

**1. Requested Motion:**

**Meeting Date: Oct. 17, 2011**

Approve Resolution 11-21 granting a Special Exception in the DOWNTOWN zoning district to increase the outdoor seating area and permit live music at La Ola Restaurant located at 1035 Estero Blvd.

**Why the action is necessary:**

This action will allow the applicant to revise the existing special exception that controls uses on the subject property. The only way to revise a special exception is through application for another special exception.

**What the action accomplishes:**

**2. Agenda:**

Consent  
 Administrative  
 Public Hearing

**3. Requirement/Purpose:**

Resolution  
 Ordinance  
 Other

**4. Submitter of Information:**

Council  
 Town Staff – Comm. Dev.  
 Town Attorney

**5. Background:**

The subject property is located in a subdivided portion of the building at 1035 Estero Boulevard (shared with West Coast Surf Shop) just inside the pedestrian Times Square area.

The applicant is requesting expansion of the number of tables and chairs at their location. It should be noted that the interior size of the restaurant is such that no indoor seats are provided – all seating is outdoors. Currently they are limited to 10 tables and 42 chairs by Condition #3 set forth in Resolution 04-14 (see **Exhibit C**). The applicant is requesting 10 tables with 42 chairs, 6 high-top tables, three bars and 25 stools thereby increasing the outdoor seating capacity at the subject property.

The applicant is additionally requesting deletion of Condition #7 of Resolution 04-14 which limits entertainment to recorded background music in order to permit live music. In the submitted application (see **Exhibit A**) the applicant has proposed limiting the live outdoor music to between the hours of 3 and 9 pm daily.

The LPA held a public hearing on the request at their September 13, 2011 meeting and voted to approve the special exception with conditions.

Please note that the meeting minutes from the September 13, 2011 LPA meeting are still in draft form at the time of packet assembly. They should be officially adopted at the October 11, 2011 LPA meeting.

**Attachments:**

- Draft Town Council resolution
- LPA resolution 2011-011
- Draft LPA minutes from the September 13, 2011 meeting
- LPA packet including staff report from the September 13, 2011 meeting
-

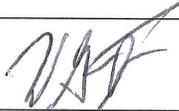
**6. Alternative Action:**

- 1. Deny the requested special exception
- 2. Approved the requested special exception subject to alternative or additional conditions

**7. Management Recommendations:**

Approve the requested Special Exception subject to the conditions recommended in the Staff report and by the LPA.

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

**9. Council Action:**

Approved     Denied     Deferred     Other

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 11-21  
FMBSEZ2011-0001 (La Ola Restaurant)

WHEREAS, applicant Thomas List has requested a Special Exception in the DOWNTOWN zoning district to increase outdoor seating and provide live music (amending conditions set forth in Resolution 04-14); and

WHEREAS, the subject property is located at 1035 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 19-46-24-W4-0060B.0120 and the legal description of the subject property is BUSINESS CENTER BLK 8 PB 9 PG 9 LT 7 + LOT 6 LESS WLY 6 FT LESS ROW OR3539 PG3351; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on September 13, 2011; and

WHEREAS, at its meeting of September 13, 2011 the LPA instructed Town staff to bring this application forward to Town Council without the necessity of having approved LPA minutes; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on October 17, 2011, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2011-07, the recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-88.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application, LPA Resolution 2011-011 and the standards for granting special exceptions, the Town Council makes the following findings of fact, and reaches the following conclusions:

The Town Council **APPROVE/DENY** the applicant's request for a Special Exception in the DOWNTOWN zoning district to increase outdoor seating and provide live music (amending conditions set forth in Resolution 04-14), with any approval subject to the following conditions:

**RECOMMENDED CONDITIONS OF APPROVAL:**

1. *The expanded seating area shall not exceed current building, fire and life safety codes and will be re-evaluated on an annual basis for compliance.*
2. *No bars, tables, chairs, speakers or any other item may extend into the utility easement without written consent from the public utility(ies) entitled to utilize that easement.*
3. *Conditions 1, 2, 4, 5, 6, and 8 from Resolution 04-14 (see **Exhibit C**) remain in effect.*
4. *Non-amplified live music is permitted only between the hours of 3:00 pm and 9:00pm, 7 days a week and must comply at all times with applicable Town noise ordinances.*
5. *Upon approval by Town Council applicant must amend its Business Extension in Times Square agreement to reflect the changed site plan.*

**RECOMMENDED FINDINGS AND CONCLUSIONS:**

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a special exception, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

1. Changed or changing conditions **do/do not exist** that make the requested approval, as conditioned, appropriate:
2. The requested special exception, as conditioned, **is/is not** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan:
3. The requested special exception, as conditioned, **meets or exceeds/does not meet or exceed** all performance and locational standards set forth for the proposed use.
4. The requested special exception, as conditioned, **will/will not** protect, conserve, or preserve environmentally critical areas and natural resources:
5. The requested special exception, as conditioned, **will/will not** be compatible with existing or planned uses and **will/will not** cause damage, hazard, nuisance or other detriment to persons or property:
6. The requested special exception, as conditioned, **will/will not** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34:

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

Larry Kiker, Mayor    AYE/NAY  
Alan Mandel            AYE/NAY  
Joe Kosinski            AYE/NAY

Bob Raymond, Vice Mayor    AYE/NAY  
Jo List                            AYE/NAY

DULY PASSED AND ADOPTED THIS \_\_\_\_\_ day of OCTOBER, 2011.

Town Council of the Town of Fort Myers Beach

By: \_\_\_\_\_  
Larry Kiker, Mayor

Approved as to legal sufficiency:

ATTEST:

By: \_\_\_\_\_  
Fowler White Boggs, P.A.  
*Town Attorney*

By: \_\_\_\_\_  
Michelle Mayher  
*Town Clerk*

RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 2011- 011  
FMBSEZ2011-0001 (La Ola Restaurant)

WHEREAS, applicant Thomas List has requested a Special Exception in the DOWNTOWN zoning district to increase outdoor seating and provide live music (amending conditions set forth in Resolution 04-14); and

WHEREAS, the subject property is located at 1035 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 19-46-24-W4-0060B.0120 and the legal description of the subject property is BUSINESS CENTER BLK 8 PB 9 PG 9 LT 7 + LOT 6 LESS WLY 6 FT LESS ROW OR3539 PG3351; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on September 13, 2011; and

WHEREAS, at the hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-88.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application and the standards for granting special exceptions, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends that the Town Council **APPROVE** the applicant's request for a Special Exception in the DOWNTOWN zoning district to increase outdoor seating and provide live music (amending conditions set forth in Resolution 04-14), with any approval subject to the following conditions:

**RECOMMENDED CONDITIONS OF APPROVAL:**

- 1. The expanded seating area cannot exceed current building, fire and life safety codes and will be re-evaluated on an annual basis for compliance.*
- 2. No bars, tables, chairs, speakers or any other item may extend into the utility easement without written consent from the public utility(ies) entitled to utilize that easement.*

3. *Conditions 1, 2, 4, 5, 6, and 8 from Resolution 04-14 (see **Exhibit C**) remain in effect.*
4. *Non-amplified live music is permitted only between the hours of 3:00 pm and 9:00pm, 7 days a week and must comply at all times with applicable Town noise ordinances.*
5. *Upon approval by Town Council applicant must amend its Business Extension in Times Square agreement to reflect the changed site plan.*

**RECOMMENDED FINDINGS AND CONCLUSIONS:**

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a special exception, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

1. Changed or changing conditions **do not exist** that make the requested approval, as conditioned, appropriate:
2. The requested special exception, as conditioned, **is** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan:
3. The requested special exception, as conditioned, **meets or exceeds** all performance and locational standards set forth for the proposed use.
4. The requested special exception, as conditioned, **will** protect, conserve, or preserve environmentally critical areas and natural resources:
5. The requested special exception, as conditioned, **will** be compatible with existing or planned uses and **will not** cause damage, hazard, nuisance or other detriment to persons or property:
6. The requested special exception, as conditioned, **will** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34:

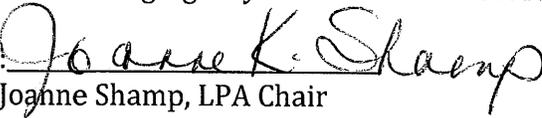
*Remainder of this page intentionally left blank*

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member **Zuba** and seconded by LPA Member **Kakatsch**, and upon being put to a vote, the result was as follows:

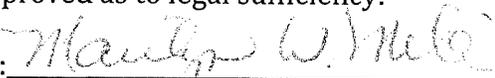
Joanne Shamp, Chair	AYE	Bill Van Duzer, Member	Absent
Rochelle Kay, Member	AYE	John Kakatsch, Member	AYE
Hank Zuba, Member	AYE	Tom Cameron, Member	AYE

DULY PASSED AND ADOPTED THIS **13th** day of SEPTEMBER, 2011.

Local Planning Agency of the Town of Fort Myers Beach

By:   
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By:   
Fowler White Boggs, P.A.  
LPA Attorney

ATTEST:

By:   
Michelle Mayher  
Town Clerk

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 04-14

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA  
APPROVING THE REQUEST FOR CONSUMPTION ON PREMISES

WHEREAS, Prismatic Corp., Times Square Coffee Shop has requested a Special Exception for consumption on premises (2-COP) of alcoholic beverages with outdoor seating in conjunction with a cafe; and,

WHEREAS, the subject property is located at 1035 Estero Blvd., and the applicant has indicated the property's current STRAP number is: 24-46-23-W3-00208.0060 and the legal description is attached as Exhibit "A"; and,

WHEREAS, the LPA gave full and complete consideration to the recommendations of the Staff, the documents in the file, and the testimony of all interested persons and recommended that the Town Council approve the Applicant's request subject to the 8 conditions listed on Page 2 of the Staff Report dated March 11, 2004 and which is attached hereto and incorporated herein by reference with the following change:

Condition #4. *Esthetically pleasing* legible signs will be clearly posted for the areas not approved for on premise consumption stating "Alcoholic beverages are prohibited beyond this point."

FINDINGS AND CONCLUSIONS:

The following findings and conclusions were made in conjunction with the approval of the requested modification:

1. The applicant did comply with Section 34-1264 (2) b. which places the burden of proof upon the applicant to demonstrate that approval will not have any adverse affect on surrounding properties.
2. That there is no error or ambiguity in the Land Development Code or Town Plan which must be corrected by the Special Permit.
3. That the character and nature of the surrounding area make approval of the Special Permit, as conditioned, appropriate.
4. That the Special Permit, as conditioned, is consistent with the goals, objectives, policies and intent of the Town Plan, and the densities, intensities and general uses set forth in the Town Plan and Land Development Code.
4. That the Special Permit, as conditioned, meets all performance and locational standards set forth for the proposed use.
5. That urban services will be available and adequate to serve the proposed use when it is constructed.

**II. BACKGROUND INFORMATION AND RECOMMENDATION:**

**A. Recommendation: Staff recommends APPROVAL of the request with the following conditions:**

1. The Special Exception is limited to on premises consumption of alcoholic beverages in conjunction with outdoor seating and is limited to a 2-COP beverage license to be used in conjunction with the café.
2. Prior to the issuance of a Certificate of Occupancy for the use, the applicant must obtain a yearly permit agreement with the Town of Fort Myers Beach to allow the placement of tables and chairs within the Times Square area.
3. Indoor seating is not approved as part of this Special Exception. The consumption on premises for outdoor seating is limited to the area shown on attached Exhibit "B" and the area leased from the Town of Fort Myers Beach located within the Times Square area and is limited to a maximum of 10 tables with a maximum seating capacity of 42 seats.
4. Legible signs will be clearly posted for the areas not approved for on premise consumption stating "Alcoholic beverages are prohibited beyond this point.
5. Lighting on the outdoor seating areas will be shuttered and shielded from the surrounding properties.
6. The hours for the outdoor seating area will only be used between 8:00 a.m. to 12:00 Midnight, 7-days a week, Sunday through Saturday.
7. Entertainment is limited to recorded background music between the hours of 8:00 a.m. to 12:00 Midnight, 7-days a week, Sunday through Saturday.
8. Prior to the issuance of a Certificate of Occupancy for the use, the applicant and property owner must comply with the provisions of the Land Development Code, Sections 14-71 through 14-79 relating to the protection of Sea Turtles.

**Findings & Conclusions**

Based upon an analysis of the application and the standards for approval of a special exception, staff makes the following findings and conclusions:

1. The requested special exception, as conditioned:

COP2003-00091

PROPERTY DESCRIPTION  
EXHIBIT "A"

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

A TRACT OR PARCEL OF LAND IN THE BUSINESS  
CENTER SUBDIVISION, PLAT BOOK 9, PAGE 9, BLOCK  
8, LOTS 6 & 7, ESTERO ISLAND, FT. MYERS BEACH,  
PUBLIC RECORDS, LEE COUNTY, FLORIDA.

Applicant's Legal Checked  
by AMM 07JULY03

6. That there are no environmentally critical areas or natural resources to be adversely affected by the Special Permit, as conditioned.

NOW, THEREFORE, BE IT RESOLVED BY THE FORT MYERS BEACH TOWN COUNCIL, that the Council APPROVES the requested modification with the following conditions:

the 8 conditions listed on Page 2 of the Staff Report dated March 11, 2004 and which is attached hereto and incorporated herein by reference with the following change:

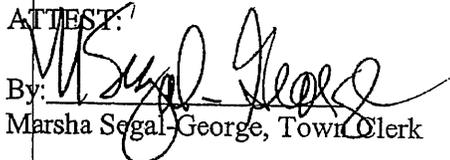
Condition #4. *Esthetically pleasing* legible signs will be clearly posted for the areas not approved for on premise consumption stating "Alcoholic beverages are prohibited beyond this point."

The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

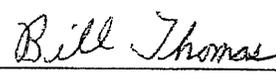
Howard Rynearson	<u>AYE</u>
Don Massucco	<u>NAY</u>
Bill Thomas	<u>AYE</u>
W. H. "Bill" Van Duzer	<u>AYE</u>
Garr Reynolds	<u>NAY</u>

Adopted this 19th day of April, 2004.

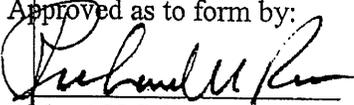
ATTEST:

By:   
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By:   
Bill Thomas, Mayor

Approved as to form by:

  
Richard V.S. Roosa, Town Attorney

- a) is consistent with the goals, objectives, policies and intent of the Town of Fort Myers Beach Comprehensive Plan;
- b) meets or exceeds all performance and locational standards set forth for the proposed use;
- c) will be compatible with existing or planned uses;
- d) will not cause damage, hazard, nuisance or other detriment to persons or property; and
- e) will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in the Land Development Code.

