



# *Town of Fort Myers Beach*

## COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

**TYPE OF CASE:** Commercial Planned Development (CPD)

**CASE NUMBER:** DCI2014-0005

**LPA HEARING DATE:** November 14, 2014

**LPA HEARING TIME:** 9:00 AM

### **I. APPLICATION SUMMARY**

**Applicant:** Rob Fowler, Sr., Fowler Construction  
Rob DeGennaro, Barrier Islands Management, LLC

**Request:** To rezone +/- 1.46 acres plus a portion of a submerged land lease to Commercial Planned Development (CPD) for outdoor seating, retail, and marine educational facility

**Subject property:** See attached Exhibit A

**Physical Address:** 441/445 & 645 Old San Carlos Boulevard

**STRAP #:** 24-46-23-W3-00026.0030 & 24-46-23-W3-00026.0000

**FLU:** Pedestrian Commercial & Tidal Water

**Zoning:** CPD (Resolution 09-10)

**Current use(s):** Parking lot for Nervous Nellie's and docks for tall ships and charter boats

#### **Adjacent zoning and land uses:**

**North:** Matanzas Pass, Tidal Water FLUM

**South:** DOWNTOWN, Pedestrian Commercial FLUM  
Cupcakes in Paradise

- East: Old San Carlos Boulevard, then DOWNTOWN and Commercial Planned Development (CPD), Pedestrian Commercial FLUM Nervous Nellies, Harbour House
- West: DOWNTOWN and CM (Commercial Marina), Pedestrian Commercial and Marine FLUM categories Marina Village at Snug Harbor and Moss Marina
- Southwest: RC (Residential Conservation), Mixed Residential FLUM Single-family and two-family dwelling units

## **II. BACKGROUND AND ANALYSIS**

### **Background:**

The subject property is comprised of 1.38 acres of upland and 0.08 acres of submerged land (Butler Act) owned by the Applicant, plus an additional submerged land lease. Existing development on the property consists of paved parking lots, walkways, and docking facilities. The property was rezoned from DOWNTOWN to Commercial Planned Development (CPD) for development of a mixed-use complex to include a variety of retail, hotel/motel, and marina uses, including a 234-car parking structure in Resolution 09-10 (attached as Exhibit B). Per Land Development Code Sec. 34-220, "Duration of rights conferred by a master concept plan," the master concept plan shall be deemed to be vacated unless a development order is obtained for the first phase of the project within 3 years of the approval by Town Council. LDC Sec. 34-220(4) provides that the property subject to the vacated master concept plan will remain zoned planned development, but no development can occur until a master concept plan is adopted by Town Council. The three options for subsequent development to occur include a new master concept plan under the provisions of the original CPD, the original master concept plan may be extended, or the property may be rezoned by the Town Council. The applicant has chosen the third option.

The subject property was historically the location of the Snug Harbor restaurant. Kitchen facilities were located on the ground floor of the adjacent Marina Village at Snug Harbor, while the dining room was located on the dock that remains on the Butler Act portion of the applicant's property.

### **Analysis:**

The requested CPD is a scaled-back version of the existing approved CPD. The subject request includes 2,729 square feet of outdoor seating for the "Full Belly Deli", 3,547 square feet of outdoor and covered open-air seating for the "Lobster Pot", 4,020 square feet of open-air retail spaces, and 1,140 square feet of open-air public space for the marine educational facility for a total square footage of 11,436 of new development. The Snug Harbor CPD (Resolution 09-10, attached as Exhibit B) included a 61,098 square foot parking garage, 44,845 square feet of hotel/retail liner building, and a 3,600 square foot liner building adjacent to the Marina Village at Snug Harbor condominium building, for a

total of 109,543 square foot of development. The proposed development represents a 89.6% decrease in development intensity from the approved Snug Harbor CPD.

The proposed Schedule of Uses, attached as Exhibit C, provides specific uses that have been requested for each of the four parcels within the project, as well as a list of accessory uses common to all four parcels. Parcel #1, which surrounds the Marina Village at Snug Harbor condominium, would allow consumption on premises (for the restaurant/deli located on the ground floor of the condominium), a shared permanent parking lot, personal services, restaurant, and small retail store (less than 5,000 square feet in floor area). Parcel #2, the submerged land lease, would include uses of boat slips, cultural facility/exhibit area for marine education activities, docks, marina, and theater/exhibit area. Parcel #3 will remain as a shared permanent parking lot, which is unchanged from the existing use. Parcel #4, described as the Butler Act parcel where the former Snug Harbor restaurant was located, is intended for use as open seating in conjunction with the restaurant on Parcel #1, as well as consumption on premises of alcoholic beverages in conjunction with the outdoor seating.

Land Development Code Sec. 26-43 provides that the marine structures regulated by Chapter 26 of the LDC “may be permitted only within riparian extensions of property lines or on owned or leased submerged lands” and “must be related to accessory uses that are allowed in conjunction with a permitted principal use on the adjoining land.” The redevelopment or rehabilitation of the existing dock for outdoor seating, marine educational facility, and a space for Sheriff, Marine Patrol or harbor master is consistent with the LDC requirement for the uses being related to principal uses on the adjoining land.

Comprehensive Plan Considerations:

**Policy 4-B-6** of the comprehensive plan states that the **Pedestrian Commercial** FLUM category is “*a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard and the area around Villa Santini Plaza).*” The policy further requires that “*commercial activities must contribute to the pedestrian-oriented public realm as described in [the] comprehensive plan and must meet the design concepts of [the] plan and the Land Development Code.*” The applicant has proposed a mixed of retail tenants spaces and restaurants with outdoor seating, oriented along Old San Carlos Boulevard and Matanzas Pass. All proposed development is single-story, in order to keep the project pedestrian-scale.

**Policy 4-B-10** of the comprehensive plan states that the **Tidal Water** FLUM category is “*applied to all saltwater canals and all waters surrounding Estero Island that lie within the municipal boundary (out 1,000 feet). No residential development is permitted. Allowable uses are water sports, boating, swimming, fishing, and similar uses. Also allowed are fixed structures for water access provided they comply with Land Development Code provisions designed to avoid impeding navigation and to minimize environmental damage and interference with aesthetic enjoyment of surrounding waters.*” The submerged land lease parcel will be used for additional dockage and boat slips, along with a public use area to be known as the History House, containing educational information about local history, the tall ships, and other environmental and wildlife information. The applicant has also committed to providing space for Sheriff, Marine Patrol or harbor master, and these uses

are consistent with the Tidal Water FLUM category. The Butler Act parcel is proposed for outdoor seating, both covered and open. The seating areas will be located upon the existing dock, if it can be rehabilitated, or on a replacement dock. The Butler Act declaration was granted based upon the property's historic use as a restaurant prior to 1951, which continued until approximately 2003, when Snug Harbor opened up in the current Nervous Nellie's location.

**Policy 6-B-5 Adjacent Development** – *“Development adjacent to aquatic and other nature preserves, wildlife refuges, and recreation areas shall protect the natural character and public benefit of these areas including, but not limited to, scenic values for the benefit of future generations.”* The proposed development will not only provide for scenic enjoyment of the Matanzas Pass views, but the marine educational facility will provide a venue for lessons about the environment, wildlife, and history of the area.

The comprehensive plan also encourages shared parking lots in **Policy 7-F-1**. *“Parking lots serving a variety of land uses require much less space than separate on-site lots for each business. Shared lots waste less land and encourage walking because businesses are relatively small, are clustered together, and have different busy periods.”* The shared parking lots on the subject property enhance the “park once” concept of the comprehensive plan by serving restaurants, retail merchants, and planned cultural and educational facilities. The “Park-Once” strategy is also highlighted in the Old San Carlos Boulevard – Crescent Street Master Plan.

#### Findings and Conclusions:

- a. *Whether there exists an error or ambiguity which must be corrected.*

There is no ambiguity which must be corrected.

- b. *Whether there exist changed or changing conditions that make approval of the request appropriate.*

The changed condition occurred in 2013 when Barrier Islands Management LLC purchased the property. The new owner does not intend to build the large parking garage, retail stores, nor hotel that was approved in 2009.

- c. *The impact of a proposed change on the intent of LDC Chapter 34.*

The requested CPD would zone a non-upland property for commercial uses, and would provide for open air retail spaces along the Old San Carlos frontage of the parking lot on Parcel #1.

- d. *Whether the request is consistent with the goals, objectives, policies and intent, and with the densities, intensities, and general uses set forth in the Fort Myers Beach Comprehensive Plan.*

The upland portion of the subject property is located in the Pedestrian Commercial Future Land Use category, the highest intensity mixed-use land use category on Fort Myers Beach, while the submerged lands are Tidal Water, and are intended to provide for water-dependent uses of land. The application is consistent with those intents.

- e. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

The planned restaurant and retail uses are consistent with the Pedestrian Commercial FLUM category, and the water-related uses of docking, educational information about the Tall Ships and other environmental and wildlife exhibits, and space for Sheriff, Marine Patrol or harbor master are consistent with the Tidal Water FLUM category.

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

Urban services are available, and roads and sidewalks are in place along Old San Carlos Boulevard.

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

The applicant will rehabilitate or replace the existing rundown dock/pier to provide areas for enjoyment of the waterfront.

- h. *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 requested amendment would allow additional restaurants, retail and water-related activity on the property. The request will not cause damage, hazard, nuisance, or other detriment to persons or property, and is less intense than the existing development approved in Resolution 09-10.

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

The request will not place any burden on the transportation network or other facilities, as it is less intensive than the current development approvals in the Snug Harbor CPD.

- j. *For planned development rezonings, see § 34-216 for additional considerations (below):*

1. *The proposed mix of uses is appropriate at the subject location.*

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

The request is appropriate at the subject location, does not negatively impact the public, and is consistent with the comprehensive plan.

### **III. RECOMMENDATION**

The proposed CPD is a reduction in proposed development from the existing approved Snug Harbor CPD (Resolution 09-10). The property has new ownership, and they are interested in improving the property, rather than rezone the property to secure entitlements for future development of hotel/retail space.

The proposed improvements tie-in with other proposed improvements that do not require a rezoning, such as a deli and museum on the ground floor of the Marina Village at Snug Harbor condominium, which is also owned by the applicant. The applicant plans to add outdoor seating for the deli on the upland portion of Parcel #1, which does not involve any new construction.

The plans also include improvements to the dock to include open and covered outdoor seating for a restaurant located on the ground floor of the adjacent condominium. In addition to the dock, a portion of the single-story structure on the dock will be used for a marine educational facility, and it will also contain space for Sheriff, Marine Patrol or harbor master.

The plans call for open air retail spaces along Old San Carlos Boulevard between the sidewalk and the parking lot and condominium building. The retail merchant spaces will be single-story, unlike the prior approval of a 3-story retail/hotel combination.

The other major change from the prior CPD approval is the complete removal of the 234-car parking garage on the south parcel (Parcel #3). The applicant provided a parking calculation, attached as Exhibit G, which provides sufficient parking for the existing Nervous Nellie's, charter boat, proposed deli, proposed restaurant seating on the dock, proposed retail, proposed marine educational facility, and the required parking spaces for boat slips. Land Development Code Sec. 34-676(a) provides for a parking reduction of 50% the number of spaces otherwise required by the LDC. Therefore, the required number of spaces to support the proposed intensity is 72 spaces, and the property has 129 existing parking spaces on-site, which are proposed to remain. The Master Concept Plan depicts a decorative fence that will separate the parking lots from the Old San Carlos Boulevard right-of-way. An example of the proposed fence is attached as Exhibit H.

**Conditions:**

1. Development must be consistent with the master concept plan (MCP) titled “Olde Seaport of Fort Myers Beach” for case DCI2014-0005, last revised 9-30-14, except as modified by conditions or deviations discussed herein. In accordance with LDC Section 34216(b)(5), the MCP must be updated to reflect the deviations and conditions approved by Town Council. If changes to the MCP are subsequently pursued, appropriate approvals will be required.

2. The following limits apply to the project and uses:

Schedule of Uses

**Parcel #1 (645 Old San Carlos):**

Consumption on Premises  
Parking Lot, shared permanent  
Personal Services  
Restaurant  
Retail store, small

**Parcel #2 (submerged land lease):**

Boat slips  
Cultural Facility/Exhibit area  
Docks  
Marina  
Theater/Exhibit area

**Parcel #3 (441/445 Old San Carlos):**

Parking Lot, shared permanent

**Parcel #4 (Butler Act property):**

Open seating (in conjunction with Parcel #1 restaurant)  
Consumption on Premises

**Accessory uses on all parcels:**

Bay access  
Essential Services  
Essential Services equipment

3. Nothing in this rezoning, including any of the attached conditions, may be construed as a variance from the provisions of LDC Chapter 6, Article IV Floodplain regulations.
4. Approval of this rezoning does not give the developer an undeniable right to local development order approval. Development or redevelopment of the subject property must comply with all applicable requirements of the Fort Myers Beach

Comprehensive Plan and Land Development Code in effect at the time of development order approval and permitting, except as specifically modified herein.

5. The development must comply with LDC Sec. 14-76 requirements for sea turtle conservation applicable to new development.
6. No structure may be placed in or over, and no work may occur in, any navigable water of the United States unless properly authorized by the United States Army Corps of Engineers or its designee.
7. No stormwater management system, dam, impoundment, reservoir, appurtenant work, or works may be constructed or altered on the subject property, including submerged lands and riparian leased areas, without property permit or exemption, and unless in compliance with all conditions of such permit or exemption, from the South Florida Water Management District or Florida Department of Environmental Protection, as applicable. Stormwater management for the subject property must comply with all applicable requirements of the Land Development Code at the time of development order approval and must provide for the capture and retention of all stormwater on the site.
8. Approval of this rezoning does not address the compliance or noncompliance of proposed building elevations with the commercial design standards included in LDC Chapter 34, Article III, Division 7. Development of the subject property must meet the commercial design standards effective at the time of local development order approval.
9. Docks for use by occupants of principal uses on the subject property, docks for lease to non-occupants of principal uses on the subject property, and docks for use by water taxi or water shuttle are limited to the areas within the existing submerged land leases and submerged land described in Exhibit A. These docks are and must remain accessory to the principal use(s) of the subject property. The number of slips within the area of a submerged land lease may not exceed the number authorized by that lease without proper approval. Construction of additional or replacement docks must comply with all applicable requirements of the LDC and all applicable state and federal regulations at the time of permitting. No live-aboard units are allowed.

