part 200.327 and its Appendix II provisions shall be automatically incorporated herein.

(4) Purchases utilizing Federal Transit Administration (FTA) and/or other federal funds must comply with all requirements of Title 2 of the Code of Federal Regulations (CFR) and FTA Circular C 4220.1F, as amended from time to time, and the resulting contract shall include all federal contract clauses, as applicable.

(5) As provided by 2 CFR Part 200.320, as amended from time to time, the Town may self-certify on an annual basis a micro-purchasing threshold up to \$50,000.00. If the federal government amends the self-certification threshold for micro-purchases for non-federal entities, the threshold listed in this section shall be automatically updated.

(6) Purchasing under federal grants shall be conducted in accordance with the federal regulations mandated by the granting agency as amended from time to time. The Town is hereby given the authority to use the most up to date document. These provisions may include, but are not limited to, the following:

(1) 2 CFR Part 200.

(2) 2 CFR Part 1201.

(3) 23 CFR Part 172.

(4) 23 CFR Part 635.

(5) 24 CFR Part 75 Section 3.

(6) 24 CFR Part 570.

(7) 48 CFR Part 36.

(8) Title 1 of the Housing and Community Development HCD Act.

(9) Section 508 of the Rehabilitation Act.

(10) Brooks Act.

(11) Florida State Statutes, as applicable.

(7) In accordance with 2 CFR § 200.214, the Town will verify the status of prospective vendors to ensure they are not debarred, suspended, or otherwise excluded from participating in Federal transactions. 2 CFR § 180.300 requires non-Federal entities to check the System for Award Management (SAM.gov) before entering into contracts using Federal funds. Additionally, following 2 CFR § 200.318(h) the Town will not contract with or make subawards to parties listed on the government-wide exclusions list.

(b) Federal Procurement Standards Notice

1. The following clauses shall apply to any Purchase Orders/Contracts issued under declaration of emergency and/or where federal funds apply. All clauses shall apply unless stated below, due to threshold.

NOTICE TO CONSULTANT/CONTRACTOR/VENDOR REGARDING FEDERAL FUNDING

When property or services are procured using funds derived from a Federal grant or Agreement whether direct to the Town or "pass-through" from another entity, the Town is required to and will follow the Federal procurement standards in the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", 2 C.F.R. Part 200, Sections 200.317 through 200.327.

CONTRACTOR, further referred to as CONSULTANT/CONTRACTOR/VENDOR within this section, shall work with the Town under this Agreement to assure that it will comply with the following statutes and regulations to the extent applicable:

- (1) 2 CFR, Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Appendix II
- (2) 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
- (3) Sections 1361(A) of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c, as amended by the National Flood Insurance Reform Act of 1994, Public Law 103-325 and the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264
- (4) 31 CFR Part 25 Rules and Procedures for Funds Transfers

Contract Cost and Price: For every procurement in excess of the Simplified Acquisition Threshold, including contract modifications, the Town shall perform a cost or price analysis in connection with every procurement subject to Federal procurement guidelines, which shall include an independent estimate of cost prior to issuing bids or proposals. For proposals where price is not considered in the award, profit shall be negotiated as a separate element of the price. In determining whether profit is fair and reasonable, the Town shall consider the complexity of work, the risk to be borne by the CONSULTANT/CONTRACTOR/VENDOR, the CONSULTANTS/CONTRACTORSNENDORS investment, the amount of subcontracting necessary, the quality of the CONSULTANTS/CONTRACTORSNENDORS record and past performance, and industry profit rates for the surrounding geographical area. "Cost Plus Percentage" methods for determining profit may not be used.

c. Federal Procurement Standards

1. EQUAL EMPLOYMENT OPPORTUNITY:

1.1. During the performance of this contract, CONSULTANT/CONTRACTOR/VENDOR agrees as follows:

The CONSULTANT/CONTRACTOR/VENDOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONSULTANT/CONTRACTOR/VENDOR 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 CONSULTANT/CONTRACTOR/VENDOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

1.1.2. The CONSULTANT/CONTRACTOR/VENDOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT/CONTRACTOR/VENDOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

1.1.3. The CONSULTANT/CONTRACTOR/VENDOR 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 CONSULTANT/CONTRACTOR/VENDOR's legal duty to furnish information.

1.1.4. The CONSULTANT/CONTRACTOR/VENDOR 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 by the agency contracting officer, advising the labor union or workers' representative of the CONSULTANT/CONTRACTOR/VENDOR's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

1.1.5. The CONSULTANT/CONTRACTOR/VENDOR 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.

1.1.6. The CONSULTANT/CONTRACTOR/VENDOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

1.1.7. In the event of the CONSULTANT/CONTRACTOR/VENDOR's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the CONSULTANT/CONTRACTOR/VENDOR may be declared ineligible for further Government 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.

1.1.8. The CONSULTANT/CONTRACTOR/VENDOR will include the provisions of paragraphs (a) through (h) 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 sub-CONSULTANT/CONTRACTOR/VENDOR. The CONSULTANT/CONTRACTOR/VENDOR will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the CONSULTANT/CONTRACTOR/VENDOR becomes involved in, or is threatened with, litigation with a sub-CONSULTANT/CONTRACTOR/VENDOR as a result of such direction, the CONSULTANT/CONTRACTOR/VENDOR may request the United States to enter into such litigation to protect the interests of the United States.

2. MAINTENANCE OF RECORDS:

2.1. The CONSULTANT/CONTRACTOR/VENDOR 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 pursuant to the requirements of this agreement. Said records and documentation will be retained

by the CONSULTANT/CONTRACTOR/VENDOR for a minimum of five (5) years from the date of termination of this agreement, or for such period is required by law.

2.2. CONSULTANT/CONTRACTOR/VENDOR shall provide, when requested, access by the Town, Federal granting agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the CONSULTANT/CONTRACTOR/VENDOR which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

2.3. CONSULTANT/CONTRACTOR/VENDOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

2.4. CONSULTANT/CONTRACTOR/VENDOR agrees to provide the GRANT AGENCY Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract.

2.5. CONSULTANT/CONTRACTOR/VENDOR shall retain all records associated with this solicitation and any agreements that are created in response to the solicitation for a period of no less than five (5) years after final payments and all other pending matters are closed.

2.6. The Town and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during the period of this agreement, and during the period as set forth in the paragraphs above; provided, however, such activities shall be conducted only during normal business hours of the CONSULTANT/CONTRACTOR/VENDOR and at the expense of the Town.

3. DHS SEAL, LOGO, AND FLAGS:

3.1. The CONSULTANT/CONTRACTOR/VENDOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific GRANT AGENCY pre-approval. The CONSULTANT/CONTRACTOR/VENDOR shall include this provision in any subcontracts.

4. LOCAL VENDOR PREFERENCE EXCLUSION:

4.1. Local Vendor Preference Ordinance has been waived for this service/purchase request and any and all references contained herein are non-applicable to this request and subsequent contract and/or purchase order(s).

5. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, and EXECUTIVE ORDERS:

5.1. This is an acknowledgment that GRANT AGENCY financial assistance to fund services requested. to fund all or a portion of the contract. The CONSULTANT/CONTRACTOR/VENDOR will comply with all applicable federal law, regulations, executive orders, GRANT AGENCY policies, procedures, and directives.

6. NO OBLIGATION BY THE FEDERAL GOVERNMENT:

6.1. The Federal Government is not a party to this solicitation and/or contract and is not subject to any obligations or liabilities to the non- Federal entity,

CONSULTANT/CONTRACTOR/VENDOR, or any other party pertaining to any matter resulting from the Solicitation.

7. FRAUD and FALSE OR FRAUDULENT OR RELATED ACTS:

7.1. The CONSULTANT/CONTRACTOR/VENDOR acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the CONSULTANT/CONTRACTOR/VENDORS actions pertaining to this solicitation and/or contract.

8. SUBCONTRACTS:

8.1. The selected firm must require compliance with all federal requirements of all sub-CONSULTANT/CONTRACTOR/VENDORS performing work for Prime CONSULTANT/CONTRACTOR/VENDOR under this Agreement, by including these federal requirements in all contracts with sub-CONSULTANT/CONTRACTOR/VENDORS.

9. CONFLICT OF INTEREST:

9.1. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officers, 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 herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from CONSULTANT/CONTRACTOR/VENDORS or parties to subcontracts.

10. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM (E-VERIFY):

10.1. Statutes and Executive Orders require employers to abide by the Immigration laws of the United States and to employ only individuals who are eligible to work in the United States. The Employment Eligibility Verification System (E-Verify) operated by the U.S. Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) to provides an internet-based means of verifying employment eligibility of workers in the United States; it is not a substitute for any other employment eligibility verification requirements.

10.2. Sub-CONSULTANT/CONTRACTOR/VENDOR requirement: Vendors shall require all subcontracted vendors to flow down the requirement to use E-Verify to sub-CONSULTANT/CONTRACTOR/VENDORS.

10.3. It shall be the vendor's responsibility to familiarize themselves with all rules and regulations governing this program.

10.4. For additional information regarding the Employment Eligibility Verification System (E-Verify) program visit the following website: <http://www.dhs.gov/E-Verify>.

11. ENERGY POLICY AND CONSERVATION ACT:

11.1. CONSULTANT/CONTRACTOR/VENDOR must follow any 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 (42 U.S.C. 6201).

12. SMALL AND MINORITY BUSINESS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS:

12.1. If subcontracts are to be let, the prime CONSULTANT/CONTRACTOR/VENDOR 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.

12.1.1 Place qualified small and minority businesses and women's business enterprises on solicitation lists.

12.1.2 Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.

12.1.3 Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

12.1.4 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.

12.1.5 Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.

12.1.6 Requiring the prime CONSULTANT/CONTRACTOR/VENDOR, if subcontracts are to be let, to take the five previous affirmative steps.

13. DOMESTIC PREFERENCES FOR PROCUREMENT (2 C.F.R. § 200.322)

13.1. As appropriate and to the greatest extent consistent with law, state and non state entities should the CONSULTANT/CONTRACTOR/VENDOR should, to the greatest extent practicable under its GRANT AGENCY 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. 2 C.F.R. §

200.322 also provides specific definitions for "Produced in the United States" and "manufactured products" that states should review.

13.1.1. 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.

13.1.2. Manufactured products mean 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.

14. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS OR SERVICES (2 C.F.R. § 200.216):

14.1 2 C.F.R. § 200.216 prohibits state and non state entities from obligating or expending loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system as identified in Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NOAA), Pub. L. No. 115 332 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. See Prohibitions on Expending GRANT AGENCY Award Funds for Covered Telecommunications Equipment or Services Interim Policy for additional information.

14.1 The CONSULTANT/CONTRACTOR/VENDOR shall comply with 2 C.F.R. § 200.216, Prohibition on Contracting for 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 (Interim), 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 CONSULTANT/CONTRACTOR/VENDOR and its sub-CONSULTANT/CONTRACTOR/VENDOR 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;
 - (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 CONSULTANT/CONTRACTOR/VENDORS 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 CONSULTANT/CONTRACTOR/VENDOR 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 CONSULTANT/CONTRACTOR/VENDOR is notified of such by a sub-CONSULTANT/CONTRACTOR/VENDOR at any tier or by any other source, the CONSULTANT/CONTRACTOR/VENDOR 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 CONSULTANT/CONTRACTOR/VENDOR 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 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 CONSULTANT/CONTRACTOR/VENDOR shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments."

OVER \$10K ADD THE FOLLOWING TO THE ABOVE

15. TERMINATION FOR CAUSE AND/OR CONVENIENCE (for projects greater than \$10,000):

15.1. The Town, by written notice to the CONSULTANT/CONTRACTOR/VENDOR, may terminate this Agreement with or without cause (for convenience), in whole or in part, when the Town determines in its sole discretion that it is in the Town's best interest to do so. In the event of termination, the CONSULTANT/CONTRACTOR/VENDOR will not incur any new obligations for the terminated portion of the Agreement after the CONSULTANT/CONTRACTOR/VENDOR has received notification of termination.

15.2. If the Agreement is terminated before performance is completed, the CONSULTANT/CONTRACTOR/VENDOR shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount that is the same percentage of the Agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of the Town and shall be turned over promptly by the CONSULTANT/CONTRACTOR/VENDOR.

OVER \$25K ADD THE FOLLOWING TO THE ABOVE

16. CHANGES:

16.1 Changes to any federal grant or federally funded cooperative agreement shall be in writing, executed by change order and the costs of any change, modification, change order or constructive change must be allowable, allocable, and within the original scope of the federal grant or federal cooperative agreement. Changes should be reasonable and necessary for the completion of the original project scope. Any changes must be permissible under state, local and federal laws. Any change recommended and accepted by both parties, in writing, will not be considered a contract breach. Modifications to alter the method, price, or schedule of the work for any reason shall be completed following the terms and provisions of the associated contract documents. No changes to the contract documents or the performance provided shall be made unless the same are in writing and signed by both the CONSULTANT/CONTRACTOR/VENDOR and the Town.

17. LICENSE AND DELIVERY OF WORKS SUBJECT TO COPYRIGHT AND DATA RIGHTS:

17.1. The CONSULTANT/CONTRACTOR/VENDOR 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 CONSULTANT/CONTRACTOR/VENDOR 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 CONSULTANT/CONTRACTOR/VENDOR 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."

18. TIME & MATERIAL, TIME & EQUIPMENT, FIRM FIXED PRICE LUMP SUM CONTRACTS:

18.1. The following applies to purchases made or reimbursed with Federal funds as per 2 CFR 200.318(j) and other Federal Regulations. For firm fixed price, lump sum, Time & Material (T&M) and/or Time & Equipment (T&E) procurements, a Purchase Order represents a CONSULTANT/CONTRACTOR/VENDOR's Notice to Proceed (NTP). Line-item Extended Price(s) shall be considered Not to Exceed (NTE) ceiling value(s). Additionally, the Total Order value for a Purchase Order represents a NTE ceiling value. If the CONSULTANT/CONTRACTOR/VENDOR anticipates exceeding either of these NTE values, they should contact the Town of Fort Myers Beach for a change order. If a CONSULTANT/CONTRACTOR/VENDOR exceeds a Line Item or Total Order NTE value, it does so at its own risk.

19. SUSPENSION AND DEBARMENT (for projects greater than \$25,000):

19.1. 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 CONSULTANT/CONTRACTOR/VENDOR is required to verify that none of the CONSULTANT/CONTRACTOR/VENDOR, 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).

19.2. The CONSULTANT/CONTRACTOR/VENDOR 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.

19.3. This certification is a material representation of fact relied upon by the awarded CONSULTANT/CONTRACTOR/VENDOR. If it is later determined that the CONSULTANT/CONTRACTOR/VENDOR 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.

19.4. The CONSULTANT/CONTRACTOR/VENDOR 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.

20. RECOVERED MATERIALS (for projects greater than \$10,000):

20.1. In the performance of this contract, the CONSULTANT/CONTRACTOR/VENDOR shall

make maximum use of products containing recovered material 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.

20.2. Information about this requirement is available EPA'S Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/> The list of EPA- designate items is available at <http://www.epa.gov/cpg/products/htm>

20.3. The CONSULTANT/CONTRACTOR/VENDOR also agrees to comply with all other applicable requirements of Section 6002 or Solid Waste Disposal Act.

21. REMEDIES (for projects greater than Simplified Acquisition Threshold - \$250,000):

21.1. In the event the CONSULTANT/CONTRACTOR/VENDOR fails to satisfactorily perform or has failed to adhere to the terms and conditions under this Agreement, the Town may, upon fifteen (15) calendar days written notice to the CONSULTANT/CONTRACTOR/VENDOR _____ and _____ upon _____ the CONSULTANT/CONTRACTOR/VENDOR's failure to cure within those fifteen (15) calendar days, exercise any one or more of the following remedies, either concurrently or consecutively:

21.1.1. Withhold or suspend payment of all or any part of a request for payment.

21.1.2. Require that the CONSULTANT/CONTRACTOR/VENDOR refund to the Town any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.

21.1.3. Exercise any corrective or remedial actions, to include but not be limited to:

21.1.4. Requesting _____ additional _____ information _____ from _____ the CONSULTANT/CONTRACTOR/VENDOR to determine the reasons for or the extent of non-compliance or lack of performance;

21.1.5. Issuing a written warning to advise that more serious measures may be taken if the situation is not corrected;

21.1.6. Advising _____ the CONSULTANT/CONTRACTOR/VENDOR _____ to _____ suspend, discontinue or refrain from incurring costs for any activities in question; or

21.1.7. Requiring the CONSULTANT/CONTRACTOR/VENDOR to reimburse the Town for the amount of costs incurred for any items determined to be ineligible.

22. OTHER REMEDIES AND RIGHTS:

22.1. Pursuing any of the above remedies will not keep the Town from pursuing any other rights or remedies, which may be otherwise available under law or in equity. If the Town waives any right or remedy in this Agreement or fails to insist on strict performance by the CONSULTANT/CONTRACTOR/VENDOR, it will not affect, extend or waive any other right or remedy of the Town, or affect the later exercise of the same right or remedy by the Town for any other default by the CONSULTANT/CONTRACTOR/VENDOR.

22.2. Unless otherwise provided by the Contract, all claims, counter claims, counterclaims, disputes and other matters in question between the Town and the

CONSULTANT/CONTRACTOR/VENDOR arising out of or relating to the Agreement between the parties, or the breach of it, that cannot be resolved by and between the parties after conferring in good faith, will be decided by a court of competent jurisdiction pursuant to Florida law. If such dispute is in state court, venue shall be in the Twentieth Judicial Circuit Court in and for Lee County, Florida. If in federal court, venue shall be in the U.S. District Court for the Middle District of Florida, Ft. Myers Division.

23. CONTRACT WORK HOURS & SAFETY STANDARDS (40 U.S.C. 3701-3708)-': (for projects greater than \$100,000):

23.1. 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.

23.2. 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 \$10 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.

23.3. Withholding for unpaid wages and liquidated damages. The State of Florida Division of Emergency Management 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.

23.4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also 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.

24. CLEAN AIR ACT (for projects greater than \$150,000):

24.1. 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.

24.2. The contractor agrees to report each violation to the GRANT AGENCY and the Regional Office of

the Environmental Protection Agency and understands and agrees that the GRANT AGENCY and the Regional Office of the Environmental Protection Agency will, in turn, report each violation as required to assure notification to the Town, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

24.3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by GRANT AGENCY.

25. FEDERAL WATER POLLUTION CONTROL ACT (for projects greater than \$150,000):

25.1. 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.

25.2. The contractor agrees to report each violation to the GRANT AGENCY and the Regional Office of the Environmental Protection Agency and understands and agrees that the GRANT AGENCY and the Regional Office of the Environmental Protection Agency will, in turn, report each violation as required to assure notification to the Town, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

25.3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by GRANT AGENCY.

26. BYRD ANTI-LOBBYING AMENDMENT (for projects greater than \$100,000):

26.1. CONSULTANT/CONTRACTOR/VENDORS 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 nonfederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

27. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT:

27.1. If the Federal award meets the definition of "funding agreement" under 37C.F.R. § 401.2(a) and the Town enters 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 Town must comply with the requirements of 37 C.F.R. 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 Federal Awarding Agency. See 2 C.F.R. Part 200, Appendix II(F).

28. FLY AMERICA REQUIREMENTS:

28.1. The CONSULTANT/CONTRACTOR/VENDOR agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and sub recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include

the requirements of this section in all subcontracts that may involve international air transportation.

29. AMERICANS WITH DISABILITIES ACT (ADA):

29.1. All design and construction must be accessible to individuals with disabilities pursuant to Titles II and III of the Americans with Disabilities Act.

30. CARGO PREFERENCE:

30.1. The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

30.2. Use of United States - Flag Vessels:

30.3. The CONSULTANT/CONTRACTOR/VENDOR agrees to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States- Flag commercial vessels.

30.4. Furnish within twenty (20) business days following the date of loading for shipments originating within the United States or within thirty (30) business days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding 6 paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Town (through the Contractor in the case of a subcontractor's bill-of-lading.)