**B. Rationale:**

**Introduction/Synopsis**

The proposed café is located in the same building as the West Coast Surf Shop. The applicant plans to open a small café with outdoor seating in the southwesterly retail space of the building as depicted on the attached Exhibit "B". The applicant wishes to "create an outdoor café in the tradition of the sidewalk bistros of Paris." The menu is tailored towards espresso, cappuccino, smoothie, or wine along fresh baked goods, cheeses, and deserts. The applicant is requesting a 2-COP license which will allow them to serve beer and wine only. The café is located in the Downtown zoning district and is in the Pedestrian Commercial land use category.

Land Development Code (LDC), Section 34-1264(a)(2)a.2. states any establishment which provides outdoor seating areas for its patrons consuming alcoholic beverages, except that a restaurant may have outdoor seating approved administratively provided the outdoor seating area is not within 500 feet of a place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit under separate ownership. Lynn Hall Park, is within 500 feet which trigger this requirement and therefore the request must go through the public hearing process.

**Requested Special Exception**

The proposed consumption on premises is for a 2-COP liquor license for beer and wine only. The applicant received an interior remodeling permit (COM2004-00364) for the café on March 3, 2004, see Exhibit "C". The café will contain 300 square feet of floor area within the existing West Coast Surf Shop building. The applicant proposes to place 10 tables with a seating capacity of 42 seats outside the café in the Times Square area. Indoor seating will not be provided as stated on Exhibit "D". The hours of operation for the outdoor café will be 8:00 a.m. to 12:00 midnight, 7-days

a week. Music and entertainment will be provided and geared towards setting a mood conducive to conversation as stated in Exhibit "E".

### Parking

Additional on site parking spaces are not required for property located within the Downtown zoning district. Section 34-676 of the LDC states the Downtown district is planned as a "park-once" district, with preference given to pedestrian movement within the district. On-street parking will be provided by the town along Old San Carlos Boulevard and other public parking is available under the Sky Bridge. The parking space requirement for properties in the Times Area and Bayfront pedestrian plazas are calculated by multiplying 0% for existing building space and 50% for new building space. No parking spaces may be provided in the Times Square area but the required space must be located within 750 feet in single-purposed, shared, or joint-use parking lots as defined in Division 26 of the LDC.

Beverly Primeau, the property owner of the building where the proposed café is to be located, has eight on-site parking spaces. In September 2001, Ms. Primeau entered into an agreement with the Town of Fort Myers Beach regarding parking for the business. Three of the parking spaces are located in the southeast portion of the property, next to concrete bollards, behind the trolley stop. The other five parking spaces are located in the northeast portion, just off Estero Boulevard. In the agreement Ms. Primeau agreed that the parking area located in the northeast portion of the property shall be restricted to two employee parking spaces and three customer parking spaces.

### Surrounding Zoning and Neighborhood Compatibility

The subject property and all of the surrounding properties are in the Downtown zoning district. This zoning district promotes pedestrian-oriented commercial activities. The subject property and all of the surrounding properties are also in the Pedestrian Commercial land use category. Commercial activities in this land use category must contribute to the pedestrian-oriented public realm. The surrounding properties are developed mostly with retail uses and restaurants with outdoor seating. The proposed café with outdoor seating and the requested special exception are compatible with the surrounding properties.

### Town of Fort Myers Beach Comprehensive Land Use Plan

The subject property and surrounding properties are located in the Pedestrian Commercial land use category according to the adopted Town of Fort Myers Beach Future Land Use Map. Policy 4-B-6 describes the Pedestrian Commercial district as a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard). 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. Staff finds the proposed café **CONSISTENT** with Policy 4-B-6.

### Conclusion

The requested Special Exception for a consumption on premises (2-COP) with outdoor seating is consistent with the Town of Fort Myers Beach Comprehensive Plan and will be compatible with existing and planned uses. The goal of the café is to create a sidewalk bistro to encourage pedestrian customers to enjoy their services. The request will not cause damage, hazard, nuisance or other detriment to persons or property and will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in the Land Development Code. Given the location of the café, staff finds that the request satisfies the requisite finding for special exceptions and recommends **APPROVAL** of the request with conditions.

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### III. SUBJECT PROPERTY

- A. **STRAP:** The applicant indicates the STRAP number is: 24-46-23-W3-00208.0060
- B. **LEGAL DESCRIPTION:** See Exhibit "A"

### IV. ATTACHMENTS

- A. Map of surrounding zoning

### V. EXHIBITS

- A. Legal Description
- B. Site plan showing location of café and surrounding uses
- C. Interior remodel permit COM2004-00364 floor plan
- D. Site plan of café with outdoor seating
- E. Applicant's narrative stating their menu, hours operation and seating capacity

cc: Applicant  
Town of Fort Myers Beach LPA  
Zoning File



COP2003-00091

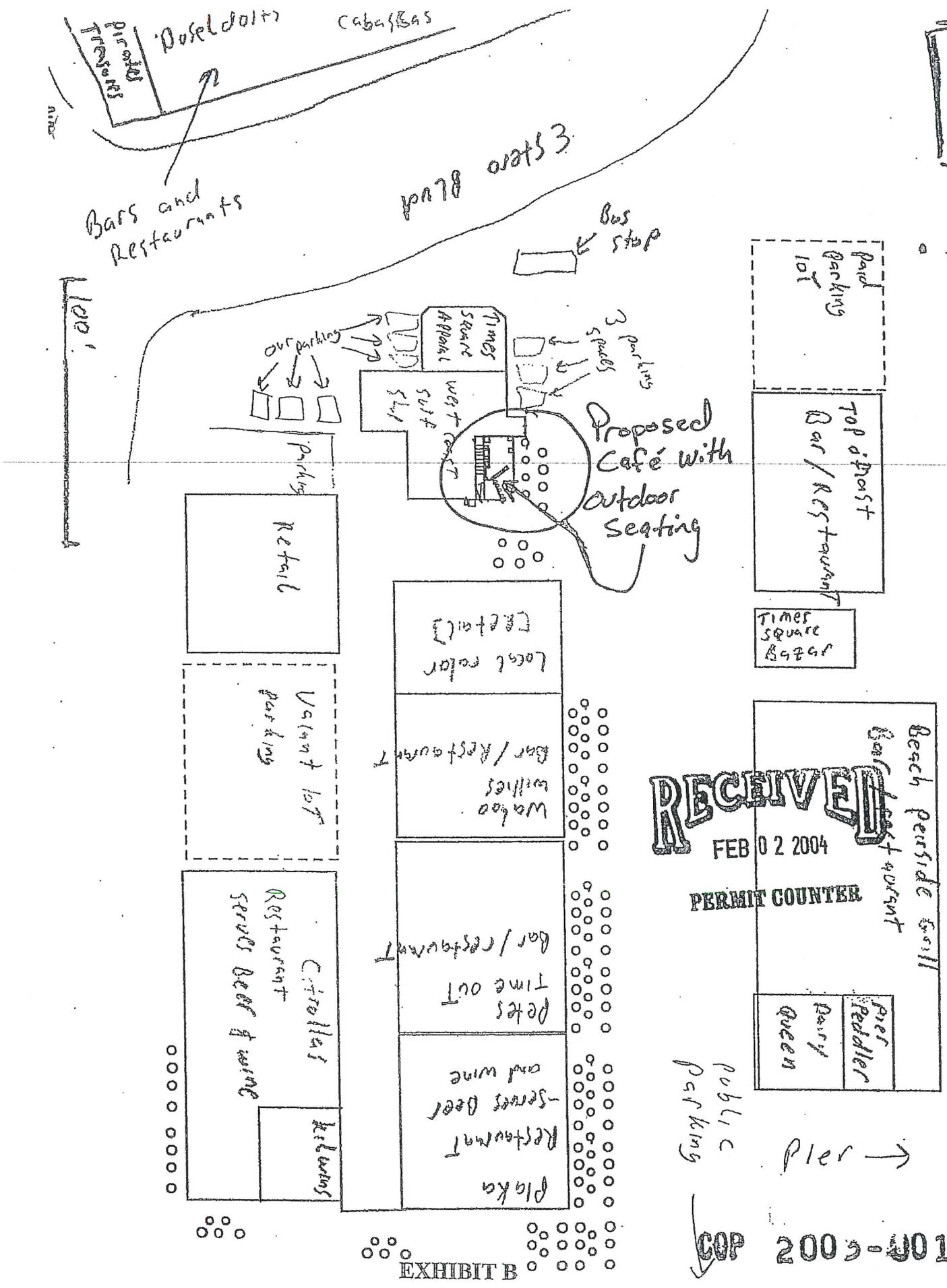
PROPERTY DESCRIPTION  
EXHIBIT "A"

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

A TRACT OR PARCEL OF LAND IN THE BUSINESS  
CENTER SUBDIVISION, PLAT BOOK 9, PAGE 9, BLOCK  
8, LOTS 6 & 7, ESTERO ISLAND, FT. MYERS BEACH,  
PUBLIC RECORDS, LEE COUNTY, FLORIDA.

Applicant's Legal Checked  
by AMM 07JULY03

Figure 1



RECEIVED  
FEB 02 2004

PERMIT COUNTER

COP

2005-00155

EXHIBIT B



Signs  
Tables

From  
3341



exit  
exits

No  
Tables  
Seating

stairs  
Exit

overhead protection  
ice machine  
mop sink

2 hour  
wall

west coast surf shop

Times square apparel

EXHIBIT D

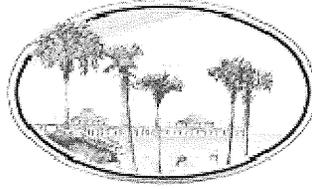
Our goal is to create an outdoor café in the tradition of the sidewalk bistros of Paris. Our menu is tailored towards couples sharing an espresso or bottle of wine while snacking on fresh baked goods, cheeses, and deserts. With that in mind our music and entertainment will be geared towards setting a mood conducive to conversation.

Hours of operation: 8:am-12:am  
Seating capacity: 42

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EXHIBIT E

Item  
3,304



## MINUTES

**FORT MYERS BEACH  
LOCAL PLANNING AGENCY  
TOWN HALL – COUNCIL CHAMBERS  
2523 ESTERO BOULEVARD  
FORT MYERS BEACH, FLORIDA 33931  
Special Meeting  
September 13, 2011**

### **I. CALL TO ORDER**

Meeting was called to order at 9:06 a.m. by Joanne Shamp; other members present:

Rochelle Kay  
John Kakatsch  
Bill Van Duzer – excused absence  
Hank Zuba  
Tom Cameron

LPA Attorney, Marilyn Miller  
Staff Present: Walter Fluegel, Community Development Director  
Leslee Chapman, Zoning Coordinator

### **II. PLEDGE OF ALLEGIANCE**

### **III. INVOCATION – Rochelle Kay**

A moment of silence was observed for the passing of Carleton Ryffel.

### **IV. MINUTES**

#### **A. Minutes of July 12, 2011**

Ms. Kay noted the misspelling of Steve Strauss. Ms. Shamp added that Mr. Melsek's name remained misspelled, and she noted there were several instances where the motion maker and/or the second were omitted. Discussion ensued regarding errors, omissions, and inaccuracies in the Minutes of July 12, 2011; LPA Attorney Miller permitted the LPA to approve the section of the minutes pertaining to the

Local Planning Agency  
September 13, 2011

Surf Club Special Exception, and the remaining sections of the Minutes would be reviewed and corrected by staff, and presented to the LPA again at their October meeting for approval.

Tina Mayfield Ekblad requested the following correction to the minutes for Surf Club Special Exception: *Mr. Ganim was spelled incorrectly; Mr. Cermak needs to be referenced on page 3 in the second to the last paragraph, it is confusing as to who made that statement, it should read Mr. Van Duzer then posed his question to the owner, Mr. Cermak he didn't think he should be held to different times when his neighbor across the street, etc....Mr. Cameron was the LPA member who made the motion.*

**MOTION:** Ms. Kay moved to accept only the portion of the July 12, 2011 minutes concerning the Surf Club Special Exception, and the remaining sections of the Minutes would be reviewed and corrected by staff, and presented to the LPA again at their October meeting for approval; second by Mr. Kakatsch.

**VOTE:** Motion passed 5-0.

## **V. PUBLIC HEARINGS**

### **A. FMBSEZ2011-0001 – La Ola Special Exception for increased outdoor seating and live music.**

Ms. Shamp opened the hearing and asked LPA Attorney Miller to swear in the witnesses.

Ms. Chapman, Zoning Coordinator, was sworn in and the Affidavit of Publication was entered into the record.

Ms. Shamp asked if any LPA member had ex-parte communication regarding FMBSEZ2011-0001; Mr. Kakatsch – none; Mr. Zuba – none; Ms. Kay – none; Mr. Cameron – none; Ms. Shamp – reported she conducted a site visit and had a short conversation with the applicant. Ms. Shamp stated the applicant offered the Town the opportunity to present their case first.

Ms. Chapman presented comments on behalf of the Town. She explained the applicant was seeking a special exception for property located at 1035 Estero Boulevard; a multi-tenant commercial building located in Times Square; and the special exception request was to amend conditions from a previous special exception (Town Resolution 04-14 which contained 8 conditions). The applicant was seeking to increase outdoor seating and offer live music. The zoning for the subject property is Downtown and the future land use is Pedestrian/Commercial. She noted the subject property was included in the Business Extension in Times Square Agreement which is a utilization of Town right-of-way (741 square feet the applicant was leasing from the Town). She reviewed the proposed site plan as submitted by the applicant. She pointed out there were some special considerations to consider for the applicant with regard to the limited size of the restaurant which does not allow indoor seating; Resolution 04-14 did

limit dining use at the site to 10 tables and 42 chairs; and limited all music to be pre-recorded. She noted there was a six foot utility easement runs the length of the property.

Ms. Chapman stated the applicant was seeking amendment to Resolution 04-14:

- Condition #3 - to expand the outdoor seating to 11 tables and 42 chairs, 6 high top tables, 14 stools, 3 moveable bars, and 11 stools for a total of 67 seats.
- Condition #7 – to allow live music in addition to pre-recorded music; and applicant has suggested hours of operation for the live music to be 3:00 p.m. to 9:00 p.m., 7-days per week.

She displayed photographs of the current conditions at the subject property. She noted supporting regulations fall under Chapter 34-88 in the Land Development Codes, and she reported staff found that there were no changing conditions on the subject property; and the change was appropriate. When determining if the changes were consistent with the goals, objectives, policies, and intent, staff found that outdoor seating was strongly encouraged in the Comprehensive Plan and the Land Development Code for the Downtown. She reported staff found the use appropriate for the location; noted that the reason why the applicant was seeking a special exception was because the request involved a previous special exception thereby requiring another public hearing. She pointed out that the subject property was located in a heavily used pedestrian area and was not directly adjacent to any sensitive environmental areas.