#### **IV. CONCLUSION**

The granting of the requested rezoning for the Olde Seaport CPD would be a reduction in development intensity of almost 90% from the prior approval in the Snug Harbor CPD. The planned development will encourage pedestrian activity centered on the property's waterfront location at the terminus of Old San Carlos Boulevard. The use of the dock for outdoor seating areas, marine educational facility, and space for Sheriff, Marine Patrol or harbor master are water-oriented uses consistent with the Tidal Water future land use category.

If Town Council finds that the requested CPD amendment is contrary to the public interest or the health, safety, comfort, convenience and/or welfare of the citizens of the Town, or that the request is in conflict with the criteria of LDC Section 34-85 regarding rezonings, Town Council should deny the request as provided in LDC Section 34-85(4). If Town Council chooses to approve the request, special conditions necessary to protect the health, safety, comfort, convenience or welfare of the public may be attached if Council finds that such conditions are reasonably related to the requested rezoning.

Staff recommends **APPROVAL WITH CONDITIONS** of the requested CPD to allow outdoor seating, retail, and marine educational facility.

Exhibits:

- A – Legal Description
- B – Resolution 09-10
- C – Schedule of Uses
- D – Master Concept Plan
- E – Olde Seaport seating area drawing
- F – Olde Seaport Market drawing
- G – Parking calculation
- H – Proposed Fence detail

**Exhibit A**  
Legal Description  
DCI2014-0005  
Olde Seaport CPD

North parcel (Parcel #1)

A parcel of land lying in Section 24, Township 46 South, Range 23 East, Estero Island, Lee County, Florida, said parcel being further bounded and described as follows:

Commencing at a concrete monument on the northwesterly right-of-way line of San Carlos Boulevard (30.00 feet from the centerline) being the same monument that is shown three feet southeast of the most southeasterly corner of Matanzas View Subdivision as recorded in Plat Book 9, Page 40, Public Records of Lee County, Florida; thence N. 25°00'00" E. on said right-of-way line for 125.00 feet to the **Point of Beginning**; thence N. 65°00'00" W. for 119.3 feet; thence N. 25°00'00" E. for 84.60 feet; thence N. 65°00'00" W. for 25.07 feet; thence N. 25°00'00" E. for 75.40 feet; thence N. 65°00'00" W. for 36.00 feet; thence S. 25°00'00" W. for 13.50 feet; thence N. 65°00'00" W. for 19.60 feet to the easterly line of a parcel described in Official Record Book 439, Page 55; thence N. 25°00'00" E. on said easterly line for 46.50 feet; thence S. 65°00'00" E. for 21.66 feet to the westerly line of a parcel described in Official Record Book 1637, Page 1411, for Marina Village at Snug Harbor, a Condominium; thence S. 25°00'00" W. on said westerly line for 6.00 feet; thence S. 65°00'00" E. on the southerly line of said parcel for 147.32 feet; thence N. 25°00'00" E. on the southeasterly line of said parcel for 70.52 feet; thence N. 65°00'00" W. on the northeasterly line of said parcel for 113.77 feet; thence N. 16°09'15" E. for 39.02 feet to the waters of Matanzas Pass at a concrete seawall; thence S. 70°33'16" E. along said waters at said seawall for 151.50 feet to the northwesterly right-of-way line of said San Carlos Boulevard; thence S. 25°00'00" W. on said right-of-way line for 310.74 feet to the **Point of Beginning**.

AND

South parcel (Parcel #3)

**Beginning** at a concrete monument in the northwesterly right-of-way line of San Carlos Boulevard, 30 feet from the center thereof and being the same monument that is shown three feet east of from the most easterly corner of Lot 1, Block A, Matanzas View Subdivision, as recorded in Plat Book 9, Page 40, Public Records of Lee County, Florida; thence N. 65° W. for 200 feet; thence N. 25° E. parallel to San Carlos Boulevard for 125 feet; thence S. 65° E. for 200 feet to the westerly line of San Carlos Boulevard; thence S. 25° W. for 125 feet to the **Point of Beginning**.

Butler Act parcel (Parcel #4)

A submerged tract or parcel of land lying in Matanzas Pass, situated in Section 24, Township 46 South, Range 23 East, Lee County, Florida, said tract or parcel being more particularly described as follows:

Commencing at the northwesterly corner of Block 1, Business Center Subdivision, as recorded in Plat Book 9, Page 10, Public Records of Lee County, Florida; thence N. 25°00'00" E. on the easterly right-of-way line of San Carlos Boulevard for 125.00 feet to the centerline of First Street (a right-of-way 63 feet wide); as shown on the plat of said subdivision; thence N. 65°00'00" W. for 33 feet to the centerline of said San Carlos Boulevard; thence continue N. 65°00'00" W. for 30 feet to the westerly right-of-way line of said San Carlos Boulevard; thence N. 25°00'00" E. for 112.75 feet to a drill hole marking the intersection of the waters edge of a concrete seawall with the westerly right-of-way line of said San Carlos Boulevard; thence N. 70°33'16" W. along the waters edge of said seawall for 139.81 feet to the **Point of Beginning**; thence N. 70°23'47" W. for 10.32 feet; thence N. 17°50'44" E. for 31.08 feet; thence N. 69°26'24" W. for 1.75 feet; thence N. 17°44'02" E. for 5.19 feet; thence N. 72°15'58" W. for 30.03 feet; thence N. 09°32'17" E. for 1.33 feet; thence N. 68°30'55" W. for 31.85 feet; thence N. 17°44'02" E. for 10.60 feet; thence N. 72°15'58" W. for 21.45 feet; thence N. 21°32'25" E. for 10.02 feet; thence S. 72°15'57" E. for 46.02 feet; thence S. 68°27'45" E. for 20.78 feet; thence S. 72°58'17" E. for 61.54 feet; thence S. 17°44'02" W. for 23.38 feet; thence N. 72°15'58" W. for 33.50 feet; thence S. 17°44'02" W. for 36.69 feet to the **Point of Beginning**.

el

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 09-10

WHEREAS, McHarris Planning and Design ("Applicant") has requested to rezone 1.38 +/- acres of upland from DOWNTOWN to Commercial Planned Development (CPD) and zone 0.069 +/- acres of submerged land to CPD, to allow phased redevelopment of the subject property with a mixed-use complex to include a variety of retail, hotel/motel, and marina uses to include a 234-car parking structure; and

WHEREAS, the subject property is located at 645 Old San Carlos Boulevard and 445 Old San Carlos Boulevard, Fort Myers Beach; and

WHEREAS, the Applicant has indicated the property's current STRAP numbers are 24-46-23-W3-00026.0000 and 24-46-23-W3-00026.0030 with the legal description attached hereto and incorporated herein by reference as Exhibit "A"; and

WHEREAS, a public hearing was advertised and held before the Local Planning Agency (LPA) on November 12, 2008, at which time the LPA gave full and complete consideration to the recommendations of staff, the documents in the file, the request of Applicant and the testimony of all interested persons and recommended that the Town Council grant approval of applicant's request, with conditions and deviations as outlined with specificity in LPA Resolution Number 2008-42; and

WHEREAS, a public hearing was advertised for February 2, 2009, at which time the Town Council continued the hearing at the request of the Applicant to May 4, 2009, at which time the Town Council continued the hearing to August 10, 2009, at which time the Town Council gave full and complete consideration to the recommendations of staff, the LPA resolution, the request of Applicant, including but not limited to the sworn statement by counsel for Applicant that applicant did not oppose the position of the LPA regarding Applicant's request to zone 0.069± acres of submerged land to CPD, the documents in the file, and the testimony of all interested persons.

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

The Town Council **APPROVES** the Applicant's request to rezone the 1.38± acres of upland legally described in the attached **Exhibit A** from DOWNTOWN to CPD (Commercial Planned Development), subject to the **sixteen (16)** conditions and **three (3)** deviations set forth with specificity below. The Town Council **DISAPPROVES** the request to zone the 0.069± acres of submerged land legally described in the attached **Exhibit B** to CPD.

**A. CONDITIONS**

1. Development must be consistent with the master concept plan (MCP) titled "Snug Harbor" for case FMBDCI2007-0005, stamped received January 5, 2010, except as specifically modified by conditions or deviations discussed herein. In accordance with LDC Section 34-216(b)(5), the MCP must be updated to reflect the deviations and conditions approved by Town Council. If changes to the MCP are subsequently pursued, appropriate approvals will be required.

2. The following limits apply to the project and uses:

Schedule of Uses

**Residential**

Principal:  
NONE  
Accessory:  
NONE

**Lodging**

Principal:  
Hotel/Motel  
Resort  
Timeshare units

Accessory:  
Resort accessory uses  
Subordinate commercial uses  
Group quarters (as limited by condition #13 below)

**Office**

Principal:  
Offices, general or medical  
  
Personal Services  
Automobile rental (by special exception only)  
Accessory:  
Administrative office  
Commercial accessory uses  
Subordinate commercial uses

**Retail**

Principal:  
Bar or cocktail lounge (by special exception only)  
Laundromat  
Parking lot, shared permanent  
Personal services  
Restaurant  
Retail store, small  
Retail store, large (by special exception only)  
Recreation facilities, commercial (by special exception only)  
Accessory:  
ATM

**Marine**

Principal:  
Dock for use by water taxi or water shuttle  
Accessory:  
Dock for use by occupants of principal use  
Dock for lease to non-occupants of principal use

**Civic**

Principal:

Recreation facility, public (by special exception only)  
 Transit terminal (by special exception only)  
 Cultural facility (by special exception only)  
 Essential services building (by special exception only)

Accessory:

Bay access  
 Essential services  
 Essential services equipment  
 Dwelling unit, caretaker (limited to one unit only)

Principal retail and office uses are limited to the 14,486 square feet of floor area proposed on the ground floors of the Phase II and Phase VII buildings as indicated on the MCP.

Site Development Regulations

Minimum Lot area:	<b>60,100± square feet</b>
Maximum Floor Area Ratio:	<b>1.823</b>
Maximum Building Height (feet):	<b>40 feet</b> above base flood elevation <b>52 feet</b> above base flood elevation for partial 4 <sup>th</sup> floor (see deviation #1 and condition #15 below)
Maximum Building Height (stories):	<b>4</b> (including enclosed or unenclosed space below base flood elevation as one story, see deviation #1 and condition #15 below)
Minimum setbacks and build-to lines:	
Old San Carlos Boulevard:	<b>0-foot build-to line</b>
Southwesterly side:	<b>0-foot setback</b>
Rear of Phase I:	<b>0-foot setback</b>
Floor Area allocations:	
Phase I (Parking Garage):	61,098 square feet
Phase II (Hotel/liner):	44,845 square feet
Phase V (“waterfront”):	<b>DENIED</b>
Phase VI (“waterfront”):	<b>DENIED</b> (total 5400 square feet requested for Phase V and Phase VI buildings)
Phase VII (Condo liner):	3600 square feet

3. Nothing in this rezoning, including any of the attached conditions and deviations, may be construed as a variance from the provisions of LDC Chapter 6, Article IV.

4. The construction proposed to occur in Phase VII, a new building between the existing Marina Village at Snug Harbor building and the Bayfront Pedestrian Plaza, must comply with all provisions of the Florida Building Code applicable at the time of permitting. The setback from the lot line separating the proposed Phase VII building and the existing Marina Village building may be zero (0) feet if both the new building and the existing building are constructed in accordance with all building code requirements applicable to attached buildings, in cooperation with the owners of the existing building and proof thereof must be provided at the time of permitting. Otherwise the Phase VII building must comply with all applicable code requirements and must not obstruct egress or ventilation to the existing Marina Village building.

5. The 100 parking spaces within the parking garage that exceed the minimum number of spaces required for the uses within this planned development must be made available to the general public as a shared permanent commercial parking lot at all times. In cooperation with the Town, the developer must seek authorization from the governmental entity with jurisdiction over State Road 865 to install at a suitable location a permanent public service sign under LDC Section 30-6(a)(8). If authorized by that entity, this sign must be visible by motorists prior to reaching the first intersection of State Road 865 on Estero Island, must clearly direct motorists to the parking garage, and must indicate, using a continuously updated variable message, the number of spaces in the garage remaining available to the general public. Unless authorization to construct this sign is refused, the sign must be constructed prior to the issuance of a certificate of compliance for Phase I (parking garage) and maintained for the life of the parking garage at the expense of the developer or its successor(s) in interest. If the entity with jurisdiction over State Road 865 refuses authorization to construct this sign, written evidence to that effect must be provided to the Town prior to the issuance of a certificate of compliance for Phase I (parking garage) and the developer or successor(s) in interest must cooperate with the Town to find a suitable alternative location for the sign.
6. Approval of this rezoning does not give the developer an undeniable right to local development order approval. Development or redevelopment of the subject property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and Land Development Code in effect at the time of development order approval and permitting, except as specifically modified herein.
7. The development must comply with LDC Section 14-76 requirements for sea turtle conservation applicable to new development.
8. No structure may be placed in or over, and no work may occur in, any navigable water of the United States unless properly authorized by the United States Army Corps of Engineers or its designee.
9. No stormwater management system, dam, impoundment, reservoir, appurtenant work, or works may be constructed or altered on the subject property, including submerged lands and riparian leased areas, without proper permit or exemption, and unless in compliance with all conditions of such permit or exemption, from the South Florida Water Management District or Florida Department of Environmental Protection, as applicable. Stormwater management for the subject property must comply with all applicable requirements of the Land Development Code at the time of development order approval and must provide for the capture and retention of all stormwater on the site.
10. Any and all unmaintained underground storage tanks or similar containers now known or subsequently discovered on the subject property must be rehabilitated in accordance with all applicable state and federal requirements. Prior to issuance of a development order, the developer must test the subject property for any type of pollution resulting from current or prior uses. The results of such test must be provided to the Town and any other governmental entity with jurisdiction thereof within seven (7) working days of developer's receipt thereof and the developer must follow all recommendations and requirements by such entity or entities promptly and provide proof thereof to the Town. Prior to the Town Council's execution of any resolution

regarding this CPD, the developer must enter into a separate Agreement to indemnify and hold the Town harmless against any claims, including third-party claims, resulting from such current or former uses regardless of the person or entity which created or was previously involved with such use(s). An official determination by the agency or agencies with jurisdiction over these matters that the property complies with all relevant environmental regulations must be provided to the Town to satisfy this Agreement. The Agreement must be recorded in the Official Records of Lee County, Florida, at the developer's sole cost. If the Agreement is satisfied after recording, the Town will record a notice that the Agreement has been satisfied at the developer's cost for preparation and recording.

