

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: 2012-131

1. Requested Motion: Motion to approve the Parking Lease Agreement with the First Baptist Church of Fort Myers Beach for Mound House parking.

Meeting Date: 12/17/12

Why the action is necessary: Approval of the Parking Lease Agreement is required in order to provide overflow parking for the Mound House.

What the action accomplishes: Approves a Parking Lease Agreement with the First Baptist Church of Fort Myers Beach to provide overflow parking for the Mound House.

2. Agenda:

Consent
 Administrative

3. Requirement/Purpose:

Resolution
 Ordinance
 Other

4. Submitter of Information:

Council
 Town Staff
 Town Attorney

5. Background: The proposed Parking Lease Agreement will provide for overflow parking for visitors of the Mound House. The agreement is for an initial one (1) year term with a lease rate of \$250/month. The agreement will automatically renew for additional one year terms until either party gives notice, at least thirty (30) days prior to the expiration of any term, to the other party of an intent not to renew.

6. Alternative Action: Modify or decline to approve the Parking Lease Agreement.

7. Management Recommendations: Approve the Parking Lease Agreement.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

9. Council Action:

Approved Denied Deferred Other

PARKING LEASE AGREEMENT

This Parking Lease Agreement (“**Lease**”) is made as of the latest date of execution by the parties hereto, by and between FIRST BAPTIST CHURCH OF FORT MYERS BEACH (hereinafter “**Landlord**”) and THE TOWN OF FORT MYERS BEACH, FLORIDA, a Florida municipal corporation, (hereinafter “**Tenant**”). In consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the parties hereby agree as follows:

1. **Description of Premises.** The Landlord leases to the Tenant, and the Tenant rents from the Landlord the following described premises: The east side of the parking lot located adjacent to 130-138 Connecticut Street, Fort Myers Beach, Florida, as shown on the sketch dated *****, attached hereto as *Exhibit A* and incorporated herein, which parking lot has approximately ***** (***) parking spaces (the “**Premises**”).

2. **Lease Term.** The term of the Lease (the “**Term**”) shall be for one (1) year, commencing on _____ (“**Commencement Date**”) and ending _____ (the “**Termination Date**”). Thereafter, this Lease Agreement shall automatically renew for unlimited additional one (1) year terms unless either party, not less than thirty (30) days’ prior to the expiration of any term, provides written notice to the other party of an intention not to renew this Lease Agreement. In addition, Tenant may terminate this Lease for any reason, with or without cause, by providing thirty (30) days’ advance written notice of such termination to Landlord. It is understood and agreed that there will be no penalty against Tenant for cancelling or terminating the Lease. The monthly rental shall be prorated based on the number of calendar days in the particular month for any portion of a month where the Premises is being rented.

3. **Monthly Rent.** The Tenant shall pay to Landlord TWO HUNDRED FIFTY AND NO/100 (\$250.00) as monthly rent, which monthly rent shall be paid in advance and shall be due on the ____ day of each calendar month without Landlord having to make a demand for same.

4. **Permitted Use.** Tenant shall use and occupy the Premises only for the purpose of overflow parking for visitors to the Mound House. The permitted uses shall at all times be in compliance with the terms of this Lease and applicable rules, regulations, ordinances, statutes and laws.

5. **Tenant Alterations.** The Tenant shall not make any alterations, additions or improvements to the Premises without the prior written consent of the Landlord (which may be conditioned, withheld or delayed in Landlord’s sole discretion).

6. Tenant agrees to accept and use the Premises in “AS IS” condition and understands that Landlord will not be responsible for making any improvements to the Premises or providing any services or utilities of any type in connection with this Lease or otherwise.

7. Insurance and Assumption of Liability.

A. **Insurance.** The Tenant shall, at its sole cost and expense, but for the mutual benefit of itself and Landlord, maintain in force and effect general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Premises or the use thereof during the Term of not less than \$1,000,000.00 with respect to bodily injury or death of one person, \$2,000,000.00 with respect to bodily injury or death of more than one person as a result of any one accident or occurrence, and \$100,000.00 with respect to damage to rented property. Tenant shall carry worker’s compensation insurance as required by law. The coverage shall be maintained with such company or companies as shall meet the reasonable requirements of Landlord. The coverage shall be on an “**occurrence basis**” and not on a “**claims made**” basis. The Tenant shall furnish copies of policies or certificates of insurance evidencing the required coverage to Landlord no less than fifteen (15) days prior to the Commencement Date, unless otherwise agreed by Landlord. Notwithstanding anything to the contrary elsewhere in this Agreement, Tenant shall maintain such required policies of insurance in effect: (i) prior to Tenant or its Agents making use of or occupying the Premises; (ii) through the entire Term and during any other period of Tenant’s use or occupation of the Premises; and (iii) until Tenant’s use and occupation of the Premises has ceased and all personal property of the Tenant or personal property otherwise placed in, on or about the Premises by Tenant, including without limitation, any personal property, equipment, vehicle(s) of others placed in, on or about or otherwise present upon the Premises, has been removed from the Premises. All policies required hereunder shall contain a provision whereby the insurer agrees not to cancel or materially change the coverage without first giving thirty (30) days’ prior written notice to Landlord. The obligations of Tenant under this Section shall survive the termination and/or expiration of this Lease.

B. **Assumption of Liability.** By entering into this Lease or by making use of or occupying the Premises, Tenant hereby agrees, that except to the extent of Landlord’s own willful misconduct, Landlord shall not be responsible or liable for any of the following: (i) injury to persons (including, without limitation, death) occurring in, on or about the Premises or arising from Tenant’s use or occupancy of the Premises; (ii) any total or partial loss of use or occupancy of the Premises for any reason; (iii) loss or damage to vehicles or any other personal property arising from Tenant’s use or occupancy of the Premises or which are otherwise present or located on the Premises; or (iv) any

environmental contamination upon the Premises which is determined to be due to or arising from the acts or omissions of Tenant. The Tenant hereby agrees to assume all liability for any and all claims, loss, damage and expense by or on behalf of any person, firm or entity of any kind: (i) arising by virtue of the use and occupancy of the Premises by the Tenant; (ii) arising from any act, omission or negligence on the part of the Tenant; or (iii) arising in, on or about the Premises and in any way related to the Tenant's use or occupancy of the Premises, including, without limitation, any environmental contamination or hazardous waste contamination in, on or about the Premises caused by the acts or omissions of Tenant. Tenant has inspected the Premises for itself and hereby agrees to assume all risk of using or occupying the Premises. The obligations of Tenant under this Section 9 shall survive the termination and/or expiration of this Lease.

8. Waste and Hazardous Substances. The Tenant shall not allow, permit or commit waste to the Premises. Tenant shall not allow or permit the storage or disposal or placement of any hazardous chemicals or hazardous waste or hazardous substances on the Premises. Landlord shall have the right to enter the Premises from time to time to as Landlord deems necessary in order to inspect the Premises and to determine that Tenant is in compliance with all provisions of this Lease.

9. Compliance with Laws. The Tenant shall comply with all rules, regulations, ordinances codes and laws of all governmental authorities having jurisdiction over the Premises, including, without limitation, all environmental laws and regulations regarding the storage and disposal of toxic or hazardous wastes or hazardous substances.

10. Prohibited Activities. The Tenant shall not permit or engage in any activity that is not specifically permitted under the terms of this Lease or which will effect an increase in the rate of insurance for the Premises. Tenant shall not permit or commit any nuisance to occur in, on or about the Premises or in connection with the use and occupancy of the Premises.

11. No Subletting. The Tenant shall not sublet or assign the Premises nor allow any other person or business to use or occupy the Premises (except for Agents) without the prior written consent of the Landlord, which may be conditioned, delayed or withheld in Landlord's sole discretion.

12. Surrender of Premises. At the end of the Term of this Lease, the Tenant shall surrender and deliver up the Premises in the same condition (subject to any Landlord approved additions, alterations or improvements, if any) as presently exists, reasonable wear and tear excluded.