Ms. Chapman explained that due to the location of the property it was compatible with its existing use. She noted staff's concerns pertaining to the live music request since the Town had a street performer program, so she tried to research the background of when the Times Square area was changed to a pedestrian area. She was unable to find the reason why pre-recorded music was a requirement in that area. She mentioned that there were a few businesses that had Gulf frontage that did have live outdoor music; however, any of the businesses that were located on the leased Town right-of-way property were held to the pre-recorded music requirement.

Ms. Chapman stated staff recommended approval of FMBSEZ2011-0001 with the following conditions:

1. The expanded seating area cannot exceed current Fire & Life Safety Code.
2. No bars, tables, speakers, chairs, or any other items may extend into the utility easement without written consent from the public utility company.
3. Conditions 1, 2, 4, 5, 6, and 8 of Resolution 04-14 remain in effect.
4. Non-amplified live music only; for the hours of 3:00 p.m. to 9:00 p.m., 7-days per week; and must comply with applicable Town noise ordinances.
5. Upon approval by Town Council the applicant must amend their Business Extension in Times Square Agreement to reflect the new conditions and so that Public Works has an updated site plan.

Mr. Cameron questioned if the utility easement noted by staff was underground or overhead.

Ms. Chapman stated she would verify the status of the power line.

Director Fluegel believed it was for a buried underground line.

Ms. Kay asked if FP&L had been contacted.

Ms. Chapman responded in the negative.

Ms. Kay noted it appeared the applicant was asking for something that was already in existence.

Ms. Chapman responded in the affirmative, explaining there have been tables and chairs at the site prior to Town approval; however, to her knowledge live music has not taken place as yet.

Discussion ensued concerning pre-recorded music/live music; the inconsistency of the applicant's request since all the businesses leasing the Town right-of-way were held to the standard of pre-recorded music; the applicant's offer to limit live music to 3:00 p.m. to 9:00 p.m. 7-days per week; and the staff's recommended condition concerning live music.

Mr. Kakatsch – no questions.

Mr. Zuba questioned if payments were required by the Business Extension in Times Square Agreement.

Ms. Chapman responded in the affirmative; the rate is \$2.98 per square foot. She noted the applicant was not requesting any additional space to lease.

Director Fluegel mentioned that staff was reviewing the rate structure for all of the right-of-way lease agreements.

Mr. Zuba asked if pedestrian traffic would be impeded by the live music and/or the additional seating.

Ms. Chapman responded in negative with respect to the additional seating; however, staff was uncertain as to whether or not the live music would impact pedestrian traffic; therefore, staff had included in their condition the music be non-amplified.

Mr. Zuba inquired if the lease agreement would impact the redesign of Estero Boulevard.

Ms. Chapman responded in the negative.

Mr. Zuba asked if the applicant was required to provide insurance with respect to the leased Town right-of-way property.

Director Fluegel stated it was his belief when the annual renewal of the agreement occurred the lessee was required to submit proof of insurance naming the Town as additional insured.

Ms. Chapman noted the insurance requirements in the copy of the applicant's current lease agreement (Exhibit B).

Mr. Zuba noted his concern a comment in staff's analysis: "*potentially very real impacts from this potential change in policy*". He asked if this was referring only to the live music.

Ms. Chapman responded in the affirmative.

Director Fluegel discussed the concerns of amplified music because the street performers were not permitted to be amplified, and how this could impact the Times Square area in general. He suggested the LPA and Town Council may want to consider these policies in the future. He noted all of the applicant's interior space was for the kitchen, so he was entirely reliant on the outside on ways to enhance and make his business successful. He described the ways the applicant has enhanced and developed the outside area; the possible use of food cart and the current Town code's definition of a food cart; and FEMA constraints as it pertained to elevation in Times Square.

Ms. Shamp noted her site visit and concerns regarding the lease agreement, #11, "*all utility easements and rights-of-way must be kept clear at all times*", and suggested staff may need to re-write the business extension regulations for Times Square. She mentioned that the carts were a creative way of creating business space, but asked if the one near the fixed fence to the left crossed the right-of-way or was it moveable. She recommended the addition of 'all rights-of-way and easements should be kept clear at all times and any items placed there should be moveable'.

Director Fluegel noted he understood Ms. Shamp's concerns and explained that the majority of what was seen at the subject site was within the applicant's property line and the tables extend out into the Town's right-of-way per the extension agreement; however, there was a fine line then where the pedestrian right-of-way begins which must remain free and clear.

Discussion ensued concerning the use of moveable carts as it pertained to the rights-of-way; and items that may not extend in to the utility easement such as but not limited to bars, tables, and chairs.

Ms. Shamp mentioned her frustration with regard to the continual presentation of applications to the LPA that involved hours and conditions for music which were contrary to what the Town Council previously approved.

Discussion ensued regarding the hours of operation for music; and the public utility easement.

Mr. Thomas List, Applicant and Owner of La Ola, reported that the electrical was in the back of the subject property; he discussed how he operated some of his other businesses in Europe as it pertained to live music and he stated the music was "smooth" and it would not be a 'rock concert'; he requested the LPA give him the opportunity to demonstrate the non-amplified music and the Town could even test the decibel levels; and he indicated on the overhead screen where the live music would be positioned on the subject site.

Public comment was opened and then closed, without comments from the public.

Mr. List was recognized again, and he pointed out on the overhead screen that the items he indicated were all moveable, and the awnings were removable.

Mr. Zuba asked the Applicant if he had discussed the special exception request with any of his neighbors.

Mr. List stated he spoke with (*inaudible*) who had no comments, and with the owner of Pete's Time Out who told him it would be perfect if he could do something. He stated he spoke with Local Color and another neighbor both of whom had no objections. He explained his request for music at those particular times was because many people start to leave the beach between 4:00-5:00 p.m. and he hoped they would be able to catch the people to keep them on the beach longer; and he didn't want to keep the music playing too late at night because he did not want to disturb near-by residents.

Ms. Kay asked where did the applicant store the tables and chairs if there was a hurricane since there was no inside storage area.

Mr. List reported he rented two storage rooms at a facility over the bridge.

With no further comment from the applicant or staff, Ms. Shamp closed the public comment portion of the hearing and opened the meeting for LPA discussion.

Ms. Kay noted that most of her questions had already been asked and were answered; Mr. Kakatsch reported he was at the subject site twice, and it appeared the Applicant has done a good job, and he recommended approval; Ms. Shamp noted her concern regarding the music and recommend that the Town needed to establish an ordinance regarding music and noise; and she explained why she could not support live music on-site since codes did not permit it at this time.

Director Fluegel clarified that staff was recommending non-amplified live music.

Mr. Kakatsch asked how close was the nearest residential house or unit to the subject property.

Director Fluegel reported the nearest would probably be on Crescent, quite a distance away behind the 7-Eleven on North Estero Boulevard. He discussed the street performer program and noted they were not permitted to be amplified.

**MOTION: Mr. Zuba moved to approve Resolution 2011-011 concerning La Ola Restaurant with the recommendations of staff, conditions of approval as outlined, and the recommended Findings and Conclusions;**

- 1. Changing conditions do not exist that make the approval inappropriate;**
- 2. that the requested special exception as conditioned is consistent with the Comp Plan;**
- 3. the requested special exception as conditioned meets or exceeds performance and locational standards;**

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4. the requested special exception as conditioned will protect and conserve the environmentally critical areas;
5. the requested special exception as conditioned will be compatible with existing and planned uses and will not cause damage or hazard; and
6. the requested special exception as conditioned will be in compliance with general applicable zoning conditions.

Second by Mr. Kakatsch.

Discussion was held concerning live music in the 'back bay area'.

VOTE: Motion passed 5-0.

The hearing on FMBSEZ2011-0001 was closed at 10:08 a.m.

Recessed at 10:08 a.m. – Reconvened at 10:15 a.m.

**B. FMBVAR2008-0003 – Diamond Head Sign Variance**

Ms. Shamp opened the hearing and asked LPA Attorney Miller to swear in the witnesses.

Ms. Chapman, Zoning Coordinator, was sworn in and the Affidavit of Publication was entered into the record.

Ms. Shamp asked if any LPA member had any ex-parte communication regarding FMBVAR2008-0003; Mr. Zuba – site visit; Mr. Kakatsch – site visit; Ms. Kay – none; Ms. Shamp – site visit; Mr. Cameron – none.

Ms. Chapman presented comments on behalf of the Town. She explained the application was for the Diamond Head Beach Resort and Spa and the requested variation was from the sign ordinance - Section 30-153 (b) and 30-154(c) of Chapter 30 of the land development code. She discussed some specific site conditions when reviewing the case: 1) at the time of development of the site Lee County required a subsurface drainage system at the site, so the property had to be raised approximately two feet which caused a grade change, and because of this the building code required a fence where the grade was changed; 2) the sign on the location was approved prior to 1999 and must come into compliance by the end of this year (she displayed a photograph of the existing sign and explained the current definition would consider this sign to be a pole sign which is prohibited); 3) and she reviewed how the current sign did not meet the requirements of Section 30-153(b) or 30-154(c). She discussed the applicant's request to modify the height of the sign; keep the existing sign face; and two businesses were located at this site. She stated that staff recommended that the finding of the elevation difference between the parking lot surface and the adjacent roadway was an exceptional condition and it justified a variance, and the conditions were not the result of actions created by the applicant. The variance, if granted, would be the minimum variance that would relieve the burden for the applicant; and she noted this was where staff's recommendation differed slightly from the applicant's request – the height from the top of

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the fence should be the five feet. She stated staff recommended treating the top of the fence as 'zero' elevation; and to allow a sign that would measure five feet from the top of the fence; staff recommended that granting the variance would not be injurious to the neighborhood; she pointed out that the two foot grade change was unique to this situation; and she reported staff recommended approval of the variance with the following conditions:

1. The approval does not exempt the subject property, Diamond Head Beach Resort & Spa, from applying for and getting approved sign permits to modify their sign to what they have requested or what LPA recommends and what Council finds as the appropriate size;
2. the height of the sign measures from the elevation of the existing grade of the elevated parking lot to the highest point on the sign must not exceed eight feet six inches (8.6");
3. construction or remodeling the sign must comply with all applicable codes, regulations, etc.; and
4. if the building on the subject property is removed or replaced, then this variance would expire within 30 days.

Mr. Zuba addressed the uniqueness of the subject property as it pertained to the grade the County had imposed.

Director Fluegel reviewed the density of the subject site and the requirement to store water on-site.

Mr. Zuba questioned if there was any foot candle power change with the new sign.

Ms. Chapman explained she was unsure, and that was why staff included the condition that they would have to get a face change permit and comply with building codes.

Mr. Kakatsch asked for clarification that the five feet started at the top of the fence.

Ms. Chapman responded in the affirmative.

Ms. Kay – no questions.

Mr. Cameron – no questions.

Ms. Shamp noted the sign and dimension depicted and the large white space; she questioned that no sign type was permitted on the base.

Ms. Chapman responded in the affirmative.

Ms. Shamp questioned vegetative requirements around the base for aesthetic purposes.

Ms. Chapman took note of this potential requirement, and stated the LPA could add that as a condition.

Discussion was held regarding signage, double-faced signs, and monument signs.

Mr. Neil Hopgood, Applicant and General Manager of Diamond Head Beach Resort & Spa, stated that the Diamond Resort had applied for a variance in 2008 and intends to fully comply with the Town's code for monument signs. He reviewed the hardship the business had experienced due to the grade/elevation. He mentioned they were trying to reduce cost by re-using the cap of the sign, and that they had obtained a permit to reface the sign in 2009. He stated they agreed with staff's recommendation of five feet above the sight-line of the fence; and requested a variance on height from grade and size of sign to use existing cap of current sign to alleviate the aesthetic clutter of 2-3 monument signs as well as the cost to complete.

Discussion was held concerning the height of the sign; the wording of the proposed sign; and Mr. Hopgood stated the sign's foot candle would not change, and that they had no problem with using bushes to improve the aesthetics at the white wall.

Public comment was opened and then closed, without comments from the public. With no further comment from the applicant or staff, Ms. Shamp closed the public comment portion of the hearing and opened the meeting for LPA discussion.

Discussion ensued regarding the white wall at the base of the sign; the sign ordinance; staff's recommendations; the uniqueness of the subject property; and the purpose of the sign.

**MOTION: Mr. Cameron moved that the LPA recommend to the Town Council approval of the applicant's request for a variance from Sections 30-153(b) and 30-154(c) of the LDC with any approval subject to the following conditions:**

- 1. Recommending conditions subject to the variance is not exempt the subject property from the LDC Section 30-55 permit requirements for signs;**
- 2. the height of the sign measured from the elevation of the existing grade of the elevated parking lot to the highest point of the sign must not exceed 8'6";**

Discussion was held regarding the height as requested by the Applicant.

LPA Attorney Miller suggested the Town obtain the square footage of the triangular portion, and then the height would be the 8'6" plus the triangular portion, so it could go up an additional two feet one inch.

**Motion maker clarified #2 as follows: the height of the sign measured from the elevation of the existing grade of the elevated parking lot to the highest point of the sign must not exceed 8'6" plus the triangular portion (as stated by the LPA Attorney).**

- 3. the remodeling of the sign must comply with all applicable codes and regulations including building codes and lighting standards;**
- 4. if the principal building on the subject property is removed or replaced, then the sign allowed by this variance would be removed within 30 days of the issuance of the demolition permit for the principal building, or within 30 days of the expiration of the federal, state, county, and local declaration of disaster, whichever conditions apply and whichever comes first; and**

**5. placement of signage in conjunction with redevelopment must comply with all regulations in effect at the time of permitting.**

**Recommended Findings and Conclusion: in accordance with the regulations in LDC Section 34-84 and 34-87 regarding consideration of eligibility for a Variance the LPA recommends that the Town Council make the following Findings and Conclusions:**

- **There are exceptions, extraordinary conditions or circumstances that are inherent to the property in question, or**
- **the request is not a *de minimis* variance;**
- **the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of regulation in question;**
- **the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question;**
- **the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and**
- **the conditions or circumstances of the specific piece of property for which the variance is sought are not general or recurrent in nature as to make it more reasonable and practical to amend the regulation in question.**

**Second by Mr. Zuba.**

Ms. Shamp discussed the basis for not supporting the motion due to the extra two feet, one inch in height. She asked if the motion maker would add in wording about vegetation.

Mr. Cameron believed it would be in the Applicant's best interest to place some bushes around the white base.

Discussion ensued regarding the vegetation and the appearance of the monument sign base.

Director Fluegel noted a provision in the code and the LPA could require landscaping so that there was no more than 18 inches of exposed structure.