11. Approval of this rezoning does not address the compliance or noncompliance of proposed building elevations with the commercial design standards included in LDC Chapter 34, Article III, Division 7. Development of the subject property must meet the commercial design standards effective at the time of local development order approval.

12. Construction of structures in or over the right-of-way of Old San Carlos Boulevard requires execution of a separate agreement between the developer and the Town Council prior to Town Council's execution of any resolution regarding this CPD. Approval of this rezoning is conceptual and the developer is not entitled to the use of public property by virtue of this rezoning.

13. Approval of this rezoning does not authorize the construction or use of any dwelling units on the subject property except ONE (1) caretaker's dwelling unit. All other living units on the subject property must be constructed and used as guest units in compliance with LDC Chapter 34, Article IV, Division 19. Each unit must have a minimum floor area of 250 square feet and must not exceed a maximum floor area of 1000 square feet. Guest units that are used as accessory group quarters for workforce housing may be occupied without regard for the occupancy time-limitation of LDC Section 34-1801(b)(4). Occupancy of such group quarters is limited to bona fide employees of uses located within the subject property.

14. Regardless of the order of construction phasing, no certificate of compliance will be issued for Phase I (parking structure) unless Phase II (liner building for parking structure) simultaneously receives a certificate of compliance.

15. The fourth (4<sup>th</sup>) floor and additional twelve (12) feet of building height are limited to one partial fourth floor at the northeasterly corner of Phase II. The floor area of this partial fourth floor is limited to a maximum of 8000 square feet. Building height elsewhere within this CPD zoning district is limited to a maximum of 3 stories and 40 feet.

16. Docks for use by occupants of principal uses on the subject property, docks for lease to non-occupants of principal uses on the subject property, and docks for use by water taxi or water shuttle are limited to the areas within the existing submerged land leases and the submerged land described in **Exhibit B**. These docks are and must remain accessory to the principal use(s) of the subject property. The number of slips within the area of a submerged land lease may not exceed the number authorized by that lease without proper approval. Construction of additional or replacement docks must comply with all applicable requirements of the LDC and all applicable state and federal regulations at the time of permitting. The requested Marina principal use is denied. No live-aboard units are allowed.

## **B. DEVIATIONS**

1. Deviation from LDC Section 34-675(b)(3) and LDC Section 34-1803(b) to allow building height of four (4) stories and 52 feet above base flood elevation, instead of three (3) stories and 40 feet above base flood elevation, in one area limited to 8000 square feet at the northeastern end of the Phase II building, as shown on the building elevations attached hereto as **Exhibit C**. Town Council **APPROVES** deviation #1, as conditioned.
2. Deviation from LDC Section 10-285 to allow minimum connection separation of 28 feet instead of 125 feet for an existing shared access easement connection to Old San Carlos Boulevard, as shown on the MCP. Town Council **APPROVES** deviation #2.
3. Deviation from LDC Section 34-675(c)(1) to allow F.A.R. of 1.891 (including parking garage area providing 234 spaces, exceeding the minimum 134 spaces required for the proposed project), instead of maximum F.A.R. of 1.8. Town Council **APPROVES** deviation #3 as modified to allow maximum F.A.R. of 1.823.
4. Deviation from LDC Section 26-43 and Comp Plan Policy 4-B-10 to allow rezoning for placement of a structure not permitted by LDC Chapter 26 and uses not allowed by Comp Plan Policy 4-B-10 within the Tidal Water FLUM category. Town Council **DOES NOT APPROVE** deviation #4

## **FINDINGS AND CONCLUSIONS**

Based upon the presentations by the Applicant, staff, and other interested parties at the hearing, and review of the application and the standards for planned development zoning approval, Town Council make the following findings and reach the following conclusions:

A. Regarding the request to zone 0.069± acres of submerged land to CPD:

1. The requested CPD zoning district **does not comply** with the Fort Myers Beach Comprehensive Plan, LDC Chapter 34, and all other applicable town ordinances or codes ;
2. The proposed use or mix of uses **is inappropriate** at the subject location Sufficient safeguards to the public interest **are not provided** by special conditions to the master concept plan or by other applicable regulations;
3. The proposed use or mix of uses **does not meet** all specific requirements of the Comprehensive Plan that are relevant to the requested planned development, including **Policy 4-B-10** regarding the Tidal Water Future Land Use Map category, **Policy 4-C-2** regarding commercial intensity, **Policy 4-C-3** regarding commercial locations, **and Policy 5-A-5**, which requires the Town to allow no net increase to development capacity island-wide.

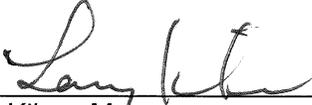
Regarding the request to rezone 1.38± acres of upland from DOWNTOWN to CPD:

1. The requested CPD zoning district, as conditioned, **complies** with the Fort Myers Beach Comprehensive Plan, LDC Chapter 34, and all other applicable town ordinances or codes;
2. The proposed use or mix of uses, as conditioned, **is appropriate** at the subject location;
3. Sufficient safeguards to the public interest **are provided** by the special conditions to the master concept plan or by other applicable regulations;
4. All special conditions **are reasonably related** to the impacts on the public's interest created by or expected from the proposed development;
5. The proposed use or mix of uses, as conditioned, **meets** all specific requirements of the Comprehensive Plan that are relevant to the requested planned development, including **Policy 4-B-6** regarding the Pedestrian Commercial Future Land Use Map category, **Policy 7-E-3** regarding location of buildings in pedestrian areas, and **Policies 7-F-1, 7-F-2, 7-F-3, and 7-F-4** regarding the provision of on-island parking facilities, including parking garages.
6. Regarding requested Deviation #1, Deviation #2, and Deviation #3 (if modified as recommended):
  - a. Each deviation **enhances** the achievement of the objectives of the planned development;
  - b. Through each deviation the general intent of LDC Chapter 34 to protect the public health, safety, and welfare **will be** preserved and promoted;
  - c. Each deviation **operates** to the benefit, or at least not to the detriment, of the public interest; and
  - d. Each deviation **is consistent** with the Fort Myers Beach Comprehensive Plan.
7. Regarding requested Deviation #4:
  - a. The deviation **does not enhance** the achievement of the objectives of the planned development;
  - b. The deviation **will not preserve and promote** the general intent of Land Development Code Chapter 34 to protect the public health, safety, and welfare;
  - c. The deviation **will not operate** to the benefit of the public interest **and may operate to the detriment of the public interest**; and
  - d. The deviation **is inconsistent** with the Fort Myers Beach Comprehensive Plan.

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

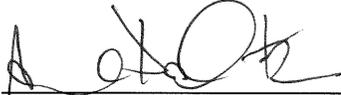
Larry Kiker, Mayor	<u>aye</u>	Herb Acken, Vice Mayor	<u>aye</u>
Tom Babcock	<u>aye</u>	Jo List	<u>aye</u>
Bob Raymond	<u>nay</u>		

DULY PASSED AND ADOPTED THIS 10<sup>th</sup> DAY OF AUGUST, 2009, BY THE  
**TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH**

By:   
Larry Kiker, Mayor

ATTEST:  
By:   
Michelle D. Mayher, Town Clerk

Approved as to legal sufficiency:

By:   
Anne Dalton, Esquire, Town Attorney



**Exhibit A**  
**FMBDCI2007-0005**

A parcel of land lying in Section 24, Township 46 South, Range 23 East, Estero Island, Lee County, Florida, said parcel being further bounded and described as follows:

Commencing at a concrete monument on the northwesterly right-of-way line of San Carlos Boulevard (30.00 feet from the centerline) being the same monument that is shown three feet southeast of the most southeasterly corner of Matanzas View Subdivision as recorded in Plat Book 9, Page 40, Public Records of Lee County, Florida; thence N. 25°00'00" E. on said right-of-way line for 125.00 feet to the **Point of Beginning**; thence N. 65°00'00" W. for 119.3 feet; thence N. 25°00'00" E. for 84.60 feet; thence N. 65°00'00" W. for 25.07 feet; thence N. 25°00'00" E. for 75.40 feet; thence N. 65°00'00" W. for 36.00 feet; thence S. 25°00'00" W. for 13.50 feet; thence N. 65°00'00" W. for 19.60 feet to the easterly line of a parcel described in Official Record Book 439, Page 55; thence N. 25°00'00" E. on said easterly line for 46.50 feet; thence S. 65°00'00" E. for 21.66 feet to the westerly line of a parcel described in Official Record Book 1637, Page 1411, for Marina Village at Snug Harbor, a Condominium; thence S. 25°00'00" W. on said westerly line for 6.00 feet; thence S. 65°00'00" E. on the southerly line of said parcel for 147.32 feet; thence N. 25°00'00" E. on the southeasterly line of said parcel for 70.52 feet; thence N. 65°00'00" W. on the northeasterly line of said parcel for 113.77 feet; thence N. 16°09'15" E. for 39.02 feet to the waters of Matanzas Pass at a concrete seawall; thence S. 70°33'16" E. along said waters at said seawall for 151.50 feet to the northwesterly right-of-way line of said San Carlos Boulevard; thence S. 25°00'00" W. on said right-of-way line for 310.74 feet to the **Point of Beginning**.

AND

**Beginning** at a concrete monument in the northwesterly right-of-way line of San Carlos Boulevard, 30 feet from the center thereof and being the same monument that is shown three feet east of from the most easterly corner of Lot 1, Block A, Matanzas View Subdivision, as recorded in Plat Book 9, Page 40, Public Records of Lee County, Florida; thence N. 65° W. for 200 feet; thence N. 25° E. parallel to San Carlos Boulevard for 125 feet; thence S. 65° E. for 200 feet to the westerly line of San Carlos Boulevard; thence S. 25° W. for 125 feet to the **Point of Beginning**.

Descriptions based on survey by Charles D. Knight, PLS 6056, dated 12/20/06 and last revised 9/8/08 (BWLK project #38897)

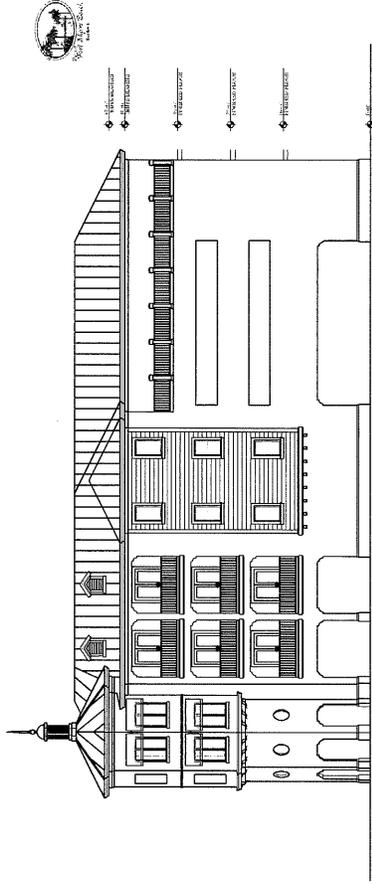
**Exhibit B**  
**FMBDCI2007-0005**

A submerged tract or parcel of land lying in Matanzas Pass, situated in Section 24, Township 46 South, Range 23 East, Lee County, Florida, said tract or parcel being more particularly described as follows:

Commencing at the northwesterly corner of Block 1, Business Center Subdivision, as recorded in Plat Book 9, Page 10, Public Records of Lee County, Florida; thence N. 25°00'00" E. on the easterly right-of-way line of San Carlos Boulevard for 125.00 feet to the centerline of First Street (a right-of-way 63 feet wide); as shown on the plat of said subdivision; thence N. 65°00'00" W. for 33 feet to the centerline of said San Carlos Boulevard; thence continue N. 65°00'00" W. for 30 feet to the westerly right-of-way line of said San Carlos Boulevard; thence N. 25°00'00" E. for 112.75 feet to a drill hole marking the intersection of the waters edge of a concrete seawall with the westerly right-of-way line of said San Carlos Boulevard; thence N. 70°33'16" W. along the waters edge of said seawall for 139.81 feet to the **Point of Beginning**;

