

RESOLUTION NUMBER 17-37

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH AUTHORIZING THE MAYOR TO EXECUTE A NON-EXCLUSIVE PERPETUAL ACCESS UTILITY EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

WHEREAS, to facilitate construction and maintenance of Town-owned drainage utilities along Donora Boulevard within the Town, the real property owner has agreed to grant to the Town an easement as described in the attached Agreement which is made a part hereof:

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Fort Myers Beach, Florida that:

1. The Agreement attached hereto is found to be in the Town's best interest to promote the health, safety and welfare of the Town citizen.
2. The Mayor is authorized to execute the Agreement.
3. The Town Manager is authorized to proceed as necessary to complete construction and future maintenance as required.

THE FOREGOING RESOLUTION was adopted by the Town Council upon a motion by Council Member Shamp and seconded by Council Member Cereceda and upon being put to a vote, the result was as follows:

Dennis C. Boback, Mayor	aye	Tracey Gore, Vice Mayor	aye
Bruce Butcher, Council Member	aye	Anita Cereceda, Council Member	aye
Joanne Shamp, Council Member	aye		

DULY PASSED AND ADOPTED on this 6th day of November, 2017.

ATTEST:

TOWN OF FORT MYERS BEACH

By: 
Michelle Mayher, Town Clerk

By: 
Dennis C. Boback, Mayor

Approved as to form

By: 
Peterson Law Group, Town Attorney

THIS INSTRUMENT PREPARED BY: |
Town Attorneys Office |
2525 Estero Bl |
Fort Myers Beach, Fl 33931 |

SPACE ABOVE FOR RECORDING

Non-Exclusive Perpetual Access Utility Easement and Temporary Construction Easement Agreement

This Non-Exclusive Perpetual Access Utility Easement and Temporary Construction Agreement (“Agreement”) is made and entered into this _____ day of _____, 2017 by and between The Town of Fort Myers Beach, Florida (“Town”), a Florida municipal corporation, whose address is 2525 Estero Bl, Fort Myers Beach, Florida 33931 and Jeffrey Gene Neddo, Trustee, whose address is 180 Donora Boulevard, Fort Myers Beach, Fl 33931 (herein “Grantor”).

WHEREAS, Grantor is the owner of certain real property located within Lee County, Florida, more particularly depicted on the attached Exhibit A, which is incorporated herein and referred to herein as the “Property”; and,

WHEREAS, Town and Grantor have determined that it is in the best interests for the Grantor to grant and the Town to accept a 15’ (fifteen feet) permanent utility easement and 15’ (fifteen feet) construction easement as depicted on the attached Exhibit A.

NOW, THEREFORE, for the sum of Ten Dollars (\$10.00) to be paid by Town to Grantor, Town and Grantor covenant and agree as follows:

1. Grant of Easement

a. **Utility Easement.** Grantor, for themselves and for their successors and assigns, hereby conveys and grants to Town, its successors and assigns, a permanent, non-exclusive easement (the “Utility Easement”) over, under, in, along, across and upon the property described on the attached Exhibit A (the “utility easement area”) solely for the lawful construction, installation, maintenance, operation, repair, replacement and use of underground pipe and related underground drainage facilities, including any junction boxes and related

equipment; and, for access to the utility easement area as depicted generally on the attached exhibits.

b. **Temporary Construction Easement.** Grantor, for themselves and for their successors and assigns, hereby convey and grant to the Town, its successors and assigns, a temporary, non-exclusive easement (the "temporary construction easement") over, under, in, along, across and upon the property described on the attached and incorporated Exhibit A for use in the initial construction and installation of the improvements and other construction purposes reasonably related to the initial construction of the improvements. Prior to commencement of the temporary construction easement, Town shall have access to the property during normal business hours to conduct any and all studies, test, examination and surveys necessary to design and construct said improvements. The temporary construction easement is depicted generally on the attached and incorporated Exhibit A.

2. Term of Easements.

a. **Utility Easement.** The utility easement shall commence on the effective date of the Agreement and shall run with the land and continue in full force and effect until Town abandons any improvements, as "abandonment" or "abandon" is defined herein below; or until said improvements are dedicated to another governing jurisdiction as may request or require such dedication in connection with Town's development of the property. Grantor agrees to execute any documents as may be required to effect such dedication.

b. **Temporary Construction Easement.** The temporary construction easement shall commence on the effective date of this Agreement and shall terminate automatically and expire upon the date the construction of the improvements contemplated herein are completed. Upon expiration of this term, all rights and benefits of the Town in to and under this Agreement with respect to the temporary construction easement shall terminate and be of no further force and effect.

c. **Reservation by Grantor of Non-Exclusive Use.** All right, title and interest in and to any easement area under this Agreement which may be used and enjoyed with interfering with the rights conveyed herein, are reserved to Grantor, provided, to or interference with the improvements to be placed with the utility easement area; or develop, landscape or beautify any easement area in any way which would unreasonably or materially increase the costs to Town of installation of said improvements or restoring any of the easement area after such installation.

d. **Costs.** Town shall bear and promptly pay any costs of construction and maintenance of improvements.

e. **Compliance with Laws.** Town shall construct improvements in a workmanlike manner and in compliance with applicable statutes, ordinances, rules and regulations of all governing public authorities as those laws may be amended from time to time.

f. Restoration. Town shall restore to the condition in which it existed at the commencement of construction any surface area within the temporary construction easement.

3. General Provisions.

a. Covenants running with the land. The parties hereto acknowledge and agree that the easements and other rights conferred herein are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the parties and their respective grantees, heirs, successors and assigns. Without limiting the foregoing, Grantor acknowledges Town's rights herein are assignable; that Town may enter into agreements to sell or otherwise transfer its rights or obligations granted herein.

b. Effective date. This agreement shall be effective upon the date it is executed by the Town's authorized representative, provided the Agreement has been previously signed by the Grantor.

c. Each signor of this Agreement states that he or she is the authorized representative of the signing party.

d. Notices. Any notice permitted or required herein shall be deemed received, if delivered, when actually received, or if mailed, on the third business day after mailing by regular U.S. Mail to the party's address set forth above, or to any other address designated in writing to the other party.

e. Attorney's Fees. In event of any dispute between the parties hereto regarding enforcement or effect of this Agreement, the non-prevailing party shall pay the prevailing party's reasonable attorney's fees and costs incurred.

f. Abandonment. Should the Town or its successors or assigns abandon or terminate use of all the improvements for a period of thirty-six (36) consecutive months, this Agreement and all easement rights granted therein shall terminate.

g. Cooperation. Each party hereto agrees to execute such other documents and to perform other acts reasonably necessary or desirable to further the expressed intent and purpose of this Agreement.

In Witness of this, the undersigned have executed this Agreement as of this _____ day of _____, 2017.

For the Town:

For the Grantor:

Attest:

Notary and Seal:

Town Clerk

Exhibit A

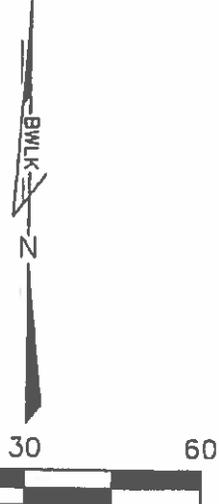
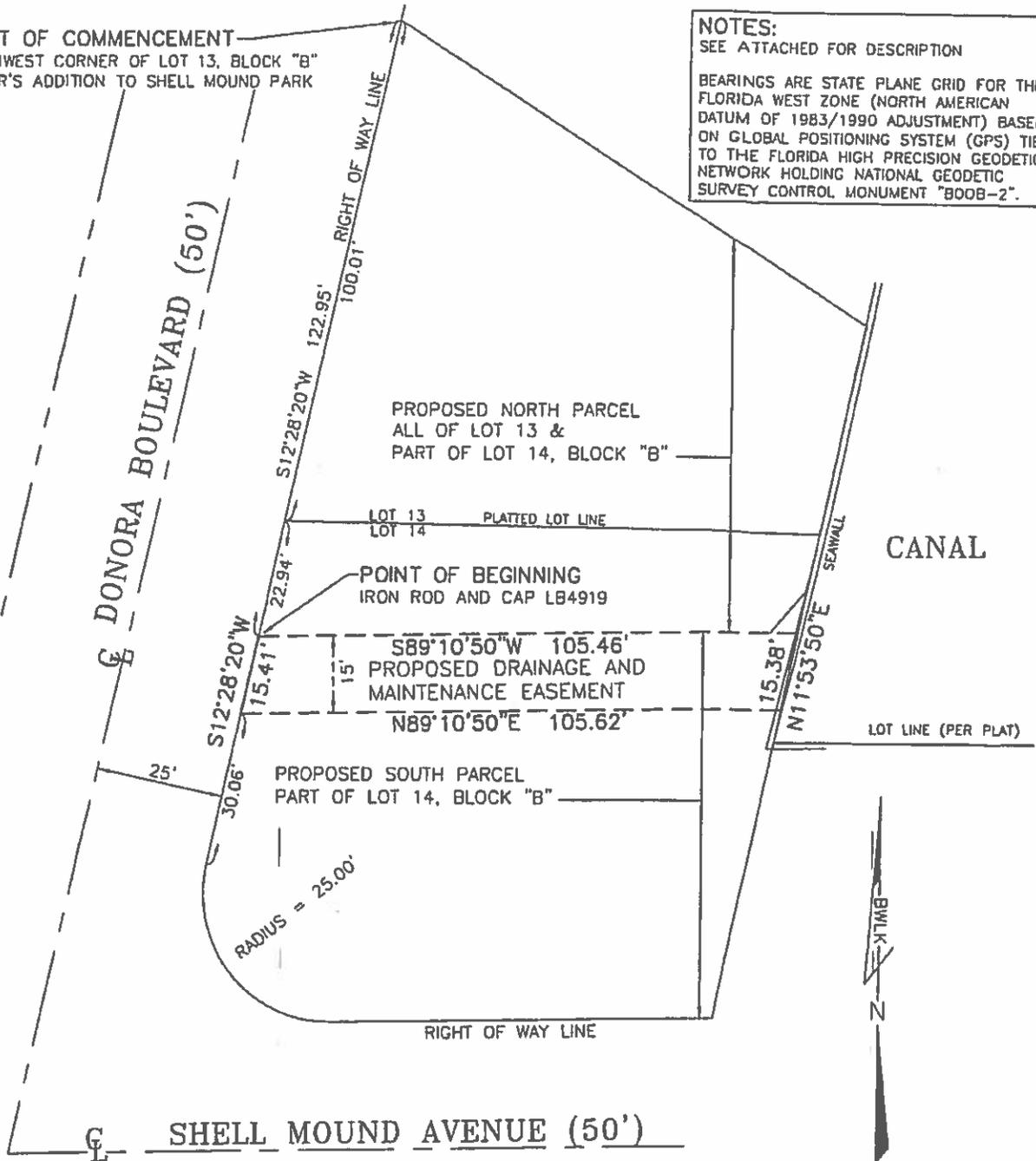
page 1 of 2

SKETCH OF DESCRIPTION

POINT OF COMMENCEMENT
NORTHWEST CORNER OF LOT 13, BLOCK "B"
ZIMMER'S ADDITION TO SHELL MOUND PARK

NOTES:
SEE ATTACHED FOR DESCRIPTION

BEARINGS ARE STATE PLANE GRID FOR THE FLORIDA WEST ZONE (NORTH AMERICAN DATUM OF 1983/1990 ADJUSTMENT) BASED ON GLOBAL POSITIONING SYSTEM (GPS) TIES TO THE FLORIDA HIGH PRECISION GEODETIC NETWORK HOLDING NATIONAL GEODETIC SURVEY CONTROL MONUMENT "BOOB-2".



PROPOSED DRAINAGE AND MAINTENANCE EASEMENT LOT 14, BLOCK B, ZIMMER'S ADDITION TO SHELL MOUND PARK

*** NOT A SURVEY ***
BEAN, WHITAKER, LUTZ & KAREH, INC.

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)
CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS
13041-1 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

SK44249 DR EASEMENT.DWG

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
10-10-17	44249	JLL	1" = 30'	1 OF 2	29-46-24

SCOTT C WHITAKER, P.S.M., NO. LS4324
PROFESSIONAL SURVEYOR & MAPPER
STATE OF FLORIDA

Exhibit A

page 2 of 2



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard • Suite 1
Fort Myers, Florida 33919-5910
email - fmooffice@bwk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

DESCRIPTION OF A PARCEL OF LAND LYING IN

SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA
(Drainage easement, Zimmer's Addition to Shell Mound Park)

A proposed drainage and maintenance easement situated in the State of Florida, County of Lee, Town of Fort Myers Beach, in Section 29, Township 46 South, Range 24 East, being a part of Lot 14, Block "B", Zimmer's Addition to Shell Mound Park as recorded in Plat Book 11 at Page 54 of the Public Records of said Lee County and further described as follows:

Commencing at the northwest corner of Lot 13, Block "B" of said Zimmer's Addition to Shell Mound Park; thence S12°28'20"W along the easterly right of way line of Donora Boulevard (50 feet wide) for 122.95 feet to an iron rod with cap marked LB4919 and the Point of Beginning; thence continue S12°28'20"W along said easterly right of way line for 15.41 feet; thence N89°10'50"E for 105.62 feet to a point on the easterly line of said Lot 14, Block "B"; thence N11°53'50"E along said easterly line for 15.38 feet; thence S89°10'50"W for 105.46 feet to the Point of Beginning.

Bearings are based on state plane grid for the Florida West Zone (North American Datum of 1983/1990 adjustment) based on global positioning system (gps) ties to the Florida high precision geodetic network holding national geodetic survey control monument "boob-2".

Said easement contains 1,583 square feet.

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

Scott C. Whitaker, P.S.M., No. LS4324
Professional Surveyor & Mapper
State of Florida

44249/DOCUMENTS/DRAINAGE EASEMENT DESC

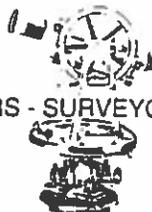
PRINCIPALS:

SCOTT C. WHITAKER, PSM, PRESIDENT

JOSEPH L. LUTZ, PSM

AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

JAMES A. HESSLER, PSM

ROBERT L. CARMELA, PSM

STEPHEN F. SHAWLES II, PSM

MUNIR R. SULEH, PE, MSEE