13. **Default.** A failure of either party to perform any obligation hereunder or to comply with this Agreement shall constitute a default (“**Default**”). Upon occurrence of a Default the non-defaulting party must give written notice to the defaulting party, setting forth the nature of the Default. The defaulting party shall have twenty four (24) hours to cure such Default, or if a cure cannot be reasonably effected within twenty four (24) hours, such time as may be reasonably necessary to effect such a cure but in no case more than seventy two (72) hours (the “**Cure Period**”). Use of the Premises by Tenant shall not be permitted if the Tenant is in Default or attempting to cure a default. If the Tenant does not cure the Default within the Cure Period, the Landlord may elect to cure the Default on behalf of the Tenant but Landlord is not obligated to cure the Default. The Tenant shall reimburse the Landlord for all costs associated with curing the Default on the Tenant’s behalf. Notwithstanding anything to the contrary elsewhere herein, in no case shall a default by Tenant involving insurance or environmental matters or breaches of applicable law have a Cure Period in excess of twenty four (24) hours. If a legal action is initiated by any party to this Lease against another, arising out of or relating to the alleged performance or non-performance of any right or obligation established hereunder, or any dispute concerning the same, any and all fees, costs and expenses reasonably incurred by the prevailing party or its legal counsel in investigating, preparing for, prosecuting, defending against, or providing evidence, producing documents or taking any other action in respect of, such action shall be the joint and several obligation of and shall be paid or reimbursed by the non-prevailing party.

14. **No Recordation, Assignments & Amendments.** This Lease shall be binding upon, and inure to the benefit of, the parties, their heirs, successors, and permitted assigns. Tenant may not record this Lease, or any portion or a summary thereof, in the public records of any municipality or county. This Lease may not be assigned by Tenant to any other person or entity, in whole or in part, without the prior written consent of Landlord, which may be conditioned, withheld or delayed in Landlord’s sole discretion. Any assignment of this Lease, made without the prior written consent of Landlord, shall be void and without affect and shall be a material breach of this Lease. This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile or electronic copies of counterpart signature pages shall be deemed to be the same as originals. The individuals executing this Lease on the behalf of the parties represent and affirm that they each have the authority to bind the respective parties to the terms and provisions of this Lease. The Lease may only be amended in writing with the consent of each of the parties hereto.

15. **Notices.** Any notice to be given under this Lease must be in writing and may be served by depositing same in the United States first class mail, addressed to the party notified, with postage

prepaid or by registered mail or by certified mail, with return receipt requested or by overnight courier. Notice given in accordance herewith shall be effective upon receipt at the address of the party to be served. For purposes of notice, the addresses of the parties shall be as follows:

If to Landlord:

If to Tenant:

This Parking Lease Agreement is hereby executed by the undersigned and shall be effective upon the latest date of execution by the undersigned.

WITNESSETH:

TENANT:

Town of Fort Myers Beach,
a Florida municipal corporation

Sign: _____

By: _____

Print: _____

Print: _____

Sign: _____

Title: _____

Print: _____

Date of Execution: _____

WITNESSETH:

LANDLORD:

Sign: _____

By: _____

Print: _____

Print: _____

Sign: _____

Title: _____

Print: _____

Date of Execution: _____

EXHIBIT A

SKETCH OF PREMISES

CONNECTICUT

N 47°28'26" E
300.00'

PROPOSED PARKING AREA

NOTE: WAS DESTROYED
F.C.M. WAS DESTROYED
RESET S.I.R. W/CAP 2/25/92
F.C.M.
2.0± BELOW SURFACE

EXIST.
1 STORY
WOOD FRAME
BLDG.
F.F.E. = 12.10'

CASE SUBDIVISION
LOT 51
(PB. 1, PG. 58)

S 57°44'34" E
253.00'

EXIST.
CONC.
SLAB
EXIST.
1 STORY
WOOD FRAME
BLDG.
F.F.E. = 5.79'

EXIST.
1 STORY
WOOD FRAME
BLDG.
F.F.E. = 7.54'

EXIST.
1 STORY
CONCRETE
BLDG.
F.F.E. = 7.54'

PROPOSED
TWO STORY C.B.S.
ELEVATION = 12.0'

300.00'
S 47°28'26" W

LOT 4
BLOCK "A"

LOT 5
BLOCK "A"

LOT 6
BLOCK "A"

PROJ
LOT