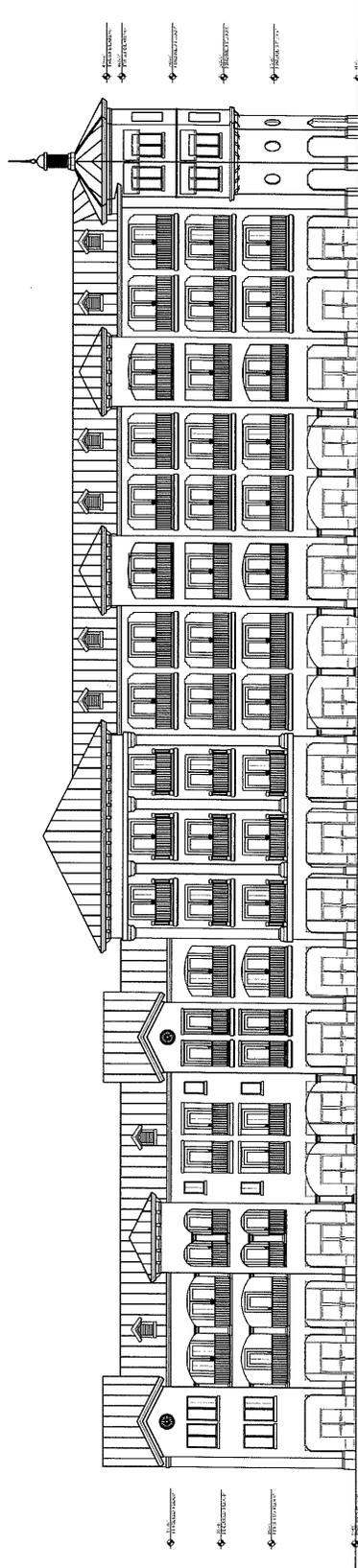
thence N. 70°23'47" W. for 10.32 feet;  
thence N. 17°50'44" E. for 31.08 feet;  
thence N. 69°26'24" W. for 1.75 feet;  
thence N. 17°44'02" E. for 5.19 feet;  
thence N. 72°15'58" W. for 30.03 feet;  
thence N. 09°32'17" E. for 1.33 feet;  
thence N. 68°30'55" W. for 31.85 feet;  
thence N. 17°44'02" E. for 10.60 feet;  
thence N. 72°15'58" W. for 21.45 feet;  
thence N. 21°32'25" E. for 10.02 feet;  
thence S. 72°15'57" E. for 46.02 feet;  
thence S. 68°27'45" E. for 20.78 feet;  
thence S. 72°58'17" E. for 61.54 feet;  
thence S. 17°44'02" W. for 23.38 feet;  
thence N. 72°15'58" W. for 33.50 feet;  
thence S. 17°44'02" W. for 36.69 feet to the **Point of Beginning**.

**EXHIBIT C**



**SIDE ELEVATION**

SCALE: 3/32"=1'-0"



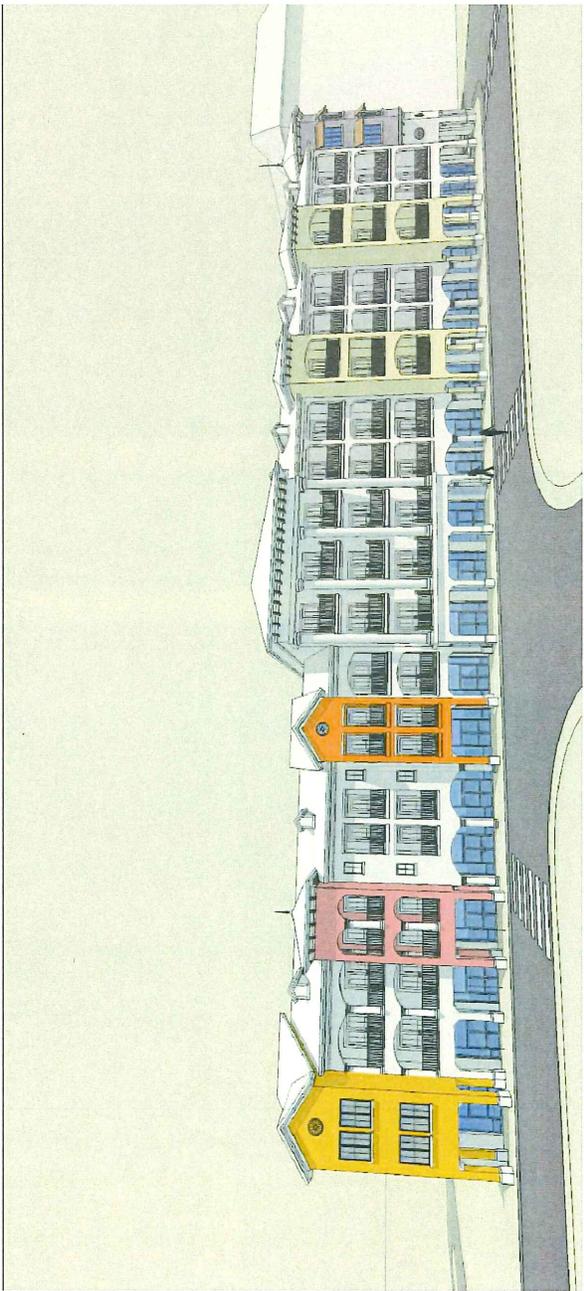
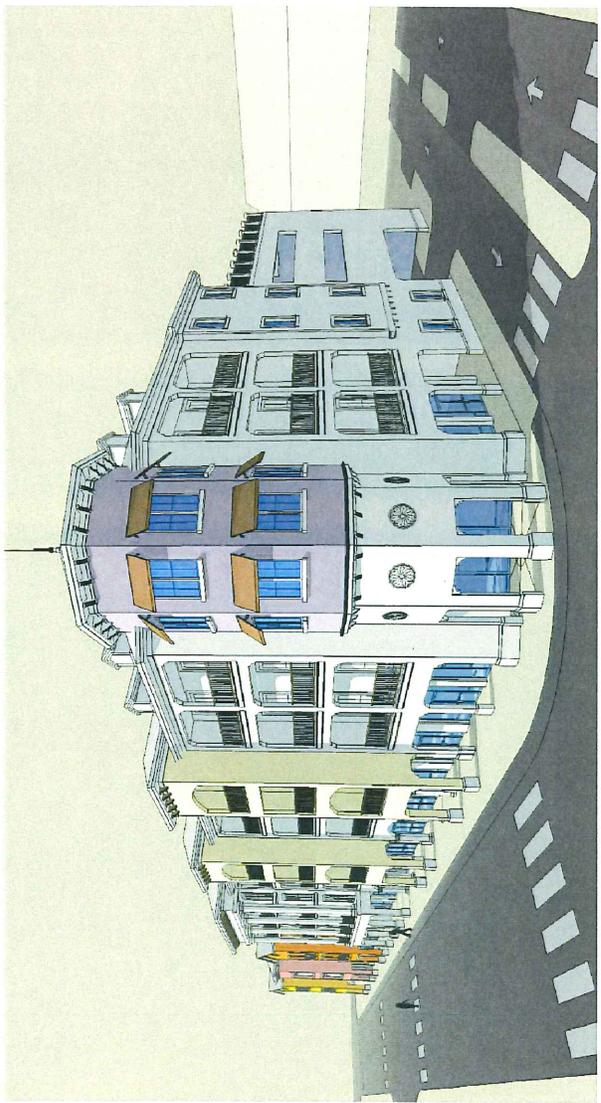
**FRONT ELEVATION**

SCALE: 3/32"=1'-0"

NO.	DESCRIPTION	DATE	BY	CHKD.
1	REVISED			
2	REVISED			
3	REVISED			
4	REVISED			
5	REVISED			
6	REVISED			
7	REVISED			
8	REVISED			
9	REVISED			
10	REVISED			

THIS DOCUMENT IS THE PROPERTY OF MCHARRIS PLANNING & DESIGN, INC. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF MCHARRIS PLANNING & DESIGN, INC.

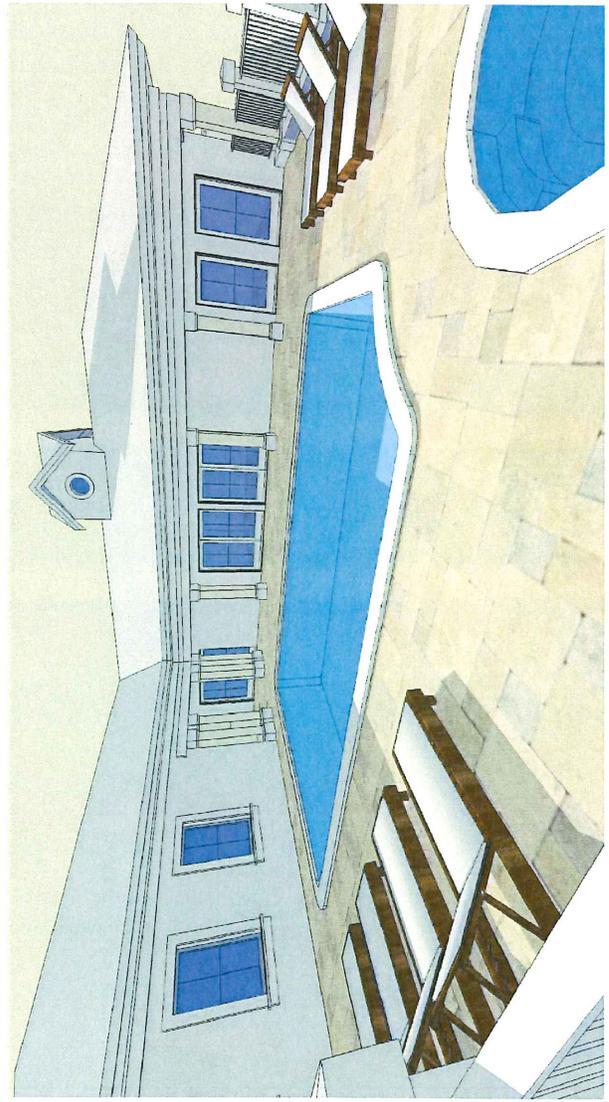
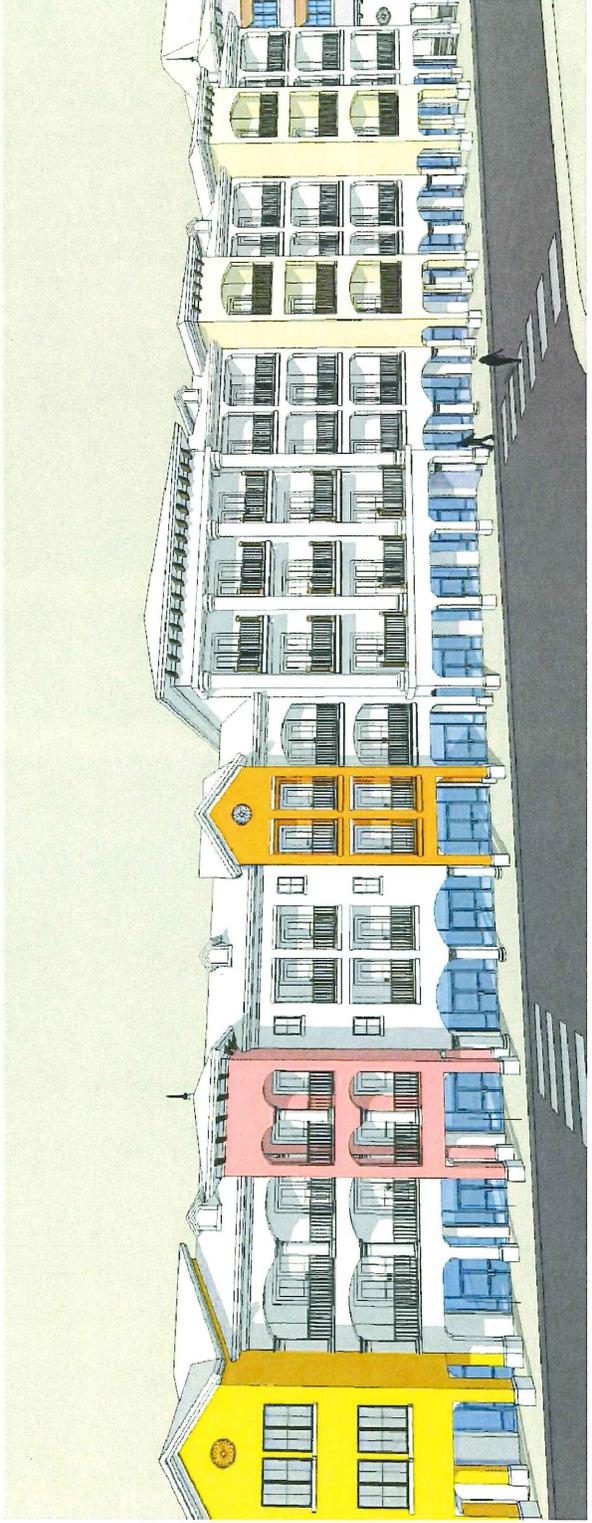
**MCHARRIS**  
PLANNING & DESIGN  
INC.  
1000 W. PALM BEACH BLVD., SUITE 200  
WEST PALM BEACH, FL 33411  
TEL: 561-833-1100  
WWW.MCHARRISPLANNING.COM



This drawing is the property of MCHARRIS Planning & Design, Inc. and is not to be used, copied, or reproduced in any form without the written consent of MCHARRIS Planning & Design, Inc. All rights reserved.