30.5. Include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

31. SEISMIC SAFETY REQUIREMENTS FOR THE CONSTRUCTION OF NEW BUILDINGS OR ADDITION TO EXISTING BUILDINGS:

31.1. CONSULTANT/CONTRACTOR/VENDOR agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The CONSULTANT/CONTRACTOR/VENDOR also agrees to ensure that all Work performed under the Contract including Work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

32. ENERGY CONSERVATION:

32.1. CONSULTANT/CONTRACTOR/VENDOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the Florida energy conservation plan issued in compliance with the Energy Policy and Conservation Act, as amended, 42 USC § 6321 *et seq.*, and perform an energy assessment for any building constructed, reconstructed, or modified with Federal funds required under Federal regulations, "Requirements for Energy Assessment," 49 CFR part 622, subpart

h

CONSTRUCTION ONLY, if Applicable

33. DAVIS-BACON ACT:

33.1. All prime construction contracts in excess of \$2,000 awarded by non- Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction).

See 2 C.F.R. Part 200, Appendix 11(0). In accordance with the statute, contractors 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, contractors must be required to pay wages not less than once a week.

The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It DOES NOT apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.

33.2. Minimum wages

i. All laborers and mechanics employed or working upon the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis - Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part

5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be Posted at all times by the CONTRACTOR and its sub-CONTRACTORS at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

ii.

(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 C.F.R. 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and

3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

4. With respect to helpers as defined in 29 C.F.R. 5.2(n) (4), such a classification prevails in the area in which the work is performed.

(B) If the CONTRACTOR and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the CONTRACTOR, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting

Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a) (ii) (B) or (C) of this section, shall be paid to all workers performing Work in the classification under the Contract from the first day on which Work is performed in the classification.

1.1. Withholding – Town of Fort Myers Beach 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 the CONTRACTOR under the Contract or any other Federal contract with the same prime CONTRACTOR, or any other federally- assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime CONTRACTOR, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the CONTRACTOR or any sub-CONTRACTOR the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, Town of Fort Myers Beach may, after written notice to the CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

1.2. Payrolls and basic records

i. Payrolls and basic records relating thereto shall be maintained by the CONTRACTOR during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project).

Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the CONTRACTOR shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. CONTRACTORS employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

ii.

- (A) The CONTRACTOR shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to Town of Fort Myers Beach for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 C.F.R. part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime CONTRACTOR is responsible for the submission of copies of payrolls by all sub- CONTRACTORS.
- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the CONTRACTOR or sub- CONTRACTOR or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
 - 1. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5 and that such information is correct and complete;
 - 2. That each laborer or mechanic (including each helper, apprentice, and trainee employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. part 3;
 - 3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of Work performed, as specified in the applicable wage determination incorporated into the Contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (c) (i) (B) of this section.
- (D) The falsification of any of the above certifications may subject the CONTRACTOR or sub- CONTRACTOR to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

iii. The CONTRACTOR or sub- CONTRACTOR shall make the records required under

paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the CONTRACTOR or sub-CONTRACTOR fails to submit the required records or to make them available, the Federal agency may, after written notice to the CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

1.3. Apprentices and trainees

- i. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the Work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the CONTRACTOR as to the entire Work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any apprentice performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. Where a CONTRACTOR is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the CONTRACTOR's or sub- CONTRACTOR's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the CONTRACTOR will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.
- ii. Trainees - Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the Work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour

Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any trainee performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the CONTRACTOR will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

iii. Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. part 30.

1.4. Compliance with Copeland Act requirements. The CONTRACTOR shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in the Contract.

1.5. Subcontracts. The CONTRACTOR or sub- CONTRACTOR shall insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the sub-CONTRACTORS to include these clauses in any lower-tier subcontracts. The prime CONTRACTOR shall be responsible for the compliance by any sub-CONTRACTOR or lower tier sub-CONTRACTOR with all the Contract clauses in 29 C.F.R. 5.5.

1.6. Contract termination: debarment. A breach of the Contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the Contract, and for debarment as a CONTRACTOR and a sub-CONTRACTOR as provided in 29 C.F.R. 5.12.

1.7. Compliance with Davis - Bacon and Related Act requirements. All rulings and interpretations of the Davis - Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in the Contract.

1.8. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of the Contract shall not be subject to the general disputes clause of the Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the CONTRACTOR (or any of its sub- CONTRACTORS) and the Contracting agency, the U.S. Department of Labor, or the employees or their representatives.

1.9. Certification of eligibility

i. By entering into the Contract, the CONTRACTOR certifies that neither it (nor he or she) nor any person or firm who has an interest in the CONTRACTOR's firm is a person or firm ineligible to be awarded Government Contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

ii. No part of the Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

34. COPELAND ANTI-KICKBACK ACT:

34.1. Recipient and subrecipient contracts must include a provision for compliance 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").

34.2. This requirement applies to all contracts for construction or repair work above \$2,000 in situations where the Davis-Bacon Act also applies. It DOES NOT apply to the FEMA Public Assistance Program.

34.3. Compliance

34.3.1. CONSULTANT/CONTRACTOR/VENDOR shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3, which are incorporated by reference into the Contract.

34.3.2. Subcontracts. The CONSULTANT/CONTRACTOR/VENDOR or subcontractor shall insert in any subcontracts the clause above and such other clauses as may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONSULTANT/CONTRACTOR/VENDOR shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

34.3.3. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

Secs. 2-491—2-505. - Reserved.



Business Impact Estimate

Proposed ordinance's title/reference:

Ordinance 26-06 Purchasing Policy Amendments

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 1 PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES OF ARTICLE V FINANCE OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES TO 1) CLARIFY AND STREAMLINE EXISTING REGULATIONS AND PROCEDURES; 2) INCORPORATE BY REFERENCE STATUTORY MANDATORY TERMS AND CONDITIONS AND STATE AND FEDERAL GRANT REQUIREMENTS; AND 3) IMPLEMENT RECOMMENDATIONS PROVIDED TO THE TOWN BASED ON THE DISASTER READINESS ASSESSMENT PREPARED BY THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND 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;
 - 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.

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

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, (e.g. statement of the public purpose serving the public health, safety, morals and welfare):

The ordinance aims to address clarification and streamlining of existing procedures and regulations, incorporate grant and federal funding requirements for applicable purchases and contracts, and to implement revisions based on recommendations from the Town's Disaster Readiness Assessment.

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 Ordinance 26-06.

Ordinance 26-06 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:

The Town believes that businesses would not be impacted by this ordinance.

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

N/A

ORDINANCE 24-11

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 1 PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES OF ARTICLE V FINANCE OF THE TOWN OF FORT MYERS BEACH TO TRANSFER PURCHASING TO THE TOWN MANAGER OR DESIGNEE FROM THE FINANCE DEPARTMENT, TO INCREASE THE AUTHORITY OF THE TOWN MANAGER FOR PURCHASES OF GOODS AND SERVICES, TO CLARIFY EXISTING REGULATIONS, AND TO IMPLEMENT RECOMMENDATIONS PROVIDED TO THE TOWN BASED ON THE DISASTER READINESS ASSESSMENT AND ABATEMENT PLAN PREPARED BY THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND 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, for purposes of greater efficiency, the responsibilities of the Finance Department Director have been transferred to the Town Manager or designee; and

WHEREAS, the increase in the cost of goods and services justifies an increase in the Town Manager's authority for purchases of goods and services without further review by the Town Council; and

WHEREAS, as part of its response to implementation of an Abatement Plan to improve upon disaster readiness and compliance with requirements mandated by the Federal Emergency Management Agency (FEMA), the town desires to further clarify and emphasize certain existing procurement policies; and

WHEREAS, on April 15, 2024 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to recommendations of staff and the testimony of all interested persons; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City's website on the 18th day of April, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was

published in the Fort Myers News-Press on the 18th day of April, 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041; and

WHEREAS, on the 6th day of May, 2024, the Town Council held a second reading of the Ordinance; at which time the Town Council gave full and complete consideration to the recommendations of staff, and the testimony of all interested persons; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors to update and amend the Town's procurement ordinances.

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

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

Section 2. The Town Council determines that adoption of the following changes to Division 1 Purchasing of Goods and Services Policies and Procedures of Article V Finance are in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors, and shall read as amended in attached Exhibit A.

Section 3. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted Town Code provision or ordinance, this Ordinance 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. Absent extension of this Ordinance in accordance with State law, Executive Order 22-218, and the Town Code, this Ordinance shall terminate within 30 days from its effective date and shall be of no further force or effect after such date.

Section 7. This Ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Vice Mayor Atterholt and seconded by Mayor Allers, 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 6th day of May 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers
Dan Allers (May 14, 2024 14:48 EDT)
Dan Allers, Mayor

ATTEST:

Amy Baker
Amy Baker, Town Clerk

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

Becky Vose
Becky Vose (May 14, 2024 23:40 EDT)
Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 14th day of May 2024.

EXHIBIT A

DIVISION 1. - PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES

Sec. 2-476. - Purpose.

The purpose of the ordinance codified in this division is to provide for a fair and equitable method of administering purchases of goods and services in order to maximize the purchasing value of public funds and to provide procedures and guidelines governing said purchases. The ordinance is intended to supplement the provisions pertaining to procurement of goods and services set forth in Florida Statutes.

Sec. 2-477. - Applicability.

This division applies to all purchases of supplies and services and construction by the Town of Fort Myers Beach as of the effective date. In the event of a conflict between the provisions of this division and any applicable state or federal law or the town Charter, the most restrictive provisions will prevail, unless the Town is otherwise pre-empted from regulation.

Sec. 2-478. - Responsibilities for procurement of goods and services.

The Town Manager or designee finance department is authorized to promulgate procedures for the requisition of supplies, goods and services; and, all purchases of goods and services must be processed through this department. The procedures shall include a requirement for the completion of an analysis of whether it is in the Town's best interest to purchase or lease needed equipment.

For purchases of \$500.00 or more, the finance department will certify to the Town Manager or designee that the purchase request has sufficient unencumbered funds to cover the purchase, or a transfer is in process for approval by the town council, manager or designee, and the proper purchasing procedures have been followed. The Town Manager or designee shall remain responsible for insuring that proper purchasing procedures have been followed.

Sec. 2-479. - Definitions.

"Brand name or equal specification" means a specification limited to one or more items by manufacturers' names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet the town's requirements, and which provides for the submission of equivalent products.

"Brand name specification" means a specification limited to one or more items by manufacturers' names or catalog numbers.

"Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, association, or any other legal entity currently licensed to do business in the State of Florida and doing business in the State of Florida.

"Change order" means a written change to a contract after the contract has been awarded.

"Confidential information" means any information that is available to any employee only because of the employee's status as an employee of the town and is not a matter of public knowledge or available to the public on request.

"Construction" means the process of building, altering, repairing, improving, or demolishing any structure or building, or other public improvement of any kind to any structure or building, or other public improvements of any kind to any real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, real property.

"Contract" means all types of town agreements, regardless of what they may be called, for the procurement of supplies, services or construction.

"Equipment" means all property, including but not limited to, town capitalized equipment.

"Firm" or "vendor" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, association, or any other legal entity, currently licensed to do business in the State of Florida and doing business in the State of Florida.

"Indirect" or "indirect interest" means an interest in which legal title is held by another as trustee or other representative capacity, but the equitable or beneficial interest is held by the employee or town official.

"Invitation to bid" (ITB) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting sealed bids.

"Invitation to negotiate" (ITN) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting proposals.

"Material interest" means direct or indirect ownership of more than five percent of the total assets or capital stock of any business or firm.

"Request for proposals" (RFP) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting proposals.

"Request for qualifications" (RFQ) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting statements of qualifications under the Consultants Competitive Negotiations Act or otherwise.

"Responsible offeror" means a person or firm who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit that will assure good faith performance of the contract.

"Responsive bidder" means a person or firm who has submitted a bid that confronts in all material respects to the requirements set forth in the invitation to bid.

"Selection advisory committee" means a committee of staff members, town members with expert knowledge and contracted professionals of the town, not in conflict with the commodity being bid, who evaluate professional service contract submittals to the town manager and/or council for approval.

"Sole source" means only one available source for supply, equipment, service or construction items.

"Specification" means any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

"Supplies" means property, including but not limited to materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

"Town official" means any town council member, the mayor any other person who is elected to fill a position with the Town of Fort Myers Beach.

Sec. 2-480. - Purchasing procedures.

(a) *Competitive sealed bidding.*

- (1) *Applicability.* Except as otherwise authorized herein, all contracts for the purchase of goods or contractual services in excess of ~~\$25,000.00~~ \$75,000 within a fiscal year shall be awarded by competitive sealed bid.
- (2) *Invitation to bid.* For all purchases subject to competitive bidding, the Town Manager or designee ~~finance department~~, with assistance from the affected departments, will issue an invitation to bid that includes specifications, and all contractual terms and conditions applicable to the anticipated purchase. In the event of any conflict between the invitation to bid and this division, the provisions of this division will prevail.
- (3) *Addendum.* After an invitation to bid is issued and before the bid opening, the affected department may request that the Town Manager or designee ~~and/or the finance department may~~ issue one or more written addendum for the purpose of clarifying specifications or other matters relating to the bid. ~~The finance department is solely responsible to issue all addenda.~~

- (4) *Public notice.* All invitations to bids must be published at least once in a newspaper of general circulation in the town for a minimum of 30 calendar days preceding the last day set for the opening of bids. The public notice must state the place, date, and time of the bid opening; a general description of the subject matter of the bid, and where bid forms and specifications may be obtained.
- (5) *Bid bond.* The invitation to bids may specify that a form of bid security, as a guarantee that all provisions of the specifications will be met, is required. The bid bond must provide that if the bid is: (a) rejected by the town; or (b) accepted and the bidder executes the contract and furnishes an appropriate bond, then the bid bond is void; otherwise it remains in full force and effect. As an alternative to a bid bond, the required bid security may be provided in the form of a certified check, a cashier's check, treasurer's check or bank draft of any national or state bank made payable solely to the Town of Fort Myers Beach. No third-party endorsed payments are acceptable for this purpose. If the town permits a bidder to withdraw its bid, no action shall be taken against the bidder or the bid security.
- (6) *Bid opening.*
- Bids will be opened publicly at the time and place designated in the invitation to bid. The amount of each bid, and such other relevant information as the Town Manager or designee ~~finance department director~~ deems appropriate, together with the name of each bidder will be recorded and made available for public inspection. (see Exhibit A).
 - Bid openings must be scheduled a minimum of 30 calendar days after the date that the invitation to bid is advertised.
- (7) *Bid acceptance.* Bids will be unconditionally accepted without alteration or correction, except as may be authorized in this division. All bids will be deemed to be held open and irrevocable for the time period set forth in the invitation to bid.
- (8) *Bid evaluation.* Bids will be evaluated based on a bidder's ability to satisfy the requirements set forth in the invitation to bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered as part of the evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation to bid must set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation to bid.
- (9) *Bid mistakes.* Mistakes discovered before the bids are opened may be modified by the bidder via written notice from the bidder specifically identifying the modification and the reason the modification is necessary. In lieu of modification, the bidder may also withdraw the bid submittal. The written notice as to modification or withdrawal must be received in the office designated in the invitation to bid prior to the time set for bid opening.
- (10) *Bid withdrawal.* After bids are opened, corrections or modification to bids are not permitted, but a bidder may be permitted to withdraw an erroneous bid, prior to the bid award by the town if the following is established to the satisfaction of the town manager. In the town's sole judgment:
- The bidder acted in good faith in submitting the bid;
 - In preparing the bid there was an error of such magnitude that enforcement of the bid would work severe hardship upon the bidder;
 - The error was not the result of gross negligence or willful inattention on the part of the bidder;
 - The error was discovered and communicated to the town ~~finance department~~ manager or designee within eight business hours of bid opening, along with a written request for permission to withdraw the bid; and
 - The bidder submits documentation acceptable to the town and an explanation of how the bidding error was made.

- (11) *Cancellation of invitation to bid.* An invitation to bid may be cancelled, or any or all bids or proposals may be rejected, in whole or in part, with or without cause. The following are considered good cause for rejection of all bids:
- All bids exceed the estimated or budgeted amount.
 - The specifications contain an error which causes confusion and misunderstanding among bidders.
 - The item(s) or services are no longer needed.
 - Lack of adequate competition.
 - Notice of cancellation will be sent to all businesses solicited or submitting bids.
- (12) *Bid award.*
- All bids will be awarded by town as soon as practical after the bids are opened. Bids shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid. The town reserves the right to reject any and all bids and to waive minor irregularities in an otherwise valid bid. A minor irregularity is a variation from the bid invitation that does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by the other bidders, or does not adversely impact the interests of the town.
 - In the event the lowest responsive and responsible bid for a construction project exceeds available funds, as certified by the finance department director, and such bid does not exceed such funds by more than ten percent, the town manager is authorized, when time or economic considerations preclude re-solicitation of work of reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment may be obtained only by eliminating independent deductive items specified in the invitation to bid.
- (13) *Tie bids.* In the event two or more bids are equal with respect to price, quality and service, preference will be given in the following order:
- The bidder who has its principal place of business in the Town of Fort Myers Beach, Florida.
 - The bidder who has its principal place of business in Lee County, Florida.
 - The bidder who has its principal place of business in the State of Florida.
- (14) *Selection advisory committee.*
- A selection advisory committee, consisting of a minimum of three members, may be established for the purpose of evaluating bids submitted to the town. The selection advisory committee may consist of: ~~a town department directors or their designees~~ and in the discretion of the Town Manager or designee, members of the town and Lee County community that are deemed as having special or expert knowledge in the area being solicited.
 - All members of the selection advisory committee are prohibited from speaking, answering questions or having contact with any potential bidder. During this process the selection advisory committee will operate in a "cone of silence" decorum beginning on the date of the bid posting and ending when council approves the contract.
 - All meetings of the selection advisory committee will be open to the public and notices containing the date, time, place and purpose of all selection advisory committee meetings will be conspicuously posted in Town Hall. All meetings of the selection advisory committee will be recorded and recordings will be available for public inspection.
 - The selection advisory committee will review the ~~submittal bid and response materials provided by the finance department~~ submittal bid and response materials prior to the selection committee meeting. The committee will evaluate each firm's qualifications based on past experience, expressed understanding

of the project and proposed method of handling of the project and any other criteria included for evaluation in the invitation to bid. The committee shall perform a cost or price analysis for any bid greater than \$250,000.

- e. After evaluation, the committee will formulate a recommendation consisting of a list, in order of preference, of no fewer than three firms deemed to be the most highly responsive and qualified to perform the required services, unless noted above. The town manager, after review, will forward the recommendation to the town council for consideration during a regularly schedule council meeting.
- f. If no more than two firms submit proposals, the town manager will determine whether to proceed with only two proposals, based on availability of alternatives and qualifications.
- g. In determining whether a firm is responsive and qualified, the committee will consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm. The selection advisory committee may not request, accept, or consider proposals for compensation to be paid under the contract.

(15) *Recommendation.*

- a. The town council will carefully consider the recommendations of the town manager and selection advisory committee, review the qualifications of the firms, and vote to accept or reject the ranking of the firms as proposed by the town manager.
- b. After the ranking of the firms has been determined by the town council, the council will direct the town manager or designee to initiate negotiations with the number one ranked firm. The town council may reject the ranking order recommended by the town manager and propose an alternative ranking or require re-solicitation.

(16) *Negotiation.*

- a. The town manager will negotiate a contract with the most qualified firm for compensation the town manager determines is fair, competitive, reasonable, and for which funds are available. In making such determination, the town manager may conduct a detailed analysis of the cost of the products and/or professional services required in addition to considering the scope and complexity of the project.
- b. For any lump-sum or cost-plus-a-fixed-fee contract in excess of \$60,000.00, the firm receiving the contract must execute a truth-in-negotiation certificate confirming that wage rates and other unit costs are accurate, complete and correct. The contract must include a provision indicating that the original contract price, and any additions thereto, may be adjusted to exclude increases in the contract price demonstrably related to inaccurate or incomplete billing information, or based upon wage rates and/or unit costs not agreed to as part of the contract.
- c. If the town manager is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm will be formally terminated; and, the town manager will undertake negotiations with the second ranked firm. If the town manager fails to reach an agreement with the second ranked firm, negotiations with the third ranked firm will be undertaken.
- d. If the town manager is unable to negotiate a satisfactory contract with any of the selected firms, the town manager may select additional firms in the order of their competence and qualification and submit them to council for determination and ranking and continue selection and negotiations as specified in this division until an agreement is reached or reissue the request for qualifications.