**Motion maker amended the motion to include "landscaping to comply with code" as an addition to #3.**

**Second agreed.**

Ms. Kay discussed her belief that approving the extra two feet, one inch was setting precedent and not in keeping with the sign ordinance.

Discussion ensued regarding the sign ordinance; the proposed sign dimensions; and proposed wording on the sign.

**VOTE: 3-2; Ms. Kay and Ms. Shamp dissenting.**

The hearing on FMBVAR2008-0003 was closed at 11:07 a.m.

**Recessed at 11:08 a.m. – Reconvened at 11:13 a.m.**

## **VI. ADMINISTRATIVE AGENDA**

Ms. Shamp noted a change in the agenda – a new resolution, the Carlton Ryffel Resolution, would be discussed first and then the Consumption on Premises agenda item.

### **A. Carlton Ryffel Resolution**

Ms. Shamp explained that she prepared the resolution in honor of Carlton Ryffel based on the LPA format in the procedure manual. She expressed the LPA's sorrow at the sudden passing of fellow LPA member, Carlton Ryffel. She noted that the LPA would like to honor Mr. Ryffel and his expertise he brought to the Board through this resolution.

Director Fluegel reported that Council also expressed their desire to honor Mr. Ryffel and to possibly do a joint memorialization of him. He reported that he also reached out to Lee County and a dear friend of Mr. Ryffel, Wayne Daltry. He reviewed some options the LPA may want to consider to honor Mr. Ryffel such as but not limited to a joint resolution from the LPA, Council, and possibly the BOCC, or a standalone resolution from the LPA; the Board could nominate Mr. Ryffel for the Mayor John Mulholland Stewardship Award; or a tree planting in a County Park or the Town's Bay Oaks. He recounted how Mr. Ryffel cared about the community and was instrumental as it pertained to the creation of the Town of Fort Myers Beach. He noted that Mr. Ryffel was a great personal friend and a mentor and advisor.

Discussion ensued as to an appropriate and fitting memorial for Mr. Ryffel; Mr. Zuba noted he favored the nomination for the Mulholland Award; Ms. Shamp agreed and noted Mr. Ryffel's very protective nature of the beach, how he was always cognizant of the environment, and noted that he also served with the County's LPA; Mr. Kakatsch suggested, in addition to the LPA's resolution, to do something at the north end of the beach, possibly at the turnaround area, since Mr. Ryffel live nearby and was very involved with that area, and wondered if they could name that after him; Mr. Cameron mentioned he heard there was a possibility the southern tip of the beach would be changed to *Mulholland Point* and the name change process involved some type of federal procedures, therefore he wanted to alert the LPA these additional steps might be required if they name the turnaround area after Mr. Ryffel; Ms. Shamp recounted how in conversations with Mr. Ryffel he had conveyed to her his desire for an American flag to be placed in Crescent Park and she discussed options such as but not limited to naming the pole, or raising the first flag in his honor and present it to Mr. Ryffel's family.

Director Fluegel stated staff would work on all of these ideas, the concept of a joint resolution with the BOCC, and added the LPA could prepare their own resolution as well.

**MOTION: Mr. Cameron moved to direct staff to nominate Carlton Ryffel for the Mayor John**

**Mulholland Award and proceed with the nomination to be included in the next award cycle, and staff should work on the other efforts mentioned in concert with the nomination; seconded by Mr. Kakatsch.**

Ms. Shamp noted for the record that the LPA was already working on a resolution and also honored Mr. Ryffel at the today's meeting.

**VOTE: Motion passed 5-0.**

### **B. Consumption on Premises Update**

Director Fluegel reviewed the COP timeline as it pertained to alcohol consumption, sales, and service which showed the development of the County ordinances and approvals, and Town ordinances and adoption of the Town's Comprehensive Plan. He explained that how some Town approvals were site specific and had were done by special exception or special permit. He reported more details and information would be included in the final report and staff was working to complete it and at that point it would be forwarded for legal review/determination. He described the detail and amount of work involved with the report and noted it was staff's objective to present a final report to the LPA in October for discussion.

Discussion ensued and Ms. Shamp thanked the staff for their hard work on this item and requested as much lead time as possible to review the report prior to the meeting; Mr. Cameron discussed the number of COP in the EC Zoning Districts and permits for Top of the Mast; LPA Attorney Miller noted the daunting task of finding public records pre-incorporation, as well as with ABT and the County; Mr. Cameron discussed his desire to obtain an aerial view of the licensed premises where they are licensed to serve alcohol on the property and where the EC Zoning District line was at Top of the Mast; LPA Attorney Miller explained the legal differences between using a GIS map versus a survey; Director Fluegel reviewed highlights of the topics in the report that the LPA would be analyzing such as but not limited to boundary lines as it pertained to where alcohol could be served, and the lack of a regulatory framework and using special exceptions.

Ms. Shamp suggested staff give the LPA each section of the report as it becomes available.

Mr. Kakatsch requested staff research to determine consumption on the beach policy at Sanibel, Captiva, Bonita Springs, Vanderbilt Beach, Naples, and Marco Island.

Director Fluegel reported he had researched those areas and the problem was none of them had the same situation as Fort Myers Beach where you have a property bifurcated by two different zoning districts.

LPA Attorney Miller stated she pulled up Sanibel's open container law on her laptop and reported they prohibit an open container on *any public street or right-of-way including any bicycle path, any public parking lot, the public fishing pier, the public boat ramp facility*". She explained the Town's code says

*“semi-public parking lot, public street, parkway, sidewalk, and beach”*; however staff would research the other locations as requested by Mr. Kakatsch.

Ms. Shamp discussed the Town’s decision to create an environmentally critical zone and questioned the basis for the EC Zone.

Mr. Fluegel explained that based upon conversations and reviewing minutes, it appeared it was a way of cutting the density in half for every property fronting along the beach. He reviewed the type of information that would be included in the final report.

Ms. Shamp questioned if the LPA would receive information on the EC line at the north end of the beach.

LPA Attorney noted that there could be different standards for those properties since the State leases property to private entities.

Discussion ensued regarding State property, leasing State property, and public beaches; zoning districts/boundaries; the EC line; and how these might pertain to alcohol consumption.

Ms. Shamp noted the need to appoint a Vice Chair.

Mr. Kakatsch nominated Mr. Van Duzer.

Ms. Shamp explained why Mr. Van Duzer would probably turn down the nomination; she noted the appointment may be for only one meeting, since in October they would reorganize.

**MOTION: Mr. Cameron nominated Mr. Zuba as the LPA Vice Chair; second by Mr. Kakatsch.**

**VOTE: 5-0.**

**MOTION: Mr. Zuba moved to adjourn as the LPA and reconvene as the Historic Preservation Board; second by Mr. Cameron.**

**VOTE: 5-0.**

**ADJOURN AS LOCAL PLANNING AGENCY AND RECONVENE AS HISTORIC  
PRESERVATION BOARD**

**12:03 P.M.**

Ms. Kay reported HAC held a meeting on July 26, 2011 where they discussed the Smith Cottage presentation; there would be another presentation at the Episcopal Church on September 29, 2011; a history of the church was well documented by the HAC; there was a discussion at the July meeting

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regarding the plaques and it was decided to continue to use the same type of plaque; another discussion at the July meeting dealt with a list of properties of historic significance compiled by the HAC; also vista signs were discussed, Planning Coordinator Ekblad presented information on the signage, and it appeared the group favored to use the sloped-panel free standing signs. She questioned if the Council had included funding for the signs in the budget.

Director Fluegel reported at the preliminary budget meeting there was \$10,000 allocated for the Vista Sign Program, and possibly \$2,000 for the plaques.

Ms. Kay mentioned the expense and work involved for the vista signs. She stated at the July meeting there were questions concerning the Mound House such as but not limited to staffing, a new historian, the consolidation of Parks & Recreation and Cultural Resources, and a discussion was held on the purpose of the Newton House. She requested staff to research and confirm whether or not there were plans for a Mound House historian.

Discussion ensued regarding a historian for the Mound House.

## **VII. HISTORIC PRESERVATION**

No items to report.

**MOTION: Ms. Shamp moved to adjourn the HPB at 12:12 p.m. and reconvene as the LPA; second by Mr. Kakatsch.**

**VOTE: 5-0.**

### **HISTORIC PRESERVATION BOARD ADJOURNED AND RECONVENED AS THE LOCAL PLANNING AGENCY 12:12 P.M.**

## **VIII. LPA MEMBER ITEMS AND REPORTS**

Mr. Cameron – no items or report.

Mr. Kakatsch – no items or report.

Mr. Zuba – no items or report.

Ms. Kay – requested clarification that the Town Clerk had contacted the Municipal Code Corporation concerning the cost to codify the Land Development Code since years ago the land development codes were not included in the codification.

Director Fluegel explained that the land development codes were not on Municode as the other Town ordinances were, and they now wanted to include them to make them more accessible.

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Discussion was held regarding search features of the code on Municode on the Internet.

Ms. Shamp asked who was in charge of maintenance on the north end where the planters were located.

Director Fluegel stated there was a maintenance contract in the works for that location.

Ms. Shamp noted a Joint Meeting of the LPA and Town Council had not occurred in quite some time, and she recommended having one schedule one as outlined in their procedural manual.

**MOTION: Ms. Kay moved to direct staff to work to schedule a joint workshop with Town Council; second by Mr. Kakatsch.**

Ms. Shamp suggested holding the meeting in November, and Mr. Kakatsch suggested placing the item on the LPA October agenda so that they may create and finalize an agenda for the Joint Meeting; and Ms. Shamp requested the LPA forward suggested topics for the Joint Meeting to Director Fluegel,

**VOTE: Motion passed 5-0.**

Ms. Kay discussed her concerns regarding the Downtown District as it related to parking problems such as the cost of parking and reduced parking as compared to the 'back bay' area.

Director Fluegel suggested a discussion on that topic as it related to Comprehensive Plan; he wondered if there was a way to incentivize parking; and raised the question of whether or not it should be a public initiative. He suggested after the COP was completed the LPA may want to discuss the topic in a workshop.

#### **IX. LPA ATTORNEY ITEMS**

No items to report.

#### **X. COMMUNITY DEVELOPMENT DIRECTOR ITEMS**

Director Fluegel reported he received information today from the Board of Realtors that the median prices for sales of single-family residents and condos are increasing, but the more significant was that overall For Sale inventory was down substantially. He explained how his department liked to track this information as it related to deferred maintenance issues; and he discussed the increase in building permits over 2009 and the Town's agreement structure with Lee County for permitting fees.

Mr. Kakatsch complimented the Town on the beautiful bridge and painting, and did they intend to power wash the posts under the bridge.

Director Fluegel stated he would investigate the matter.

Mr. Kakatsch discussed his view regarding the purchase of a Town Hall.

LPA Attorney Miller stated there would be a referendum question on the next Council agenda.

Mr. Kakatsch addressed the fence installed around the proposed Sea Farer's Mall parking area.

Director Fluegel gave a quick update; he noted the Town Manager and he met with County staff regarding the Sea Farer's and discussed the possibility of a parking lot. He noted the County's intent was for a surface parking lot. He reported Town staff recommended an amendment to that CPD zoning which would require a public hearing before the LPA and Town Council.

Discussion ensued concerning a traffic study for the subject property.

#### **XI. LPA ACTION ITEM LIST REVIEW**

- Surf Club to Council on September 26<sup>th</sup> or October 3<sup>rd</sup>
- Mr. Kakatsch would represent the LPA when the Surf Club appeared on the Council agenda; and staff would keep Mr. Kakatsch informed of the hearing date
- Holiday Inn sign – Staff noted the applicant withdrew and submitted a sign permit application that complies with the new code
- Add on two LPA Resolutions from today
- Discussion on the rights-of-way on Estero Boulevard; Director Fluegel explained that he would have to 'pull the reins' in on this due to the work being done on the COP
- IPMC – Fluegel
- EAR Update – LaRue update on 2 visioning sessions
- Post-disaster reconstruction/recovery – TBD; LPA Attorney Miller
- Beach raking – TBD
- PAL PWVL Ordinance – TBD
- Connecticut Street

#### **XII. ITEMS FOR NEXT MONTH'S AGENDA**

- COP
- IPMC
- Potential special exception and/or variance applications

#### **XIII. PUBLIC COMMENT**

No comment.

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**XIV. ADJOURNMENT**

**MOTION: Motion by Mr. Kakatsch, seconded by Ms. Kay to adjourn.**

**VOTE: Motion approved 5-0**

Meeting adjourned at 12:35 p.m.

Adopted \_\_\_\_\_ With/Without changes. Motion by \_\_\_\_\_

Vote: \_\_\_\_\_

\_\_\_\_\_  
Signature

- End of document.



# *Town of Fort Myers Beach*

## DEPARTMENT OF COMMUNITY DEVELOPMENT STAFF REPORT

**TYPE OF CASE:** Special Exception  
**CASE NUMBER:** FMBSEZ2011-0001  
**LPA HEARING DATE:** September 13, 2011  
**LPA HEARING TIME:** 9:00 AM

### I. APPLICATION SUMMARY

Applicant: Thomas List

Request: Special Exception in the DOWNTOWN zoning district to increase outdoor seating and provide live music (amending conditions set forth in Resolution 04-14)

Subject property: BUSINESS CENTER  
BLK.8 PB 9 PG 9 LT 7 +  
LOT 6 LESS WLY 6 FT LESS ROW OR3539 PG3351

Physical Address: 1035 Estero Boulevard Fort Myers Beach, FL

STRAP #: 24-46-23-W3-00208.0060

FLU: Pedestrian Commercial

Zoning: DOWNTOWN

Current use(s): Restaurant with a 2COP license

Adjacent zoning and land uses:

North: Retail (Local Color)  
DOWNTOWN  
Pedestrian Commercial

South:	Vacant Commercial (Old Seafarer's) DOWNTOWN Pedestrian Commercial
East:	Retail (Teeki Hut) DOWNTOWN Pedestrian Commercial
West:	Bar/Cocktail Lounge (Top o'Mast) DOWNTOWN Pedestrian Commercial

## **II. BACKGROUND AND ANALYSIS**

### **Background:**

The subject property is located in a subdivided portion of the building at 1035 Estero Boulevard (shared with West Coast Surf Shop) just inside the pedestrian Times Square area.

The applicant is requesting expansion of the number of tables and chairs at their location. It should be noted that the interior size of the restaurant is such that no indoor seats are provided – all seating is outdoors. Currently they are limited to 10 tables and 42 chairs by Condition #3 set forth in Resolution 04-14 (see **Exhibit C**). The applicant is requesting 10 tables with 42 chairs, 6 high-top tables, three bars and 25 stools thereby increasing the outdoor seating capacity at the subject property.

The applicant is additionally requesting deletion of Condition #7 of Resolution 04-14 which limits entertainment to recorded background music in order to permit live music. In the submitted application (see **Exhibit A**) the applicant has proposed limiting the live outdoor music to between the hours of 3 and 9pm daily.

### **Analysis:**

The subject property is located in the Downtown zoning district within Times Square and within close proximity to Old San Carlos Boulevard, where many other establishments, generally restaurants with bars, serve alcohol on the premises and include outdoor seating areas. This area is one of the most intensive commercial areas of the Town, and with the exception of a few residential units, it is located generally away from the intensely residential areas of the island. The regulations of the Downtown zoning district, as contained in LDC Section 34-678, encourage restaurants to provide outdoor seating areas located on porches or patios, largely between enclosed buildings and the street. The Town has an established procedure and lease agreement for businesses within Times Square to further this goal by allowing them to lease Town right-of-way to increase the outdoor seating area at each business location.

The pedestrian nature of Times Square, sidewalks on both sides of Estero Boulevard, availability of commercial parking lots, the Lee County fishing pier, Lynn Hall Park, and the new Crescent Beach Family Park help to attract beach-going pedestrians to the area. The applicants' restaurant, La Ola, is among a large number of restaurants and retail uses in Times Square, several of whom have outdoor seating. The presence of visiting pedestrians transitioning between parking areas, retail stores, restaurants, the beach, and nearby motels, is a long-established custom that will not be altered by approval or denial of the current request.

The immediate vicinity is within the Pedestrian Commercial future land use category and the Comprehensive Plan's vision of this area specifically contemplates that the Times Square area (i.e. Downtown Core Area) will include a more intensive mix of commercial activities including outdoor uses.

The applicant is limited by Resolution 04-14 to a "maximum 10 tables with a maximum seating capacity of 42 seats" and by the Business Extension in Times Square agreement (see **Exhibit B**, page 3) to "no more than 42 chairs."

Currently located on the subject property are 17 more seats than 42 permitted for a grand total of 59 seats (see **Exhibit E**). Additionally the applicant is proposing 8 more seats at three tables alongside the building and at a service bar. The site plan is included as **Exhibit D**, please refer to it for further clarification. The items highlighted in blue indicate outdoor displays and service carts and the applicant has submitted plans for these items that are currently under review. Please note, however, that these items already exist on-site and the applicant does not yet have permits for these items. The items highlighted in pink indicate the permitted and existing tables. There is a summary of the requested seating submitted by the applicant on **Exhibit D**; it lists 11 tables with 42 chairs, 6 high-top tables with 14 stools, 3 moveable bars with 11 stools for a grand total seating capacity of 67 seats.

The Business Extension in Times Square agreement signed by the applicant and attached as **Exhibit B** lists the rules and regulations for approval of use of Town right-of-way. Item 6 reads: *the business must stay true to drawing as approved by the Town. No expansion or addition of tables and chairs shall take place without prior written approval by the Town.* This is noted because the applicant has expanded tables and chairs, thereby modifying the approved drawing prior to written consent from the Town. Item 11 reads: *All utility easements and rights-of-way must be kept clear at all times.* This restriction is noted because the applicant is requesting additional seating in within a utility right-of-way, (see **Exhibit F**) without the consent of the public utility (Florida Power and Light).

In the past, Lee County and the Town issued location-specific approvals for alcoholic beverage uses which sometimes contained limitations on the number of seats, perhaps in an effort to limit potentially adverse effects on the neighboring properties and to aid with enforcement issues involving unauthorized expansions.

Staff does not recommend conditions be included limiting the number of seats. The seating area can be limited by reference to the applicant's site plan, which must clearly delineate the square footage of the seating area and adherence to the building, fire, and life safety codes which set capacity maximums. A policy such as this allows for changes to the types of seats used in the seating area or amendments to the building, fire, and life safety codes which could allow a somewhat different seating capacity within the same floor area in the future. Because this property must renew, on an annual basis, their Business Extension in Times Square agreement, Staff will have the ability to review the seating capacity which each revision to building, fire, and life safety codes.

The applicant is requesting the option of live music between 3:00pm and 9:00 pm 7 days a week. Currently they are limited to pre-recorded music from 8:00 am to 12 midnight. In researching the history of approvals for this property and the formation of Times Square, Staff found little documentation containing the rationale for limiting music to pre-recorded only– that apparently has been the policy and it applies to all businesses along and within Times Square. It should be noted, however, that for a few businesses with Gulf front locations in Times Square, live music has been performed for a number of years on decks overlooking the water. The live music request is one that should be considered carefully because it would be a change in policy for the entire Times Square area. The Comprehensive Plan does encourage uses that increase the unique and vibrant nature of Times Square, however, there are potentially very real impacts from this potential change in policy which Staff feels should be considered for the entire district rather than on a case by case basis.

Resolution 04-14, attached as **Exhibit C**, was the original outdoor consumption on premises (for a 2 COP license) approval which was restricted with 8 conditions. These range from requiring legible signage, restricting business hours and limiting seating. Staff has reviewed the conditions from this resolution and finds that all conditions, with the exception of #3 and #7, remain applicable and recommends that they remain in effect.

Findings and Considerations:

1. *Whether there exist changed or changing conditions [that] make approval of the request appropriate.*

The Comprehensive Plan notes in the Consensus on Commercial Uses: "The present concentration of commercial uses in the Times Square area is good for Fort Myers Beach. Despite severe congestion during peak season, Times Square has always provided an urban beach environment that does not exist anywhere else in Lee County, and which cannot be easily duplicated because of today's floodplain regulations."

As contemplated in the Comprehensive Plan, the Times Square area has continued to emerge as a vibrant urban core for the Town, and as such

the area can support an intensive variety of uses which is consistent with the applicant's request.

While there are no changing conditions at the subject property, the request remains consistent with the intended use of the area.

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

The subject property is located in what the Comprehensive Plan terms the Downtown Core. The Comprehensive Plan describes a vision for this area that "boasts a revitalized entertainment area with tree-shaded outdoor cafes, pedestrian streets, and an 'Old Estero Island' character to the buildings." The applicant's request for additional seating capacity to further this intent is consistent with the vision for the area as described above. However, the Comprehensive plan is silent on terms or conditions for outdoor entertainment. The applicant's request for live music outdoors, conditioned thoughtfully, could also further this vision, however it is important to look at this request on a large scale and determine if a Times Square/Downtown Outdoor Entertainment Ordinance might not be a better way to address this request.

Additionally, in both the Community Design Element and the Future Land Use Element, the Comprehensive Plan describes a vision for the Downtown Core/Times Square area as a "nucleus of commercial and tourist activities" with pedestrian oriented commercial uses that enhance the experience of both the resident and visitor. Again, the applicant's request is in keeping with this vision, by providing an additional venue for the enjoyment of the unique outdoor environment of Fort Myers Beach.

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

This application is a request to amend conditions set forth in a previous special exception application for a use (outdoor consumption on premises) that did not meet locational standards as set forth in the LDC. The questions involving the locational standards were addressed in that previous case and resulting resolution (See **Exhibit C** Resolution 04-14).

The current applicant's request is appropriate because the only way to amend a special exception is to apply for an additional special exception. The requested amendments at the subject property in Times Square and the Downtown Core Area is in keeping with the goals, objectives, policies and intent of the Comprehensive Plan which describes a vibrant tourist commercial district in the Downtown Core.

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

The proposed increase of seating capacity and outdoor live entertainment will have no negative effects on the environmentally critical areas and natural resources of Fort Myers Beach because the subject property is located in Times Square on the landward side without direct access to environmentally critical areas and sensitive natural resources.

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

The subject property and the area immediately surrounding it, is within the Pedestrian Commercial future land use category and the Comprehensive Plan's vision of this area does not require that it be transformed from the established intensively commercial area into a primarily residential district. It possesses a vibrant mix of uses and as such, Staff feels the applicant's request is generally compatible and appropriate within this neighborhood. However it should be noted that the Town does have a Street Performers program and increasing live music performances at individual locations could compromise this unique program.

6. *Whether the requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.*

Staff recommends finding that the requested use, as conditioned, is in compliance with applicable zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34 for Times Square and the Downtown district.

### **III. RECOMMENDATION**

The appropriate limitations on an outdoor seating area for consumption on premises that is allowed by special exception are for Town Council to determine through the hearing process, and should a specific location or applicant wish to change, modify or amend the limitations it is within Town Council's authority to consider those requests.

With consideration to the current and existing conditions, Staff recommends **APPROVAL** of the requested amendments to the existing special exception to allow expanded outdoor seating and live music at 1035 Estero Boulevard.

If the Town Council chooses to approve the requested special exception, staff recommends that approval be subject to the following conditions:

1. The expanded seating area cannot exceed current building, fire and life safety codes and will be re-evaluated on an annual basis for compliance.
2. No bars, tables, chairs, speakers or any other item may extend into the utility easement without written consent from the public utility(ies) entitled to utilize that easement.
3. Conditions 1, 2, 4, 5, 6, and 8 from Resolution 04-14 (see **Exhibit C**) remain in effect.
4. Non-amplified live music is permitted only between the hours of 3:00 pm and 9:00pm, 7 days a week and must comply at all times with applicable Town noise ordinances.
5. Upon approval by Town Council applicant must amend its Business Extension in Times Square agreement to reflect the changed site plan.

#### **IV. CONCLUSION**

Regulations for the DOWNTOWN zoning district encourage outdoor dining, and many restaurants within the district have capitalized on the vision of the Comprehensive Plan in accordance with these regulations and are providing outdoor seating areas.

The area surrounding the subject property is one of the most intensive commercial areas of the Town, and aside from a minimal number of residential units, it is located generally away from the intensely residential areas of the island. The subject property is located in the Downtown zoning district with close proximity to Times Square and Old San Carlos Boulevard, where many other establishments, generally restaurants with bars, serve alcohol on the premises and include outdoor seating areas. Thus the request for outdoor consumption on premises is appropriate at this location. When considering the context and compatibility of the subject property's requested use along with the applicant's provided hours of operation and tempered with the conditions listed previously, Staff finds that the outdoor consumption on premises is a compatible and appropriate use.

If Town Council finds that the requested use 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 34-88, Town Council should deny the request as provided in LDC Section 34-88(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 special exception. Staff has recommended conditions for the Town Council's convenience.

Staff recommends **APPROVAL** of the requested special exception, as conditioned.

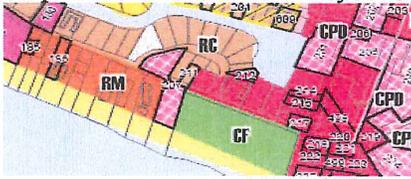
Exhibits:

- Exhibit A – Application for Public Hearing and Supplement PH-A
- Exhibit B – Business Extension in Times Square Agreement 2010-2011
- Exhibit C – Town Council Resolution 04-14
- Exhibit D – Applicant proposed site plan
- Exhibit E – On-site photos of requested items
- Exhibit F – 1996 Subject Property Boundary survey
- Exhibit G – RETOLIST, LLC (La Ola) liquor license 2011-2012

Case # \_\_\_\_\_  
 Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
 Date of Sufficiency/Completeness \_\_\_\_\_

**Town of Fort Myers Beach**  
 Department of Community Development



Zoning Division

EXHIBIT ( A )

**Application for Public Hearing**

This is the first part of a two-part application. This part requests general information required by the Town of Fort Myers Beach for any request for a public hearing. The second part will address additional information for the specific type of action requested.

Project Name: LA OLA MEX. RESTAURANT
Authorized Applicant: THOMAS LIST
LeePA STRAP Number(s): 24-46-23-W3-00208.0060

<b>Current Property Status:</b>
Current Zoning: DOWNTOWN
Future Land Use Map (FLUM) Category: PEDESTRIAN COMERC.
Platted Overlay? <u>  </u> yes <u>  </u> no FLUM Density Range:

Action Requested	Additional Form Required
<input checked="" type="checkbox"/> Special Exception	Form PH-A
<input type="checkbox"/> Variance	Form PH-B
<input type="checkbox"/> Conventional Rezoning	Form PH-C
<input type="checkbox"/> Planned Development	Form PH-D
<input type="checkbox"/> Master Concept Plan Extension	Form PH-E
<input type="checkbox"/> Appeal of Administrative Action	Form PH-F
<input type="checkbox"/> Development of Regional Impact	Schedule Appointment
<input type="checkbox"/> Other (cite LDC section number: _____)	Attach Explanation

**Town of Fort Myers Beach**  
**Department of Community Development**  
 2523 Estero Boulevard  
 Fort Myers Beach, FL 33931  
 (239) 765-0202

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

### PART I - General Information

#### A. Applicant:

Name(s):	THOMAS LIST		
Address: Street:	1035 ESTERO BLVD. #B3		
City:	FNB	State:	FL Zip Code: 33931
Phone:	239 823 7111		
Fax:			
E-mail address:	THOMAS.LIST@HOTMAIL.COM		

#### B. Relationship of applicant to property (check appropriate response)

<input type="checkbox"/> Owner (indicate form of ownership below)	
<input type="checkbox"/> Individual (or husband/wife)	<input type="checkbox"/> Partnership
<input type="checkbox"/> Land Trust	<input type="checkbox"/> Association
<input type="checkbox"/> Corporation	<input type="checkbox"/> Condominium
<input type="checkbox"/> Subdivision	<input type="checkbox"/> Timeshare Condo
<input checked="" type="checkbox"/> Authorized representative (attach authorization(s) as Exhibit AA-1)	
<input type="checkbox"/> Contract Purchaser/vendee (attach authorization(s) as Exhibit AA-2)	
<input type="checkbox"/> Town of Fort Myers Beach (Date of Authorization: _____)	

#### C. Agent authorized to receive all correspondence:

Name:	THOMAS LIST		
Mailing address: Street:			
City:		State:	Zip Code:
Contact Person:	SEE ABOVE		
Phone:		Fax:	
E-mail address:			

#### D. Other agents:

Name(s):	NO		
Mailing address: Street:			
City:		State:	Zip Code:
Phone:		Fax:	
E-mail address:			

Use additional sheets if necessary, and attach to this page.

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Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

### PART II – Nature of Request

**Requested Action (check applicable actions):**

<input checked="" type="checkbox"/> Special Exception for: <i>LIVE MUSIC AND OUTDOOR ENTERTAINMENT</i>
<input type="checkbox"/> Variance for:
<input type="checkbox"/> Conventional Rezoning from _____ to: _____
<input type="checkbox"/> Planned Development
<input type="checkbox"/> Rezoning (or amendment) from _____ to: _____
<input type="checkbox"/> Extension/reinstatement of Master Concept Plan
<input type="checkbox"/> Public Hearing of DRI
<input type="checkbox"/> No rezoning required
<input type="checkbox"/> Rezoning from _____ to: _____
<input type="checkbox"/> Appeal of Administrative Action
<input type="checkbox"/> Other (explain):

### PART III – Waivers

**Waivers from application submittal requirements:** Indicate any specific submittal items that have been waived by the Director for the request. Attach copies of the Director's approval(s) as Exhibit 3-1.

Code Section Number	Describe Item

### PART IV – Property Ownership

<input type="checkbox"/> <b>Single owner</b> (individual or husband and wife)
Name: <i>NORMAN PRIMEAU</i>
Address: Street: <i>950 SAN CARLOS DR.</i>
City: <i>INB</i> State: <i>FL</i> Zip Code: <i>33931</i>
Phone: <i>239-470-4118</i> Fax: <i>-</i>
E-mail Address: <i>-</i>

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<input type="checkbox"/> Multiple owners (including corporation, partnership, trust, association, condominium, timeshare condominium, or subdivision)
Attach Disclosure Form as Exhibit 4-1
Attach list of property owners as Exhibit 4-2
Attach map showing property owners' interests as Exhibit 4-3 if multiple parcels are involved
For condominiums, timeshare condominiums, and subdivisions, see instructions.

### PART V – Property Information

#### A. Legal Description of Subject Property

Is the property entirely made up of one or more undivided platted lots officially recorded in the Plat Books of the Public Records of Lee County?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes:
Subdivision name:
Plat Book Number:     Page:     Unit:     Block:     Lot:
If no:
Attach a legible copy of the metes and bounds legal description, with accurate bearings and distances for every line, as Exhibit 5-1. The initial point in the description must be related to at least one established identifiable real property corner. Bearings must be referenced to a well-established and monumented line.

#### B. Boundary Survey

Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code, as Exhibit 5-2. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida.
--

#### C. STRAP Number(s):

24-46-23-43-00208.0060
------------------------

#### D Property Dimensions:

Area:	square feet	380 SF	acres
Width along roadway:	feet	Depth:	feet

#### E. Property Street Address:

1035 ESTERO BLVD #3, FNB 33931
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Planner \_\_\_\_\_

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Date of Sufficiency/Completeness \_\_\_\_\_

**F. General Location of Property (from Sky Bridge or Big Carlos Pass Bridge):**

PROPERTY IS IN TIME SQUARE

Attach Area Location Map as Exhibit 5-3

**G. Property Restrictions (check applicable):**

There are no deed restrictions or covenants on this property that affect this request.

Restrictions and/or covenants are attached as Exhibit 5-4

A narrative statement explaining how the deed restrictions and/or covenants may affect the request is attached as Exhibit 5-5.

**H. Surrounding property owners:**

Attach list of surrounding property owners (within 500 feet) as Exhibit 5-6

Attach two sets of mailing labels as Exhibit 5-7

Attach a map showing the surrounding property owners as Exhibit 5-8

**I. Future Land Use Category: (see Comprehensive Plan Future Land Use Map)**

Low Density  Marina

Mixed Residential  Recreation

Boulevard  Wetlands

Pedestrian Commercial  Tidal Water

Is the property located within the "Platted Overlay" area on the Future Land Use Map?  Yes  No

**J. Zoning: (see official zoning map, as updated by subsequent actions)**

RS (Residential Single-family)  CM (Commercial Marina)

RC (Residential Conservation)  CO (Commercial Office)

RM (Residential Multifamily)  CB (Commercial Boulevard)

VILLAGE  SANTINI

SANTOS  DOWNTOWN

IN (Institutional)  RPD (Residential Planned Dev.)

CF (Community Facilities)  CPD (Commercial Planned Dev.)

CR (Commercial Resort)  EC (Environmentally Critical)

BB (Bay Beach)

**PART VI – Affidavit**

**Application Signed by Individual Owner or Authorized Applicant**

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

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data, or other supplemental matter attached hereto and made a part of this application are honest and true;
3. I hereby authorize Town staff or their designee(s) to enter upon the property during normal working hours (including Saturdays and Sundays) for purposes reasonably related to the subject matter of this application; and
4. The property will not be transferred, conveyed, sold, or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Thomas List

Signature

THOMAS LIST

Typed or Printed Name

State of FLORIDA  
County of Lee

The foregoing instrument was sworn to (or affirmed) and subscribed

before me this 15th <sup>of March 2011</sup> by THOMAS LIST

(date)

(name of person under oath or affirmation)

who is personally known to me or produced FLDL: L230820670840

(type of identification)

as identification.

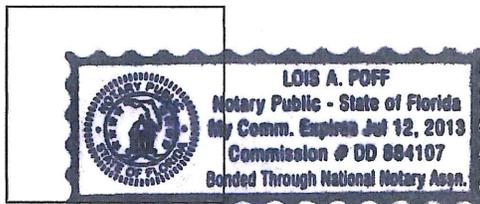
Lois A. Poff

Signature of person administering oath

LOIS A. POFF

Typed or Printed Name

SEAL:



Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

**EXHIBIT 4-1  
DISCLOSURE OF INTEREST FORM**

STRAP# 24-46-23-W3-00208.0060

Attach additional sheets in the same format for each separate STRAP number in the application if multiple parcels with differing ownership are included.

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

Name and Address	Percentage

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

Name, Address, and office	Percentage

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Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

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

Name and Address	Percentage
PRIMEAM BEVERLY A TR EST	100%

4. If the property is in the name of a GENERAL PARTNERSHIP or LIMITED PARTNERSHIP, list the names of the general and limited partners with the percentage of ownership.

Name and Address	Percentage

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

Name, Address, and Office (if applicable)	Percentage

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Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

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

Name and Address


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

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

Signature Thomas List  
Applicant  
THOMAS LIST  
Printed or typed name of applicant

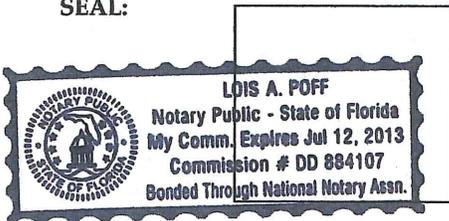
STATE OF FLORIDA  
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 1st day of August, 2011, by THOMAS LIST, who is personally known to me or who has produced FLDL: 230 820 67084 as identification and who did (or did not) take an oath.

Lois A. Poff  
Signature of Notary

LOIS A. POFF  
Typed or Printed Name of Notary

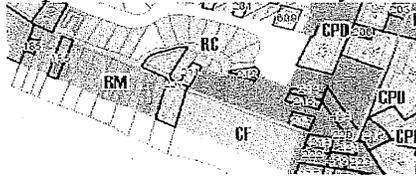
SEAL:



Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

**Town of Fort Myers Beach**  
Department of Community Development



Zoning Division

**Supplement PH-A**

**Additional Required Information for a  
Special Exception Application**

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

Project Name: LA OLA Mex RESTAURANT
Authorized Applicant: THOMAS LIST
LeePA STRAP Number(s): 24-46-23-W3-00208.0060

Current Property Status:
Current Zoning: DOWNTOWN
Future Land Use Map (FLUM) Category: PEDESTRIAN COMERC.
Platted Overlay? __yes__no FLUM Density Range:

**Requested Action:**

<input type="checkbox"/> Use of premises in the EC (Environmentally Critical) zoning district for:
<del>LIVE MUSIC</del>
<input checked="" type="checkbox"/> Use of premises in the DOWNTOWN zoning district for:
LIVE MUSIC
EXPANDING SEATING

PART I  
Narrative Statements

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

LIVE MUSIC AT THE RESTAURANT, LA OLA
HO-SO BETWEEN 3pm - 9pm
Extend OUTDOOR SEATING TO ENLARGE TO 55 Seats
14 TABLES
1 SERVICE BAR ON WHEELS
1 SERVICE AREA (BEER)

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

The property qualifies for a Special Exception because:
ITS ON PRIVATE PROPERTY AND TO NOT NEED CITY PROPERTY,
RESOLUTION NUMBER 04-14
AMOUNT Condition Lt. 7 AND Lt. 3





EXHIBIT ( B 9 )

*Fort Myers Beach*  
*Business Extension in Times Square*  
**RULES AND REGULATIONS**  
2010-2011

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1. Each business must receive approval through the Town to use the publicly owned area of Times Square. To receive approval, the Town and each business must establish the total square footage used. The width and depth of the area, including the number of tables, chairs and umbrellas shall be agreed upon. Tables, chairs and other objects shall be immediately removed upon request by the Town. Umbrellas should be color coordinated as close as possible to the pavers. No advertising of any kind shall be on umbrellas. **Businesses must obtain an Outdoor Sales and Display Permit annually from the Town in addition to renewing their Agreement for Extension of Business Operation.**
2. Extension area shall be directly adjacent to business operation. Business must be conducted within the premise extension area as it is on one's existing property (no exception). This is an extension of your dining area – no subletting to other vendors will be permitted.
3. Businesses required to have a State of Florida Alcoholic Beverages and Tobacco license, shall obtain an extension of premises license through Alcoholic, Beverage & Tobacco Department of Business and Professional Regulation. A copy must be provided to the Town upon signing the permit agreement.
4. Business must secure and maintain insurance for the extension area and provide a certificate of insurance for the same upon signing the permit agreement. Insurance coverage must remain in effect for the duration of the permit agreement.
5. Business must provide its current Lee County Occupational License and State of Florida Division of Hotels and Restaurants License upon signing the permit agreement.
6. The business must stay true to drawing as approved by the Town. No expansion or addition of tables and chairs shall take place without prior written approval by the Town.
7. Each business must maintain the cleanliness of their areas and adjacent neutral zones. This includes picking up of litter including paper products, cigarette butts, etc. off of the pavers and flowerbeds. Debris is not to be pushed into a pile without picking it up unless it is washed down and are waiting for debris to dry for pickup. Also remove and dispose of dead palm fronds. The premise extension area will cleared of all property when notified by the Town that a paver cleaning is scheduled.

8. Any menu boards must remain in each business area.
9. No animals are to be chained up to trees or fixtures in Times Square. Animals should be hand held or held by a leash (no more than 6 feet in length) at all times.
10. All trash receptacles must be kept on your property in a neat and clean manner. All cardboard is to be flattened and placed in a Town of Fort Myers Beach plastic bag. All trash receptacles and cardboard must be placed at the designated maintenance pick-up zone, at the end of each business day.
11. All utility easements and rights-of-way must be kept clear at all times.
12. No soliciting of any kind is permitted.
13. All trees and lamp posts are the property of the Town of Fort Myers Beach and shall not be used by the business in any way, nor shall they be altered in any way by the business.
14. No other items besides tables, chairs and umbrellas are permitted in the extension area.
15. A description and/or drawing shall be provided depicting the means of grease storage and disposal. This shall be submitted with the permit agreement.
16. Extension of Premise fee shall be kept current at all times. Should the fee remain unpaid the Town will require vacation of the extension. No new permit agreement will be entered into until all fees are paid.
17. Business must abide by all rules and regulations, violations will be issued in writing by a Town Official or its delegate. After three (3) written warnings, the extension permit shall be revoked.

### SIGNATURE AND CERTIFICATION

I, the undersigned, have read and understand the Rules and Regulations for Food-Oriented Business Extensions in the Times Square Area of Fort Myers Beach, and hereby agree to adhere to them at all times. I further agree to make all of my employees and agents aware of these Rules and Regulations and ensure their adherence as well.

Shamus Smith  
Business Owner

1035 Gero Blvd #3, 33931  
Business Address

11/27/10  
(Date)

239/823 7111  
(Phone)

PERMIT AGREEMENT FOR EXTENSION OF BUSINESS OPERATION  
(RESTAURANT)

The Town of Fort Myers Beach, pursuant to the authority set out in Ordinance #97-5, and in furtherance of the desires and intention of the Town Council with regard to the redeveloped business district known as Times Square, hereby grant to **Thomas List** this permit for an extension of business operation, into the Town right-of-way as defined in Section 5 C of the above referenced Ordinance, on the property located adjacent to the business known as **La Ola, 1035 Estero Boulevard, Unit 3**, Fort Myers Beach, FL 33931, under the following terms and conditions.

1. Permit shall extend from **October 1, 2010 through September 30, 2011.**
2. Permittee may place personal property, limited to tables (with or without umbrellas) in an area designated as **18' by 39' and 39 sq. ft. (width and depth of business)** feet immediately adjacent to their place of business known as **La Ola.**
3. This Permittee shall be charged for **741** square feet with no more than **42** chairs at this location, and the location shall be marked off and designated by use of rope or other approved material or indicators. A detailed scaled drawing showing the location of all personal property shall be attached hereto as Exhibit A.
4. Hours of operation of the area of extended use shall be from **6:00 am to 12:00 am** but shall be subject to review and modification based on health and safety concerns as they develop.
5. The Permittee assumes and accepts responsibility of any damage caused to Town property by reason of the use of the property covered under this agreement.
6. The Permittee shall remove said personal property and cease the permitted uses when so directed by the Town of Fort Myers Beach.
7. The use of the Town property as set forth herein shall be allowed at a cost of **\$2.98 per square foot per year** (as indicated in Section 2 above), payable yearly upon execution of this Permit Agreement in the amount of **\$2340.67** or monthly in the amount of **\$195.06** by the Permittee to the Town of Fort Myers Beach, regardless of whether the extension is used or not used throughout the year. This cost includes sales tax. Should the Permittee fail to pay the annual or monthly fee, this agreement will be considered null and void and Permittee will be required to vacate the extension of premises.
8. By signing this permit agreement, Permittee agrees to abide by all the Rules and Regulations as attached hereto and made a part hereof. This Permit shall become effective upon receipt of the Alcoholic Beverages and Tobacco Extension License where applicable.

Thomas List  
Permittee

Date: 11/29/10

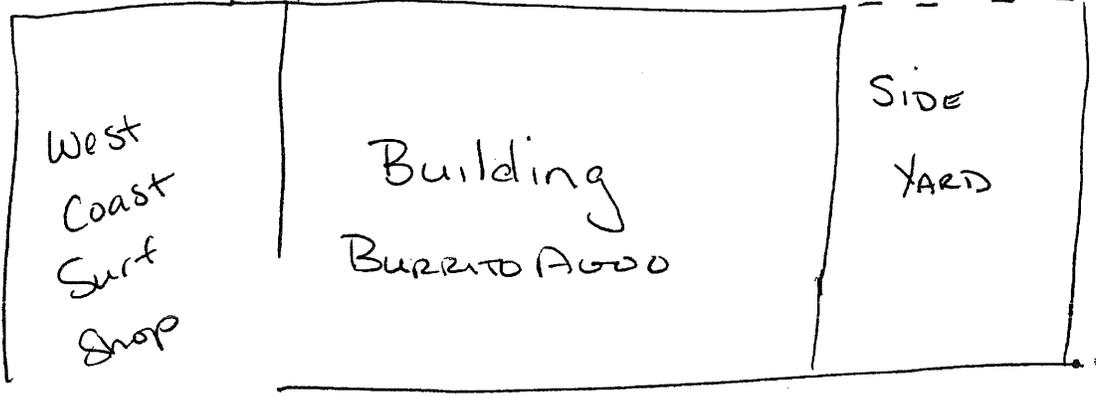
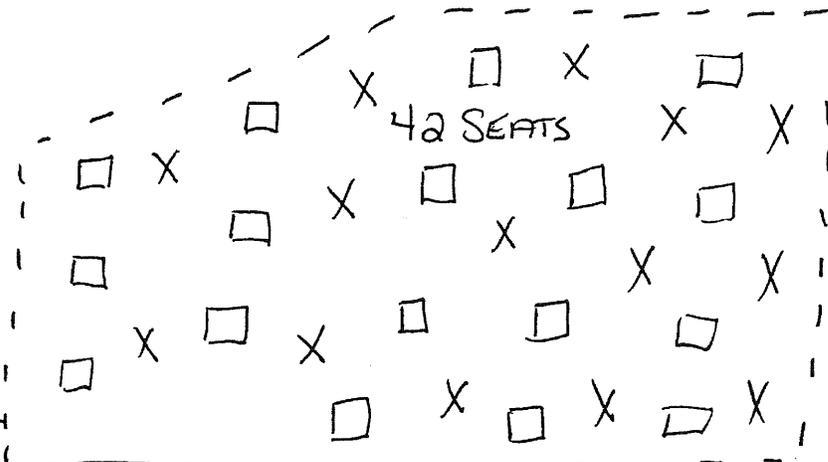
Cathy Luis  
Town Representative

ABT Extension License Received

Date: \_\_\_\_\_

Cathy Luis  
Town Representative

741 sq. ft.



West  
Coast  
Surf  
Shop

Building  
BURRITO ADOO

SIDE  
YARD

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 04-14

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA  
APPROVING THE REQUEST FOR CONSUMPTION ON PREMISES

WHEREAS, Prismatic Corp., Times Square Coffee Shop has requested a Special Exception for consumption on premises (2-COP) of alcoholic beverages with outdoor seating in conjunction with a cafe; and,

WHEREAS, the subject property is located at 1035 Estero Blvd., and the applicant has indicated the property's current STRAP number is: 24-46-23-W3-00208.0060 and the legal description is attached as Exhibit "A" ; and,

WHEREAS, the LPA gave full and complete consideration to the recommendations of the Staff, the documents in the file, and the testimony of all interested persons and recommended that the Town Council approve the Applicant's request subject to the 8 conditions listed on Page 2 of the Staff Report dated March 11, 2004 and which is attached hereto and incorporated herein by reference with the following change:

Condition #4. *Esthetically pleasing* legible signs will be clearly posted for the areas not approved for on premise consumption stating "Alcoholic beverages are prohibited beyond this point."

FINDINGS AND CONCLUSIONS:

The following findings and conclusions were made in conjunction with the approval of the requested modification:

1. The applicant did comply with Section 34-1264 (2) b. which places the burden of proof upon the applicant to demonstrate that approval will not have any adverse affect on surrounding properties.
2. That there is no error or ambiguity in the Land Development Code or Town Plan which must be corrected by the Special Permit.
3. That the character and nature of the surrounding area make approval of the Special Permit, as conditioned, appropriate.
4. That the Special Permit, as conditioned, is consistent with the goals, objectives, policies and intent of the Town Plan, and the densities, intensities and general uses set forth in the Town Plan and Land Development Code.
4. That the Special Permit, as conditioned, meets all performance and locational standards set forth for the proposed use.
5. That urban services will be available and adequate to serve the proposed use when it is constructed.

**II. BACKGROUND INFORMATION AND RECOMMENDATION:**

**A. Recommendation: Staff recommends APPROVAL of the request with the following conditions:**

- 1. The Special Exception is limited to on premises consumption of alcoholic beverages in conjunction with outdoor seating and is limited to a 2-COP beverage license to be used in conjunction with the café.**
- 2. Prior to the issuance of a Certificate of Occupancy for the use, the applicant must obtain a yearly permit agreement with the Town of Fort Myers Beach to allow the placement of tables and chairs within the Times Square area.**
- 3. Indoor seating is not approved as part of this Special Exception. The consumption on premises for outdoor seating is limited to the area shown on attached Exhibit "B" and the area leased from the Town of Fort Myers Beach located within the Times Square area and is limited to a maximum of 10 tables with a maximum seating capacity of 42 seats.**
- 4. Legible signs will be clearly posted for the areas not approved for on premise consumption stating "Alcoholic beverages are prohibited beyond this point.**
- 5. Lighting on the outdoor seating areas will be shuttered and shielded from the surrounding properties.**
- 6. The hours for the outdoor seating area will only be used between 8:00 a.m. to 12:00 Midnight, 7-days a week, Sunday through Saturday.**
- 7. Entertainment is limited to recorded background music between the hours of 8:00 a.m. to 12:00 Midnight, 7-days a week, Sunday through Saturday.**
- 8. Prior to the issuance of a Certificate of Occupancy for the use, the applicant and property owner must comply with the provisions of the Land Development Code, Sections 14-71 through 14-79 relating to the protection of Sea Turtles.**

**Findings & Conclusions**

Based upon an analysis of the application and the standards for approval of a special exception, staff makes the following findings and conclusions:

- 1. The requested special exception, as conditioned:**



6. That there are no environmentally critical areas or natural resources to be adversely affected by the Special Permit, as conditioned.

NOW, THEREFORE, BE IT RESOLVED BY THE FORT MYERS BEACH TOWN COUNCIL, that the Council APPROVES the requested modification with the following conditions:

the 8 conditions listed on Page 2 of the Staff Report dated March 11, 2004 and which is attached hereto and incorporated herein by reference with the following change:

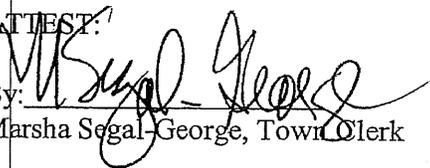
Condition #4. *Esthetically pleasing* legible signs will be clearly posted for the areas not approved for on premise consumption stating "Alcoholic beverages are prohibited beyond this point."

The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

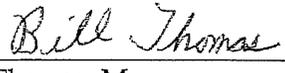
Howard Rynearson	<u>AYE</u>
Don Massucco	<u>NAY</u>
Bill Thomas	<u>AYE</u>
W. H. "Bill" Van Duzer	<u>AYE</u>
Garr Reynolds	<u>NAY</u>

Adopted this 19th day of April, 2004.

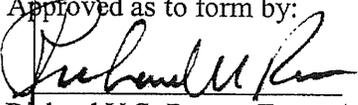
ATTEST:

By:   
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By:   
Bill Thomas, Mayor

Approved as to form by:

  
Richard V.S. Roosa, Town Attorney

- a) is consistent with the goals, objectives, policies and intent of the Town of Fort Myers Beach Comprehensive Plan;
- b) meets or exceeds all performance and locational standards set forth for the proposed use;
- c) will be compatible with existing or planned uses;
- d) will not cause damage, hazard, nuisance or other detriment to persons or property; and
- e) will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in the Land Development Code.

**B. Rationale:**

**Introduction/Synopsis**

The proposed café is located in the same building as the West Coast Surf Shop. The applicant plans to open a small café with outdoor seating in the southwesterly retail space of the building as depicted on the attached Exhibit "B". The applicant wishes to "create an outdoor café in the tradition of the sidewalk bistros of Paris." The menu is tailored towards espresso, cappuccino, smoothie, or wine along fresh baked goods, cheeses, and deserts. The applicant is requesting a 2-COP license which will allow them to serve beer and wine only. The café is located in the Downtown zoning district and is in the Pedestrian Commercial land use category.

Land Development Code (LDC), Section 34-1264(a)(2)a.2. states any establishment which provides outdoor seating areas for its patrons consuming alcoholic beverages, except that a restaurant may have outdoor seating approved administratively provided the outdoor seating area is not within 500 feet of a place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit under separate ownership. Lynn Hall Park, is within 500 feet which trigger this requirement and therefore the request must go through the public hearing process.

**Requested Special Exception**

The proposed consumption on premises is for a 2-COP liquor license for beer and wine only. The applicant received an interior remodeling permit (COM2004-00364) for the café on March 3, 2004, see Exhibit "C". The café will contain 300 square feet of floor area within the existing West Coast Surf Shop building. The applicant proposes to place 10 tables with a seating capacity of 42 seats outside the café in the Times Square area. Indoor seating will not be provided as stated on Exhibit "D". The hours of operation for the outdoor café will be 8:00 a.m. to 12:00 midnight, 7-days

a week. Music and entertainment will be provided and geared towards setting a mood conducive to conversation as stated in Exhibit "E".

### Parking

Additional on site parking spaces are not required for property located within the Downtown zoning district. Section 34-676 of the LDC states the Downtown district is planned as a "park-once" district, with preference given to pedestrian movement within the district. On-street parking will be provided by the town along Old San Carlos Boulevard and other public parking is available under the Sky Bridge. The parking space requirement for properties in the Times Area and Bayfront pedestrian plazas are calculated by multiplying 0% for existing building space and 50% for new building space. No parking spaces may be provided in the Times Square area but the required space must be located within 750 feet in single-purposed, shared, or joint-use parking lots as defined in Division 26 of the LDC.

Beverly Primeau, the property owner of the building where the proposed café is to be located, has eight on-site parking spaces. In September 2001, Ms. Primeau entered into an agreement with the Town of Fort Myers Beach regarding parking for the business. Three of the parking spaces are located in the southeast portion of the property, next to concrete bollards, behind the trolley stop. The other five parking spaces are located in the northeast portion, just off Estero Boulevard. In the agreement Ms. Primeau agreed that the parking area located in the northeast portion of the property shall be restricted to two employee parking spaces and three customer parking spaces.

### Surrounding Zoning and Neighborhood Compatibility

The subject property and all of the surrounding properties are in the Downtown zoning district. This zoning district promotes pedestrian-oriented commercial activities. The subject property and all of the surrounding properties are also in the Pedestrian Commercial land use category. Commercial activities in this land use category must contribute to the pedestrian-oriented public realm. The surrounding properties are developed mostly with retail uses and restaurants with outdoor seating. The proposed café with outdoor seating and the requested special exception are compatible with the surrounding properties.

### Town of Fort Myers Beach Comprehensive Land Use Plan

The subject property and surrounding properties are located in the Pedestrian Commercial land use category according to the adopted Town of Fort Myers Beach Future Land Use Map. Policy 4-B-6 describes the Pedestrian Commercial district as a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard). 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. Staff finds the proposed café **CONSISTENT** with Policy 4-B-6.

**Conclusion**

The requested Special Exception for a consumption on premises (2-COP) with outdoor seating is consistent with the Town of Fort Myers Beach Comprehensive Plan and will be compatible with existing and planned uses. The goal of the café is to create a sidewalk bistro to encourage pedestrian customers to enjoy their services. The request will not cause damage, hazard, nuisance or other detriment to persons or property and will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in the Land Development Code. Given the location of the café, staff finds that the request satisfies the requisite finding for special exceptions and recommends **APPROVAL** of the request with conditions.

**III. SUBJECT PROPERTY**

- A. **STRAP:** The applicant indicates the STRAP number is: 24-46-23-W3-00208.0060
- B. **LEGAL DESCRIPTION:** See Exhibit "A"

**IV. ATTACHMENTS**

- A. Map of surrounding zoning

**V. EXHIBITS**

- A. Legal Description
- B. Site plan showing location of café and surrounding uses
- C. Interior remodel permit COM2004-00364 floor plan
- D. Site plan of café with outdoor seating
- E. Applicant's narrative stating their menu, hours operation and seating capacity

cc: Applicant  
Town of Fort Myers Beach LPA  
Zoning File



COP2003-00091

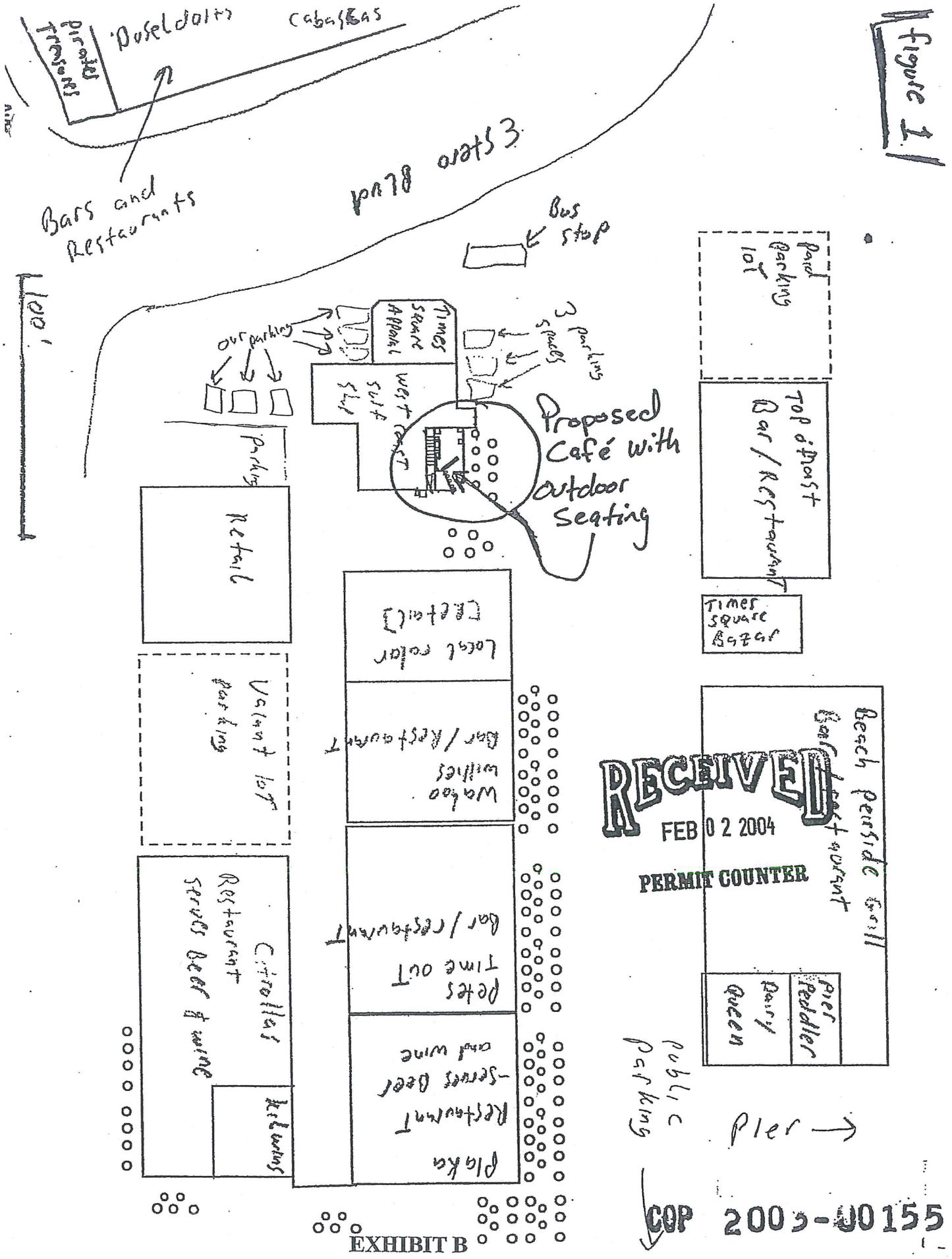
PROPERTY DESCRIPTION  
EXHIBIT "A"

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

A TRACT OR PARCEL OF LAND IN THE BUSINESS  
CENTER SUBDIVISION, PLAT BOOK 9, PAGE 9, BLOCK  
8, LOTS 6 & 7, ESTERO ISLAND, FT. MYERS BEACH,  
PUBLIC RECORDS, LEE COUNTY, FLORIDA.

Applicant's Legal Checked  
by AMM 07JULY03

Figure 1

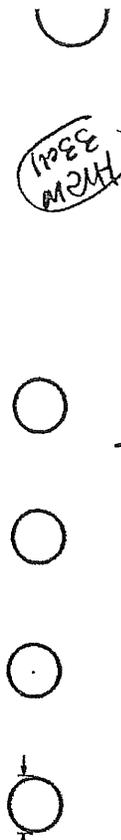


COP 2003-00155



Signal  
Lamps  
Tanks

HMW  
3301



exit  
exits

No  
Index  
Seating

stairs  
EXIT

ice  
machine  
overhead protection  
mop sink

2  
hour  
wall

west coast surf shop

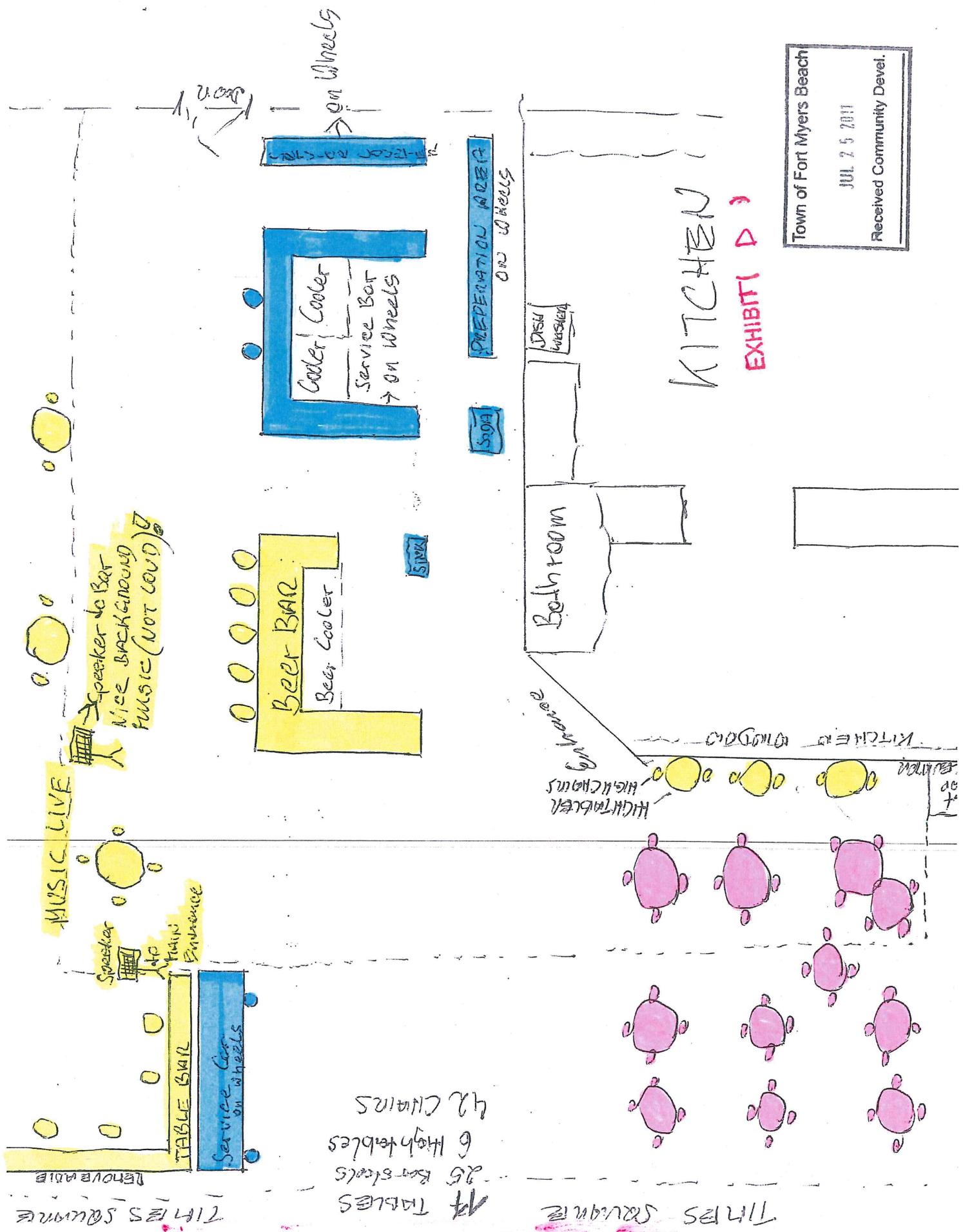
Times square apparel

EXHIBIT D

Our goal is to create an outdoor café in the tradition of the sidewalk bistros of Paris. Our menu is tailored towards couples sharing an espresso or bottle of wine while snacking on fresh baked goods, cheeses, and deserts. With that in mind our music and entertainment will be geared towards setting a mood conducive to conversation.

Hours of operation: 8:am-12:am  
Seating capacity: 42

Item  
3,304



Town of Fort Myers Beach  
 JUL 25 2011  
 Received Community Devel.



EXHIBIT ( E )









OPEN

Lime Margarita

Mango Margarita

Corona

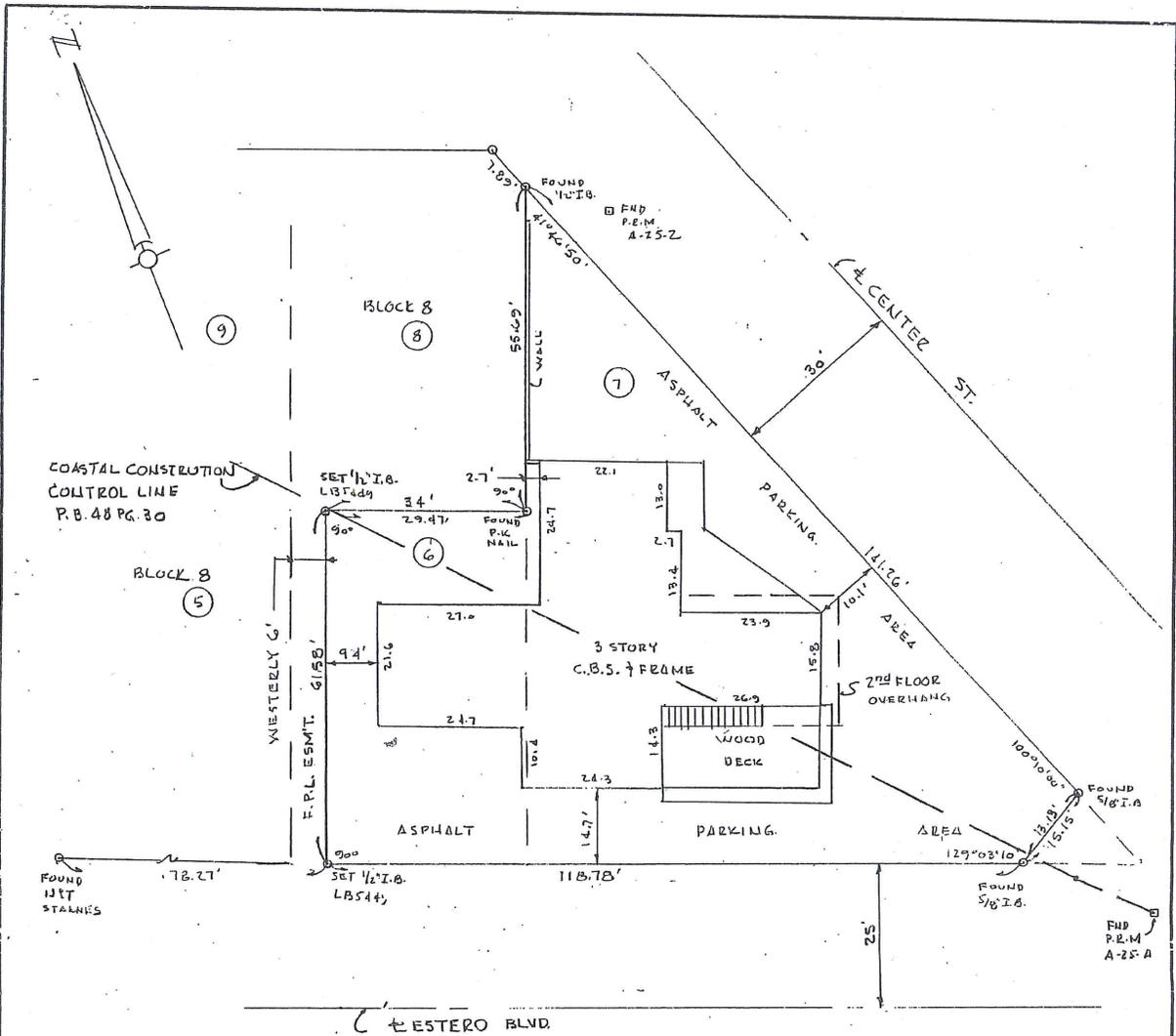
Specialty Margaritas

Specialty Margaritas

Specialty Margaritas

STARTERS

The New Margarita  
Formerly



Above property is located in flood zone A-12 (El. 14.0)

Boundary Survey  
 1035 Estero Boulevard  
 Section 24, Township 46 South, Range 23 East  
 Lee County, Florida  
 Scale: 1" = 20' November 23, 1992  
 For Legal Description See Attached

- LEGEND:
- C.M. - CONCRETE MONUMENT
  - I.B. - IRON BAR
  - P.U.E. - PUBLIC UTILITY EASEMENT
  - P.R.M. - PERMANENT REFERENCE MONUMENT
  - S.P. - SCREENED PORCH
  - T.B.M. - TEMPORARY BENCH MARK
  - ⊙ - CENTER LINE
  - N & T - NAIL AND TAB

- C.B.S. - CONCRETE BLOCK STUCCO
- x- - WIRE FENCE
- // - WOOD FENCE
- P.E. - POOL ENCLOSURE
- C.P. - CONCRETE PAD
- DH - DRILL HOLE
- E.O.P. - EDGE OF PAVEMENT
- R/W - RIGHT-OF-WAY

- (P) - PLAT
- (M) - MEASURED
- (C) - CALCULATED
- (D) - DEED
- R - RADIUS
- A - ARC
- Δ - DELTA
- CH - CHORD

EXHIBIT (F)

NOT VALID UNLESS  
 SIGNED AND SEALED

I HEREBY CERTIFY THAT A SURVEY OF THE ABOVE DESCRIBED PROPERTY WAS MADE UNDER MY DIRECTION AND MEETS THE MINIMUM TECHNICAL STANDARDS AS PER CHAPTER 21 HH-6 FLORIDA ADMINISTRATIVE CODE. TO THE BEST OF MY KNOWLEDGE, THERE ARE NO ENCROACHMENTS, BOUNDARY LINE DISPUTES, EASEMENTS OR CLAIMS OF EASEMENTS OTHER THAN SHOWN.

*Robert M. Still* 10-3-96  
 ROBERT M. STILL, REGISTERED LAND SURVEYOR NO. 3695  
 S.T.A.R. SURVEYING, INC. LB5449  
 1130-C LEE BLVD., LEHIGH ACRES, FL 33936  
 (813) 368-7400 FAX (813) 368-7665

FIELD SURVEY:
11-20-92
9-30-96
REV: 10-3-96
FILE NO: 9279



STATE OF FLORIDA

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

DIV OF ALCOHOLIC BEVERAGES & TOBACCO
1940 N MONROE ST
TALLAHASSEE FL 32399-0783

(850) 488-8288

RETOLIST LLC
LA OLA
9431 SUNSET HARBOR LN
#152
FORT MYERS FL 33919

Congratulations! With this license you become one of the nearly one million Floridians licensed by the Department of Business and Professional Regulation. Our professionals and businesses range from architects to yacht brokers, from boxers to barbeque restaurants, and they keep Florida's economy strong.

Every day we work to improve the way we do business in order to serve you better. For information about our services, please log onto www.myfloridalicense.com. There you can find more information about our divisions and the regulations that impact you, subscribe to department newsletters and learn more about the Department's initiatives.

Our mission at the Department is: License Efficiently, Regulate Fairly. We constantly strive to serve you better so that you can serve your customers. Thank you for doing business in Florida, and congratulations on your new license!



STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

AC# 5484688

BEV4605540 03/01/11 100357244

RETAILER OF ALCOHOLIC BEVERAGES
RETOLIST LLC
LA OLA

IS LICENSED under the provisions of Ch. 564 FS.
Expiration date: MAR 31, 2012 L11030103891

EXHIBIT ( 9 )

DETACH HERE

AC# 5484688

STATE OF FLORIDA

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIV OF ALCOHOLIC BEVERAGES & TOBACCO

SEQ# L11030103891

Table with 4 columns: DATE, BATCH NUMBER, LICENSE NBR, SERIES. Row 1: 03/01/2011, 100357244, BEV4605540, 2COP

The RETAILER OF ALCOHOLIC BEVERAGES
Named below IS LICENSED
Under the provisions of Chapter 564 FS.
Expiration date: MAR 31, 2012

RETOLIST LLC
LA OLA
1035 ESTERO BLVD #3
FORT MYERS BEACH FL 33931

RICK SCOTT
GOVERNOR

CHARLIE LIEM
SECRETARY

DISPLAY AS REQUIRED BY LAW