NO.	DATE	DESCRIPTION	BY	APP.
1				
2				
3				
4				
5				

NO.	DATE	DESCRIPTION	BY	APP.
1				
2				
3				
4				
5				



THIS INSTRUMENT PREPARED BY  
AND, AFTER RECORDING, RETURN TO:  
THE TOWN OF FORT MYERS BEACH  
2523 ESTERO BOULEVARD  
FORT MYERS BEACH, FL 33931

INSTR # 2010000032651, Pages 10  
Doc Type AGR, Recorded 02/08/2010 at 03:48 PM,  
Charlie Green, Lee County Clerk of Circuit Court  
Rec. Fee \$86.50  
Deputy Clerk JMILLER  
#1

AGREEMENT FOR USE OF TOWN RIGHT- OF-WAY

COMMERCIAL DESIGN STANDARDS

The Town of Fort Myers Beach, a municipal corporation whose address is 2523 Estero Boulevard, Fort Myers Beach, FL 33931 ("Town") and Kiric Investments, Inc. ("Licensee") a Florida Corporation whose address is 1522 Park Road, Waynesboro, VA 22980, enter into this Agreement ("Agreement") on this 22 day of December, 2009 for use of portions of Town Right-of-Way on an annual basis, under the following terms and conditions:

1. Town Land Development Code Provisions. The Town Land Development Code (LDC) requires that commercial buildings have traditional pedestrian-oriented exteriors and further requires, pursuant to LDC Section 34-995(e), that commercial buildings located at 450 Old San Carlos Blvd. maintain a continuous awning or canopy unless the sidewalk is shaded by an arcade or colonnade. LDC Section 34-995(e)(6)(a) further states that arcades and colonnades may encroach into a Town Right-of-Way, provided explicit permission is granted by the Town.

2. Licensee's Property. Licensee owns a parcel of real property located at 645 Old San Carlos Boulevard and 645 Old San Carlos Boulevard Fort Myers Beach, FL, as is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

3. Licensee's Addition and R-O-W Structure(s). Licensee desires to construct Snug Harbor CPD on the subject property for the purpose of compliance with the Town's Commercial Design Standards and the architectural design thereof has structural and habitable space extending into or over the subject Right-of-Way ("Licensed Area" or "Structure"). Exhibit "B," which is attached hereto and incorporated by reference, sets forth the proposed Structure(s) inclusive of the legal description for the area of the Town Right-of-Way referenced in this Agreement.

4. Term of License. This License will continue indefinitely unless terminated by either party in writing upon sixty (60) days' prior notice or as provided elsewhere herein. It is the Licensee's sole responsibility to contact the Town for payment of the applicable fee(s) prior to December 31 of each year. The Town assumes no responsibility to notify the Licensee of any obligation hereunder.

5. Grant of License. The Town hereby grants, gives and conveys to Licensee, its successors, and assigns, an annual and non-exclusive license to use the subject right-of way for purposes of placement and the maintenance of the Structure(s) for the subject property, limited to the area described in Exhibit "B."

6. Maintenance and Use. Licensee is responsible for all construction costs associated with its use of the subject Right-of-Way and is responsible for all costs associated with the maintenance and repair of the Structure(s). Licensee covenants and agrees to construct,

maintain and use the subject Right-of-Way and the Structure(s) in a manner consistent with the depiction in Exhibit "B" and applicable Elevations and as set forth elsewhere in this Agreement.

7. Town Access To Subject Right-of-Way.

(a) From time to time, the Town may require access to a portion or all of the subject Right-of-Way within which Licensee's Structure(s) are located. The Town will endeavor to minimize the impact of such access on Licensee's Structure(s) if possible but Licensee accepts and agrees that (i) the Town has sole discretion as to whether such partial or full access is required by the Town and (ii) the Town's judgment as to the need for and extent of such access shall be final, and (iii) it may be necessary for Licensee to remove and replace the Structure(s) in their entirety at Licensee's sole cost.

(b) As soon as practicable, the Town will notify Licensee of the potential need for use of any or all of the portion of the subject Right-of-Way upon which the Structure(s) are located and/or the necessity of removal of the Structure(s) from the subject Right-of-Way. The Town will not be required to provide advance notice in the event of an emergency, as defined by the Town. In the event that this License is not renewed for any reason, Licensee shall remove any and all structures from the Town Right-of-Way within seven (7) days of expiration hereof.

(c) The cost of Licensee's removing part or all of the Structure(s) from the subject Right-of-Way promptly upon request shall be Licensee's sole responsibility; however in the event of an emergency, as defined by the Town, the Town may remove all or part of such Structure(s), in its sole discretion. The cost of replacement and/or repair of any section of the Structure(s) due to the Town's need for access to the Right-of-Way shall be Licensee's sole responsibility. If Licensee does not promptly comply with the Town's request for access, or in the event of such emergency, as defined by the Town, the Town may remove the Structure(s) in part or in full and place temporary structural components in their stead, and Licensee shall be required to reimburse the Town for all labor, materials, and other costs to the Town related thereto, within fifteen (15) days of being invoiced.

7. Licensee's Obligation to Repair In the Event of Damage and/or Destruction. In the event the Structure(s), and/or the subject property and/or any part of the Town's Right-of-Way is/are damaged by Licensee or any third party as a result of the use allowed hereunder, or if any of the foregoing is/are destroyed by fire, wind, water or other casualty, Licensee must repair the Structure(s) to comply with the then-current Florida Building Code and Licensee must also repair the Town's Right-of-Way to the satisfaction of the Town. All costs of such repair are at the sole expense of Licensee, and all such repairs must be consistent with Exhibit "B" attached hereto and incorporated herein. This paragraph does not waive Licensee's obligation to comply with the requirements of the LDC.

8. Indemnification and Hold Harmless. The Licensee, its successors, and assigns, agree to defend, indemnify and hold the Town, its employees, contractors and representatives harmless from and against any and all loss, liability, claim, damage and expense (including but not limited to attorney fees and appellate attorney fees) that may result from, arise out of, or concern the subject matter of this Agreement.

9. Insurance. Licensee covenants and agrees to obtain and maintain general liability insurance, property damage insurance, and other insurance for the term of this Agreement in the amount of one million (\$1,000,000) dollars /three million (\$3,000,000) dollars

with a maximum deductible of \$25,000 .The insurance type, amount, and deductible required herein are subject to reasonable amendment by the Town in the Town's sole discretion. Licensee shall designate the Town as an additional insured and shall deliver to the Town a Certificate of Insurance showing the Town as an additional insured upon mutual execution of this Agreement and provide annual updates of such Certificate of Insurance to the Town Finance Department on January 2 of each year this Agreement is in effect.

10. Successors and Assigns; Transfer of Property. This Agreement shall be binding upon the parties hereto, their respective heirs, successors and assigns. In the event Licensee shall sell or otherwise transfer its interests in the subject property, such transfer shall be subject to this Agreement and such transferee shall become bound to all terms and obligations accruing subsequent to such transfer.

11. Notices. All notices which may be given or which are required to be given under this Agreement, shall be deemed effective when either: (i) personally delivered to the intended recipient; (ii) upon acknowledgment of receipt of certified or registered mail by the recipient or (iii) immediately if sent during regular business hours by facsimile, provided that receipt for such facsimile is verified by the sender and followed by a notice sent in accordance with one of the other provisions set forth above.

12. Entire Agreement; Modification. This Agreement, with all exhibits referenced herein, contains the entire understanding and agreement between the parties hereto and there are no promises, agreements, conditions, undertaking or warranties or representations, oral or written, expressed or implied, between them except as set forth herein. No change or modification hereto shall be effective unless it is in writing and signed by the parties hereto.

13. Dispute Resolution and Attorneys Fees. Venue for resolution of any disputes arising from this Agreement shall be in the Twentieth Judicial Circuit Court in and for Lee County, Florida. The prevailing party shall be entitled to an award of attorney's fees up through and including any appeal.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

14. Effective Date; Recording. The Effective Date of this Agreement shall be the date when the last party has signed this Agreement. This Agreement shall be recorded in the Public Records of Lee County, Florida by Licensee at Licensee's sole cost and a certified copy shall be provided to the Town within three (3) business days of such recording.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year set forth above.

Licensee:

Witness for Licensee:

**KIRIC INVESTMENTS, INC**

BY: \_\_\_\_\_

Print name of person signing:

*Richard Hendricks, CEO*

Print name: \_\_\_\_\_

*Shawn V. Wood*

ATTEST:

*Michelle D. Mayher*  
Michelle D. Mayher, Town Clerk

TOWN OF FORT MYERS BEACH

*Jack Green*  
\_\_\_\_\_, Town Manager

Approved as to Legal Form and Sufficiency:

By: \_\_\_\_\_

*Anne Dalton*  
Anne Dalton, Esquire, Town Attorney

**EXHIBIT A:**

**LEGAL DESCRIPTION OF SUBJECT PROPERTY**

## *EXHIBIT A*

### Parcel 1

A parcel of land situated in the State of Florida, County of Lee, lying in Section 24, Township 46 South, Range 23 East and further bounded and described as follows:

Starting at a concrete monument on the Northwesterly right-of-way line of San Carlos Boulevard (30.00 feet from centerline) being the same monument that is shown three feet Southeast of the most Southeasterly corner of Matanzas View Subdivision as recorded in Plat Book 9 at Page 40 of the Public Records of Lee County; thence N 25 Degrees 00' 00" E along said right-of-way line for 125.00 feet to the Point of Beginning; thence N 65 Degrees 00' 00" W for 119.33 feet; thence N 25 Degrees 00' 00" E for 84.60 feet; thence N 65 Degrees 00' 00" W for 25.07 feet; thence N 25 Degrees 00' 00" E for 75.40 feet; thence N 65 Degrees 00' 00" W for 36.00 feet; thence S 25 Degrees 00' 00" W for 13.50 feet; thence N 65 Degrees 00' 00" W for 19.60 feet to the Easterly line of a parcel described in Official Records Book 439 at Page 55; thence N 25 Degrees 00' 00" E along said Easterly line for 46.50 feet; thence S 65 Degrees 00' 00" E for 21.66 feet to the Westerly line of a parcel described in Official Records Book 1637 at Page 1411 for Marina Village at Snug Harbor, a Condominium; thence S 25 Degrees 00' 00" W along said parcel for 6.00 feet; thence S 65 Degrees 00' 00" E along said parcel for 147.32 feet; thence N 25 Degrees 00' 00" E along said parcel for 70.52 feet; thence N 65 Degrees 00' 00" W along said parcel for 113.77 feet; thence N 16 Degrees 09' 15" E for 39.02 feet to the waters edge of a concrete seawall; thence S 70 Degrees 33' 16" E along said waters edge of a concrete seawall for 151.50 feet to the Northwesterly right-of-way line of said San Carlos Boulevard; thence S 25 Degrees 00' 00" W along said right-of-way line for 310.74 feet to the Point of Beginning.

### Parcel 3

Units 2, 3, 4 and 5 of Marina Village at Snug Harbor Condominium, per the Declaration of Condominium thereof filed and recorded in O.R. Book 1637, Pages 1386-1449, Public Records of Lee County, Florida.

### Parcel 4

A submerged tract or parcel of land lying in Matanzas Pass, situated in the State of Florida, County of Lee, Section 24, Township 46 South, Range 23 East and further bounded and described as follows;

Beginning at a drill hole marking in the intersection of the waters edge of a concrete seawall and the Northwesterly right-of-way line of San Carlos Boulevard, said drill hole being referenced by an iron rod (Corp. 4919) on said right-of-way line at a distance of 112.75 feet, bearing S 25 Degrees 00' 00" W; thence N 70 Degrees 33' 16" W along said waters edge of a concrete seawall for 151.50 feet; thence N 16 Degrees 09' 15" E along said waters edge of a concrete seawall for 1.57 feet; thence N 70 Degrees 40' 28" W along said waters edge of a concrete seawall for 49.21 feet; thence N 25 Degrees 34' 06" W for 52.53 feet to an intersection with a wood deck; thence N 21 Degrees 32' 25" E along said deck and a prolongation thereof for 23.20 feet; thence S 68 Degrees 27' 35" E for 67.51 feet; thence S 73 Degrees 04' 04" E for 54.00 feet; thence S 70 Degrees 33' 16" E for 121.69 feet to an intersection with a line bearing N 25 Degrees 00' 00" E from the Point of Beginning; thence S 25 Degrees 00' 00" W for 61.98 feet to the Point of Beginning.

Parcel 6

Commencing at a concrete monument in the Northwesterly line of San Carlos Boulevard, 30 feet from the center thereof and being the same monument that is shown three feet East from the more Easterly corner of Lot 1, Block A, of Matanzas View Subdivision, Plat Book 9, Page 40, Public Records of Lee County, Florida; thence N 65 Degrees W a distance of 200 feet; thence N 25 Degrees E parallel to San Carlos Boulevard 125 feet; thence S 65 Degrees E 200 feet to Westerly side of San Carlos Boulevard ; thence S 25 Degrees W a distance of 125 feet to the Point of Beginning; being in Government Lot 1, Section 24, Township 46 South, Range 23 East, Lee County, Florida.

**EXHIBIT B:**

**DESCRIPTION OF PROPOSED STRUCTURE(S)**

**(INCLUSIVE OF LEGAL DESCRIPTION FOR AFFECTED AREA OF TOWN RIGHT-OF-WAY)**



**LEGAL DESCRIPTION FOR AFFECTED AREA OF TOWN RIGHT-OF-WAY**

Commencing at a concrete monument in the Northwesterly line of San Carlos Boulevard, 30 feet from the center thereof and being the same monument that is shown three feet East from the more Easterly corner of Lot 1, Block A, of Matanzas View Subdivision, Plat Book 9, Page 40, Public Records of Lee County, Florida; thence N 25 Degrees 00' 00" E parallel to San Carlos Boulevard 275 feet; thence S 65 Degrees 00' 00" E a distance of 15 feet; thence S 25 Degrees 00' 00" West parallel to San Carlos Boulevard 275 feet; thence N 65 Degrees 00' 00" W a distance of 15 feet to the Point of Beginning; being in Government Lot 1, Section 24, Township 46 South, Range 23 East, Lee County, Florida.

## **HOLD HARMLESS AGREEMENT**

This AGREEMENT, is made the date last indicated below between KIRIC INVESTMENTS, INC., a Florida corporation ("Kiric") and the TOWN OF FORT MYERS BEACH (the "Town").