(17) *Town council approval.* The town manager will seek town attorney review of the negotiated contract prior to forwarding the contract to the town council for approval.

(b) *Small purchases.*

- (1) *Applicability.* Any purchase of ~~\$25,000.00~~ \$75,000 or less may be made in accordance with the small purchase procedures authorized in this section. Contract requirements may not be artificially divided so as to constitute a small purchase under this section. Any purchase in excess of ~~\$25,000.00~~ \$75,000.00 must be approved by town council. All small purchases shall be accompanied by a quote sheet. (see Exhibit B). Change orders to existing contracts may be made in accordance with the small purchase procedures authorized in this section up to \$75,000. Any subsequent change orders shall require approval by the town council.
- (2) *Purchases over ~~\$4,000.00~~ \$10,000 and not greater than ~~\$25,000.00~~ \$75,000.* For smaller purchases of ~~\$4,000.00~~ \$10,000 and over, no less than three written quotations must be obtained, if available (e.g., not a sole source situation or change order). The award will be made by the department director and town manager, with review by the finance department director, to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, must be recorded and maintained in the town's records. For items purchased on an ongoing basis, contracts may not be for a term in excess of two years without obtaining new quotations to determine if the price is still the lowest.
- (3) *Purchases over ~~\$500.00~~ \$5,000 and not greater than ~~\$4,000.00~~ \$10,000.* For purchases greater than ~~\$500.00~~ \$5,000 but less than ~~\$4,000.00~~ \$10,000 a minimum of three verbal, telephone, facsimile or electronic quotations may be obtained, if available. The award may be made by the department director, with review by the finance department director, to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained in the town's records.
- (4) *Purchases for ~~\$500.00~~ \$5,000 and under.* For purchases of ~~\$500.00~~ \$5,000 and under, one verbal quotation is required, provided the quotation is fair and reasonable as determined by the department director and documented on the quote sheet.
- (5) *Tie bids.* In the event two or more bids are equal with respect to price, quality and service, preference will be given in the following order:
 - a. The bidder who has its principal place of business in the Town of Fort Myers Beach, Florida.
 - b. The bidder who has its principal place of business in Lee County, Florida
 - c. The bidder who has its principal place of business in the State of Florida.

(c) *Sole source purchases.*

- (1) *Basis for sole source purchase.*
 - a. A contract may be awarded without competition when the town manager with the recommendation of the finance department director and , in conjunction with the department director determines, in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, equipment, service, or construction item. The requisitioning department must submit to the town manager ~~finance department~~ written justification as to why there is only one source (see Exhibit C).
 - b. The town manager or designee will conduct negotiations, as appropriate, as to price, delivery, and terms. The contract must be approved by the town manager. A record of sole source contracts must be maintained by the town clerk ~~finance department~~. Sole source contracts may not be automatically renewed.
 - c. At the beginning of each fiscal year, the town manager or designee ~~finance department director~~, in conjunction with the department director, will determine whether the item is still only available from a sole source. If additional sources are discovered, then bids or quotations must be obtained before the item is purchased under a new contract.
- (2) *Town council approval.* The town manager will submit all sole source purchases of \$20,000.00 or more to the town attorney for review, and submit the contract to the town council for approval.

(d) *Emergency purchases.*

- (1) *Basis for emergency purchase.* Notwithstanding any other provisions of this division, the town manager or designee may make, or authorize others to make, emergency purchases of supplies, services or construction items when there exists a threat to public health, welfare or safety; provided that such emergency purchases are made with such competition as is practicable under the circumstances. The director of the affected department will notify the town manager, who will certify the threat to public health, welfare or safety in writing and authorize the purchase of the needed items(s). The director will send a purchase order request to the finance department, together with a written explanation of the basis for the emergency purchase (see Exhibit D). The town manager or designee must approve all emergency requisitions.
- (2) *Town council approval.* The town manager will submit any emergency purchase in excess of ~~\$25,000.00~~ \$75,000.00 to the town attorney for review and submit the contract to the town council for approval, as soon as practicable after the purchase.

(e) *Purchases from other governmental entities.*

- (1) *Basis for purchase.* Purchases of goods from the federal government, any state or political subdivision thereof, or any municipality are exempt from the competitive bid requirements of this division. There must be proof of proper procedural documentation to support the other governmental agencies purchasing policy provides for competitive bidding similar to the town's competitive bid process and in cases of piggybacking contracts, certification that the other governmental entity's contract allows for this conduct (see Exhibit E).
- (2) *Town council approval.* The town manager will submit any individual purchases in an amount in excess of ~~\$25,000.00~~ \$75,000.00 to the town attorney for review and submit the contract to the town council for approval.

(f) *Purchases of goods from contracts awarded by other governmental entities by competitive bid (aka: "piggybacking").*

- (1) *Basis for purchase.* The purchase of goods under a contract awarded by another governmental entity or cooperative purchasing entity is authorized provided the town manager or designee ~~finance department director~~ makes a written determination that time and expense factors make it financially advantageous for the town to do so. In making this determination, the town manager or designee ~~finance department director~~ will consider the number of bids so solicited by the other governmental entity or cooperative purchasing entity. There must be proof of proper procedural documentation to support the other ~~governmental agencies~~ entity's purchasing policy and, in cases of piggybacking contracts, certification that the other ~~governmental~~ entity's contract allows for this conduct (see Exhibit E).
- (2) *Town council approval.* The town manager will submit any contract(s) awarded by the town based upon another governmental entity's procurement process in an amount in excess of ~~\$25,000.00~~ \$75,000.00 to the town attorney for review and submit the contract to the town council for approval.

(g) *Cooperative purchasing.*

- (1) *Basis for purchase.* The town ~~finance department~~ may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any goods, services or construction with one or more other governmental units or cooperative purchasing entities.
- (2) *Town council approval.* Cooperative purchasing agreements must be authorized pursuant to an interlocal agreement with a governmental entity or other agreement approved by town council and executed by all participating governmental units. The town manager will forward the proposed interlocal agreement to the town attorney for review and submit the interlocal agreement to the town council for approval.
- (3) The town manager may purchase goods or services through cooperative purchasing in lieu of a competitive bid as provided in this Division.

(h) *Competitive negotiation for professional services.*

- (1) *Applicability.* Contracts for professional services consisting of architecture, professional engineering, landscape architecture, or registered land surveying must be competitively negotiated in accordance with the requirements of F.S. § 287.055 (the "Consultant's Competitive Negotiation Act" or "CCNA") and within statutory thresholds.
- (2) *Request for qualification.* The department director will prepare, with the assistance of the town manager or designee ~~finance department director, and review by the town manager or designee,~~ a request for qualification for the particular project. The request will include:
 - a. A delineation of the required scope of services. The description must be sufficient to assure that all firms have the same understanding of the requested basic services.
 - b. A request for specific and general information on how the firm will proceed with the project. Specific instructions on how, when and where the proposal must be submitted.
 - c. A requirement that the proposal be submitted as a sealed package. The proposer must, if required for the particular solicitation process, submit a project price in a separate sealed envelope, clearly marked as "Project Price". The pricing envelope may not be opened unless the proposer is selected by the town to engage in negotiations.
- (3) *Addenda.*
 - a. After a request for qualifications (RFQ) is issued and before the submission deadline, town manager or designee ~~finance department director~~ , with assistance from the affected department, may issue one or more written addendum for the purpose of clarifying specifications or providing further information or other matters relating to the RFQ.
 - b. Any firm or individual desiring to provide professional services to the town must first be certified by the town as qualified pursuant to law and the regulations of the town. The town will make a finding that the firms or individuals to be employed is fully qualified to render the required service. The factors to be considered include but are not limited to the capabilities, adequacy of personnel, past record, and experience of the firm or individual.
- (4) *Public notice and qualification procedures.* The town clerk must publish, in a newspaper of general circulation, as such is defined in the Florida Statutes, a notice on each occasion when professional services are required to be purchased for a project whose projected basic construction cost is estimated by the town to be in excess of statutory thresholds \$250,000.00, or for planning or study activities when the fee for professional services is in excess of statutory thresholds \$25,000.00, other than as permitted by the CCNA. The notice must include a general description of the project, shall indicate how interested parties may apply for consideration, and the closing date for receipt of proposals, and contain such other information as the town deems pertinent. Publications of statewide and national distribution may be utilized for notices when the magnitude of the project so merits in the town's discretion. The submission deadline must be a minimum of 30 calendar days after the date the RFQ is first published.
- (5) *Selection advisory committee.*
 - a. A selection advisory committee, consisting of a minimum of three members, may be established for the purpose of evaluating bids submitted to the town. The selection advisory committee may consist of: a town department directors or their designees and in the discretion of the Town Manager or designee, members of the town and Lee County community that are deemed as having special or expert knowledge in the area being solicited.
 - b. All members of the selection advisory committee are prohibited from speaking, answering questions or having contact with any potential bidder. During this process the selection advisory committee will operate in a "cone of silence" decorum beginning on the date of the bid posting and ending when council approves the contract.

- c. All meetings of the selection advisory committee will be open to the public and notices containing the date, time, place and purpose of all selection advisory committee meetings will be conspicuously posted in Town Hall. All meetings of the selection advisory committee will be recorded and recordings will be available for public inspection.
- d. The selection advisory committee will review the submittal bid and response materials provided by the finance department prior to the selection committee meeting. The committee will evaluate each firm's qualifications based on past experience, expressed understanding of the project and proposed method of handling of the project and any other criteria included for evaluation in the invitation to bid. The committee shall perform a cost or price analysis for any bid greater than \$250,000.
- e. After evaluation, the committee will formulate a recommendation consisting of a list, in order of preference, of no fewer than three firms deemed to be the most highly responsive and qualified to perform the required services, unless noted above. The town manager, after review, will forward the recommendation to the town council for consideration during a regularly schedule council meeting.
- f. If no more than two firms submit proposals, the town manager will determine whether to proceed with only two proposals, based on availability of alternatives and qualifications.
- g. In determining whether a firm is responsive and qualified, the committee will consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm. The selection advisory committee may not request, accept, or consider proposals for compensation to be paid under the contract.

(6) *Recommendation.*

- a. The town council will carefully consider the recommendation of the town manager and review the qualifications of the firms and vote to accept, reject, or modify the ranking of the firms by the town manager.
- b. After the ranking of the firms has been determined by the town council, the council will direct the town manager or designee to initiate negotiations with the number one ranked firm. The town council may reject the ranking order recommended by the town manager and propose an alternative ranking or require re-solicitation.

(7) *Negotiation.*

- a. The town manager will negotiate a contract with the most qualified firm for professional services for compensation the town manager determines is fair, competitive, reasonable, and for which funds are available. In making such determination, the town manager may conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity.
- b. For any lump-sum or cost-plus-a-fixed-fee contract in excess of \$60,000.00, the firm receiving the contract must execute a truth-in-negotiation certificate confirming that wage rates and other unit costs are accurate, complete and correct. The contract must include a provision indicating that the original contract price, and any additions thereto, may be adjusted to increases due to inaccurate, or incomplete billing information, or based upon wage rates and/or unit costs not agreed to as part of the contract.
- c. If the town manager is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm will be formally terminated and the town manager will undertake negotiations with the second ranked firm. If the town manager fails to reach an agreement with the second-ranked firm, negotiations with the third ranked firm will be undertaken.
- d. If the town manager is unable to negotiate a satisfactory contract with any of the selected firms, the town manager may select additional firms in the order of their competence and qualification and submit them to council for determination and ranking; and, thereafter

continue selection and negotiations as specified in this division until an agreement is reached or reissue the request for qualifications.

- (8) *Town council approval.* The town manager will submit the negotiated contract to the town attorney for review and the contract to the town council for approval.
 - (9) *Prohibition against contingent fees.* Each contract entered into by the town for professional services must contain a prohibition against contingent fees as follows: "The architect (or registered land surveyor or professional engineer as applicable) warrants that he/she has not employed, or retained any company or person, other than a bona fide employee working solely for the architect (or registered land surveyor or professional engineer, as applicable) nor offered any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement." For the breach or violation of this provision, the town has the right to terminate the agreement without liability and, at its discretion, deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.
 - (10) *Reuse of existing plans.* There is no public notice requirement or utilization of the selection process for projects in which the town is able to reuse existing plans from a prior project. However, with plans that the town intends to reuse at some future time, the original public notice must contain a statement that the plans are subject to reuse in accordance with F.S. § 287.055(11).
 - (11) *Exception to CCNA process—Emergencies.* Under emergencies as defined by F.S. § 287.055, as amended, the procedure set forth in the statute must be followed and supersedes anything to the contrary set forth in this subsection (h).
 - (12) *Exception to CCNA process—Continuing contracts.* In the event that the continuing contract provisions of F.S. § 287.055 apply to acquisition of professional services, the procedure set forth in the statute will be followed and supersedes anything to contrary set forth in this subsection (h).
- (i) *Request for proposal.*
- (1) *Applicability.* Contracts for goods and/or services, which are not subject to the Consultant's Competitive Negotiation Act and for which uniform detailed specifications cannot be provided, may be obtained in accordance with this section. At the option of the town manager, said contracts may be negotiated by utilizing the selection advisory committee as specified in subsection (h)(3) above.
 - (2) *Request for proposal.* The department director will prepare, with the assistance of the ~~finance department director, and review by~~ the town manager or designee, a request for qualification for the particular project. The request shall include:
 - a. A delineation of the required scope of services. The description must be sufficient to assure that all firms have the same understanding of the requested basic services.
 - b. A request for specific and general information on how the firm will proceed with the project. Specific instructions on how, when, and where the proposal must be submitted.
 - c. A requirement that the proposal be submitted as a sealed package. The proposer must, if required for the particular solicitation process, submit a project price in a separate sealed envelope, clearly marked as "Project Price". The pricing envelope may not be opened unless the proposer is selected by the town to engage in negotiations.
 - (3) *Addenda.* After a request for proposals is issued and before the submission deadline, the town manager or designee ~~the finance department~~ may issue one or more written addendum for the purpose of clarifying specifications or other matters relating to the RFP/RFQ.
 - (4) *Statement of qualifications.* Persons and firms interested in providing goods and/or services to the town in response to an RFP issued pursuant to this section may submit statements of qualification and expressions of interest in providing such goods and/or services.
 - (5) *Public notice.* The town will provide reasonable notice of the need for such goods and/or services through a request for proposals (RFP). The RFP must describe the goods and/or services

required, list the types of information and data required of each offeror, and state the relative importance of particular specifications or qualifications.

(6) *Selection advisory committee.*

- a. A selection advisory committee, consisting of a minimum of three members, may be established for the purpose of evaluating bids submitted to the town. The selection advisory committee may consist of: ~~a~~—town department directors or their designees and in the discretion of the Town Manager or designee, members of the town and Lee County community that are deemed as having special or expert knowledge in the area being solicited.
- b. All members of the selection advisory committee are prohibited from speaking, answering questions or having contact with any potential bidder. During this process the selection advisory committee will operate in a "cone of silence" decorum beginning on the date of the bid posting and ending when council approves the contract.
- c. All meetings of the selection advisory committee will be open to the public and notices containing the date, time, place and purpose of all selection advisory committee meetings will be conspicuously posted in Town Hall. All meetings of the selection advisory committee will be recorded and recordings will be available for public inspection.
- d. The selection advisory committee will review the ~~submittal~~ bid and response materials provided by the finance department prior to the selection committee meeting. The committee will evaluate each firm's qualifications based on past experience, expressed understanding of the project and proposed method of handling of the project and any other criteria included for evaluation in the invitation to bid. The committee shall perform a cost or price analysis for any bid greater than \$250,000.
- e. After evaluation, the committee will formulate a recommendation consisting of a list, in order of preference, of no fewer than three firms deemed to be the most highly responsive and qualified to perform the required services, unless noted above. The town manager, after review, will forward the recommendation to the town council for consideration during a regularly schedule council meeting.
- f. If no more than two firms submit proposals, the town manager will determine whether to proceed with only two proposals, based on availability of alternatives and qualifications.
- g. In determining whether a firm is responsive and qualified, the committee will consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm. The selection advisory committee may not request, accept, or consider proposals for compensation to be paid under the contract.

(7) *Recommendation.*

- a. The town council will carefully consider the recommendation of the town manager and review the qualifications of the firms and vote to accept, reject, or modify the ranking of the firms by the town manager.
- b. After the ranking of the firms has been determined by the town council, the council will direct the town manager or designee to initiate negotiations with the number one ranked firm. The town council may reject the ranking order recommended by the town manager and propose an alternative ranking or require re-solicitation.

(8) *Negotiation.*

- a. The town manager shall negotiate a contract with the most qualified firm for compensation the town manager determines is fair, competitive, reasonable and for which funds are available. In making such determination, the town manager may conduct a detailed analysis of the cost of the services required in addition to considering their scope and complexity.

- b. For any lump-sum or cost-plus-a-fixed-fee contract in excess of \$60,000.00, the firm receiving the contract must execute a truth-in-negotiation certificate confirming that wage rates and other unit costs are accurate, complete and correct. The contract must include a provision indicating that the original contract price and any additions thereto may be adjusted to exclude increases due to inaccurate, incomplete billing information, or based upon wage rates and unit costs not agreed to as part of the contract.
 - c. If the town manager is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm will be formally terminated and the town manager will undertake negotiations with the second ranked firm. If the town manager fails to reach an agreement with the second ranked firm, negotiations with the third ranked firm will be undertaken.
 - d. If the town manager is unable to negotiate a satisfactory contract with any of the selected firms, the town manager may select additional firms in the order of their competence and qualification and submit them to council for determination and ranking continue selection and negotiations as specified in this division until an agreement is reached or reissue the request for proposals.
- (9) *Discussions.* The town manager or the selection advisory committee may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. These discussions must be conducted at a duly notice meeting and be open to the public.
- (10) *Award.*
- a. Proposed awards above ~~\$25,000.00~~ \$75,000.00 must be formally approved by the town council. The award should be made to the offeror determined to be best qualified based on the evaluation factors set forth in the RFP and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.
 - b. Nothing in this division may be construed to prevent the hiring of expert witnesses and other professionals necessary to assist the town manager or town attorney in representing the town, but such hiring may be subject to council approval.
- (11) *Town council approval.* The town manager will submit the request for proposal of ~~\$25,000.00~~ \$75,000.00 or more to the town attorney for review and then submit the contract to the town council for approval.
- (12) *Cancellation of request for proposals.* A request for proposal, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part with or without cause. The following is considered good cause for rejection of all proposals:
- a. All bids exceed the estimated or budgeted amount.
 - b. The specifications contain an error which causes confusion and misunderstanding among bidders.
 - c. The items or services are no longer needed.
 - d. Lack of adequate competition.
 - e. Notice of cancellation will be sent to all businesses solicited or submitting bids.

Sec. 2-481. - Vendor list.

Vendor list. The finance department does not maintain a "vendor list" of vendors who desire to receive invitations of bids and/or requests for proposals by mail.

Sec. 2-482. - Specifications for all solicitations.

- (a) *General.* All specifications must be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the town's needs and may not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to, those prepared for the town by architects, engineers, designers, and draftsmen.
- (b) *Brand name or equal specification.*
 - (1) *Use.* Brand name or equal specifications may be used when the department director and town manager or designee ~~finance department director~~ determines in writing that:
 - a. No other design or performance specification or qualified products list is available;
 - b. Title does not permit the preparation of another form of purchase description, not including a brand name specification;
 - c. The nature of the product or nature of the town's requirements makes use of a brand name or equal specification suitable; or
 - d. Use of a brand name or equal specification is in the town's best interest.
 - (2) *Designation of several brand names.* Brand name or equal specifications will seek to designate three, or as many different brands as practicable, as "or equal" references and further state that substantially equivalent products to those designated will be considered for award.
 - (3) *Required characteristics.* Unless the town manager or designee ~~finance department director~~ and the affected department director determine in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications must include a description of the particular design, functional, or performance characteristics which are required.
 - (4) *Nonrestrictive use of brand name or equal specifications.* When a brand name or equal specification is used in a solicitation, the solicitation should contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.
- (c) *Brand name specification.* Since use of a brand name specification is restrictive of product competition, it may be used only when the ~~finance department director~~ town manager or designee makes a written determination that only the identified brand name items will satisfy the town's needs.
- (d) *Competition.* The town manager or designee ~~finance department director~~, in conjunction with the department director, will seek to identify sources from which the designated brand name items can be obtained and solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the purchase will be made in accordance with subsection 2-480(c) (Sole source purchases).

Sec. 2-483. - Performance bond and insurance requirements.

The town manager or designee ~~finance department director~~ will require a public construction bond for all contracts listed in subsection 2-480(c) (Sole source purchases) and may require a performance bond and/or evidence of sufficient insurance for other contracts when necessary to protect the town.

Sec. 2-484. - Construction contracts and supporting documents.

- (a) *Construction contracts.* All construction contracts will be reviewed by the town attorney and be executed by the mayor and town clerk and by either the president or vice-president of the contractor. Other signatories may sign on behalf of the contractor provided there is an attached certified copy of a corporation resolution authorizing that person to sign. The corporate seal of the contractor must be affixed to the contract.

- (b) *Insurance.* All construction contracts must be accompanied by a certificate of insurance indicating coverage in the amounts required by the bid specifications and name the Town of Fort Myers Beach as an additional insured, not just a certificate of holder.
- (c) *Public construction bond.* Any person entering into a contract for the construction of a public building or public work, or for repairs upon a public building or a public work must, before commencing work, execute, deliver to the town, and record in the public records of Lee County, Florida, a public construction bond issued by a surety authorized to do business in the State of Florida.
 - (1) *Form.* The bond must be in substantially the following form:

PUBLIC CONSTRUCTION BOND

BY THIS BOND, We, _____, as Principal and _____, a corporation, as Surety, are bound to the Town of Fort Myers Beach, herein called Owner, in the sum of \$_____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

Performs the contract dated _____, between Principal and Owner for construction of _____, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and promptly makes payments to all claimants, as defined in F.S. § 255.05(1), supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract: and Pays Moller al losses, damages, expenses, costs and attorney's fees, including appellate proceedings that owner sustains because of default by Principal under the contract; and

Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or non-compliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

- (2) *Waiver of bond.* Town council may waive the public construction bond requirement for project with a total contract amount of \$200,000.00 or less.
- (3) *Alternative form of security.*
 - a. In lieu of a public construction bond, a contractor may file with the town an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, an irrevocable letter of credit, or a security of a type listed in F.S. ch. 652, pt. II.
 - b. Any such alternative form of security must be for the same purpose and be subject to the same conditions as those applicable to the public construction bond. The determination of the value of an alternative form of security will be made by the town.
- (d) *Change orders.*
 - (1) No work outside the scope of the original contract may be performed prior to approval of a change order by the town council; provided, however, that town council may delegate this authority, up to a specified amount, for contracts where council approval of all change orders would hinder or delay work progress.
 - (2) This does not include contingency changes with a contract which fall within the contingency amount of that contract. These are approved by the department director and town manager.
 - (3) All change orders must be in writing and have town manager approval.

Sec. 2-485. - Disqualification of vendors and bidders.

- (a) *Procedure for disqualification.* After reasonable notice to the person or firm involved and a reasonable opportunity for the person or firm to respond, the town manager is authorized to disqualify that person or firm for cause from consideration for award of contracts. The disqualification may be for a period of not more than four years.
- (b) *Grounds for disqualification.* Grounds for disqualification include, but are not limited to:
 - (1) Conviction for commission of a criminal offense as an incident to obtaining;
 - (2) Attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 - (3) Conviction under state or federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects the person or firm's ability to perform work for the town;
 - (4) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
 - (5) Deliberate failure without good cause to perform in accordance with contract specifications or within the time limit provided in a contract;
 - (6) Financial irresponsibility;
 - (7) Unethical conduct; disciplinary action against the person or firm's professional or contractors;
 - (8) License; or
 - (9) Findings under bid protest that the firm acted fraudulently or in bad faith.
- (c) *Notice of decision.* A copy of a decision to disqualify must be mailed to the affected person or firm by certified mail, return receipt requested.
- (d) *Appeal.* Any person or firm who is disqualified may appeal the decision to the town council, provided a notice of appeal is filed within 30 calendar days of the date the decision to disqualify is rendered.

Sec. 2-486. - Appeals and remedies.

- (a) *Bid protests.*
 - (1) *Right to protest.* Any person or firm who is affected adversely by the town's decision may protest to the town council.
 - (2) *Time limits and form of protest.*
 - a. A protest with respect to an invitation to bids or request for proposals must be submitted in writing to the town clerk prior to the opening of bids or the closing date of proposals.
 - b. Written notice of intent to a protest a bid be filed with the town clerk within 72 hours (excluding Saturday, Sundays, and legal holidays) after the posting of the bid tabulation or after receipt of the notice of award or notice of intent to award the contract, whichever is later.
 - c. A formal written protest must be filed within ten calendar days after the filing of the initial written notice of intent to protest. The formal written protest must state with particularity the fact and law upon which the protest is based.
 - d. Failure to file a notice of intent to protest or failure to file a formal written protest within the time limits proscribed herein will constitute a waiver of the right to protest.
 - e. The protestor must post a bond, payable to the Town of Fort Myers Beach in an amount equal to five percent of the total bid or \$20,000.00, whichever is greater, but not to exceed the value of the bid.

- f. The protest bond will be designated and held for payment of any costs that may be levied against the protesting entity by the Town of Fort Myers Beach as a result of a frivolous protest.

(3) *Hearing.*

- a. If the subject of a protest is not resolved by mutual agreement within 14 calendar days after receipt of a formal written protest, the matter may, at the option of the town council, be referred to a hearing officer who will conduct a hearing within 15 calendar days of receipt of the referred formal written protest.
 - b. The hearing officer will render a written recommended order within 30 calendar days after the hearing. The recommended order will be scheduled on the next council agenda for final action.
 - c. If council so elects, the protest may be heard directly by the town council.
- (b) *Stay of action.* Upon receipt of a formal written protest that has been timely filed, the town will stop the bid solicitation process or the contract award process until the subject of the protest is resolved either informally or by town council action, unless the town manager sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety or welfare.
- (c) *Appeal of decision.* If a protest is denied, the protestor will have 30 calendar days to file for relief in Circuit Court in Lee County, Florida.

Sec. 2-487. - Remedies for solicitations or awards in violation of law.

- (a) *Closing date for receipt of proposals.* If prior to the bid opening or closing date for receipt of proposals, the town manager or designee ~~finance department director~~ and the affected department director, after consultation with the ~~town manager and town~~ attorney, determines that a solicitation is in violation of federal, state or municipal law, then the solicitation may be cancelled or revised to comply with applicable law.
- (b) *Prior to award.* If after bid opening or the closing date for receipt of proposals, the town manager or designee ~~finance department director~~ and the affected department director, after consultation with the ~~town manager and town~~ attorney, determines that a solicitation or proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award will be cancelled.
- (c) *After award.* If, after an award the town manager or designee ~~finance department director~~ and the affected department director, after consultation with the ~~town manager and town~~ attorney, determines that a solicitation or award of a contract was in violation of applicable law, then:
 - (1) If the person or firm awarded the contract has not acted fraudulently or in bad faith;
 - (2) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the town; or
 - (3) The contract may be terminated, and the person awarded the contract will be compensated for any costs reasonably incurred under the contract, plus a reasonable amount for overhead, prior to the termination; or
 - (4) If the person or firm awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interest of the town.

Sec. 2-488. - Standard of conduct for town officials and employees.

All town officials and employees shall adhere to the Code of Ethics for Public Officers and Employees, adopted by the Florida Legislature as Part III of Chapter 112, Florida Statutes, as amended from time to

time ("Ethics Code"). In the event of a conflict between any term, condition or requirement in this Section and the Ethics Code, the Ethics Code shall be followed.

- (a) *Failure to follow proper purchasing procedures.* It is a violation of this division for any employee to order, contract for, or purchase any materials, supplies, or services except in strict compliance with all purchasing procedures as provided herein or as established by the the town manager or designee finance department director.
- (b) *Solicitation or acceptance of gifts.* No town official or employee may solicit or accept anything of value from any vendor or bidder, including gift, loan, reward promise of future employment, favor, or service, based upon any understanding that the actions of said official or employee would be influenced thereby.
- (c) *Doing business with the town.*
 - (1) No employee or public official acting in his/her official capacity may either directly or indirectly purchase, rent, or lease any realty, goods, or services for the town from any business entity or which he/she or his/her spouse or child is an officer, partner, director, or proprietor or in which such official or employee or his/her spouse or child, or any combination of them, has a material interest.
 - (2) No town official or employee, acting in a private capacity, may rent, lease, or sell any realty, goods, or services to the town.
- (d) *Unauthorized compensation.* No town official or employee or his/her spouse or minor child may, at any time, accept any compensation payment, or thing of value when that person knows, or with the exercise of reasonable care, should know, that it was given to influence action in which the official or employee was expected to participate in his/her official capacity.
- (e) *Conflicting employment or contractual relationship.* No town official or employee may have or hold any employment or contractual relationship with any business entity that is doing business with the town; provided however, that this section may not be construed to prevent any officer or employee from accepting any other employment or following any pursuit that does not interfere with the full and faithful discharge of the officer or employee's duties in his/her employment with the town.
- (f) *Contingent fees.* No town official or employee may be retained, or retain a person, to solicit or secure a town contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.
- (g) *Confidential information.* No town official or employee may disclose or use any information not available to members of the general public and gained by reason of his/her official position for his/her personal gain or benefit of any other person or business entity.
- (h) *Penalties.* Violation of any provision of this section may subject the officer or employee to discipline in the form of one or more of the following:
 - (1) *In the case of a town official:*
 - a. Forfeiture of office as provided in the town Charter.
 - b. Restitution of any pecuniary benefit received because of the violation committed.
 - (2) *In the case of a town employee:*
 - a. Dismissal from employment, provided that if the employee is found guilty of willful violation, then dismissal from employment is mandatory.
 - b. Suspension from employment for not more than 90 days without pay.
 - c. Demotion.
 - d. Reduction in salary level.
 - e. Oral or written reprimands or warnings.

- f. Any discipline imposed shall be subject to the town's personnel rules.
- (i) *Contracts voidable.* If a violation of any of the prohibitions contained in this section occurs, then the contract involved may, at the option of the town, be declared null and void or voidable.

I have read, understand and acknowledge the Town's purchasing policy and my responsibilities under this policy as a Town Employee. I acknowledge that if I have questions I will contact the ~~Finance Director~~ or Town Manager.

_____	_____
Name	Date

Sec. 2-489. - Cone of silence.

- (a) *Purpose and intent.* The requirements of section, "cone of silence", as amended, are applicable to the town. It is the intent of this division to prevent potential bidders, offerors or service providers from communicating with town department heads, their staff, town council or selection and evaluation committee members during the period of time in which the cone of silence is imposed.
- (1) *Meaning.* "Cone of silence" is defined to mean a prohibition on:
- Any communication regarding a particular RFP, RFQ or IFB between a potential offeror, service provider, bidder, lobbyist, or consultant and the town's professional staff including, but not limited to, the town manager and his or her staff;
 - Any communication regarding a particular RFP, RFQ or IFB between the mayor, town council or their respective staffs and any member of the town's professional staff including, but not limited to, the town manager and his or her staff;
 - Any communication regarding a particular RFP, RFQ or IFB between a potential offeror, service provider, bidder, lobbyist, or consultant and any member of the selection committee or evaluation committee;
 - Any communication regarding a particular RFP, RFQ or IFB between the mayor, town council or their respective staffs and any member of the selection committee or evaluation committee;
 - Any communication regarding a particular RFP, RFQ or IFB between a potential offeror, service provider, bidder, lobbyist, or consultant and the mayor, town council and their respective staffs; and
 - The town manager and the chairperson of the selection committee may communicate about a particular selection committee recommendation, but only after the committee has submitted an award recommendation to the town manager and, provided that should any change occur in the committee recommendation, the content of the communication and of the corresponding changes must be described in writing and filed by the town manager.
- (2) *Allowed communications.* Notwithstanding the foregoing, the cone of silence does not apply to:
- Communications with the town attorney and his or her staff;
 - Duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the town manager makes a written recommendation;
 - Communications regarding a particular RFP, RFQ or IFB between any person and the the finance department director or designee, provided the communication is limited strictly to

matters of process or procedure already contained in the corresponding solicitation document; and

- d. Communications regarding a particular proposal, quotation or bid between the the town manager or designee ~~finance department director or designee~~ and a member of the selection committee or evaluation committee provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.

(b) *Procedure.*

- (1) A cone of silence will be imposed upon each RFP, RFQ and IFB after the advertisement of the RFP, RFQ or IFB. At the time of imposition of the cone of silence, the town manager or designee ~~finance department director or designee~~ will provide for public notice of the cone of silence. The the town manager or designee ~~finance department director~~ will issue a written notice thereof to the affected departments, file a copy of such notice with the town clerk, with an email copy thereof to each town council member, and include in any public solicitation for supplies or services a statement disclosing the requirements of this division. Notwithstanding any other provision of this section, the imposition of a cone of silence on a particular RFP, RFQ or IFB will not preclude procurement staff from obtaining industry comment or performing market research provided all communications related thereto with a potential offeror, service provider, bidder, lobbyist, or consultant are in writing or are made at a duly noticed public meeting.
- (2) The cone of silence terminates at the time town council votes to award the contract.
- (3) If the town manager rejects all bids or proposals submitted in response to an RFP or IFB and concurrently requests the re-issuance of an RFP or IFB, the rejected bids or proposals will remain under the cone of silence until such time the town manager issues a written recommendation of award or until the town manager withdraws the re-issued RFP or IFB.

Sec. 2-490. - Exhibits.

All exhibits referenced in this division including:

Exhibit A Bid Tally Sheet

Exhibit B Quote Sheet

Exhibit C Sole Source Purchase

Exhibit D Emergency Purchase; and

Exhibit E Cooperative Purchase Justification,

are on file with the town.

Secs. 2-491—2-505. - Reserved. 8

24-11, Purchasing Ordinance Amendments Final

Final Audit Report

2024-05-15

Created:	2024-05-14
By:	Amy Baker (AMY@FMBGOV.COM)
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"24-11, Purchasing Ordinance Amendments Final" History

-  Document created by Amy Baker (AMY@FMBGOV.COM)
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2024-05-15 - 3:40:07 AM GMT
-  Document e-signed by Amy Baker (AMY@FMBGOV.COM)
E-signature obtained using URL retrieved through the Adobe Acrobat Sign API
Signature Date: 2024-05-15 - 12:58:36 PM GMT - Time Source: server
-  Agreement completed.
2024-05-15 - 12:58:36 PM GMT

Recommendation Recommend the Applicant updates their labor policy to include specific language outlining how employees will be paid during an emergency situation. Labor policy should be: • Reasonable • Not subject to Federal funding • Applied uniformly regardless of Presidential declaration • Include non-discretionary criteria for when the Applicant activates various pay types Upload a copy of the updated and approved policy.
Recommend the Applicant updates their labor policy to include specific language outlining how employees will be paid during an emergency situation. Labor policy should be: • Reasonable • Not subject to Federal funding • Applied uniformly regardless of Presidential declaration • Include non-discretionary criteria for when the Applicant activates various pay types Upload a copy of the updated and approved policy.
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Upload a copy of the updated and approved policy.
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Upload a copy of the updated and approved policy.
Recommend the Applicant updates their labor policy to include meals for employees and volunteers engaged in eligible Emergency Work, including those at Emergency Operation Centers, provided the individuals are not receiving per diem. Upload documentation that outlines the updated and approved labor policy.
Recommend the Applicant develop and implement written policies and procedures outlining routine maintenance schedules, to include • Documentation requirements (to include retention schedule) for facilities within their jurisdiction • Process outlining roles and responsibility of who, how, and when staff are required to conduct routine maintenance on the facilities.
Upload a copy of the approved procedures.
Recommend the Applicant develop and implement written policies and procedures outlining routine maintenance schedules, to include • Documentation requirements (to include retention schedule) for facilities within their jurisdiction • Process outlining roles and responsibility of who, how, and when staff are required to conduct routine maintenance on the facilities.
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Upload a copy of the approved procedures.
Recommend the Applicant develops and implements procedures for their equipment inventory records noting the FEMA required information, to include: • Who will complete the inventory • When the inventory will be conducted • How often the inventory will be reviewed and the documentation that will be utilized to report the inventory • Type of equipment and attachments used (including year, make, and model, and Size/capacity)
Upload a copy of the approved plan.
Recommend the Applicant develops and implements written policies and procedures on how they will document their administrative costs. Upload documentation that outlines the updated and approved policy/procedures.
Recommend the Applicant develops and implements a written process and procedure to accurately document donated resources' labor, equipment, and materials. Upload documentation that outlines the updated and approved process and procedure.
Recommend the Applicant completes the following action: • Develop a debris management plan in accordance with guidance provided by FEMA. • Send the debris management plan to F-ROC@em.myflorida.com for FDEM review.
Upload a copy of the FDEM reviewed debris management plan and the review confirmation email.
Recommend the Applicant updates/implements formal guidance documenting the need to evaluate the pre-determined list of all of the locations of their temporary reduction sites and permanent disposal sites at least every year. Procedures must

include that the Applicant will evaluate every year or include a section that notes the last reviewed date. Upload a copy of the approved formal guidance
Conducting the following steps to ensure the use of small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms when possible: 1. Place such organizations that are qualified on solicitation lists. 2. Ensure such organizations are solicited whenever they are potential sources. 3. Divide total requirements, when economically feasible, into smaller tasks or quantities. 4. Establish delivery schedules, where the requirement permits, encouraging its participation. 5. Use the services and assistance, as appropriate, of the U.S. Small Business Administration (SBA) and the Minority Business Development Agency of the Department of Commerce. 6. Require prime contractor to conduct the above steps if subcontracting. The procedures must include the Applicant's process of documenting its compliance with the six affirmative steps.
Recommend the Applicant competitively bids and procures a stand-by contract with a responsible vendor, ensuring that the following steps are completed: • Solicitation/advertisement is made public • Notice of award documentation is developed • For sealed bid proposals, vendor was awarded a fixed fee contract and was the lowest, most responsive, and qualified bidder (or a cost analysis was created) • Explanations are provided if selected vendor is not the lowest, most responsive, or qualified • All required documentation was provided by responding vendors and used to evaluate proposals • Cost specific information was addressed in the proposal or contract • Responses to the request by vendors are appropriate Upload a copy of the approved contract and procurement documentation.
Recommend the Applicant competitively bids and procures a stand-by contract with a responsible vendor, ensuring that the following steps are completed: • Solicitation/advertisement is made public • Notice of award documentation is developed • For sealed bid proposals, vendor was awarded a fixed fee contract and was the lowest, most responsive, and qualified bidder (or a cost analysis was created)

- Explanations are provided if selected vendor is not the lowest, most responsive, or qualified
- All required documentation was provided by responding vendors and used to evaluate proposals
- Cost specific information was addressed in the proposal or contract
- Responses to the request by vendors are appropriate

Upload a copy of the approved contract and procurement documentation.

Recommend the Applicant develops a pre-qualified vendor list for debris removal activities.

Recommend the Applicant develops and implements written procedures on how they will maintain contractor oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Upload a copy of approved procedures.

1. **Request:**

Meeting Date: March 16, 2026

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A COMMERCIAL LEASE WITH FMB MATANZAS LLC FOR DOCK SPACE, UPLAND RESTROOM FACILITIES, AND OFFICE SPACE FOR THE MATANZAS PASS MOORING FIELD AND NEIGHBORHOOD SERVICES OPERATIONS; AUTHORIZING THE MAYOR TO EXECUTE THE COMMERCIAL LEASE ON BEHALF OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Contract with the addition of office space. Allowing the Mooring Field to move out of the temporary trailer into office space that will be shared with the Code Enforcement department.

What the action accomplishes:

Provides a location for Upland Services, dock space, and office facilities for the next 2 years.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Curtis Ludwig, Harbormaster

5. **Background:**

The Mooring Field has been working out of temporary trailer since Hurricane Ian. This lease will allow for the Mooring Field and Neighborhood Services to be operating out of the same office space with greater coverage of the downtown area. This will allow the Mooring Field to expand our services such as renting mailboxes in the future to our Mooring Field community and future sales.

Attachments:

1. 26-057, Mooring Field Facility Lease
2. Exhibit A to Resolution 26-057, Commercial Lease Agreement - FMB Mooring Field Office
3. Matanzas Pass Inn - Upland Facility Offer Letter
4. Previous Agreement with Mantanzas Inn - Mooring Field Office

Financial Impact:

\$5,000.00/month for 24 months split between Mooring/Maritime and Neighborhood Services.

6. **Alternative Action**

Not approve a lease.

7. **Management Recommendations:**

To approve the commercial lease agreement and authorize the Mayor to execute the lease.

8. **Recommended Approval:**

Patty Prevost, Senior Administrative Assistant
Frankie Kropacek, Community Development Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 3/5/2026
Approved - 3/5/2026
Approved - 3/5/2026
Approved - 3/6/2026
Approved - 3/9/2026
Final Approval - 3/9/2026

RESOLUTION NUMBER 26-057

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A COMMERCIAL LEASE WITH FMB MATANZAS LLC FOR DOCK SPACE, UPLAND RESTROOM FACILITIES, AND OFFICE SPACE FOR THE MATANZAS PASS MOORING FIELD AND NEIGHBORHOOD SERVICES OPERATIONS; AUTHORIZING THE MAYOR TO EXECUTE THE COMMERCIAL LEASE ON BEHALF OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach (“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 has continuously operated and maintained a public mooring field known as the Matanzas Pass Mooring Field; and

WHEREAS, the Town has previously executed facility and office leases to provide amenities and facilities for the Matanzas Pass Mooring Field patrons and Town staff; and

WHEREAS, previous agreements have since expired and the Town desires to execute a new lease agreement to continue to provide dock space, upland restroom facilities, and office space for the mooring field and neighborhood services operations in the monthly amount of \$5,000.00 for 24-months; and

WHEREAS, funding is currently available through the Town’s budget; and

WHEREAS, the Town Council deems it to be in the best interests of the business owners, residents, and visitors of the Town to approve and execute the Commercial Lease.

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 findings of the Town Council.

Section 2. The Town Council hereby approves the Commercial Lease attached hereto as “Exhibit A” and authorizes the Mayor to execute the Commercial Lease.

Section 3. The Town Clerk is directed through the Town Manager to record a copy of the Commercial Lease in the public records of Lee County.

Section 4. The Resolution shall be effective 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	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____
John McLean, Council Member	_____

ADOPTED this 16th day of March 2026 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 _____ 2026.

COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT (“Lease”) made this ____ day of _____, 2026 by and between FMB Matanzas LLC, a Florida corporation, hereinafter referred to as “Landlord”, 5880 Staley Rd, Fort Myers, FL 33905, and the Town of Fort Myers Beach, a Florida municipal corporation, 6231 Estero Boulevard, Fort Myers Beach, FL 33931, hereinafter referred to as “Tenant”, for and in consideration of the sums herein stated, and of the covenants and agreements hereinafter contained to be mutually kept and to be performed by the parties hereto, the parties hereby agree as follows:

ARTICLE I: PREMISES; TERM

1.1 Leased Premises.

1.1.1 Description. Tenant shall occupy the premises as shown on the sketch in Exhibit A. (the “Premises”) also known as _____, at the rental rate and upon the other terms and conditions described in this Lease Agreement, together with the appurtenant rights described in subsection 1.1.2.

1.1.2 Appurtenant Rights. The appurtenant rights referred to in paragraph 1.1.1 which are a material part of the consideration to Tenant for this Lease are ingress and egress. Tenant, its employees and Tenant’s authorized agents shall have full and unimpaired access to the Premises at all times.

1.2 Term of Lease; Effective Date and Conditions. The term of this Lease shall be 2 years, effective as of the ____ day of _____, 2026 and terminating on the ____ day of _____, 2026.

1.3 Holding Over. Any holding over by Tenant after expiration of the term shall not be a renewal of this Lease but shall be considered a month-to-month tenancy at the total monthly rental in effect for the month preceding termination.

ARTICLE II: RENT

2.1 Rent.

2.1.1 Base Rent. Tenant agrees to and shall pay to the Landlord the sum of \$5,000.00 per month, payable on the first day of each month beginning on April 1, 2026 for the duration of the term of the Lease. Rent from the effective date of the lease to April 1st 2026 shall be a pro-ration of the monthly rate.

2.2 Security Deposit. NONE.

ARTICLE III: USE OF PREMISES

- 3.1 Tenant's Use.** The leased premises shall be used and occupied by Tenant solely as a public office for the Town unless otherwise agreed by Landlord. The Tenant may restrict parking to its employees and staff.
- 3.2 Landlord's Use.** Landlord shall have the right to use the areas adjacent to the Premises if the Landlord's use does not conflict with or otherwise impede Tenant's use of the Premises.
- 3.3 Compliance with Law.** Tenant shall comply with and conform to all federal, state, and local laws, ordinances, regulations and rulings relating to the condition, use, improvement, repair, or occupancy of the Premises.
- 3.4 Manner of Use.** Tenant agrees to not permit any public nuisance or any other act or thing which would disturb the quiet enjoyment of any occupant of adjacent areas to the Premises.

ARTICLE IV: UTILITIES AND TAXES

- 4.1 Utilities.** It shall be Tenant's obligation to pay for all utilities used by Tenant in connection with the Premises.
- 4.2 Real Estate Taxes.**
- 4.2.1** Tenant is currently exempt from the payment of all real estate taxes.
- 4.2.2 Other Taxes.** Tenant is exempt from the payment of all sales tax and taxes on Tenant's leasehold interest and personal property placed in, upon, or about the Premises and all privilege gas, sewer and any other occupancy taxes.

ARTICLE V: ALTERATIONS, REPAIRS, REMOVAL OF EQUIPMENT, RESTORATION

- 5.1 Conditions of Property, Alteration, Additions, and Improvements.** Tenant will assume responsibility for the interior build-out of the office space, customized to Tenant's operational needs. Landlord shall be responsible for completing the installation and finishing of the restroom located within the office suite prior to occupancy.
- 5.2 Repairs and Maintenance.**
- 5.2.1** Tenant shall, at its own cost and expense, maintain the premises in good condition and repair throughout the term of this Lease, ordinary wear and tear excepted at Tenant's expense, without reimbursement from the Landlord, and without deductions from the rental amount due to the Landlord. At the end of the Term or other termination of this Lease, Tenant shall deliver the Premises with all improvements thereon in good repair and condition, reasonable wear and tear, and damage or destruction by fire or other casualty, excepted. Tenant shall maintain said Premises within ADA regulations. Tenant will perform daily janitorial cleaning to maintain immediate hygiene standards. Landlord shall handle regular

professional maintenance and structural upkeep to ensure the facilities remain in good working order.

5.2.2 In the event Tenant shall fail to maintain the Premises in accordance with Paragraph 5.2.1, Landlord shall have the right (but not the obligation) to cause all repairs or other maintenance to be made and the reasonable costs therefor expended by the Landlord shall be paid by Tenant upon written demand.

5.3 Surrender or Removal. All alterations, installations, changes, additions, repairs, or improvements which are made in, on, or to the Premises and all fixtures, trade fixtures, and equipment installed therein by Tenant shall be and remain the property of Tenant, and Tenant shall have the right at any time to remove such property provided that Tenant shall repair all damage to the Premises resulting from such removal.

ARTICLE VI: INSURANCE AND INDEMNITY

6.1 Obligation of Tenant to Provide Public Liability Insurance. Tenant shall, at its sole cost and expense, procure and maintain during the term of this Lease comprehensive public liability insurance with limits of not less than three hundred thousand dollars (\$300,000.00) in case of injury or damage to one person, and five hundred thousand dollars (\$500,000.00) in case of injury or damage to more than one person in the same accident or occurrence, and fifty thousand dollars (\$50,000.00) in case of damage to property. Landlord shall be named as Loss Payees on any such policy of insurance.

6.2 Notice of Cancellation. All insurance policies described in paragraph 6.1 shall provide that Landlord shall be given not less than thirty (30) days written notice prior to cancellation of or change in the policies.

6.3 Delivery of Policies; Payment of Premiums. Upon the commencement of the term of this Lease, Tenant shall deliver to Landlord copies of the policies of insurance required pursuant to paragraph 6.1 or, in the case of blanket coverage, certificates evidencing the existence of such insurance, together with satisfactory evidence that the premiums for all such insurance have been paid. Not less than thirty (30) days before the expiration of any insurance coverage, Tenant shall deliver to Landlord satisfactory evidence that such insurance has been renewed and that the required premiums have been paid.

6.4 Indemnification of Landlord. Irrespective of any insurance carried by Tenant, pursuant to this Lease or otherwise, Tenant shall, to the extent permitted by Florida law without waiver of sovereign immunity, indemnify and hold Landlord harmless against and from the loss, cost, damage, or expense, including reasonable attorney's fees and court costs, arising out of any accident, casualty, or other occurrence causing injury to any person or property arising from any act of omission of Tenant, its agents, employees, or invitees or caused by or arising from any act of omission of Tenant, its agents, employees, or invitees, provided that such loss, cost, damage, or expense does not arise from any act or omission of Landlord including the willful act or negligence of Landlord or by Landlord's failure to fulfill its obligations under this Lease. This indemnification and agreement to hold

harmless 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.

- 6.5 Indemnification of Tenant.** Irrespective of any insurance carried by Landlord, pursuant to this Lease or otherwise, Landlord shall indemnify and hold Tenant harmless against and from the loss, cost, damage, or expense, including reasonable attorney's fees and court costs, arising out of any accident, casualty, or other occurrence causing injury to any person or property arising from any act of omission of Landlord, its agents, employees, or invitees or caused by or arising from any act of omission of Landlord, its agents, employees, or invitees, provided that such loss, cost, damage, or expense does not arise from any act or omission of Tenant including the willful act or negligence of Tenant or by Tenant's failure to fulfill its obligations under this Lease.

ARTICLE VII: ASSIGNMENT AND SUBLETTING

- 7.1 Assignment and Subletting.** Tenant shall not assign or otherwise transfer this Lease or its leasehold interest in the Premises, in whole or in part, nor shall Tenant sublease the Premises without prior written consent of Landlord in each instance.

ARTICLE VIII: DEFAULT PROVISIONS

- 8.1 Default by Tenant and Termination of Lease.** Each of the following events shall be a default or breach of the Lease and, at Landlord's election, shall cause a termination of the Lease:
- 8.1.1 Abandonment or Breach of Covenants.** Abandonment or surrender of the Premises or of the leasehold estate or failure or refusal to pay when due any installment of rent or any other sum required to be paid Tenant or to perform any covenant, term, or condition of this Lease.
 - 8.1.2 Receivership.** The appointment of a receiver, for any reason, including, but not limited to, assignment for benefit or creditors or voluntary or involuntary bankruptcy proceedings.
 - 8.1.3 Bankruptcy.** The filing of a voluntary or involuntary petition by or against Tenant under any law for the purpose of adjudicating Tenant bankrupt, or the filing of any position or other proceedings under the Bankruptcy Act, or the undertaking of any reorganization, liquidation, dissolution, arrangement, composition or assignment for the benefits of creditors, on account of or to prevent bankruptcy or insolvency.
- 8.2 Notice of Default.** As a precondition to pursuing any remedy for any default by either party, the nonbreaching party shall give written notice of default to the breaching party. Each notice of default shall specify the alleged event of default and the intended remedy.

- 8.3 Right to Cure Defaults.** If the alleged default for nonpayment of rent, taxes, obligations secured by liens on the property, or other sums to be paid by Tenant, Tenant shall be provided notice in accordance with section 83.20(2) Florida Statutes, to cure the default. For the cure of any other default, Tenant shall be provided notice in accordance with section 83.20(3), Florida Statutes, to cure the default. If the alleged default is for failure on the part of Landlord to perform any covenant, term, or condition by which Landlord is bound under this Lease, Landlord shall have thirty (30) days after the notice within which to complete the cure.
- 8.4 Remedies of Landlord.** If any default by Tenant shall continue uncured following the notice required by Section 8.2, Landlord shall have the following remedies in addition to all other rights and remedies provided by law or equity to which Landlord may report cumulatively or in the alternative:
- 8.4.1 Re-Entry Without Termination.** Landlord may continue this lease in full force and effect until Landlord by notice expressly terminates Tenant's right to possession. During any such period of default, Landlord shall have the right; (a) to collect the rent when due, and, (b) to re-enter the Premises and relet all or any part of it to third parties for Tenant's account. Tenant shall be immediately liable to Landlord for all costs incurred in such reletting, including, without limitation, broker's commissions, and attorney's fees. Any reletting may be for a period shorter or longer than the remaining term of this Lease. Tenant shall pay to Landlord the rent due under this Lease of the dates it is due, less any rent Landlord received from the reletting. No act by Landlord permitted by this paragraph shall terminate this Lease unless Landlord expressly so notifies Tenant in writing. After Tenant's default and for as long as Landlord does not terminate this Lease, if Tenant obtains Landlord's consent, Tenant shall have the right to sublet its interest in this Lease, but Tenant shall not be released from liability. Landlord's consent to a proposed subletting by Tenant shall not be unreasonable withheld.
- 8.4.2 Termination of Lease and Right to Possession.** Landlord may terminate for any of the reasons set forth in Article VIII, this Lease by giving Tenant notice of termination. Immediately upon giving of that notice, all Tenant's rights in the Premises shall terminate. Tenant shall forthwith surrender and vacate the premises in good, broom clean condition and repair. Termination under this paragraph shall not relieve Tenant from the payment of any sum then due. Landlord or from any claim for damages previously accrued or then accruing against Tenant. However, Landlord shall have a duty to make every reasonable effort to mitigate its damages caused by Tenant's breach.
- 8.4.3 Use of Personal Property.** After default, Landlord may use any of Tenant's properly not removed from the Premises without compensation and without liability for use or damage or may store it for the account and at the cost of Tenant.
- 8.5 Remedies Cumulative.** The right, powers, elections, and remedies of the Landlord contained in this Article shall be construed as cumulative and no one of them is or shall be

considered exclusive of any other, or of any other rights or remedies shall not impair Landlord's right to exercise any others.

ARTICLE IX: MISCELLANEOUS

- 9.1 Attorney's Fees.** In any action or proceedings to enforce, protest, or establish any right or remedy under this Lease, each party shall pay its own attorney's fees and other costs of litigation, at both the trial and appellate levels.
- 9.2 Notice.** As used in this Lease, "notice" includes but is not limited to the communication of notices, requests, demands, approvals, statements, reports, acceptances, consents, waivers, and appointments. All notices must be in writing. Notice is considered given either (a) when delivered in person to the recipients named on page 1, or (b) five (5) days after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage and postal charges prepaid, addressed by name and address to the party or person intended. Either party may, by notice given at any time or from time to time, change these designations.
- 9.3 Captions.** The captions of the various paragraphs of this Lease are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content, or intent of this Lease or any part of it.
- 9.4 Entire Agreement.** This Lease contains the entire agreement between the parties. No promise, representation, warrant, or covenant not included in this Lease has been or is relied upon by either party.
- 9.5 Surrender of Leasehold and Improvements.** At the expiration of this Lease or upon its earlier termination, Tenant shall surrender the Premises to Landlord free and clear of all liens, claims and encumbrances in good, sound and broom clean condition, ordinary wear and tear excepted. Surrender or removal of improvements, fixtures, trade fixtures, equipment, additions, alterations, and installations shall be as described in paragraph 5.3. All property that is abandoned by Tenant shall become Landlord's properly at termination, at its election.
- 9.6 No Merger; Termination of Subtenancies.** Any termination or surrender of this Lease, voluntary or otherwise, or its mutual cancellation shall, at Landlord's option, terminate all or any existing subleases and subtenancies, or operate as an assignment to Landlord of any or all such subleases or subtenancies.
- 9.7 Landlord's Right to Inspect.** Landlord shall be entitled at all reasonable times, upon reasonable notice, to go on the Premises for the purposes of inspecting them and observing the performance by Tenant of the terms and conditions of this Lease, as well as for the purpose of posting notices of non-responsibility for any construction, alteration, or repair as required or permitted by any law or ordinance.

- 9.8 No Waiver of Breach.** No failure by either Landlord or Tenant to insist upon the strict performance of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy shall constitute a waiver. No waiver of any breach shall alter this Lease, but each and every covenant, condition, agreement, and term of this Lease shall continue in full force and effect with respect to any other existing or subsequent breach.
- 9.9 Computation of Time.** The time within which any act provided for by this Lease is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or holiday and then it is also excluded. The term “holiday” shall mean all holidays officially recognized by the federal government and the government of the state in which the premises are located.
- 9.10 Relationship of Parties.** Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, and neither the method of computation of rent nor any other provisions contained in the Lease nor any acts of the parties shall be deemed to create any relationship between Landlord and Tenant, other than the relationship of landlord and tenant.
- 9.11 Construction.** Should any provision of this Lease be subject to judicial interpretation, it is agreed that the court interpreting or considering such provision will not apply the presumption or rule of construction that the terms of this Lease be more strictly construed against the party which that party or through that party's counsel or other agent prepared the same, as all parties hereto have participated in the preparation of the final form of this Lease through review by their respective counsel, if any, and/or the negotiation of specific language and terms, and, therefore, the application of such presumption or rule of construction would be inappropriate and contrary to the intent of the parties.
- 9.12 Severability.** The invalidity or illegality of any provision of this Lease shall not affect the remainder of it which shall remain in full force and effect.
- 9.13 Successors and Assigns.** Subject to the provisions of this Lease regarding assignment and subletting, each and all of the covenants and conditions of this Lease shall be binding on and shall inure to the benefit of the successors and assigns of the parties.
- 9.14 No Liens.** Tenant shall have no power or authority to permit liens to be placed upon the premises in connection with maintenance, alterations, modifications or otherwise. The interest of the Landlord shall not be subject to liens for improvements made by the Tenant. Landlord shall not be liable for any work, labor, or materials furnished to the Premises by or through Tenant or anyone claiming through Tenant.
- 9.15 Quiet Enjoyment.** Landlord warrants that Landlord has full right and power to execute and perform this Lease and to grant the estate herein and that Tenant, on payment of Rent and performing the covenants herein contained, shall peaceably and quietly have, hold and enjoy the Premises during the full Term of this Lease and any extension or renewal hereof.

IN WITNESS WHEREOF, the parties have executed this Lease on the date first written above.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

Vose Law Firm, LLP, Town Attorney

WITNESSES:

FMB MATANZAS LLC, a Florida limited liability company, d/b/a Matanzas Inn

By: _____

Name: _____

Title: _____

Date: _____

Print Name: _____

Address: _____

Print Name: _____

Address: _____

)

STATE OF FLORIDA

COUNTY OF LEE

)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2026, by

_____, as _____ of FMB Matanzas LLC, a Florida limited liability company, ☐ who is personally known to me or ☐ who has produced _____ as identification.