### RECITALS

WHEREAS, Kiric submitted an application to the Town for the rezoning of 1.38± acres located at 645 Old San Carlos Boulevard and 445 Old San Carlos Boulevard, Fort Myers Beach, Lee County, Florida (the "Property") and more specifically described on the attached Exhibit "A" and incorporated herein by reference; and

WHEREAS, the application requested rezoning of the Property, a portion of which was formerly used as a gas station and a dry cleaner from DOWNTOWN to Commercial Planned Development (CPD); and

WHEREAS, in response to said rezoning application, and after proper consideration, the Town voted to approve Resolution Number 09-10 on August 10, 2009, approving Kiric's request to rezone from DOWNTOWN to CPD (Commercial Planned Development) subject to conditions; and

WHEREAS, Condition 10 of Resolution Number 09-10 requires Kiric to test the Property for pollution prior to obtaining a development order;

WHEREAS, Condition 10 of Resolution Number 09-10 requires Kiric to enter into this agreement (the "Agreement") with the Town to indemnify and hold the Town harmless against any environmental pollution claims, including third-party claims, resulting from current or former uses on the Property; and

WHEREAS, in order to satisfy the Agreement and prior to the issuance of a development order, Kiric must provide the Town with an official determination, made by the agency or agencies having jurisdiction, that the Property complies with all applicable environmental regulations.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the adequacy and sufficiency of said consideration having been acknowledged by each of the parties to this Agreement, the parties covenant and agree as follows:

1. The above recitals are hereby incorporated into this Agreement.
2. Release and Hold Harmless. Kiric hereby agrees that Kiric, its successors, assigns and heirs, hereby fully holds harmless and discharges the Town from and against the Town's and /or any third party claims which may arise against the Town resulting from the former use of gas tanks and dry-cleaning chemicals on the

Property. This indemnification and hold harmless of the Town shall include, but not be limited to, any third party claims related to the removal of the aforesaid gas tanks and/or any issues related directly or indirectly to pollution of soil, groundwater and/or other material on the Property or otherwise. This indemnification and hold harmless shall further include, but not be limited to, claims which may be asserted through administrative action or in some venue other than through the state or federal court system, and shall include but not be limited to reasonable attorney fees and costs, including appellate attorney fees, incurred by the Town related to the gas tanks and/or any issues related directly or indirectly to pollution of soil, groundwater and/or other material on the Property. The Town is indemnified and held harmless from all claims as may arise in the aforesaid manner until such time as condition 10 of Resolution Number 09-10 is fulfilled to the Town's satisfaction.

3. Jurisdiction over Environmental Compliance. The Florida Department of Environmental Protection (FDEP) has jurisdiction over environmental compliance with regard to the closure of underground storage tanks and cleanup for the Property and the Lee County Department of Natural Resources is authorized under contract with the FDEP to exercise some or all of the FDEP duties and responsibilities with regard thereto.

4. Satisfaction. Satisfaction of the Agreement requires Kiric to provide, prior to the issuance of a development order, an official determination, made by the agency or agencies having jurisdiction, that the Property complies with all applicable environmental regulations. Provided all other relevant conditions precedent contained in Resolution Number 09-10 are satisfied, the Town Council will execute Resolution Number 09-10 upon execution of this Agreement.

5. Other Agreements. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it.

6. Venue and Governing Law. The sole and exclusive venue for the resolution of any dispute arising pursuant to the Agreement shall be in a court of competent jurisdiction located in Lee County, Florida, and this Agreement shall be construed in accordance with the laws of the state of Florida.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date last written below.

WITNESSES:

Cynthia Henderson  
(Witness Sign Name)

Dolonda Campbell  
(Witness Sign Name)

KIRIC INVESTMENTS, INC.

[Signature]  
Print Name: RICHARD HENDRICKS  
Title: CEO  
Date: 10/01/09

City STATE OF Virginia  
COUNTY OF Wynnesboro

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of Oct, 2009, by Richard A. Hendricks, as \_\_\_\_\_ of Kiric Investments, Inc., who  is personally known to me or who  has produced a driver's license as identification.

Sharon Y. Wood  
Notary Public - State of Virginia  
Sharon Y. Wood  
Printed Name of Notary Public  
182773 7/31/2010  
Commission No. Expiration Date

TOWN OF FORT MYERS BEACH

By: [Signature]  
Print Name: LARRY KIKER  
Title: Mayor  
Date: 1-4-10

ATTEST:

By: [Signature]  
Approved as to form by:

[Signature]  
Name: ANNE DALTON  
Town Attorney

## *EXHIBIT A*

### Parcel 1

A parcel of land situated in the State of Florida, County of Lee, lying in Section 24, Township 46 South, Range 23 East and further bounded and described as follows:

Starting at a concrete monument on the Northwesterly right-of-way line of San Carlos Boulevard (30.00 feet from centerline) being the same monument that is shown three feet Southeast of the most Southeasterly corner of Matanzas View Subdivision as recorded in Plat Book 9 at Page 40 of the Public Records of Lee County; thence N 25 Degrees 00' 00" E along said right-of-way line for 125.00 feet to the Point of Beginning; thence N 65 Degrees 00' 00" W for 119.33 feet; thence N 25 Degrees 00' 00" E for 84.60 feet; thence N 65 Degrees 00' 00" W for 25.07 feet; thence N 25 Degrees 00' 00" E for 75.40 feet; thence N 65 Degrees 00' 00" W for 36.00 feet; thence S 25 Degrees 00' 00" W for 13.50 feet; thence N 65 Degrees 00' 00" W for 19.60 feet to the Easterly line of a parcel described in Official Records Book 439 at Page 55; thence N 25 Degrees 00' 00" E along said Easterly line for 46.50 feet; thence S 65 Degrees 00' 00" E for 21.66 feet to the Westerly line of a parcel described in Official Records Book 1637 at Page 1411 for Marina Village at Snug Harbor, a Condominium; thence S 25 Degrees 00' 00" W along said parcel for 6.00 feet; thence S 65 Degrees 00' 00" E along said parcel for 147.32 feet; thence N 25 Degrees 00' 00" E along said parcel for 70.52 feet; thence N 65 Degrees 00' 00" W along said parcel for 113.77 feet; thence N 16 Degrees 09' 15" E for 39.02 feet to the waters edge of a concrete seawall; thence S 70 Degrees 33' 16" E along said waters edge of a concrete seawall for 151.50 feet to the Northwesterly right-of-way line of said San Carlos Boulevard; thence S 25 Degrees 00' 00" W along said right-of-way line for 310.74 feet to the Point of Beginning.

### Parcel 3

Units 2, 3, 4 and 5 of Marina Village at Snug Harbor Condominium, per the Declaration of Condominium thereof filed and recorded in O.R. Book 1637, Pages 1386-1449, Public Records of Lee County, Florida.

### Parcel 4

A submerged tract or parcel of land lying in Matanzas Pass, situated in the State of Florida, County of Lee, Section 24, Township 46 South, Range 23 East and further bounded and described as follows;

Beginning at a drill hole marking in the intersection of the waters edge of a concrete seawall and the Northwesterly right-of-way line of San Carlos Boulevard, said drill hole being referenced by an iron rod (Corp. 4919) on said right-of-way line at a distance of 112.75 feet, bearing S 25 Degrees 00' 00" W; thence N 70 Degrees 33' 16" W along said waters edge of a concrete seawall for 151.50 feet; thence N 16 Degrees 09' 15" E along said waters edge of a concrete seawall for 1.57 feet; thence N 70 Degrees 40' 28" W along said waters edge of a concrete seawall for 49.21 feet; thence N 25 Degrees 34' 06" W for 52.53 feet to an intersection with a wood deck; thence N 21 Degrees 32' 25" E along said deck and a prolongation thereof for 23.20 feet; thence S 68 Degrees 27' 35" E for 67.51 feet; thence S 73 Degrees 04' 04" E for 54.00 feet; thence S 70 Degrees 33' 16" E for 121.69 feet to an intersection with a line bearing N 25 Degrees 00' 00" E from the Point of Beginning; thence S 25 Degrees 00' 00" W for 61.98 feet to the Point of Beginning.

Parcel 6

Commencing at a concrete monument in the Northwesterly line of San Carlos Boulevard, 30 feet from the center thereof and being the same monument that is shown three feet East from the more Easterly corner of Lot 1, Block A, of Matanzas View Subdivision, Plat Book 9, Page 40, Public Records of Lee County, Florida; thence N 65 Degrees W a distance of 200 feet; thence N 25 Degrees E parallel to San Carlos Boulevard 125 feet; thence S 65 Degrees E 200 feet to Westerly side of San Carlos Boulevard ; thence S 25 Degrees W a distance of 125 feet to the Point of Beginning; being in Government Lot 1, Section 24, Township 46 South, Range 23 East, Lee County, Florida.

**Olde Seaport of Fort Myers Beach  
Commercial Planned Development**

**Schedule of Uses**

**Parcel #1 (North Parcel – 645 Old San Carlos Blvd.)**

Consumption on Premises  
Parking Lot, shared permanent  
Personal Services  
Restaurant  
Retail store, small

**Parcel #2 (Submerged Land Lease)**

Boat slips  
Cultural Facility/Exhibit area  
Docks  
Marina  
Theater/Exhibit area

**Parcel #3 (South Parcel – 441/445 Old San Carlos Blvd.)**

Parking Lot, shared permanent

**Parcel #4 (Butler Act property)**

Open seating (in connection with Parcel #1 restaurant)  
On Premises consumption of alcoholic beverages

**Accessory uses on all parcels:**

Bay access  
Essential services  
Essential services equipment

NOTES:

1. THIS CPD INCLUDES FOUR PARCELS OF LAND, AS FOLLOWS:

- STRAP NO. 24-46-23-W3-00026.0000 (645 OLD SAN CARLOS BLVD), ALSO SHOWN AS NORTH PARCEL #1 ON THE ACCOMPANYING SURVEY
- STRAP NO. 24-46-23-W3-00026.0030 (441/445 OLD SAN CARLOS BLVD), ALSO SHOWN AS SOUTH PARCEL #3 ON THE ACCOMPANYING SURVEY
- A NON-STRAPPED PARCEL, KNOWN AS A "BUTLER ACT" PARCEL, ALSO SHOWN AS PARCEL #4 ON THE ACCOMPANYING SURVEY

NO PARCEL #2 IS IDENTIFIED ON THE SURVEY. FOR THE PURPOSE OF THIS REZONING REQUEST, THE SUBMERGED LAND LEASE WILL BE DESIGNATED AS PARCEL #2 (ALSO NOT STRAPPED)

THE RESTAURANT KNOWN AS NERVOUS NELLIE'S LOCATED TO THE EAST, WHILE NOT PART OF THIS CPD, UTILIZES A PORTION OF THE PARKING ON THESE PARCELS AND IS INCLUDED ON THE PARKING CALCULATIONS (ONLY IF WE HAVE THE EXCESS SPACES SO IT DOESN'T TURN INTO A DEBATE - ROB SAID THIS WAS EXEMPT).

2. CURRENT LAND USE/ZONING:

PARCELS 1 & 2: LAND USE: PEDESTRIAN COMMERCIAL, ZONING: CPD (RES. 09-10)

PARCELS 3 & 4: LAND USE: TIDAL WATER, ZONING: NONE  
(PARCEL 4 FORMERLY CONTAINED THE SNUG HARBOR RESTAURANT)

3. DESCRIPTION OF PROPOSED DEVELOPMENT ON EACH PARCEL:

PARCEL #1:

- LOBSTER POT; 850 SF COVERED (PREPARATION AREA - SUPPORTED BY KITCHEN OPERATIONS OUT OF UNIT D)
- "COFFEE SHOP" OPEN SEATING; 1914 SF (153 SEATS) - 1/C/W KITCHEN OPERATIONS IN UNIT B,
- OPEN AIR SHOPS (MAX. 3120 SF COVERED OPEN BUILDINGS)
- PARKING; 49 SPACES (NO CHANGE)

PARCEL #2:

- "PUBLIC USE COVERED AREA": 1140 SF COVERED
- PUBLIC WATER RELATED USES, DOCKS & DOCKING FACILITIES (NO CHANGE)

PARCEL #3; NO CHANGES PROPOSED (REMAINS AS 74 SPACE PARKING LOT)

PARCEL 4:

- COVERED SEATING: 875 SF (70 SEATS)
- OPEN SEATING: 1822 SF (145 SEATS)

4. SITE DATA AND DEVELOPMENT REGULATIONS:

PARCEL #1/NORTH PARCEL; TOTAL AREA = 35,768 SF  
 - COVERED AREA: 3970 SF (3 FT SET-BACK TO STREET, MAX. HEIGHT = 20 FT)  
 - OUTDOOR SEATING: 1914 SF (0 FT SET-BACK)

PARCEL #2/SUBMERGED LAND LEASE  
 - COVERED AREA: 1140 SF (0 FT SET-BACK)

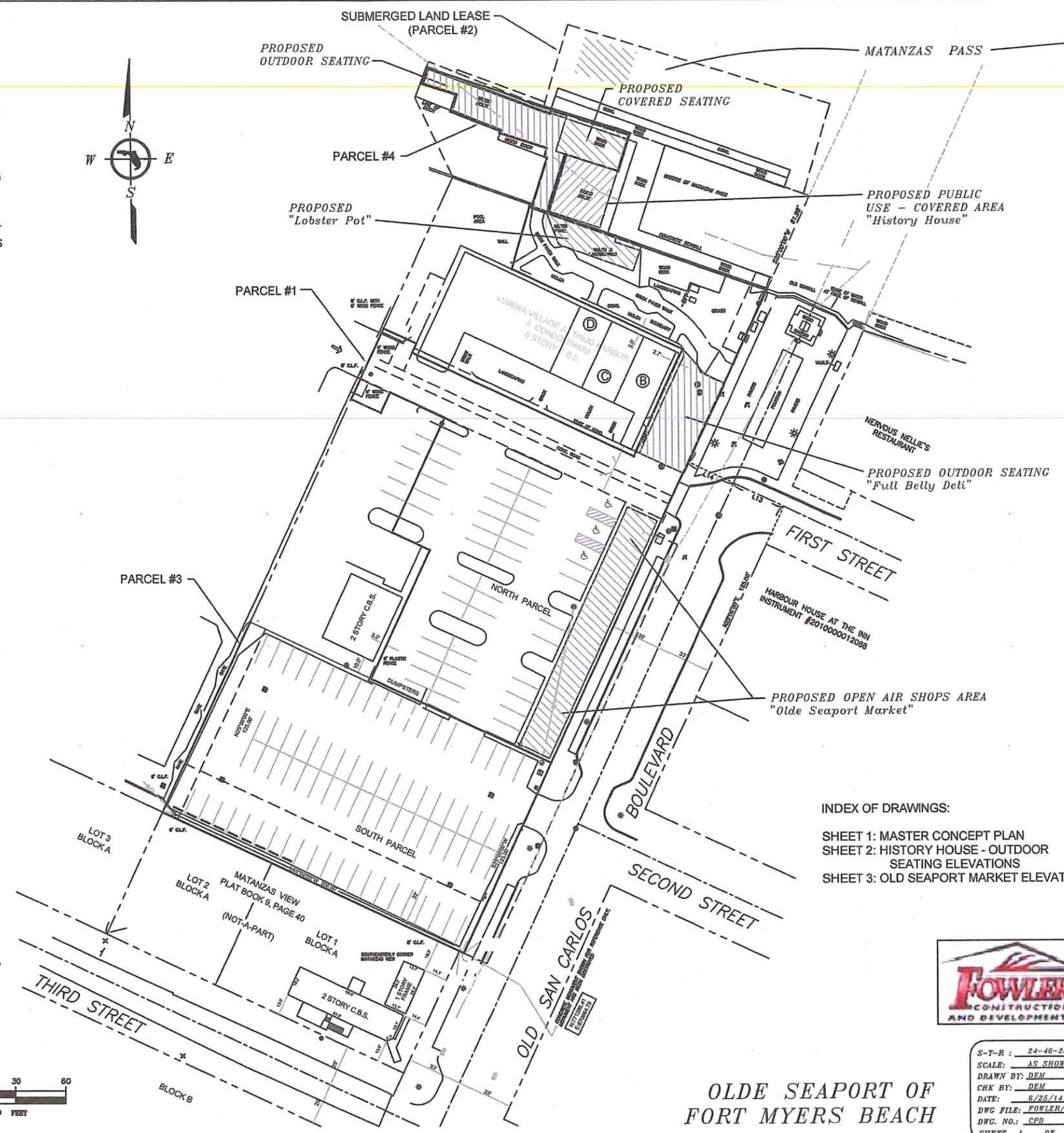
PARCEL #3/SOUTH PARCEL; TOTAL AREA = 25,000 SF (NO CHANGES)

PARCEL 4/BUTLER ACT PARCEL; TOTAL AREA = 3025 SF  
 - COVERED SEATING AREA: 875 SF (0 FT SET-BACK, MAX. HEIGHT = 20 FT ABOVE CURRENT DOCK LEVEL)  
 - OPEN SEATING: 1822 SF (0 FT SET-BACK)

5. A FDEP PERMIT FOR ADDITIONAL DOCK SLIPS HAS BEEN APPLIED FOR AND IS PROVIDED AS PART OF THE REZONING REQUEST. BUTLER ACT AND SUBMERGED LAND LEASE USES IN THE TIDAL AREA LAND USE HAVE BEEN COORDINATED.

6. UNLESS OTHERWISE NOTED, EXISTING DOCKS AND WALKWAYS WILL REMAIN AND CONTINUE TO BE USED IN THE SAME MANNER.

7. UNITS "B", "C" AND "D" IN THE MARINA VILLAGE AT SNUG HARBOR, A CONDOMINIUM, ARE OWNED BY THE APPLICANT BUT NOT PART OF THIS REZONING REQUEST. THE ZONING OF MARINA VILLAGE IS "DOWNTOWN" AND ALL PROPOSED USES ARE CONSISTENT WITH THE CURRENT ZONING.

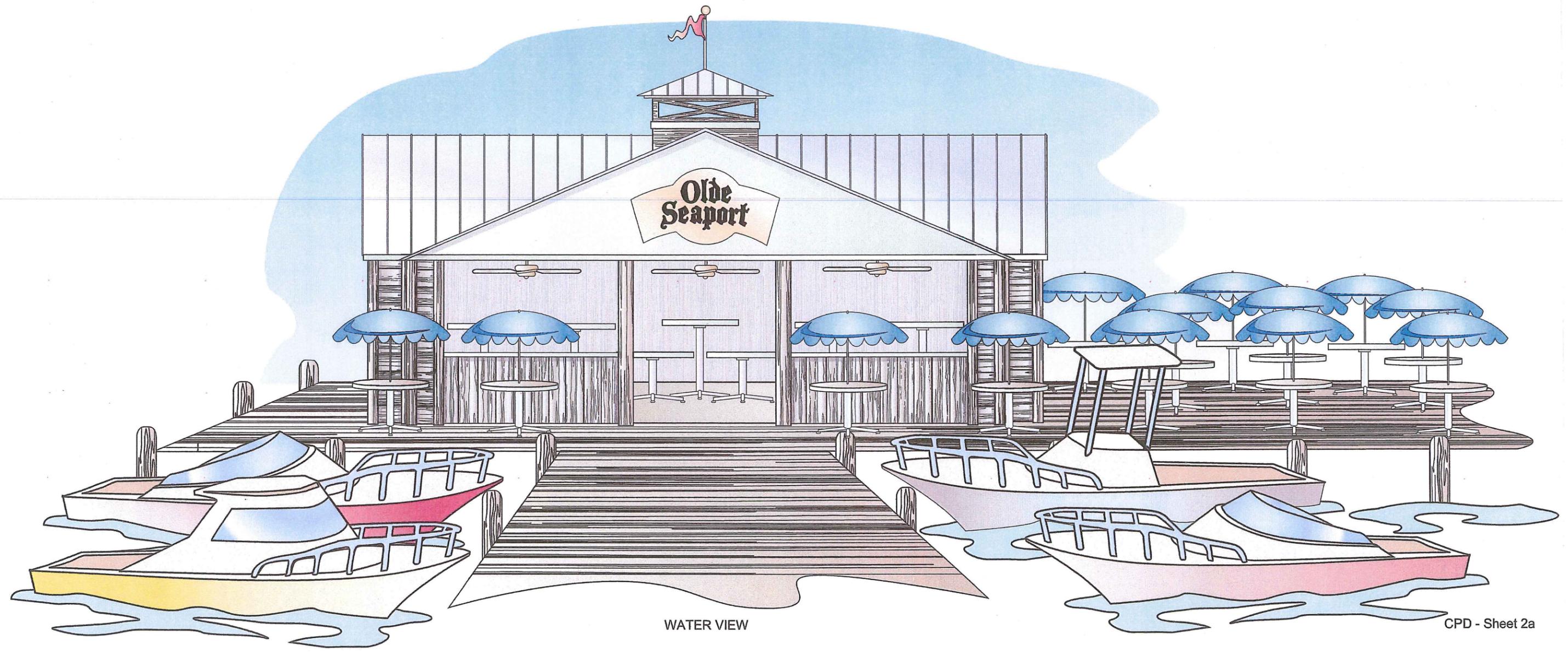


INDEX OF DRAWINGS:  
 SHEET 1: MASTER CONCEPT PLAN  
 SHEET 2: HISTORY HOUSE - OUTDOOR SEATING ELEVATIONS  
 SHEET 3: OLDE SEAPORT MARKET ELEVATIONS

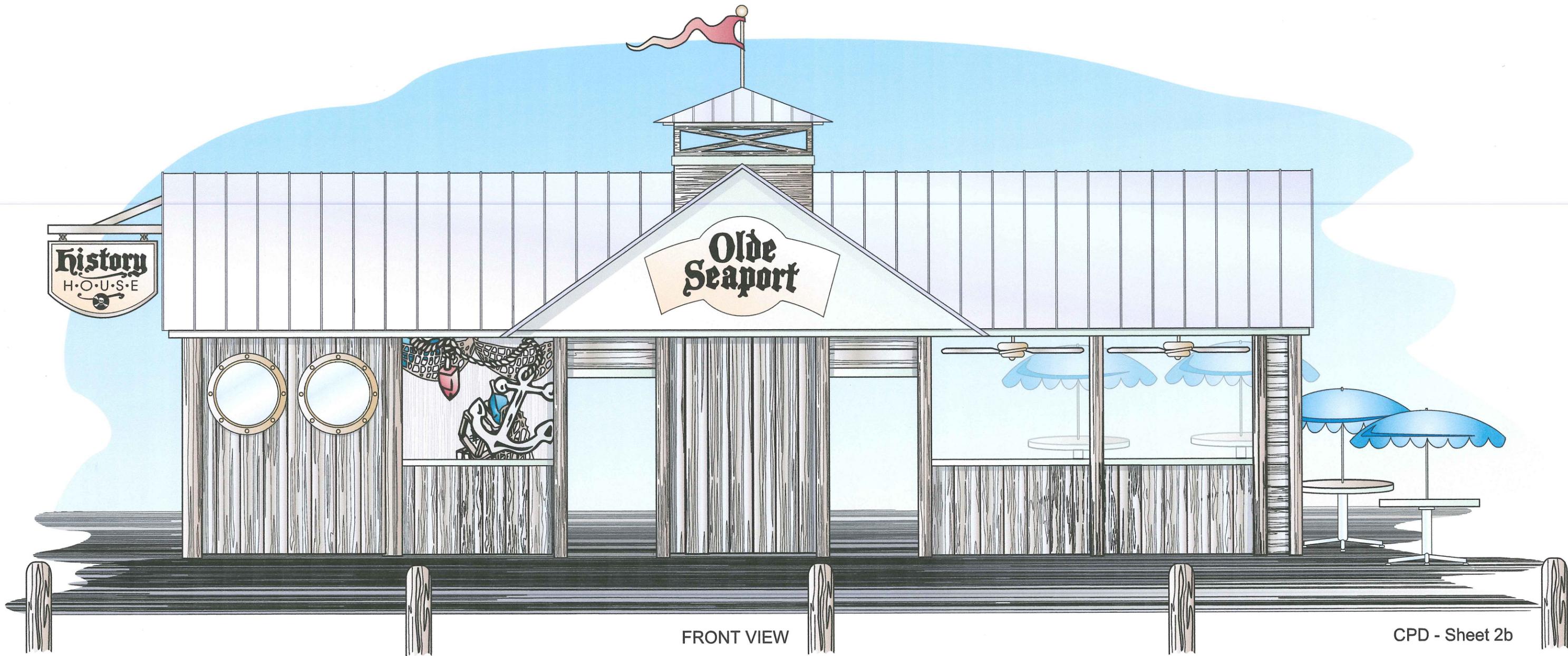


S-T-R : 24-46-23  
 SCALE: AS SHOWN  
 DRAWN BY: DEM  
 CHK BY: DEM  
 DATE: 6/25/14  
 DWG FILE: FOWLER/SNUG  
 DWG. NO.: CPD  
 SHEET 1 OF 3

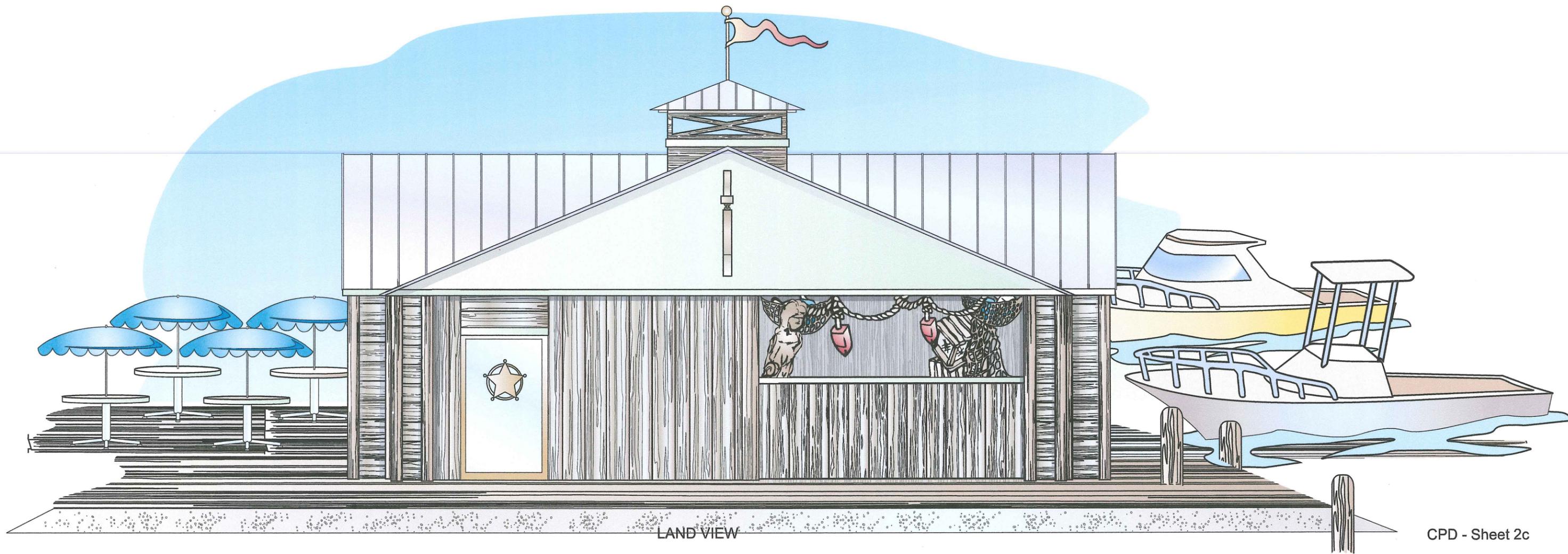
PROJECT: CPD - MASTER CONCEPT PLAN  
 BARRIER ISLANDS MANAGEMENT, LLC  
 645 OLD SAN CARLOS BLVD.  
 FORT MYERS BEACH, FL  
 PROJECT: McKee Engineering Consultants, Inc.  
 (fka Lake Hickory Ventures, Inc.)  
 Engineering Permitting Land Development  
 22210 Fairmont Court Estero, FL 33928  
 Phone (239) 899-4008 Fax (239) 495-5008 email: mckeeeng@comcast.net  
 CERTIFICATE OF AUTHORIZATION #27145  
 DATE: DAVID E. MCKEE  
 PROFESSIONAL ENGINEER  
 P.E. STATE OF FLORIDA