My commission expires:

NOTARY PUBLIC, State of Florida at Large

Print Name: _____





The Town of Fort Myers Beach – Marine Operations

239-413-9626 | cludwig@fmbgov.com

1/30/2026

Management Team

Matanzas Pass Inn

414 Crescent St. Fort Myers Beach, FL 33931

RE: Formal Lease Proposal – Upland Facilities, Dockage, and Office Suite

Dear Brandon & Eddie,

Thank you for the opportunity to meet and discuss the future of our partnership regarding the upland facilities, dock space, and additional office requirements at Matanzas Pass Inn. We deeply value the relationship we have cultivated over the years and are committed to maintaining our presence at your location.

After a thorough review of our operational requirements and the current market landscape, we would like to submit the following formal proposal for a consolidated two-year lease agreement:

Proposed Terms & Conditions

- **Total Monthly Consideration: \$5,000.00 USD**
- **Lease Term:** Twenty-four (24) months.
- **Scope of Premises:** This rate shall be inclusive of the designated dock space, the upland restroom facilities, and the specified additional office space.

Operational Responsibilities

To ensure the facilities remain in premium condition for both our clientele and your guests, we propose the following division of maintenance:

- **Restroom Facilities:** The Town of Fort Myers Beach will perform daily janitorial cleaning to maintain immediate hygiene standards. We request that Matanzas Pass Inn handles regular professional maintenance and structural upkeep to ensure the facilities remain in good working order.
- **Office Build-Out:** The Town of Fort Myers Beach will assume responsibility for the interior build-out of the office space, customized to our operational needs.
- **Office Plumbing:** As discussed, Matanzas Pass Inn will be responsible for completing the installation and finishing of the restroom located within the office suite prior to occupancy.

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931



Dan Allers, Mayor | Scott Safford, Vice Mayor | John R. King, Council Member | Rebecca Link, Council Member |

We believe this offer reflects a fair market value that acknowledges our long-standing history while providing Matanzas Pass Inn with guaranteed, long-term revenue stability. Our investment in the office build-out further demonstrates our commitment to the longevity of this location.

We look forward to your positive response and to finalizing the lease language. Please feel free to reach out directly if you would like to discuss these terms in further detail.

Sincerely,

The Town of Ft. Myers Beach

Curtis Ludwig

Harbor Master – Marine Operations

SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT is entered into on this 1 day of OCTOBER, 2021, by and between the Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931, a chartered municipality of the State of Florida (hereafter "Town"), and **Estero Bay Hotel Company DBA Matanzas Inn** with an address of **416 Crescent Street Fort Myers Beach, FL 33931** (hereafter "Provider").

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

1. **Scope of Services.** Provider will perform all services and work necessary as set forth in "Scope of Services" attached as Exhibit "A". Provider warrants and represents that it is qualified, willing and able to provide and perform all services in accordance with the terms of this Agreement. The parties have the ability to modify the Scope of Services by mutual written agreement, except that the Town has the unilateral right to exclude specified services hereunder for any reason upon prior written notice to Provider and Provider will not be entitled to compensation for such excluded services unless those services have already been performed by Provider.
2. **Term.** The term of this Agreement is 2 years commencing on October 1, 2021, and terminating on September 30, 2023. Three additional one-year renewals will be available upon mutual agreement. Effective date is October 1, 2021, however, access for transition purposes to Harbor House Office space shall be **September 1, 2021**.
3. **Payment Obligation.** The Town will pay for all requested and authorized services rendered hereunder by the Provider and completed in accordance with this Agreement, as set forth in attached Exhibit "B". The Provider's invoice statements must contain a breakdown of charges, description of services and work provided or performed, and, where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in this Agreement. In the event of a dispute as to the Town's payment obligation, the Town will pay the undisputed amount, if any, within 30 days of the date of the invoice.
4. **Provider's Obligations.** The Provider's obligations include, but are not limited to, the following:
 - a) **Licensure.** The Provider will maintain all licenses and certifications required by governmental agencies responsible for regulating and licensing the services provided and performed by the Provider.
 - b) **Provision of Services.** The Provider will perform all services pursuant to this Agreement in accordance with generally accepted standards of professional practice and in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of governmental agencies that regulate or have jurisdiction over the services to be provided or performed by the Provider. All personnel assigned by Provider hereunder will be qualified to perform such duties. Provider will designate one person as the point of contact for the Town regarding its duties hereunder. Provider is solely responsible for all taxes incurred by Provider and will make all deductions required of employers by state, federal and local laws.
 - c) **Non-Waiver.** Neither review, approval, nor acceptance by Town of data, studies, reports, memoranda, and incidental professional services, work and materials furnished hereunder by the Provider will in any way relieve Provider of responsibility for the adequacy, completeness and accuracy of its services, work and materials.

- d) **Indemnity and Hold Harmless.** The Provider agrees to indemnify and hold harmless the Town, its 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 Provider and persons employed or utilized by Provider in providing services under this Agreement..
 - e) **Non-Public Information.** The Provider agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without the Town's prior written consent, or unless incident to the proper performance of Provider's obligations hereunder, or as provided for or required by law, any non-public information concerning the services to be rendered by Provider. Provider will require all of its employees and agents to comply with the provisions of this paragraph.
 - f) **Statutory Duties.** The duties and obligations imposed upon the Provider by this Agreement and the rights and remedies available to the Town hereunder will be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.
 - g) **Disclosure.** The Provider warrants it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift or other compensation contingent upon or resulting from the award or making of this Agreement.
5. **Commencement and Completion of Work.** The Town will provide written notice to the Provider regarding commencement of services under this Agreement. Time is of the essence in the performance of this Agreement. The Provider agrees to commence work promptly and carry on all services and work as may be required in a timely and diligent manner to completion. Should the Provider fail to commence, provide, perform, and complete any of the services and work required hereunder in a timely and diligent manner, the Town may terminate this Agreement, in addition to any other remedies the Town may have.
6. **Insurance.** The Provider will have, and maintain, during the entire period of this Agreement, all such insurance (or self-insurance) as set forth on Exhibit "C". Each Certificate of Insurance must include the name and type of policy and coverages provided; the amount or limit applicable to each coverage provided; the date of expiration of coverage; the designation of the Town of Fort Myers Beach as additional insured and as certificate holder, except as to Professional Liability Insurance and Workers' Compensation Insurance. Should any of these policies be cancelled before the expiration date thereof, Provider will instruct the issuing company to mail 30 days written notice to the Town of such cancellation.
7. **Inclusion of Additional Documents.** Any request for bids and/or request for proposal, along with all exhibits or other attachments thereto as issued by the Town, are hereby incorporated by reference. In addition, the following Exhibits are attached hereto and hereby incorporated by reference: Exhibit "A"; Exhibit "B"; Exhibit "C", Exhibit "D"; Attachment "A", Attachment "B".
8. **Termination of Agreement.** Either party may terminate this Agreement without cause upon 60 calendar days' prior written notice to the other, in which case the Town will compensate the Provider for all services performed prior to the effective date of termination and reimbursable expenses then due.
9. **Assignment, Transfer and Subcontracts.** The Provider may not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from the merger or consolidation of Provider with a third party. The Provider has the right, subject to the Town's prior written approval, to employ other persons and firms to serve as subcontractors to Provider in connection with its

performance of services and work pursuant to this Agreement.

10. **Maintenance of Records.** The Provider 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 pursuant to this Agreement. Said records and documentation will be retained by the Provider for a minimum of three years from the date of termination of this Agreement, or for such period as required by law. The Town and its authorized agents will, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during the term of this Agreement and the next succeeding three years.
11. **Public Records.** Contractor is required to comply with the provision of F.S. 119.0701. Specifically, the Contractor is required to keep and maintain the records required the Town to perform the services. Upon request by the Town, Contractor is required to provide the Town with a copy of the requested records, or the ability to inspect and copy records, within a reasonable time and at a cost to the Town that does not exceed the costs established under F.S. chapter 119. Upon completion of the contract the Contractor must transfer, at no cost to the Town, all public records in a format compatible with the Town's information technology system, or, in the alternative, the Contract may retain the records in a manner consistent with F.S. 119.0701(2)(b)4.

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 , 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

12. **References to Town.** All references to "the Town" or "the Town of Fort Myers Beach" are deemed to include its employees, agents, and authorized representatives.
13. **Modification.** Except as set forth in Paragraph 1 above, modifications to this Agreement will be valid only when made in writing and signed by both parties. In the event of a conflict between the requirements, provisions, or terms of this Agreement and any subsequent written modification hereto, the most recently executed document will take precedence.
14. **E-Verify.** *As a condition precedent to entering into this AGREEMENT*, and in compliance with Section 448.095, Fla. Stat., Contractor and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.
 - a. Contractor shall require each of its subcontractors to provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this AGREEMENT.
 - b. Town, Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.
 - c. Town, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor.
 - d. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this AGREEMENT by the Town for a violation of this section by Contractor, Contractor may not be awarded

a public contract for at least one (1) year. Contractor further acknowledges that Contractor is liable for any additional costs incurred by the Town as a result of termination of any contract for a violation of this section.

e. Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

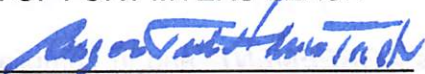
15. Miscellaneous Provisions.

- a) Applicable Law. This Agreement is governed by the laws of the State of Florida.
- b) Non-Discrimination. The Provider covenants that in the furnishing of services hereunder, no person on the grounds of race, color, national origin, handicap, or sex will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- c) Headings. The headings of the Articles, Sections, Exhibits, and Attachments in this Agreement are for the purpose of convenience only and may not be deemed to expand, limit or change the provisions contained in such Articles, Section, Exhibits and Attachments.
- d) Entire Agreement. This Agreement, including any Exhibits, constitutes the entire Agreement between the parties and supersedes all prior agreements or understandings, written or oral, relating to the matters set forth herein.

Notices. All notices required under this Agreement must be in writing and sent via U.S. Postal Service, first class mail, to the other party's address as listed at the beginning of this Agreement. Either party may change its address by prior written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

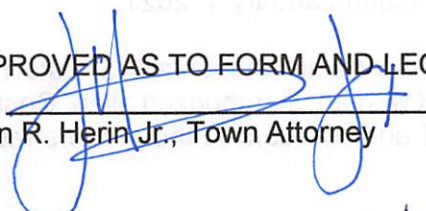
TOWN OF FORT MYERS BEACH

BY: 
Roger T. Hernstadt, Town Manager

ATTEST:

BY: 
Amy Baker, Town Clerk

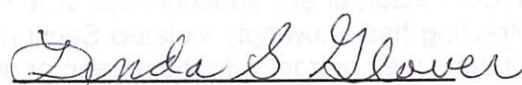
APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

BY: 
John R. Herin Jr., Town Attorney

PROVIDER

BY: 
Signature

Paul Sobman - Provider
Printed name of person signing


Witness Signature

Linda S. Glover
Printed name of witness

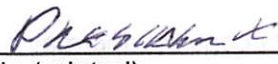

Title (printed)

EXHIBIT "A" TO SERVICE PROVIDER AGREEMENT

TO THE SERVICE PROVIDER CONTRACT DATED THIS 1 DAY OF OCTOBER, 2021
BETWEEN THE TOWN AND ESTERO BAY HOTEL CO, PROVIDER.
DBA MATANZAS INN

1. SCOPE OF SERVICES:

Provide upland services for the Town including: 2 bathroom/shower combo units, laundry and lounge area, office space in Harbor House and a restroom, water at dinghy dock, electric and dockage for the Town's pump-out boat. Utilities for the condo unit will be the responsibility of the Town.

All access to Matanzas Inn Resort facilities will be limited to mooring field patrons and Town employees, with no access to the public. Matanzas Inn Marina users may have access to showers and laundry as reasonably needed. All access shall be during normal resort hours with is approximately 7am to 10pm daily.

The agreement is only for use of facilities and does not include labor associated with the Mooring Field Services. If needed, this labor will be billed in arrears monthly at the rate of \$50 per hour.

Access to boat dockage is limited to 90 days at the rate of \$600 per month. After the 90 days, access is only on an emergency basis as reasonable allowed by Matanzas Inn Resort

All facility improvements must be approved by both parties prior to any work being done.

See also: "Attachment A: Respondent's Proposal"

2. **TERM:** The term of this Agreement shall commence on October 1, 2021 and continue for 2 years from date of award with (3) one-year renewable options to be exercised upon mutual agreement and initiated by the Town of Fort Myers Beach, subject to the Town's ability to terminate the Agreement as set forth elsewhere. Effective date is October 1, 2021, however, access for transition purposes to Harbor House Office space shall be September 1, 2021.
3. **INSURANCE:** The Provider shall obtain and maintain the following insurance coverages:
- a) Workers Compensation Coverage to comply for all employees for Statutory Limits in compliance with the applicable State and Federal laws;
 - b) Employer's Liability with a minimum limit per accident in accordance with statutory requirements;
 - c) Commercial General Liability Insurance with 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.
 - d) Business Automobile Liability Insurance with 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, with coverage including owned vehicles, hired and non-owned vehicles, and employee non-ownership.

Handwritten signature/initials

EXHIBIT "B" TO SERVICE PROVIDER AGREEMENT

TO THE SERVICE PROVIDER CONTRACT DATED THIS 1 DAY OF OCTOBER, 2021
BETWEEN THE TOWN AND ESTERO BAY HOTEL CO PROVIDER.

DBA MATANZAS INN
PAYMENT OBLIGATION

1. Payment terms are as follows:

- a) Town shall pay to the Provider: \$4,033.33 per month
- b) Additional labor related to Mooring Field Services will be billed at a rate of \$50/hour

See "Attachment B- Lease Cost and Fees"

Monthly renewal rates will be subject to documented increases in Harbor House condo fees and /or utility charges. Town shall be pay any state sales taxes (if any) billed by provider as part of this agreement.

2. Provider shall receive reimbursement for out-of-pocket expenses from the Town as follows:
(none)

PAK

EXHIBIT B - 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 Town of Fort Myers Beach
(print name of public entity)
- by Doreen Sabina - Smith, President
(print individual's name and title)
- for Estero May Hotel Company
(print name of entity submitting sworn statement)
- whose business address is 416 Colburn St
Fort Myers Beach, FL 34931

and (if applicable) its Federal Employer Identification Number (FEIN) is 650-091412
(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 bid, 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 bids or applies to bid 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.)

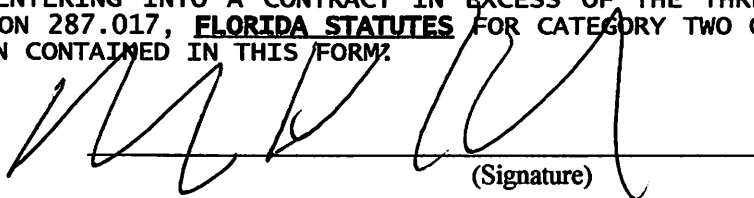
Request for Proposals – #RFP-20-24-PW
Management and Operation of the Town of Fort Myers Beach Municipal Anchorage

____ 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.

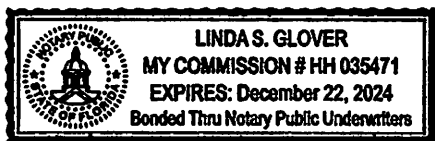

(Signature)

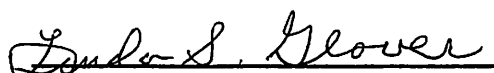
STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 7th day of October, 2021, by DAVE SPEERMAN-SMITH, 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: 12/22/24




Signature of Notary Public

Notary Public, State of
Florida

Printed, Typed or Stamped Name

Linda S. Glover

Commission/Serial No. #H4035471

Date: 10/7/21, 20__

EXHIBIT C – 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").

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: Europa Marine Hotel Company

(Signature) [Signature]

(Title) President

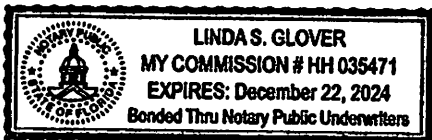
(Date) 9/29/2021

STATE OF Florida

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 7th day of October, 2021, by ROCK GIBSON, SHRS, 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: 12/22/24



Linda S. Glover
Signature of Notary Public

Notary Public, State of Florida

Printed, Typed or Stamped Name

Linda S. Glover

Commission/Serial No. HH 035471

The signee of this Affidavit guarantee, 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 D – NON-COLLUSION AFFIDAVIT

State of Florida

County of Lee

Doug Speers Smith being first duly sworn, deposes and says that:

- 1) He/she is the owner (Owner, Partner, Officer, Representative or Agent) of Seaside Tiki Motel Company the Proposer that has submitted the attached SOQ;
- 2) He/she is fully informed respecting the preparation and contents of the attached SOQ and of all pertinent circumstances respecting such SOQ;
- 3) Such SOQ is genuine and is not a collusive or sham SOQ;
- 4) Neither the said Proposer 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 SOQ in connection with the Work for which the attached SOQ 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 SOQ or 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;

Signed, sealed and delivered in the presence of:

By: [Signature]
Doug Speers Smith
(Printed Name)

ACKNOWLEDGEMENT

STATE OF Florida
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 7th day of October, 2021, by Doug Speers-Smith, by means of () physical presence or () online notarization, personally appeared before me and (X) is personally known to me or () who has produced _____, as identification and did (did not) take an oath.

WITNESS my hand and official seal

Notary Public Signature
Linda S. Glover
Printed Name of Notary Public
Linda S. Glover
Notary Commission Number/Expiration



ATTACHMENT A – RESPONDENT'S PROPOSAL

Re: Proposal for Town of Fort Myers Beach Mooring Field. 7/19/2021

Submitted by:
Estero Bay Hotel Company: DBA Matanzas Inn
416 Crescent Street
Fort Myers Beach, Florida 33931
239-463-9258
239-765-9258 (Fax)
Attention: Chris Arnberg 239-765-8866
Chris@Matanzasinn.com
Dougspeirnsmith@gmail.com 303-818-0900

Introduction

The Matanzas Inn Resort is interested in continuing our Mooring Field Services to the Town and Mooring Field under a Hybrid model with Matanzas leasing Upland facilities to the Town and town staff assuming responsibility for staff and staffing services and costs. This will help maintain continuity of services and location while allowing the Town to begin the transition to Management and improvement of Upland Services.

Summary of this Proposal

The existing bathrooms, laundry and lounge area used for Upland services will be leased to the town. In addition, the office portion go Unit G109 at Barbour House will be leased to the town as an administrative area to support Upland services. Access to dinghy dock water will continue. Preferably, the town will find another dockage area for the Mooring Field service boat, but the option exists for short-term dock use until a new location can be found.

The option exists for the Harbour House space to be expanded so remodeling can create new and more bathrooms and laundry facilities, either through a purchase of the commercial space or a longer-term lease.

The length of this initial lease is flexible to meet the Town's needs until a long-term strategy emerges.

Costs:

The attached exhibit includes lease costs and fees for the facilities. This was developed with staff input and discussion. Matanzas is essentially a landlord with a continued vested interest to support the Mooring Field guests. The mutual goals are continuity of services until the Town has a comprehensive long-term strategy for the Upland services.



ATTACHMENT B – LEASE COST AND FEES

Matanzas Mooring Field Upland Services. June 16, 2021

							7/22/2021
Item #	Description		rate	Estimate	per day	Comments	modified
1	Current bathrooms/laundry/Lounge	670 square feet	\$20/ft	\$ 1,116.67		plus tax	\$ 1,116.67
2	Current electric per month			\$ 225.00			\$ 225.00
3	Current water per month			\$ 275.00			\$ 275.00
4	Current cleaning per month	1-2 per day		\$ 1,650.00	\$ 55.00	real need and important	\$ -
5	Current supplies per month	paper/cleaning		\$ 200.00			\$ -
6	current trash haul	allocated	monthly	\$ 100.00			\$ -
7	dinghy water	allocated	monthly	\$ 50.00			\$ 50.00
8	current port-o-let for fishing pier		monthly	\$ 115.00			\$ -
9	Overhead/mgt (10%)			\$ 370.00			\$ 250.00
Total Current				\$ 4,101.67			\$ 1,916.67
9	Harbour House g109-general commercial	760 square feet	\$20 per foot	\$ 1,266.67		plus tax	\$ 1,266.67
10	Prorated Condo Fee	allocated		\$ 250.00		plus electric	\$ 250.00
total G109 office area				\$ 1,516.67		office clean optional	\$ 1,516.67
Total Estimated Monthly costs				\$ 5,618.33		plus tax	\$ 3,433.33
General Comments							
No boat dockage on canal					one year option for canal dockage		\$ 600.00
lease term flexible with reasonable cancellation notice.					three year lease with 180 day cancellation		
option to purchase and expand Harbour House space access possible					same		
mooring field bathrooms not open to the general public and some controlled access required. Closed 10					Total		\$ 4,033.33
option to explore access to Matanzas Commercial Dock exists							plus tax
option to explore off hours "on call" by Matanzas staff							
limited access to parking							

ATTACHMENT C- COMMERCIAL LEASE

COMMERCIAL LEASE

THIS COMMERCIAL CONDOMINIUM LEASE (this "**Lease**"), is made effective as of the 1st day of September, 2021 (the "**Commencement Date**"), between ESTERO BAY HOTEL COMPANY d/b/a MATANZAS INN, with a mailing address of 416 Crescent Street, Fort Myers Beach, FL 33931 (the "**Landlord**") and THE TOWN OF FORT MYERS BEACH, with a mailing address of 2525 Estero Boulevard, Fort Myers Beach, FL 33931 (the "**Tenant**").

WITNESSETH:

In consideration of the covenants herein contained on the part of the Tenant to be kept and performed, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, AS SERVICE PROVIDER (the "**Premises**") in accordance with the Declaration of Condominium of HORSESHOE MOBILE HOME PARK (the "**Condominium**") as recorded in Official Records Book _____, Page _____, of the Public Records of Lee County, Florida (together with all amendments thereto, the "**Declaration**"), to have and to hold the same unto Tenant on the following terms and conditions:

1. PREMISES; TERM.

1.1 Tenant acknowledges the Premises is suitable for the purpose for which the Premises are leased, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any easements, conditions, encumbrances, covenants or restrictions of record.

1.2 The term of this Lease (the "**Term**") shall commence on the Commencement Date and expire on September 30, 2023 (the "**Expiration Date**").

2. RENT.

2.1 Tenant shall pay Base Rent to Landlord which shall be payable in equal monthly installments, in United States currency, as follows:

Period	Base Rent Per Month	Base Rent Per Annum ¹
September 1, 2021 – December 31, 2021	\$4,033.33	\$12,099.99
January 1, 2022 – September 30, 2022	\$3,433.33	\$30,899.97

2.2 Each monthly installment shall be due in advance. Notwithstanding anything herein to the contrary, provided Tenant is not then in default beyond any applicable grace, notice and cure periods under any of the terms and conditions of this Lease, Tenant's monthly Base Rent obligations herein

~~Base Rent amounts shown include applicable sales tax, which shall be paid by Tenant as part of all payments of Base Rent in accordance with Section 4.3 below.~~ *PA45*

shall be abated during the first one (1) month of the Term. The first monthly installment of Rent shall be paid on October 1, 2021. Each subsequent installment shall be due no later than on the 1st day of each month during the Term.

2.3 In order to give Landlord a lien of equal priority with Landlord's lien for Base Rent, and for no other purpose, any and all other sums of money or charges required to be paid by Tenant under this Lease, whether or not the same be so designated, shall be considered "**Additional Rent.**" If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless, if not paid when due, be collectible as Additional Rent with the next installment of Base Rent thereafter falling due hereunder, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charges as the same becomes due and payable hereunder, or limit any other remedy of the Landlord. As used herein the term "**Rent**" shall mean Base Rent, together with Additional Rent.

2.4 The covenant of Tenant to pay Rent is separate and distinct from any other covenants herein contained. All Rent shall be due and payable without any set-off, deduction or prior demand. Any payment by Tenant or acceptance by Landlord of a lesser amount of Rent than that which is due shall be treated as a payment on account.

3. **PREPAID RENT.** Concurrently with Tenant's execution of this Lease, Tenant shall pay to Landlord: (i) prepaid Base Rent in the amount of \$4,033.33 plus applicable sales tax, which sum represents Tenant's first monthly installment of Base Rent.

4. **TAXES AND ASSESSMENTS.**

4.1 Landlord shall pay, prior to delinquency: (i) all ad valorem real estate taxes and assessments levied upon the Premises by any governmental authority; and (ii) all regular and special assessments which are assessed against and levied upon the Premises by the association(s) governing the Condominium ("**Association**"). Landlord shall indemnify and hold Tenant harmless from and against all liability arising out of Landlord's failure to pay such taxes.

4.2 Tenant shall pay, prior to delinquency, all taxes which are assessed against and levied upon trade fixtures, furnishings, equipment, inventory, and all other personal property of Tenant located in the Premises or elsewhere. Tenant shall cause said trade fixtures, furnishings, equipment, inventory, and all other personal property to be assessed and billed separately from the real property or other property of Landlord. However, if any of Tenant's personal property is assessed with, or as, Landlord's property, Tenant shall pay to Landlord the taxes attributable to said personal property within thirty (30) days after receipt of a written statement setting forth the amount thereof. Tenant shall indemnify and hold Landlord harmless from and against all liability arising out of Tenant's failure to pay such taxes.

4.3 Tenant further agrees to pay, in addition to the Base Rent, any and all sales and use tax (but not Landlord's income tax) now or hereafter imposed by any governmental entity upon, applicable to, or measured by or on the Base Rent, or any other charges payable to Landlord under this Lease. Tenant shall pay to Landlord, concurrently with each such payment of Base Rent or such other charges hereunder, the amount of tax attributable to the payment being made to Landlord. If any such tax is

required to be paid to the governmental taxing authority directly by Landlord, whether during the Term of this Lease or subsequent to the termination of this Lease (if such tax is levied on the Base Rent paid by Tenant), then, Landlord shall, upon demand, be fully reimbursed by Tenant for such payment. Tenant shall timely pay all sales, payroll, and other taxes applicable to its operations at the Premises. Tenant shall timely (prior to delinquency) pay all personal property taxes with respect to all personal property located on the Premises. Tenant shall also pay all permit and license fees imposed by applicable governmental authorities, specifically arising from or directly attributable to Tenant's operations at the Premises.

5. **UTILITIES.**

5.1 Except as may be provided by the Association or Landlord (the **"Included Utilities"**), Tenant shall contract for, and pay before delinquency, all utility services rendered or furnished to the Premises, including heat, water, gas, electricity, fire protection, trash removal, sewer rental, sewage treatment facilities, utility hook-ups and the like, together with all taxes or other charges levied on same. Except for Landlord's negligence, willful misconduct, or failure to pay the Included Utilities, Landlord shall not be liable for the quality, quantity, failure, or interruption of utility services to the Premises.

5.2 Except as modified herein, Tenant acknowledges that, a utility provider may, without being liable for doing so shut off and discontinue gas, water, electricity and any or all utilities whenever such shut off or discontinuance is necessary to make repairs or alterations. No such action shall entitle Tenant to an abatement of, or reduction in, Rent or be construed as an eviction or disturbance of possession or otherwise entitle Tenant to terminate this Lease, unless such shut off or discontinuance is for more than seven (7) calendar days. Any shut off or discontinuance of seven (7) calendar days or longer shall be considered an **"Event of Default"** as defined herein. Otherwise, Landlord, shall not, in any way, be responsible or liable on account of such action unless caused by Landlord's negligence, willful misconduct, or failure to pay the Included Utilities.

6. **USE.**

6.1 Tenant may only use the Premises for purposes of operating an upland based mooring field operations and related general office use (the **"Permitted Use"**), and for no other purpose. The Permitted Use include the operation of customary ancillary activities, such as – but not limited to – harbormaster offices, laundry room, restrooms, showers, and sale of sundries.

6.2 The Premises shall not be utilized in any way in manner which would violate any provisions of the Declaration or any applicable federal, state and local statutes, ordinances, rules, regulations, orders, restrictions of record and requirements in effect during the Term, including, without limitation, the Americans with Disabilities Act (collectively, the **"Requirements"**). Any breach of a Requirement by Tenant, its employees, guests, customers, or invitees not cured within seven (7) days of Tenant's knowledge thereof shall be considered a material default under this Lease entitling Landlord to the remedies provided herein.

6.3 Tenant hereby acknowledges that Tenant has received a copy of the Declaration and exhibits and any amendments thereto and the rules and regulations of the Condominium. Tenant shall

promptly pay to Landlord, upon demand, any fines assessed against the Premises or Landlord resulting from Tenant's failure to comply with the Declaration and all rules and regulations of the Condominium.

6.4 In the event Tenant conducts any activity within the Premises which increases the insurance premium cost or invalidates any insurance policy carried by Landlord or the Association, Tenant shall pay, as Additional Rent, upon demand of Landlord or the Association, any such increased cost.

6.5 Except in strict accordance with the Requirements, Tenant shall not use, nor permit the use of, the Premises or any part thereof, for the storage, transportation or disposal of "hazardous" or "toxic" materials as commonly known or otherwise defined under any law relating to environmental conditions and industrial hygiene, including, without limitation, the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Super Fund Amendments and Reauthorization Act of 1986, the Hazardous Materials Transportation Act and any applicable federal or state law or regulation classifying or identifying hazardous or toxic materials. Tenant shall provide to Landlord, promptly after receipt of same, photocopies of all notices of violation received by it with regard to any rules, regulations or laws applicable to such materials, the commencement of any enforcement action, the service of any potentially responsible party demand letter from any private or governmental party, or the loss of any operating permit by reason of the use or release of any such materials.

7. **COMMON ELEMENTS.** As used herein, the term "Common Elements" shall mean that part of the Condominium which is described as Common Elements in the Declaration including, but not limited to, parking spaces. Tenant and its employees, customers, subtenants, licensees and concessionaires shall have the nonexclusive right and license to use those portions of the Common Elements, as constituted from time to time, for proper purposes, to the extent that Landlord had such right pursuant to the Declaration, subject to the provisions of the Declaration and such rules and regulations governing use thereof as the Association may from time to time prescribe.

8. **MAINTENANCE AND REPAIR.**

8.1 Tenant shall maintain and repair (which shall mean replacement as necessary), at its sole cost and expense, all improvements constituting Tenant's Work (as hereinafter defined), and all non-structural components of the Premises. Tenant shall replace air conditioning filters monthly.

8.2 Except for those improvements or repairs exceeding \$2,000, Tenant expressly acknowledges and agrees that Landlord shall not be responsible to maintain the Premises or make any improvements or repairs of any kind in, or upon, the Premises.

9. **ALTERATIONS/TENANT'S WORK.**

9.1 Tenant shall make no alterations or improvements to the Premises estimated to cost more than \$2,000 without the prior written consent of Landlord, which shall not be unreasonably withheld.

9.2 Prior to commencing any Tenant's Work, Tenant shall submit its plans, prepared by a licensed professional architect, engineer or planner to Landlord. Within twenty (20) days after receipt of such

plans, Landlord shall advise Tenant if it has approved or disapproved of the plans. Landlord may approve or disapprove of the plans or may impose reasonable conditions with respect to same. If Landlord disapproves of Tenant's plans, Landlord shall specify the reasons for disapproval and Tenant shall modify Tenant's plans accordingly and resubmit the same to Landlord within seven (7) days thereafter. This process shall be repeated until Landlord has approved of Tenant's plans (the "Approved Plans").

9.3 Tenant shall utilize a licensed and insured contractor(s) to complete Tenant's Work. All Tenant's Work shall be done in a first class, lien free, manner pursuant to the Requirements and the Approved Plans. All Tenant's Work shall be completed: (i) in a manner which will minimize inconvenience to Landlord or other persons in the Condominium; and (ii) in a manner which will not otherwise violate any provisions of the Declaration.

9.4 All alterations, changes, and improvements built, constructed, or placed on the Premises by Tenant, with the exception of fixtures removable without damage to the Premises and movable personal property, shall, unless otherwise provided by written agreement between Landlord and Tenant, be the property of Landlord and remain on the Premises at the expiration or earlier termination hereof, without compensation to Tenant.

10. **LIENS.** Tenant, or all persons claiming by, through or under Tenant, shall not create or permit to be created or to remain un-discharged, any lien, encumbrance or charge upon the Premises or the Landlord's interest therein or the income therefrom. Tenant shall not do, or suffer, any other matter or thing whereby the estate, right and interest of Landlord in the Premises, or might be, impaired or encumbered. If any such lien, claim or notice of lien or contract is filed against the Landlord, Premises, Tenant shall, within ten (10) days after notice thereof, cause the same to be discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise. If Tenant fails to cause such lien or notice of lien to be discharged within the period provided, Landlord, in addition to any other rights or remedies, may, but shall not be obligated to, discharge the same by either paying the amount claimed to be due or by procuring the discharge of the same. Any amount paid by Landlord and all reasonable costs and expenses, including attorneys' fees incurred in connection therewith, together with interest thereon at the Default Rate from the date of payment or incurring of the cost and expense, shall be paid by Tenant to Landlord on demand.

THE PREMISES AND THE INTEREST OF LANDLORD IN THE PREMISES ARE NOT SUBJECT TO LIENS FOR IMPROVEMENTS MADE BY, OR FOR THE ACCOUNT OF, TENANT.

11. **SIGNS.** All signs installed or erected by Tenant shall conform with the Requirements and the Declaration. No sign, placard, picture, name, advertisement or notice visible from the exterior of the Premises shall be inscribed, painted, affixed, installed or otherwise displayed by Tenant on the Premises or any part of the Common Elements without the prior written consent of Landlord (which shall not be unreasonably withheld), and Landlord shall have the right to remove any such sign, placard, picture, name, advertisement, or notice without notice to and at the expense of Tenant. Tenant shall pay all expenses incurred for the design, construction and installation of Tenant's signs including, without limitation, professional and permit fees. All signs must be professionally made, and Tenant shall maintain all signs in good condition and in proper operating order.

12. ASSIGNMENT AND SUBLETTING.

12.1 Tenant shall not voluntarily, involuntarily or by operation of law, assign, sell, mortgage, pledge or in any manner transfer this Lease or any estate or interest therein or sublet the Premises or any part thereof, or grant any license, concession or other right to occupy any portion of the Premises, without the prior written consent of Landlord, which shall not be unreasonably withheld. Notwithstanding the above, Tenant may assign or sublet the Premises, or any part thereof, to any entity controlling, controlled by, or under common control with the original Tenant. Consent by Landlord to one or more assignments or subletting's shall not operate as a waiver of Landlord's rights as to any subsequent assignments and subletting. Notwithstanding any assignment or subletting, Tenant shall always remain fully responsible and liable for compliance with all the obligations of Tenant, including the payment of Rent unless otherwise agreed. A transfer of control, whether a transfer of voting stock or other beneficial interest whereby effective control of Tenant is transferred from one party to another, shall be deemed a transfer hereunder.

12.2 Tenant acknowledges that Landlord is free to sell the Premises before or after the Expiration Date or to enter into an agreement at any time to relet the Premises. Landlord may, in its sole discretion, elect to improve or alter the Premises in connection with any efforts relating to the sale or reletting of the Premises. Tenant acknowledges and agrees not to obstruct or interfere in any manner with any of the aforesaid activities and that such activities shall not be deemed to constitute an eviction of Tenant or a breach of this Lease by Landlord. Landlord agrees that the aforesaid activities shall be conducted in such a manner, if at all, as not to unreasonably interfere with Tenant's use and enjoyment of the Premises or Common Elements. In the event of the transfer and assignment by Landlord of its interest in the Lease and/or Premises, Landlord shall thereafter be released from any further obligations in connection with this Lease, and Tenant agrees to look solely to such successor in interest for performance of all obligations arising thereafter.

13. INSURANCE AND INDEMNITY.

13.1 Tenant shall, at Tenant's expense, obtain and keep in force during the Term, a policy of commercial general liability insurance, with contractual liability broad form general liability endorsement, with limits of at least \$1,000,000.00 per accident, covering any and all claims for injuries to persons in or upon the Premises, including all damages from signs, glass, awnings, fixtures or other appurtenance now or hereafter erected on the Premises, and insuring the indemnity provisions set forth in this Article. The limits of such insurance shall be increased from time to time as reasonably required by Landlord.

13.2 Tenant shall, at Tenant's expense, obtain and keep in force the following insurance: (a) Worker's Compensation Insurance covering all persons employed, directly or indirectly in connection with any work, repair, or alteration performed by Tenant and all employees and agents of Tenant as required by the laws of the State of Florida; and (b) such other types of insurance in form and amount which Landlord shall deem prudent for Tenant to maintain.

13.3 Tenant shall, and does hereby, indemnify and hold Landlord harmless from and against all claims, loss, cost, damage or expense arising, unless due to the negligence, gross negligence or willful

misconduct of Landlord or its agents and employees, from: (a) Tenant's use of the Premises or Common Elements or from the conduct of Tenant's business or from any activity, work or things done, permitted or suffered by Tenant, its agents, contractors, employees, invitees, licensees, subtenants and guests, in or about the Condominium, including the Premises or Common Elements; (b) the utilities located within or under the Premises causing injury to any persons or property whomsoever or whatsoever; (c) any grossly negligent act or omission of Tenant, its agents, contractors, employees, invitees, licensees, subtenants and guests; and (d) any breach of this Lease by Tenant.

13.5 Landlord shall not be liable to Tenant for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of, nor to the Tenant, Tenant's agents, contractors, employees, invitees, licensees, subtenants and guests, or any other person in or about the Condominium including the Premises or Common Elements, whether the damage or injury results from a condition arising in the Premises, or from other sources or places, unless due to the actions, negligence, gross negligence or willful misconduct of Landlord or its agents, employees or invitees.

13.6 Any insurance policies required to be maintained by Tenant hereunder shall name the Landlord and, upon written notice to Tenant, any mortgagee of Landlord's interest in the Premises ("**Lender**") as additional insureds as their interests may appear. Such insurance policies may not be modified or terminated without thirty (30) days prior written notice to the Landlord and Lender. Insurance required hereunder shall be issued by reputable and independent insurers permitted to do business in the State of Florida and rated in Best's Insurance Guide, or any successor thereto (or, if there be none, an organization having a national reputation) as having a general policyholder rating reasonably acceptable to Landlord. Such policies or duly executed certificates of insurance, reflecting all the requirements of this Article, shall be promptly delivered to the Landlord and Lender and renewals thereof as required shall be delivered to the Landlord and Lender at least thirty (30) days prior to the expiration of the respective policies.

14. CASUALTY

14.1 Tenant shall give prompt written notice to Landlord of any damage caused to the Premises by fire or other casualty ("**Casualty**"). If the Premises are made untenantable by a Casualty, Landlord or Tenant may elect either to repair the damage so to make the Premises tenantable again within forty-five (45) days or to terminate this Lease. Such election must be made within fifteen (15) days after the occurrence of such Casualty. In the event no election shall be made, or Landlord shall not have repaired such damages within forty-five (45) days after its occurrence, this Lease shall be deemed terminated as of the date of such Casualty. Tenant's Base Rent shall be justly abated during the period the Premises are untenantable because of Casualty.

14.2 The provisions of the Declaration shall govern the obligation of the Association to repair and/or rebuild the Condominium, including the Premises. Landlord shall not, in any way, be responsible or liable to repair and/or rebuild the Premises on account of any damage caused by Casualty. If, on account of any damage caused Casualty, the Condominium is terminated this Lease shall be terminated as of the date of termination of the Condominium.

14.3 If, on account of any damage caused by Casualty, the interior improvements in the Premises are damaged, Tenant shall promptly rebuild and repair such damaged improvements to the extent practical, to substantially the condition in which same existed prior to the Casualty, including all Tenant's Work, personal property and trade fixtures installed by Tenant. During any period of reconstruction or repair of the Premises, Tenant shall continue the operation of its business within the Premises to the extent practicable.

14.5 If the Premises are damaged by Casualty, regardless of the extent thereof, during the last twelve (12) months of the Term, Landlord may elect to terminate this Lease by giving written notice to the Tenant within sixty (60) days after the date of occurrence of such damage.

15. **EMINENT DOMAIN**

15.1 If any part of the Premises or Common Elements are permanently or temporarily taken, condemned or transferred by agreement in lieu of condemnation for any public or quasi-public use or purpose by any condemning authority ("Condemnation"), Landlord and Tenant shall give prompt written notice to the other.

15.2 This Lease shall be unaffected if a part of the Condominium (or Common Elements thereof) is taken by Condemnation but the Premises are not made untenable. If the entire Condominium or the building in which the Premises are located is thus taken or the taking makes the Premises untenable, this Lease shall automatically terminate. Tenant hereby waives any claim to any part of any reward or compensation paid in connection with a Condemnation.

15.3 If any portion of the Premises are permanently taken on account of Condemnation, at Landlord's option, this Lease shall terminate as of the time possession thereof vests in the condemning authority or earlier date upon which Tenant must surrender possession to condemning authority. If Landlord elects to terminate this Lease, it shall give written notice of such election to Tenant within sixty (60) days after the occurrence of the taking.

15.4 If any part of the Premises are permanently or temporarily taken on account of Condemnation, whether or not this Lease is terminated, the entire compensation award therefor, both leasehold and reversion, shall be the property of Landlord without any deduction therefrom for any present or future estate of Tenant. Tenant hereby assigns to Landlord all its right, title and interest to any such award, provided, however, that the Tenant shall be entitled to pursue a claim for moving and relocation expenses, its trade fixtures and equipment and improvements which are the property of the Tenant, as long as Tenant's claim for any of the same does not reduce or diminish the Landlord's award. Tenant shall execute all documents required to accomplish such result. In no event shall Base Rent and/or Additional Rent abate on account of Condemnation.

16. **DEFAULT.** Each of the following shall constitute an event of default ("Event of Default"): (i) if Tenant defaults in the payment of any sum of money, whether Rent, or otherwise, and such default shall continue for five (5) days; (ii) if Landlord or Tenant defaults in any other manner and such default shall continue for the period within which performance is required to be made by specific provision of this Lease, or, if no such period is so provided, for twenty (20) days; (iii) if any execution or attachment is issued against Tenant or any of Tenant's property and is not

discharged or vacated within ten (10) days; (iv) if Landlord or Tenant should commence, in any court pursuant to any statute either of the United States or of any State, an insolvency or bankruptcy proceeding (including, without limitation, a proceeding for liquidation, reorganization or for adjustment of debts of an individual with regular income), or if such a proceeding is commenced against Landlord or Tenant and either an order for relief is entered against such party or such party fails to secure a discharge of the proceeding within thirty (30) days of the filing thereof, or if Landlord or Tenant becomes insolvent or is unable to, or admits in writing its inability to pay its debts as they become due, or makes an assignment for the benefit of creditors or petitions for or enters into an arrangement with its creditors or a custodian is appointed or takes possession of Landlord or Tenant's property, whether or not a judicial proceeding is instituted in connection with such arrangement or in connection with the appointment of such custodian; (v) if any financial statement or representation given to Landlord by Tenant, any assignee or subtenant of Tenant, any successor in interest of Tenant is materially false and not cured within ten (10) days.

17. **REMEDIES.**

17.1 Upon the occurrence of an Event of Default, Landlord or Tenant shall have the option to pursue any one or more of the following remedies without notice or demand whatsoever, except as required herein, and in addition to, and not in limitation of any other remedy or right permitted to it by law or in equity or by this Lease:

17.1.1 Landlord or Tenant, with or without terminating this Lease and without waiving such Event of Default, may perform, correct, or repair any condition which Landlord or Tenant has failed to keep, observe, perform, or satisfy. Either party may take, on behalf of the other party, whatever steps the party deems necessary to cure the Event of Default. Landlord may reenter the Premises for such purposes without being liable for prosecution or claim for damages therefor. The respective party shall fully reimburse and compensate the other party, on demand, for all costs and expenses incurred by party in such performance, correction or repair, including, without limitation, accrued interest from the date of demand until date of payment at the Default Rate.

17.1.2 The non-defaulting party may terminate this Lease, in which event Tenant shall surrender the Premises to Landlord within seven (7) days of the date of termination. If Tenant fails to do so, Landlord may, without prejudice to any other remedy it may have, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim of damages therefor.

17.1.3 Landlord may recover possession of the Premises, with or without terminating this Lease, at Landlord's option, in the manner prescribed by any applicable statute, including without limitation, statutes relating to summary process. Tenant's obligation to pay Rent is independent of any duty or obligation of the Landlord pursuant to this Lease.

17.1.4 Landlord may relet the Premises upon such terms and conditions and for such rental as Landlord deems advisable, which reletting shall be deemed a termination of this Lease, and Tenant shall have no further responsibility to Landlord for Rent, Additional Rent, and other charges and expenses pursuant to this Lease. For the purpose of reletting, Landlord is authorized to make such repairs or alterations, to the Premises and/or to remove or store Tenant's or other occupants'

possessions as may be necessary, in the sole discretion of Landlord, for the purpose of such reletting, and Tenant shall be liable to Landlord for such storage costs only. In the event of termination of the Lease or repossession of the Premises on account of an Event of Default, Landlord shall use commercially reasonable efforts to relet or attempt to relet the Premises, or any portion thereof, and to collect rental payments after reletting. In the event of reletting, Landlord may relet the whole or any portion of the Premises, as agent for Tenant or for Landlord's own account, for any period, to any tenant and for any use and purpose. Landlord shall owe no duty or obligation to Tenant if Landlord attempts to relet the Premises.

17.2 In the event that Landlord takes possession of the Premises pursuant to the authority herein granted, Landlord shall remove from the Premises and store (without the necessity of obtaining a distress warrant, writ of sequestration or other legal process) all or any portion of such furniture, fixtures, equipment and other property located thereon and place same in storage at any premises within the County in which the Premises are located. In such event, Tenant shall be liable to Landlord for costs incurred by Landlord in connection with the removal and storage. Landlord shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any person ("**Claimant**") claiming to be entitled to possession thereof which presents to Landlord a copy of any instrument represented to Landlord by Claimant to have been executed by Tenant (or any predecessor of Tenant) granting Claimant the right under various circumstances to take possession of such furniture, fixtures, equipment or other property, upon Landlord's inquiry into the authenticity of Tenant's signature thereon or making an investigation or inquiry as to the validity of the factual or legal basis upon which Claimant purports to act. The rights of Landlord herein stated shall be in addition to all other rights which Landlord has or may hereafter have at law or in equity, and Tenant stipulates and agrees that the rights herein granted Landlord are commercially reasonable. Landlord shall in no event be liable to Tenant, including, without limitation, liability for trespass or conversion, with respect to any actions taken pursuant to this Article.

17.3 In the event of a breach or threatened breach by Landlord or Tenant of any of the covenants or provisions of this Lease, Landlord and Tenant shall have the right of injunction. Any remedy specified in this Lease shall not preclude Landlord or Tenant from any other remedies under this Lease, or now or hereafter existing at law or in equity or by statute.

17.4 If Landlord cannot terminate this Lease or Tenant's right of possession because of the application of bankruptcy or similar laws, then Tenant, as a debtor in possession or any Trustee, shall: (i) within the statutory time, assume or reject this Lease; and (ii) not seek or request any extension or adjournment of any application to assume or reject this Lease by Landlord. Tenant, as debtor in possession, or any Trustee may only assume this Lease if: (A) it cures or provides adequate assurance that it will promptly cure any default hereunder; and (B) it provides adequate assurance of performance during the Term of all of the terms, covenants and provisions of this Lease to be performed by Tenant. In no event after the assumption of this Lease shall any then-existing default remain uncured for a period of the earlier of ten (10) days or the period set forth herein. Adequate assurance of performance shall include, without limitation, adequate assurance: (1) of the source payment of Rent reserved hereunder; and (2) that the assumption of this Lease will not breach any provision hereunder, and will not cause a breach of any other lease, financing agreement or other agreement relating to the Premises.

17.5 In case of any action or proceeding brought to enforce the terms and provisions of this Lease, the non-prevailing party in any such action or proceeding shall pay all costs, expenses and reasonable attorneys' fees incurred by the prevailing party or its agents or both in enforcing the provision of this Lease, at all levels of proceeding, including, appeals, bankruptcy and collections.

17.6 No waiver of any covenant or condition or of the breach of any covenant or condition of the Lease shall be taken to constitute a waiver of any subsequent breach of such covenant or condition nor to justify or authorize the nonobservance on any other occasion of the same or of any other covenant or condition hereof. Acceptance of Rent by Landlord at any time when Tenant is in default hereunder shall be construed as a novation of this Lease. No waiver or indulgence granted by Landlord or Tenant shall be taken as an estoppel against either party.

17.9 Late payment by Tenant of Rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by the terms of any mortgage encumbering the Premises. Accordingly, if any installment of Rent or any other sum due from Tenant has not been received by Landlord or Landlord's designee within three (3) days after such amount is due, Tenant shall pay to Landlord a late charge equal to six percent (6%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. In the event any check tendered by Tenant is not honored for any reason, Tenant shall pay to Landlord, immediately on demand, a service fee of One Hundred Dollars (\$100.00).

17.10 Any sum due and owing by Tenant hereunder shall bear interest at rate of five percent (5%) per annum, not to exceed the highest rate allowed by law, from the due date until paid, including post judgment (the "Default Rate").

18. **SUBORDINATION AND ATTORNMENT**

18.1 This Lease is subordinate to those liens and encumbrances affecting the Premises, at any time and from time to time. This Lease is subordinate to any ground lease, mortgage or any other hypothecation or security interest hereafter placed upon the Premises and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. The subordination set forth herein is self-operative, and no further instrument of subordination shall be required for any purpose. If any Lender elects to have this Lease be prior to the lien of its mortgage, and gives written notice thereof to Tenant, this Lease shall be deemed prior to such mortgage, whether this Lease is dated prior or subsequent to the date of said mortgage.

18.2 Tenant agrees to execute any documents required to evidence such subordination or to make this Lease prior to the lien of any mortgage, as the case may be, and failing to do so within ten (10) days after written demand, does hereby make, constitute and irrevocably appoint Landlord as Tenant's attorney in fact and in Tenant's name, place and stead, to do so.

18.3 Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage encumbering the Premises, attorn to the purchaser

at any foreclosure sale and recognize such purchaser as Landlord pursuant to this Lease and shall execute any documents required to evidence same.

20. ESTOPPEL CERTIFICATE.

20.1 Within ten (10) days after Landlord's request, Tenant shall sign and deliver to Landlord a statement acknowledging that this Lease is in full force and effect and has not been modified (or, if it is not in full force and effect or has been modified, stating why it is not in full force or effect or the substance of the modification), that Landlord is not in default hereunder and containing specific answers to whatever questions concerning this Lease's status Landlord may have posed in his request for the statement. Tenant's failure to sign and deliver this statement within the ten (10) day period shall constitute a representation by Tenant, upon which a Lender, prospective purchaser or prospective mortgagee of the Premises may rely, that this Lease is in good standing, free from any default by Landlord and that there are no oral or written modifications hereof. Any false statement by Tenant that Landlord is in default under this Lease or that this Lease is otherwise not in good standing shall constitute a default by Tenant under this Lease.

21. NOTICES.

21.1 Any notice, request, demand, approval, consent or other communication which Landlord or Tenant may be required or permitted to give to the other, shall be in writing and shall be mailed by certified mail, return receipt requested, or via overnight courier, at the address specified in this Lease or to such other address as either party shall have designated by written notice to the other. Notice shall be deemed given three (3) business days after same shall have been deposited in an official United States Post Office, postage prepaid, or one (1) day after being deposited with an authorized representative of an overnight courier service such as Federal Express.

21.2 If a Lender has given notice to Tenant that it is the holder of a mortgage encumbering the Premises and such notice includes the address to which notices are to be sent, Tenant shall give to the Lender notice simultaneously with any notice given to Landlord to correct any alleged default of Landlord hereunder. The Lender shall have the right, within thirty (30) days after receipt of notice, to correct or remedy such default before Tenant may take any action pursuant to this Lease by reason of such default, provided, however, Tenant may take no action pursuant to this Lease by reason of such default if the Lender has commenced, during said thirty (30) day period, to remedy the alleged default and continues thereafter to use its diligence to remedy the alleged default. If the Lender has previously notified Tenant, any notice of default given to Landlord shall be null and void unless simultaneous notice has been given to Lender.

22. SURRENDER.

22.1 Upon the expiration or termination of this Lease, Tenant shall deliver and surrender the Premises to Landlord in good order and condition, ordinary wear and tear excepted, and shall deliver all keys and combinations to locks, safes, and vaults to Landlord.

22.2 Not later than the Expiration Date, Tenant shall, at Tenant's expense, remove all of Tenant's furnishings, movable trade fixtures and equipment. All items otherwise the property of Tenant as

aforesaid, which are not removed from the Premises at the termination of the Lease shall, at the election of Landlord, be deemed abandoned and become the property of Landlord or, at Landlord's option, Landlord may cause it to be moved and stored at Tenant's expense.

23. **HOLDING OVER.** Tenant may not remain in possession of the Premises after the Expiration Date. If Tenant remains in possession of the Premises after the expiration of the Term, Tenant shall become a tenant at sufferance and any such holding over shall not constitute an extension of this Lease. During such holding over, Tenant shall pay one hundred twenty five percent (125%) of the Rent in effect as of the Expiration Date until Tenant surrenders possession. Nothing contained herein shall be interpreted to grant permission to Tenant to holdover or to deprive Landlord of any rights and remedies with respect thereto.

24. **BROKERS.** Landlord represents and warrants that Landlord has not engaged or employed any real estate broker, agent, or other intermediary in connection with the transaction evidenced by this Lease. Tenant represents and warrants that Tenant has not engaged or employed any real estate broker, agent, or other intermediary in connection with the transaction evidenced by this Lease. Landlord agrees that it shall be solely responsible for the payment of all commissions or fees owed to Landlord's Broker by reason of the creation or procurement of this Lease pursuant to separate written agreements. Landlord and Tenant shall and do hereby mutually indemnify, defend (with counsel reasonably acceptable to the other) and hold each other harmless from and against any and all claims in the event any broker, agent or other intermediary alleges that is owed a commission, fee or other payment by reason of the indemnitor's dealings, negotiations or communications in connection with this Lease or the demise of the Premises; provided, however, the foregoing mutual indemnification shall not extend to the claims of Landlord's Broker, which shall be the sole responsibility of Landlord as hereinabove provided. The mutual indemnification set forth in the preceding sentence shall survive the expiration or any earlier termination of this Lease.

25. **ENTRY.** Tenant agrees to permit Landlord and Landlord's agents entry to the Premises, during normal business hours and upon no less than twenty-four (24) hours prior written notice to Tenant: (i) at any time during the Term for the purpose of inspecting the Premises to determine compliance with the terms hereof, preventing waste to the Premises, or discharging any duty imposed upon Landlord hereunder; and (ii) during the last one hundred and twenty (120) days of the Term for the purpose of showing the Premises to prospective purchasers or tenants. All such entries shall be at reasonable times during daylight hours except that emergency entry may be made at any time that Landlord, in its sole discretion, determines that entry is necessary to protect life or prevent damage to the Premises or the Common Elements.

26. **MISCELLANEOUS PROVISIONS.**

26.1 Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating a relationship of principal and agent or of partnership or of joint venture between the parties hereof. Neither the method of computation of Rent, nor any other provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.

26.2 The invalidity of any provision of this Lease as determined by a court of competent

jurisdiction shall in no way affect the validity of any other provision hereof. Landlord and Tenant acknowledge that they were each represented by counsel in connection with this Lease and that each of them or their respective counsel reviewed and revised this Lease and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease.

26.3 It is understood and agreed between the parties hereto that time is of the essence of all the terms, provisions, covenants, and conditions of this Lease.

26.4 The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

26.5 Upon Tenant paying the Rent reserved hereunder and observing and performing all the covenants, conditions and provisions on Tenant's part to be observed and performed under this Lease and the Declaration, Tenant shall have quiet possession of the Premises against disturbance by Landlord or those persons claiming by, through or under Landlord, for the entire Term, subject to all the provisions of the Lease.

26.6 The Lease shall be governed by the laws of the State of Florida. To the extent allowable by law, both parties waive trial by jury. Venue for any action hereunder shall be in Lee County, Florida.

26.7 The submission of this Lease for examination by Tenant does not constitute an offer or an option to lease the Premises, nor is it intended as a reservation of the Premises for the benefit of Tenant, nor shall the Lease have any force or validity until and unless a copy of it is returned to Tenant duly executed by Landlord.

26.8 RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

26.9 All Tenant payments and indemnity obligations pursuant to this Lease, and those which by their nature are to be performed after the termination hereof, shall survive the termination of this Lease.

26.10 To facilitate execution, this Lease may be executed in one or more counterparts as may be required, and evidence of execution may be communicated by facsimile. All counterparts and facsimiles shall be deemed to be original documents for all purposes.

26.11 This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns.

26.12 This Lease constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements, understandings, representations, inducements, and arrangements, oral or written, between the parties hereto with respect to such

subject matter. This Lease may not be modified in any way, unless by a written instrument executed by both Landlord and Tenant.

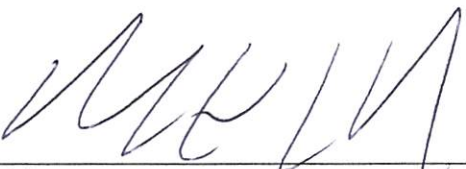
[Signature Page Follows]

Signed in the presence of:

LANDLORD: ESTERO BAY HOTEL
COMPANY d/b/a MATANZAS INN


Print Name: Chris Arnberg


Print Name: Linda S. Glover

By: 
Print Name: Dave Speina - 545TH
Its: President

Signed in the presence of:

TENANT: THE TOWN OF FORT MYERS
BEACH


Print Name: Amy Baker


Print Name: JASON FREEMAN

By: 
Raymond P. Murphy, Mayor

1. **Request:**

Meeting Date: March 16, 2026

Update on Strategic Planning Session and April M&P dates

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

TOWN MANAGER'S ITEMS

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Attachments:

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk

Created/Initiated - 3/5/2026

1. **Request:**

Meeting Date: March 16, 2026

Follow-Up: Lowe's Community Bucket-List Project Ideas

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

TOWN MANAGER'S ITEMS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

5. **Background:**

Lowe's has launched a nationwide call for communities to nominate renovation projects that would make a real difference where they live—from food pantries and shelters to parks, veteran spaces and first responder facilities. **Nominations are open through March 20.**

Through this initiative, Lowe's will award grants to **fund up to 100 large-scale renovation projects. Eligible projects may include renovations to:**

- Community resources such as senior centers, food pantries or youth clubs
- Safe, affordable housing including shelters and transitional living facilities
- Parks, gardens and gathering spaces
- Veteran and military family facilities
- First responder facilities
- Skilled trades education spaces

This effort builds on Lowe's five-year, \$100 million commitment to revitalizing community spaces nationwide. We would welcome your help sharing this opportunity with nonprofits, community leaders, and constituents who may benefit. Full details and nomination information are available at [Lowes.com/BucketList](https://www.lowes.com/BucketList) and at the links below.

Helpful Links:

- [Program Terms](#)
- [FAQs](#)
- [Project Examples](#)
- [See Past Projects](#)

If your office would like to provide a letter of support for a project nominated from your community, letters may be submitted to government.relations@lowes.com. We ask that all letters of support be received no later than March 20.

Below is sample copy if you would like to share this opportunity on your social media channels:

Lowe's is inviting communities nationwide to nominate impactful renovation projects that strengthen local resources and public spaces. Nominations are open through March 20. Lowe's will fund up to 100 large-scale renovation grants for eligible projects, including improvements to community spaces such as food pantries, shelters, parks, veteran facilities, first responder buildings and skilled trades education spaces. Learn more and submit a nomination at [Lowes.com/BucketList](https://www.Lowes.com/BucketList).

Attachments:

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 3/4/2026
Approved - 3/5/2026
Approved - 3/6/2026
Approved - 3/9/2026
Final Approval - 3/9/2026