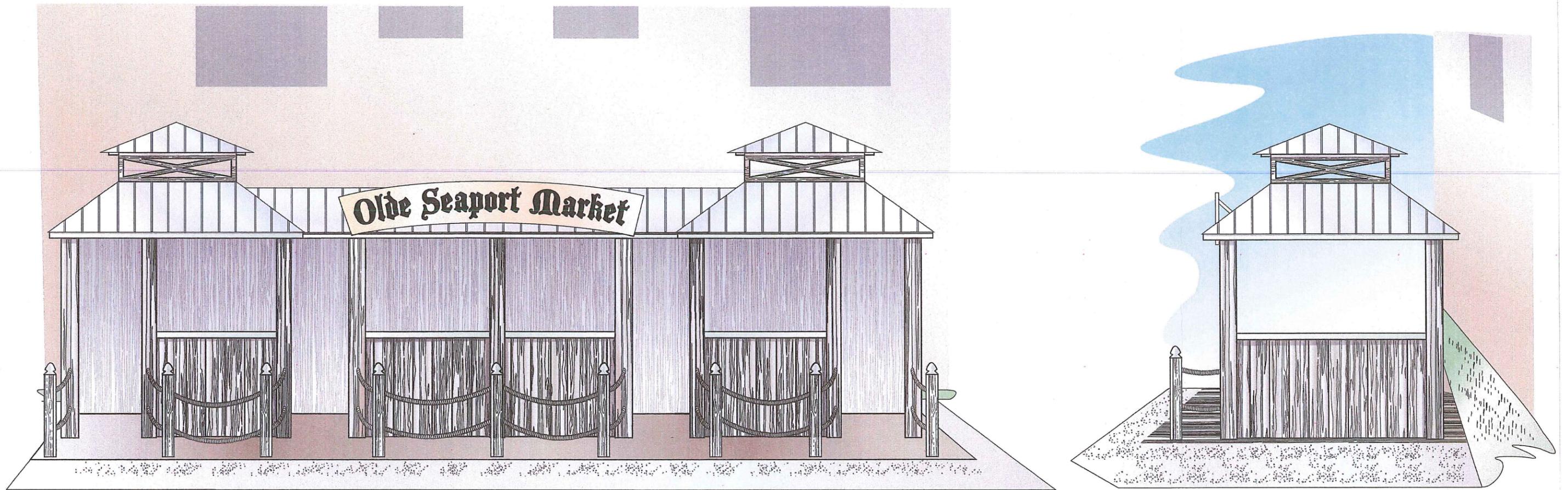
WATER VIEW



FRONT VIEW



LAND VIEW

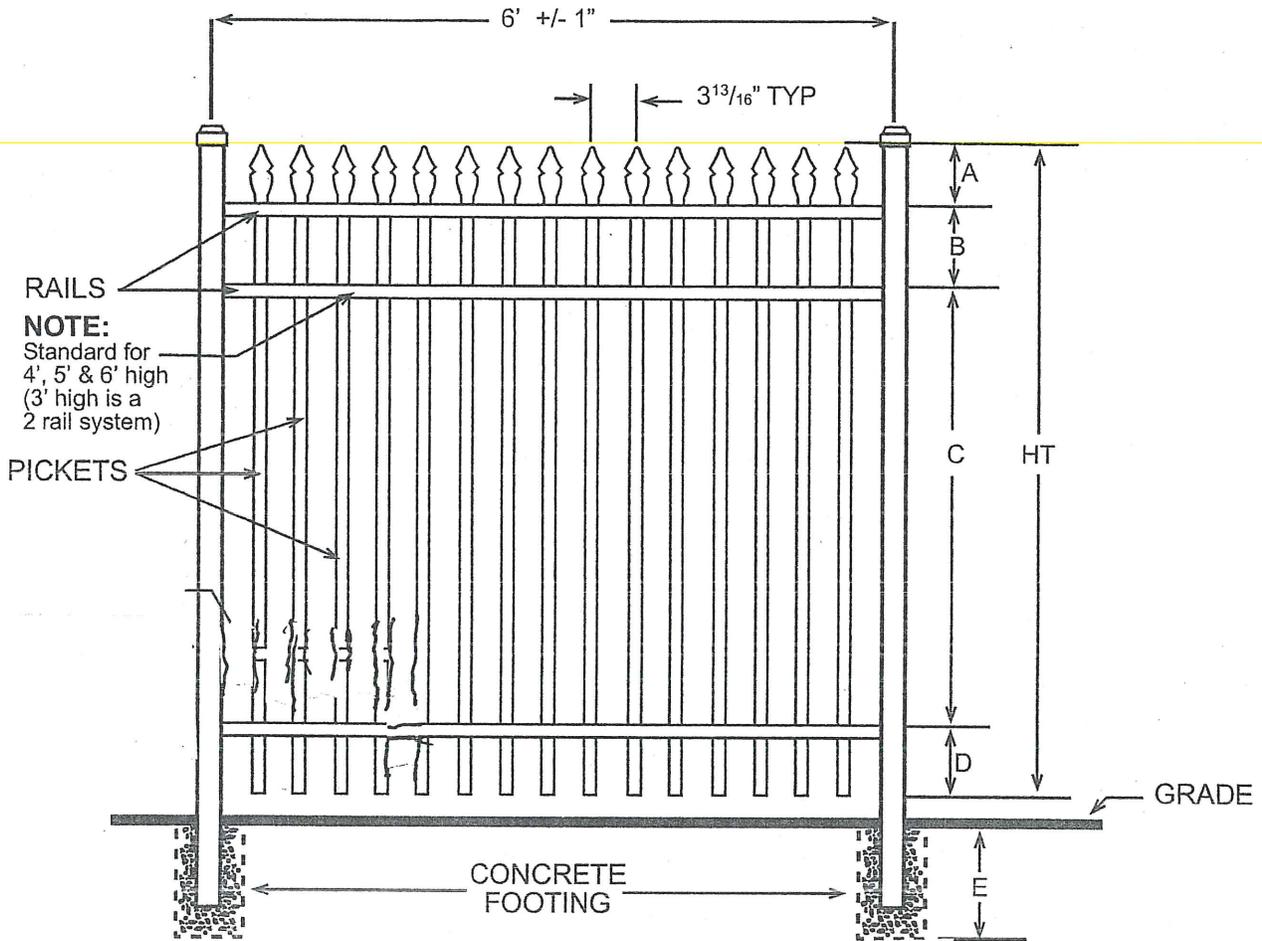


# Olde Market Place

Olde Seaport Of Fort Myers Beach  
 Parking Calculations - revised 9/30/2014

Building/Description	Unit	QTY.	Calculated Parking	Gross Total	Downtown Reduction	Required	Provided
Existing "Nervous Nellie's" - Food Service	SF	6500	8 per 1000 SF	52	0.5	26	26
Existing "Nervous Nellie's" - Bar Area	SF	1000	5 per 1000 SF	5	0.5	3	3
Charter Boat	per boat	7	3 per boat	21	0.5	11	11
"Full Belly Deli"/Outdoor Seating	SF	2729	8 per 1000 sf	22	0.5	11	11
"Lobster Pot"/Outdoor & Covered Seating	SF	3547	8 per 1000 sf	28	0.5	14	14
Retail ("Open Air Shops")	SF	4020	3 per 1000 sf	12	0.5	6	6
Public Use/"History House"	SF	1,140	2 per 1000 sf	2	0.5	1	1
Boat Slips	per slip	22	0.5 per slip	11	0.5	6	6
<b>TOTAL REQUIRED SPACES</b>						<b>77</b>	<b>77</b>

The actual number of existing spaces is 129 so there is more than adequate parking



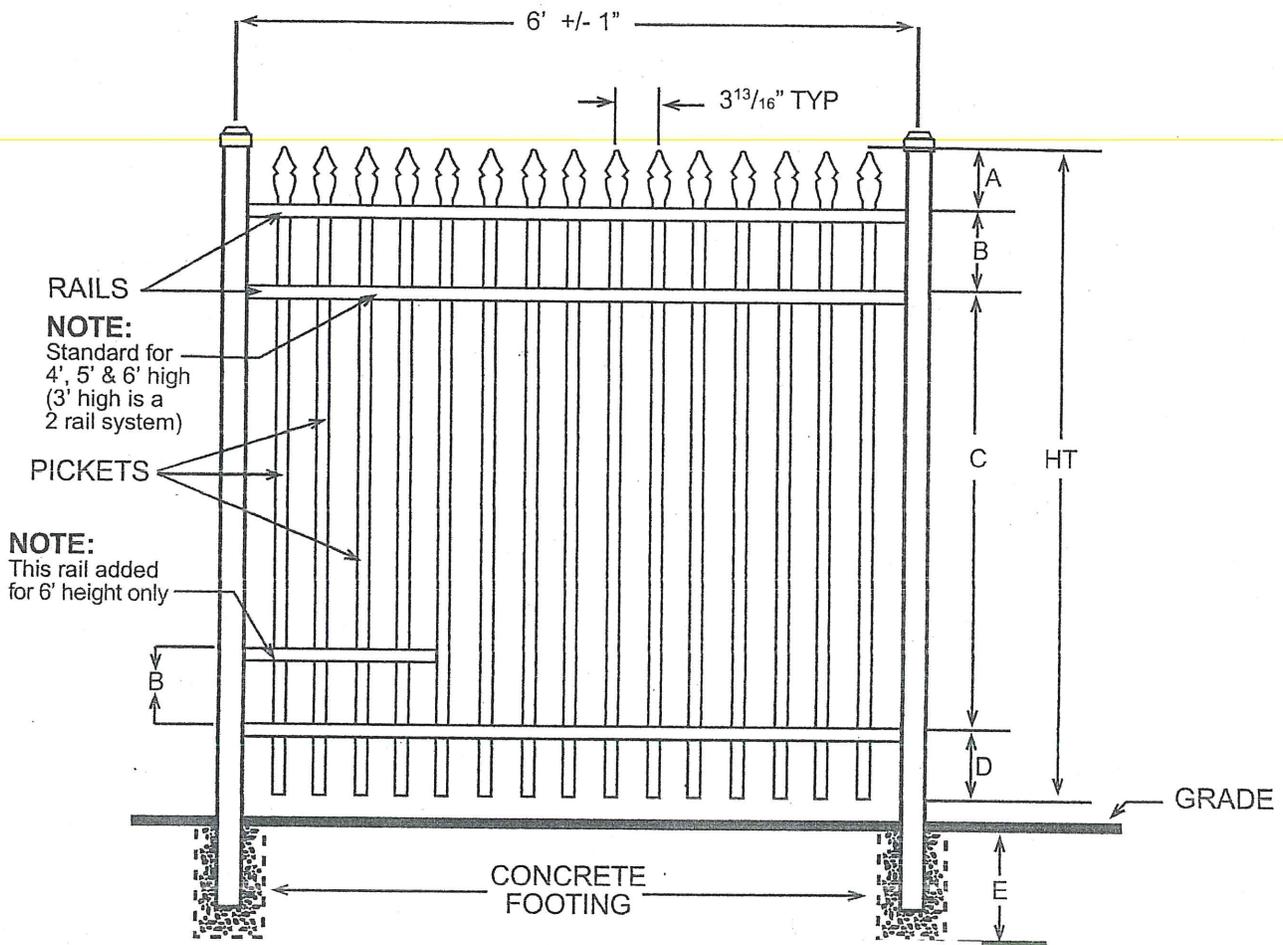
**ULTRA**   
ALUMINUM MFG., INC.

**UAS 100**  
SPEAR TOP

SPECIFICATIONS RESIDENTIAL	
Posts	2" x 2" x .060 Wall
Horizontal Rails Side Walls Top Walls	1 <sup>1</sup> / <sub>8</sub> " x 1" .082" .062"
Pickets Picket Spacing	5 <sup>1</sup> / <sub>8</sub> " x 5 <sup>1</sup> / <sub>8</sub> " x .050 Wall 3 <sup>13</sup> / <sub>16</sub> "
Available Heights	4,

DIMENSIONS						
HT	A	B	C	D	E	
4'	4 <sup>1</sup> / <sub>2</sub> "	6"	32"	5 <sup>1</sup> / <sub>2</sub> "	24"	
ALL DIMENSIONS ARE NOMINAL						

Project:	
Owner:	
Submitted By:	Date:



ALUMINUM MFG., INC.

**UAS 100**  
**SPEAR TOP**

SPECIFICATIONS RESIDENTIAL	
Posts	2" x 2" x .060 Wall
Horizontal Rails Side Walls Top Walls	1 <sup>1</sup> / <sub>8</sub> " x 1" .082" .062"
Pickets Picket Spacing	5 <sup>1</sup> / <sub>8</sub> " x 5 <sup>1</sup> / <sub>8</sub> " x .050 Wall 3 <sup>13</sup> / <sub>16</sub> "

DIMENSIONS						
HT	A	B	C	D	E	
6'	4 <sup>1</sup> / <sub>2</sub> "	6"	56"	5 <sup>1</sup> / <sub>2</sub> "	24"	
<b>ALL DIMENSIONS ARE NOMINAL</b>						

Project:	
Owner:	
Submitted By:	Date: