

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 02-12

WHEREAS, the Fowler Company, representing the Snug Harbor Restaurant, has requested that the Town approve two variances in the Fort Myers Beach Core Area Overlay C-1 Zoning District to allow the development of the property with a standard restaurant with outdoor seating:

1. From the required street setback of 25 feet (First Street) per LDC Section 34-2192(a), to allow a 0-foot street setback;
2. From the required 128 on-site parking spaces for a standard restaurant with an outdoor seating area per LDC Section 34-2020(2)l., to allow 0 on-site parking spaces; and

WHEREAS, the subject property is located at 1131 First Street, Fort Myers Beach, in S24-T46S-R23E, Lee County, Florida; and

WHEREAS, the applicant has indicated the property's current STRAP number is 24-46-23-W3-00004.0000, and the legal description for said property is contained in Exhibit "A," which is attached hereto; and

WHEREAS, the Local Planning Agency had recommended that the Town Council approve the requested variances with five specific conditions; and

WHEREAS, a public hearing was held and the Town Council considered the following criteria, the recommendations and testimony of town staff and consultants, testimony from the applicant and his representatives, and testimony from the public.

IT IS THE FINDING of the Town Council that:

- a. There are exceptional or extraordinary conditions or circumstances that are inherent to the property in question and that do not apply generally to the other nearby properties in the same zoning district;
- b. The exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken subsequent to the adoption of the ordinance;
- c. The variances being granted are the minimum variances that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;
- d. The granting of the variances will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and
- e. The condition or situation of the specific piece of property for which the variances are sought is not of so general or recurrent nature as to make it more reasonable and practical to amend the ordinance.

NOW THEREFORE BE IT RESOLVED THAT THE TWO VARIANCES ARE APPROVED SUBJECT TO THE FOLLOWING CONDITIONS AND REQUIREMENTS that are necessary for the protection of the health, safety, comfort, convenience, and welfare of the general public and that are reasonably related to the variances requested:

(1) The variances are limited to the 2-story, 10,058-square-foot restaurant shown on the 2-page site plan titled "Snug Harbor Fort Myers Beach Florida," which was marked Attachment C in the Staff Report and which is incorporated herein by reference;

(2) The applicant has agreed to enter into a non-exclusive pedestrian access agreement with the Town that places binding permanent restrictions along the bay front to maintain public pedestrian access connecting Old San Carlos Boulevard with State Road 865 (right-of-way under Sky Bridge). This pedestrian access is 10 feet wide and provides perpetual pedestrian access along a continuous dock waterward of the existing seawall to connect the two pedestrian plazas planned by the Town on the west and east sides of the applicant's property. This pedestrian access agreement is attached hereto as Exhibit "B" and shall also be recorded in the public records of Lee County.

(3) The applicant will provide the number of parking spaces that the land development code requires for the restaurant and other uses on this property at the time a development order is issued, but these spaces shall be placed in *off-site* parking lots located near Snug Harbor. Valet parking may be used to accommodate the number of required spaces. These off-site lots may include:

- the existing restaurant lot at 645 Old San Carlos (STRAP 24-46-23-W3-00026.0000)
- the boat lot at 441/445 Old San Carlos (STRAP 24-46-23-W3-00026.0030)
- the Powell lot at 401 Old San Carlos (STRAP 24-46-23-W3-0030A.0010 & 0020)
- the laundromat lot at 343 Old San Carlos (STRAP 24-46-W3-0050A.0010 & 0030B.0010)

(4) Use of the building occupied by the existing Snug Harbor Restaurant will cease upon issuance of a Certificate of Occupancy for the new restaurant building. Any use of the existing building must comply with all applicable regulations.

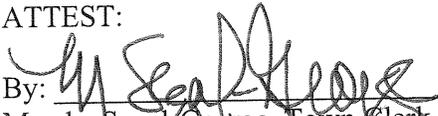
(5) Both site and architectural design of this restaurant must be substantially in accordance with and limited to the architectural elevations submitted at the Town Council hearing on March 11, 2002, and marked Exhibits C-1, C-2, C-3, C-4, C-5, and C-6, and attached hereto, except for the south elevation (First Street) as portrayed in Exhibit C-6 where the applicant has agreed to extend the covered porch on the west elevation to now also surround the first bay of the facade on First Street. The Town has determined that adequate sidewalk space can be made available to accommodate this design, as shown in Exhibit "D" which is attached hereto. The applicant's rights and responsibilities for the placement of the porch's columns and roof over the future First Street sidewalk shall be implemented as described in Exhibit "E" which is attached hereto. The Town agrees to engineer and construct the sidewalk immediately adjoining the restaurant prior to its occupancy at Town expense and to coordinate the engineering design and construction schedule with the applicant so as not to create hardships or delays on either party. Other than the extended porch plus those differences acknowledged at the March 11 public hearing, the site and architectural design of the restaurant shall be substantially in accordance with the commercial building design standards that were attached as Attachment H in the Staff Report and which are incorporated herein by reference.

The foregoing resolution was adopted by the Fort Myers Beach Town Council on a motion by Council Member Van Duzer and a second by Council Member Rynearson; upon being put to a vote, the result was as follows:

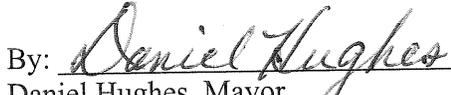
Howard Rynearson	yes
Daniel Hughes	yes
Bill Thomas	yes
W. H. "Bill" Van Duzer	yes
Terry Cain	yes

APPROVED this 11th day of March, 2002.

ATTEST:

By:   
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By:   
Daniel Hughes, Mayor

Approved as to form by:

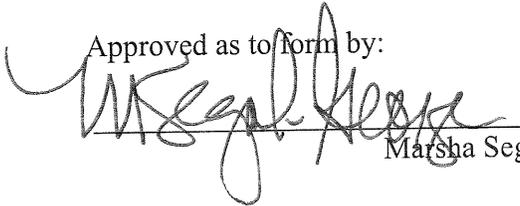
  
Marsha Segal-George, Acting as Town Attorney

EXHIBIT "A"

VAR 2001-00053

**DESCRIPTION:**

AS SHOWN IN OFFICIAL RECORDS BOOK 1534 AT PAGE 1851:) (O.R. BOOK 2565, PAGE 800)

A TRACT OR PARCEL OF LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, GOVERNMENT LOT 1 (ISLAND) OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, WHICH TRACT OR PARCEL IS FURTHER DESCRIBED AS FOLLOWS:

STARTING AT THE SOUTHWEST CORNER OF LOT 26, BLOCK "E" OF CRESCENT PARK ADDITION, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 4 AT PAGE 48 OF THE PUBLIC RECORDS OF SAID LEE COUNTY; THENCE NORTHERLY ALONG THE WEST LINE OF SAID LOT 26, SAID LINE ALSO BEING THE EASTERLY LINE OF SAID SECTION 24 A DISTANCE OF 21.95 FEET; THENCE NORTHWESTERLY AT AN ANGLE OF 63°17'00" NORTH TO NORTHWEST A DISTANCE OF 99.47 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUE ALONG THE SAID LINE NORTHWESTERLY A DISTANCE OF 135.02 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD 865 (SAN CARLOS BOULEVARD AS IT RUNS SOUTHWESTERLY FROM THE OLD MATANZAS PASS SWING BRIDGE); THENCE NORTHEASTERLY ALONG SAID RIGHT-OF-WAY LINE PARALLEL WITH AND 33 FEET FROM THE CENTERLINE OF SAID ROAD A DISTANCE OF 89.5 FEET TO THE WATERS OF MATANZAS PASS AND A POINT ON THE LINE OF A SEAWALL; THENCE SOUTHEASTERLY ALONG SAID WATERS AND ALONG THE LINE OF SAID SEAWALL A DISTANCE OF 120 FEET, MORE OR LESS, TO AN INTERSECTION WITH THE WESTERLY RIGHT-OF-WAY LINE OF NEW STATE ROAD 865; THENCE SOUTHWESTERLY ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 105 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

SAID PARCEL BEING THAT PORTION OF THE PROPERTY CONVEYED TO EDMUND J. SKORUPSKI BY BEACH MARINA, INC., BY DEED DATED THE 12TH DAY OF JANUARY, 1978, THAT IS WEST OF THE RIGHT-OF-WAY LINE OF THE NEW STATE ROAD 865.

LEE COUNTY  
RECEIVED

01 DEC -7 PM 2:47

COMM. DEV./  
PUB. WRKS. CNTR.  
SECOND FLOOR

Applicant \_\_\_\_\_  
by Jm 12/17/01



1. Grantor hereby grants to Grantee a non-exclusive right of pedestrian access across the Dock.

2. Grantee's rights of access to the Dock shall be subject to and conditioned upon all terms and conditions of the Submerged Land Lease. This access shall be irrevocable except:

- a. upon mutual consent of the parties hereto; or
- b. if the Grantor determines, in his sole discretion, that an imminent threat to public health, safety or welfare exists, including, but not limited to, damage or disrepair to the Dock which creates a hazardous condition. In this event, the Grantee shall be notified no later than 48 hours after Grantor has closed the Dock. The Grantor shall take all reasonable action necessary to reopen the Dock as soon as possible.

3. Grantor shall maintain the Submerged Land Lease or any amendments thereto in good standing, including all lease payments due the State of Florida thereunder and shall timely apply for renewals prior to the termination of each term of said Submerged Land Lease.

4. Grantee's use of the property shall be subject to all existing and future easements, agreements, licenses, covenants and conditions, governmental or private, affecting the property but in no event, shall any use be made of this area that would be contrary to its continued public use as a pedestrian access from Old San Carlos Boulevard to State Road 865 (right-of-way under Sky Bridge).

5. Grantor agrees that Grantee shall have reasonable access over and across that portion of the Dock described in Exhibit "C", except that Grantor reserves the right to construct and/or place such things on the Dock, including, but not limited to, dock boxes, utility pedestals, pump out stations, cleats, ladders and other items commonly associated with the ordinary and customary use of a dock, but in no event shall the placement of these structures on the Dock prevent, inhibit or impair pedestrian access across the Dock described in Exhibit "C".

6. In the event of a catastrophic occurrence which causes damage to that portion of the Dock described in Exhibit "C", to the extent that the Dock becomes unuseable or unsafe for pedestrian access, then Grantor agrees to provide comparable upland access on and over Grantor's upland property\_ to Grantee for the period of time necessary to repair the Dock. Subsequent to completion of the necessary Dock repair, the right to upland access by Grantee shall cease.

7. Grantor agrees to provide Grantee temporary access to the upland areas described in attached Exhibits "D" and "E". The temporary access to the upland area delineated in Exhibit "D" shall be valid for a reasonable period of time during which Grantee agrees to diligently pursue a submerged land lease for dock construction and to timely construct said dock in the area located directly west of the current terminus of the Dock described in Exhibit "C".

The temporary access to the upland area delineated in Exhibit "E" shall be valid until such time as Grantor extends the Dock described in Exhibit "C" in an easterly direction to Grantor's eastern riparian property line and Grantee obtains a submerged land

lease for Dock construction and constructs an extension to Grantor's dock in the area located immediately east of the pedestrian access area described in Exhibit "C". Grantor and Grantee agree to diligently pursue all necessary permitting and construction of said Dock extensions.

8. Grantor agrees to reasonably maintain the Dock for the duration of either this Agreement or the Submerged Land Lease, whichever is shorter.

9. Grantee's use of the property shall be between the hours of 8:00 A.M. to midnight, Monday through Sunday and shall be so posted.

10. This Agreement shall terminate only upon the termination of the Submerged Land Lease by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida or upon impossibility of performance by the Grantor.

11. Grantor agrees to hold Grantee harmless from and against any loss or damage to persons or property resulting from a negligent act or omission by Grantor, its agents or assigns concerning actions and obligations of Grantor as set forth in this Agreement.

12. Grantor agrees to name Grantee as an additional insured on its insurance liability policy with respect to pedestrian usage of the Dock pursuant to this Agreement.

13. This Agreement shall be recorded in the Public Records of Lee County, Florida.

14. This Agreement shall be binding upon and inure to the benefit of Grantor and Grantee's successors and/or assigns.

15. Grantee shall have the right of specific performance to enforce the terms of this Agreement.

16. Any modification of this Agreement shall be binding only if evidenced in writing, signed by each party.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement to be signed as of the dates below indicated.

Signed Sealed and Delivered in the presence of:

WITNESSES:

Steph T. Lund  
Leslie A. Cowshaw

GRANTOR:

KIRIC INVESTMENTS, INC., a Florida corporation

By: [Signature]  
G. Edward Cusick, Vice President

GRANTEE:

TOWN OF FORT MYERS BEACH, FLORIDA, a municipal corporation

By: Daniel L. Hughes  
Daniel L. Hughes, Mayor

Attest:

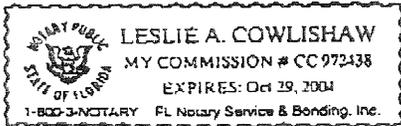
[Signature]  
City Clerk

APPROVED AS TO FORM:

[Signature]  
Marsha Segal-George, Esq.  
Acting Town Attorney

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of April, 2002, by G. Edward Cusick, as Vice President of Kiric Investments, Inc., a Florida corporation. He is personally known to me or has produced \_\_\_\_\_ as identification.



Leslie A. Cowlshaw  
Notary Public  
Printed Name: Leslie A. Cowlshaw

My Commission Expires: Oct 29, 2004

EXHIBIT "A"

THE PROPERTY:

DESCRIPTION AS SHOWN IN OFFICIAL RECORD BOOK 1534 AT PAGE 1851 AND OFFICIAL RECORD BOOK 2565, PAGE 800.

A TRACT OR PARCEL OF LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, GOVERNMENT LOT 1 (ISLAND) OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, WHICH TRACT OR PARCEL IS FURTHER DESCRIBED AS FOLLOWS:

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SAID PARCEL BEING THAT PORTION OF THE PROPERTY CONVEYED TO EDMUND J. SKORUPSKI BY BEACH MARINA, INC., BY DEED DATED THE 12<sup>TH</sup> DAY OF JANUARY, 1978, THAT IS WEST OF THE RIGHT-OF-WAY LINE OF THE NEW STATE ROAD 865.

33328DESC1

6/7/02

## EXHIBIT "B"

OVERALL DOCKS

A TRACT OR PARCEL OF LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, GOVERNMENT LOT 1 (ISLAND) OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, WHICH TRACT OR PARCEL IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

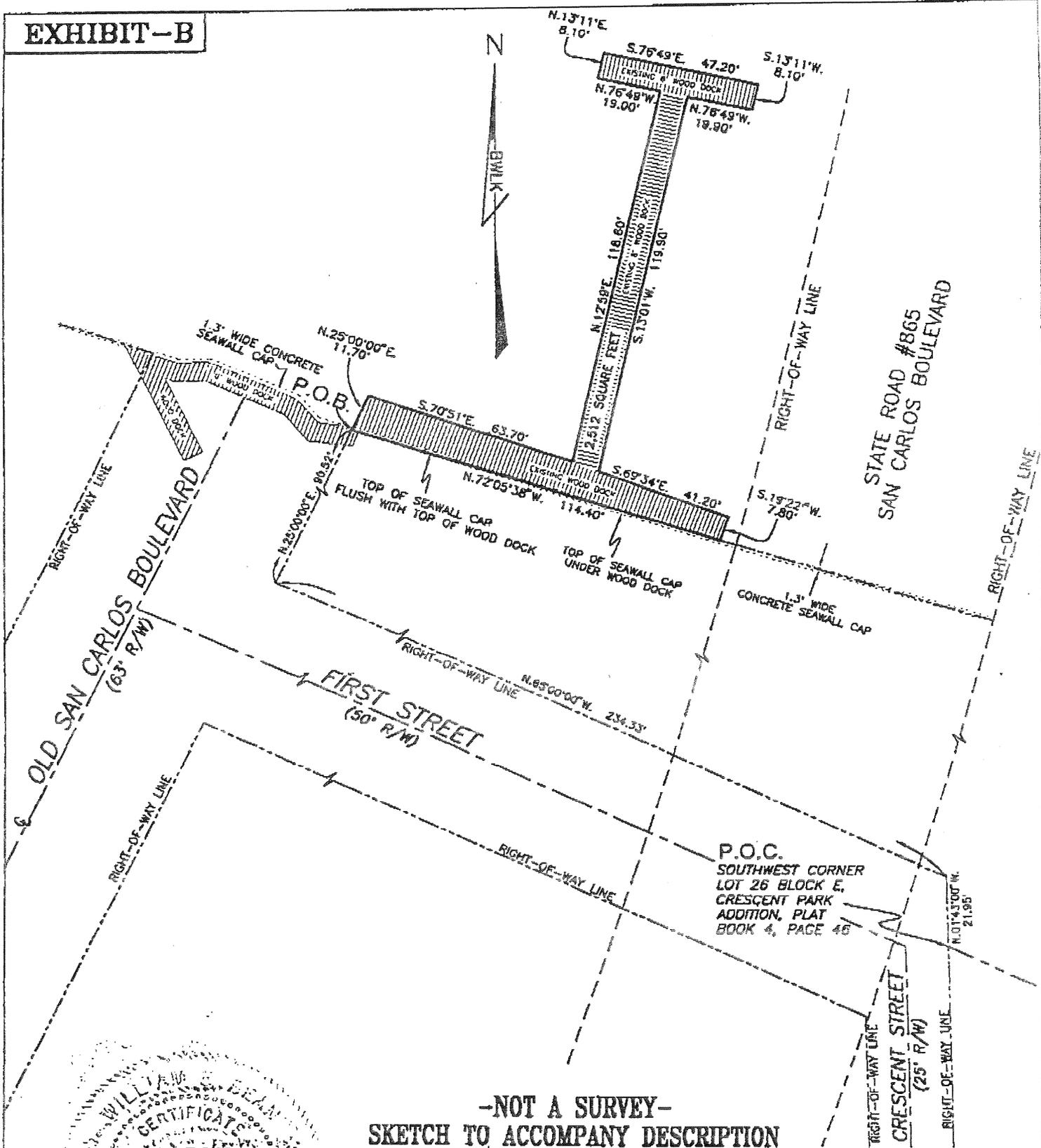
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SAID PARCEL CONTAINS 2512 SQUARE FEET, MORE OR LESS.

BEARINGS ARE BASED ON THE EASTERLY RIGHT-OF-WAY LINE OF OLD SAN CARLOS BOULEVARD AS BEARING N25°00'00"E.

SAID PARCEL SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY.

**EXHIBIT-B**



**-NOT A SURVEY-  
SKETCH TO ACCOMPANY DESCRIPTION**

WILLIAM E. BEAN  
 CERTIFICATE  
 STATE OF FLORIDA  
 BEAN, Whitaker, Lutz & Kareh, Inc.  
 WILLIAM E. BEAN  
 WILLIAM E. BEAN P.S.M.  
 Florida Certification No. 3261

**Bean, Whitaker, Lutz & Kareh, Inc. (LB4819)**  
CONSULTING ENGINEERS AND SURVEYORS

13041 MCCREGOR BOULEVARD-SUITE 1, FORT MYERS, FLORIDA 33919-5910 (841) 481-1331

SK33328B.DWG

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
6/07/02	33328	W.F.	1" = 40'	2 OF 2	24-46-23

## EXHIBIT "C"

THE DOCK:

A TRACT OR PARCEL OF LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, GOVERNMENT LOT 1 (ISLAND) OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, WHICH TRACT OR PARCEL IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

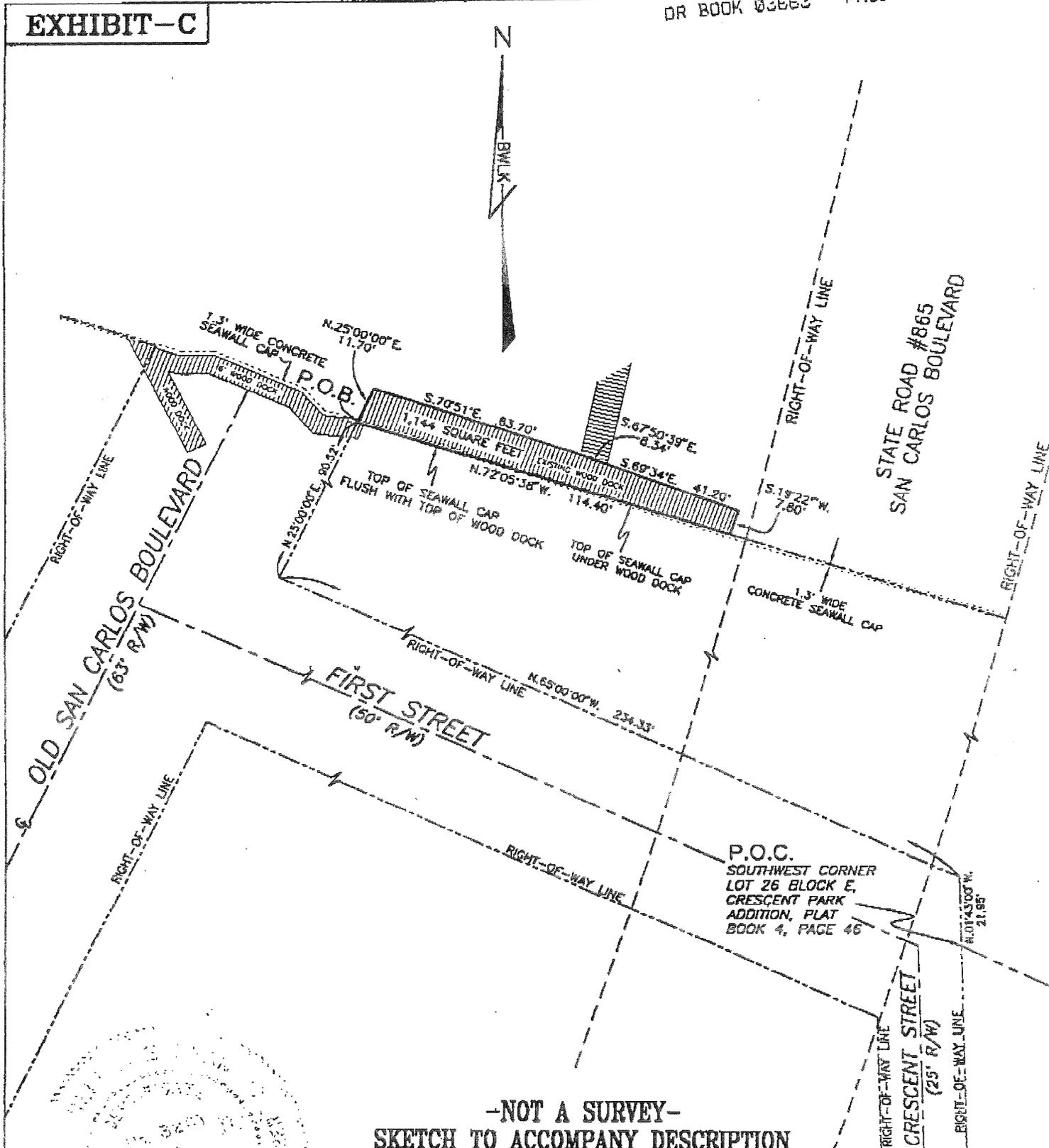
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SAID PARCEL CONTAINS 1144 SQUARE FEET, MORE OR LESS.

BEARINGS ARE BASED ON THE EASTERLY RIGHT-OF-WAY LINE OF OLD SAN CARLOS BOULEVARD AS BEARING N00°25'00"E.

SAID PARCEL SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY.

EXHIBIT-C



-NOT A SURVEY-  
SKETCH TO ACCOMPANY DESCRIPTION

THIS IS NOT A SURVEY  
Bean, Whitaker, Lutz & Karih, Inc.

*William E. Bean*

WILLIAM E. BEAN P.S.M.  
Florida Certification No. 3281

Bean, Whitaker, Lutz & Karih, Inc. (LB4819)  
CONSULTING ENGINEERS AND SURVEYORS

13041 MCGREGOR BOULEVARD-SUITE 1, FORT MYERS, FLORIDA 33919-5010 (841) 481-1331

SK33326C.DWG

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
6/07/02	33328	W.F.	1" = 40'	2 OF 2	24-48-23

## EXHIBIT "D"

TEMPORARY UPLAND ACCESS:

A TRACT OR PARCEL OF LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, GOVERNMENT LOT 1 (ISLAND) OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, WHICH TRACT OR PARCEL IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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SAID PARCEL CONTAINS 79.00 SQUARE FEET, MORE OR LESS.

BEARINGS ARE BASED ON THE EASTERLY RIGHT-OF-WAY LINE OF OLD SAN CARLOS BOULEVARD AS BEARING N25°00'00"E.

SAID PARCEL SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY.

33328DESC4

6/7/02



## EXHIBIT "E" OR BOOK 03663 PAGE 3147

TEMPORARY UPLAND ACCESS:

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SAID PARCEL CONTAINS 120 SQUARE FEET, MORE OR LESS.

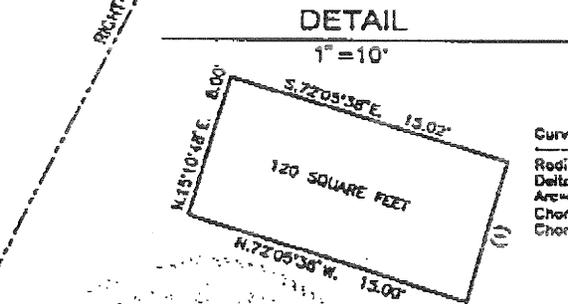
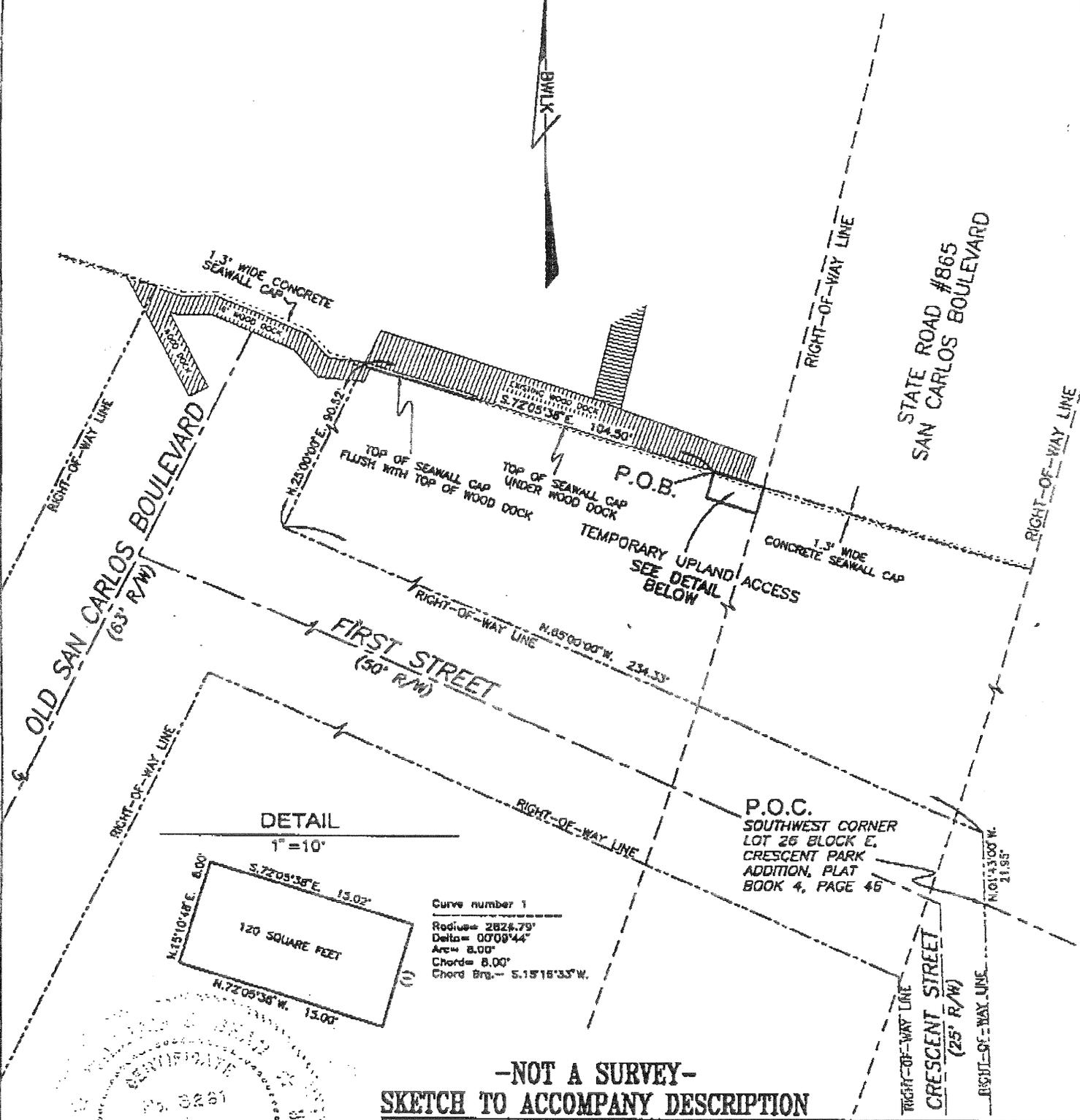
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SAID PARCEL SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY.

33328DESC5

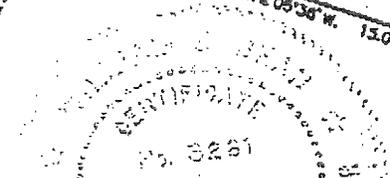
6/7/02

**EXHIBIT-E**



Curve number 1  
 Radius= 2826.79'  
 Delta= 00°08'44"  
 Arc= 8.00'  
 Chord= 8.00'  
 Chord Brg= 5.15°16'33\"/>

**-NOT A SURVEY-  
 SKETCH TO ACCOMPANY DESCRIPTION**



\*\*\* THIS IS NOT A SURVEY \*\*\*  
 Bean, Whitaker, Lutz & Karez, Inc.

*William E. Bean*  
 WILLIAM E. BEAN P.E.M.  
 Florida Certification No. 3281

**Bean, Whitaker, Lutz & Karez, Inc. (L84910)**  
 CONSULTING ENGINEERS AND SURVEYORS

13041 MCCREGOR BOULEVARD-SUITE 1, FORT MYERS, FLORIDA 33918-5910 (941) 461-1331

SK33328E.DWG

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
6/07/02	33328	W.F.	1" = 40'	2 OF 2	24-46-23

EXIST'G

EXIST'G

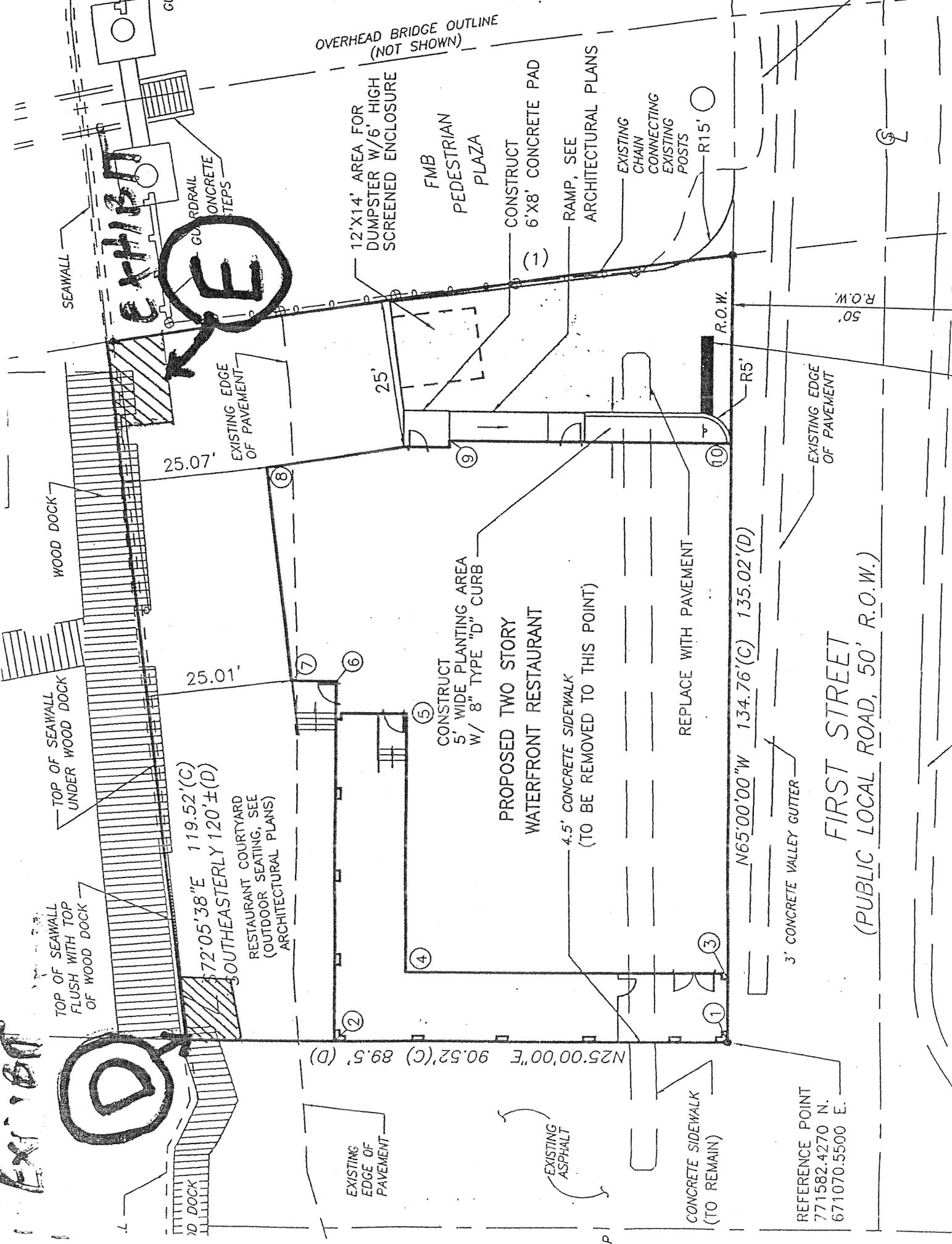
EXIST'G

N25.00'00"E 90.52'(C) 89.5'(D)

72°05'38"E 119.52'(C)  
SOUTHEASTERLY 120'±(D)

N65°00'00"W 134.76'(C) 135.02'(D)

REFERENCE POINT  
771582.4270 N.  
671070.5500 E.



OVERHEAD BRIDGE OUTLINE  
(NOT SHOWN)

12'X14' AREA FOR  
DUMPSTER W/6' HIGH  
SCREENED ENCLOSURE

FMB  
PEDESTRIAN  
PLAZA

CONSTRUCT  
6'X8' CONCRETE PAD

RAMP, SEE  
ARCHITECTURAL PLANS

EXISTING  
CHAIN  
CONNECTING  
EXISTING  
POSTS

R15'

25.07'  
EXISTING EDGE  
OF PAVEMENT

25'

R.O.W.

50'  
R.O.W.

WOOD DOCK

TOP OF SEAWALL  
UNDER WOOD DOCK

TOP OF SEAWALL  
FLUSH WITH TOP  
OF WOOD DOCK

25.01'

RESTAURANT COURTYARD  
(OUTDOOR SEATING, SEE  
ARCHITECTURAL PLANS)

CONSTRUCT  
5' WIDE PLANTING AREA  
W/ 8" TYPE "D" CURB

PROPOSED TWO STORY  
WATERFRONT RESTAURANT

4.5' CONCRETE SIDEWALK  
(TO BE REMOVED TO THIS POINT)

REPLACE WITH PAVEMENT

3' CONCRETE VALLEY GUTTER

FIRST STREET  
(PUBLIC LOCAL ROAD, 50' R.O.W.)

EXISTING  
EDGE OF  
PAVEMENT

EXISTING  
ASPHALT

CONCRETE SIDEWALK  
(TO REMAIN)

EXISTING EDGE  
OF PAVEMENT

DIRECTORS ACTION  
BY UNANIMOUS CONSENT  
WITHOUT A MEETING  
OF

KIRIC INVESTMENTS, INC.

The undersigned, presently being the members of the Board of Directors of Kiric Investments, Inc. ("Corporation") who would be entitled to vote upon the actions hereinafter set forth at a formal special meeting of the Board of Directors of said Corporation, do hereby consent to the following actions to the same extent, and to have the same force and effect as if adopted at a formal special meeting of the Board of Directors of said Corporation:

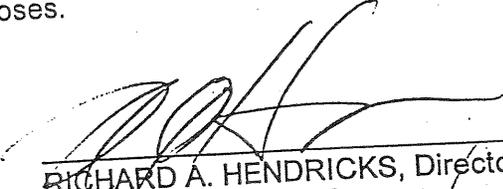
1. RESOLVED, that all actions, transactions, and activities of the Directors and Officers of the Corporation from the date of their last meeting to the date hereof are hereby approved, ratified, and confirmed.
2. FURTHER RESOLVED, that the Non-Exclusive Pedestrian Access Agreement by and between Kiric Investments, Inc., as Grantor, and the Town of Fort Myers Beach, Florida, as Grantee, a copy of which is attached hereto as **Exhibit A** (the "Agreement") is hereby approved.
3. FURTHER RESOLVED, that G. Edward Cusick, as Vice President of the Corporation, is hereby authorized and directed to execute the Agreement on behalf of the Corporation and to take such further action and to execute such further documents or instruments as may be required to effect the terms of such Agreement.

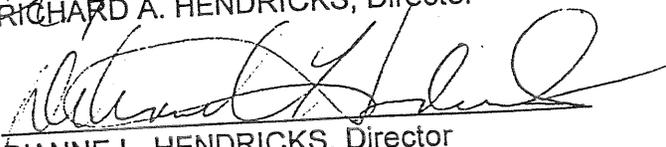
The undersigned do hereby unanimously consent and affirm that the actions set forth in the foregoing resolutions shall have the same force and effect as if taken at a duly constituted meeting of the Board of Directors of the Corporation and that this document be filed with the Secretary of the Corporation and shall be made a part of the minutes of the Corporation.

This consent action may be executed in any number of counterparts, each of which shall be deemed an original instrument, and said counterparts shall constitute but one and the same instrument which may be sufficiently evidenced by one counterpart. Facsimile copies of executed documents shall be deemed originals for all purposes.

Dated: 4/19, 2002

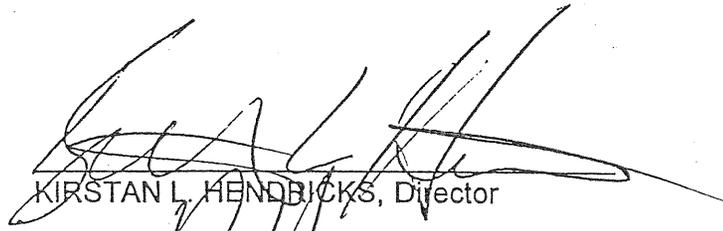
Dated: 4/20/02, 2002

  
RICHARD A. HENDRICKS, Director

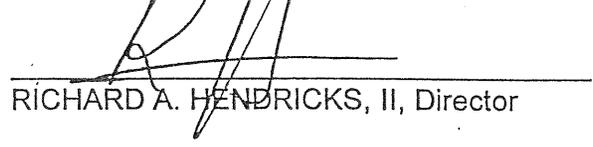
  
DIANNE L. HENDRICKS, Director

Dated: 4/17/02, 2002

Dated: 4/17/02, 2002



KIRSTAN L. HENDBICKS, Director



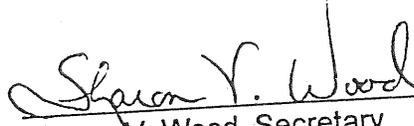
RICHARD A. HENDRICKS, II, Director

CERTIFICATE OF THE SECRETARY

The undersigned, Sharon V. Wood, Secretary of Kiric Investments, Inc., a Florida corporation (the "Corporation"), hereby certifies that the resolutions attached hereto as Exhibit A are a true, correct and complete copy of certain resolutions duly adopted by the Board of Directors of the Corporation by written consent on the 11<sup>th</sup> day of April, 2002, and that said resolutions have not been modified or rescinded since their adoption and are in full force and effect as of the date hereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of said Corporation this 11<sup>th</sup> day of April, 2002.

(Corporate Seal)

  
Sharon V. Wood, Secretary

**NON-EXCLUSIVE**  
**PEDESTRIAN ACCESS AGREEMENT**

THIS Pedestrian Access Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2002, between Kiric Investments, Inc., a Florida corporation, as Grantor, and the Town of Fort Myers Beach, Florida, a municipal corporation, Grantee.

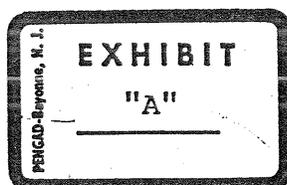
WHEREAS, Grantor is the fee simple owner of the real property located in Lee County, Florida more particularly described in Exhibit "A" attached hereto (the "Property"); and

WHEREAS, Grantor has entered into a Sovereignty Submerged Land Lease No. 360421085 with the Trustees of the Internal Improvement Trust Fund of the State of Florida (the "Submerged Land Lease") for submerged lands adjacent to the Property; and

WHEREAS, Grantor has constructed a dock over the leased submerged lands as shown on Exhibit "B" attached hereto; and

WHEREAS, in consideration of the approval of variances as requested in Case Number VAR 2001-00053 by the Town of Fort Myers Beach, Florida for the development of improvements on the Property, the Grantor has agreed to provide for public pedestrian access across a portion of the Dock for the purpose of affording pedestrian access connecting Old San Carlos with State Road 865 (right-of-way under Sky Bridge) in the location as shown on Exhibit "C" (the "Dock") attached hereto.

NOW, THEREFORE, in consideration of the above and foregoing and the mutual covenants hereinafter set forth, the Grantor and Grantee agree as follows:



1. Grantor hereby grants to Grantee a non-exclusive right of pedestrian access across the Dock.

2. Grantee's rights of access to the Dock shall be subject to and conditioned upon all terms and conditions of the Submerged Land Lease. This access shall be irrevocable except:

- a. upon mutual consent of the parties hereto; or
- b. if the Grantor determines, in his sole discretion, that an imminent threat to public health, safety or welfare exists, including, but not limited to, damage or disrepair to the Dock which creates a hazardous condition. In this event, the Grantee shall be notified no later than 48 hours after Grantor has closed the Dock. The Grantor shall take all reasonable action necessary to reopen the Dock as soon as possible.

3. Grantor shall maintain the Submerged Land Lease or any amendments thereto in good standing, including all lease payments due the State of Florida thereunder and shall timely apply for renewals prior to the termination of each term of said Submerged Land Lease.

4. Grantee's use of the property shall be subject to all existing and future easements, agreements, licenses, covenants and conditions, governmental or private, affecting the property but in no event, shall any use be made of this area that would be contrary to its continued public use as a pedestrian access from Old San Carlos Boulevard to State Road 865 (right-of-way under Sky Bridge).

5. Grantor agrees that Grantee shall have reasonable access over and across that portion of the Dock described in Exhibit "C", except that Grantor reserves the right to construct and/or place such things on the Dock, including, but not limited to, dock boxes, utility pedestals, pump out stations, cleats, ladders and other items commonly associated with the ordinary and customary use of a dock, but in no event shall the placement of these structures on the Dock prevent, inhibit or impair pedestrian access across the Dock described in Exhibit "C".

6. In the event of a catastrophic occurrence which causes damage to that portion of the Dock described in Exhibit "C", to the extent that the Dock becomes unuseable or unsafe for pedestrian access, then Grantor agrees to provide comparable upland access on and over Grantor's upland property to Grantee for the period of time necessary to repair the Dock. Subsequent to completion of the necessary Dock repair, the right to upland access by Grantee shall cease.

7. Grantor agrees to provide Grantee temporary access to the upland areas described in attached Exhibits "D" and "E". The temporary access to the upland area delineated in Exhibit "D" shall be valid for a reasonable period of time during which Grantee agrees to diligently pursue a submerged land lease for dock construction and to timely construct said dock in the area located directly west of the current terminus of the Dock described in Exhibit "C".

The temporary access to the upland area delineated in Exhibit "E" shall be valid until such time as Grantor extends the Dock described in Exhibit "C" in an easterly direction to Grantor's eastern riparian property line and Grantee obtains a submerged land

lease for Dock construction and constructs an extension to Grantor's dock in the area located immediately east of the pedestrian access area described in Exhibit "C". Grantor and Grantee agree to diligently pursue all necessary permitting and construction of said Dock extensions.

8. Grantor agrees to reasonably maintain the Dock for the duration of either this Agreement or the Submerged Land Lease, whichever is shorter.

9. Grantee's use of the property shall be between the hours of 8:00 A.M. to midnight, Monday through Sunday and shall be so posted.

10. This Agreement shall terminate only upon the termination of the Submerged Land Lease by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida or upon impossibility of performance by the Grantor.

11. Grantor agrees to hold Grantee harmless from and against any loss or damage to persons or property resulting from a negligent act or omission by Grantor, its agents or assigns concerning actions and obligations of Grantor as set forth in this Agreement.

12. Grantor agrees to name Grantee as an additional insured on its insurance liability policy with respect to pedestrian usage of the Dock pursuant to this Agreement.

13. This Agreement shall be recorded in the Public Records of Lee County, Florida.

14. This Agreement shall be binding upon and inure to the benefit of Grantor and Grantee's successors and/or assigns.

15. Grantee shall have the right of specific performance to enforce the terms of this Agreement.

16. Any modification of this Agreement shall be binding only if evidenced in writing, signed by each party.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement to be signed as of the dates below indicated.

Signed Sealed and Delivered  
in the presence of:

WITNESSES:

GRANTOR:

KIRIC INVESTMENTS, INC., a Florida corporation

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

G. Edward Cusick, Vice President

Attest:

GRANTEE:

TOWN OF FORT MYERS BEACH, FLORIDA,  
a municipal corporation

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

Daniel L. Hughes, Mayor

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Marsha Segal-George, Esq.  
Acting Town Attorney

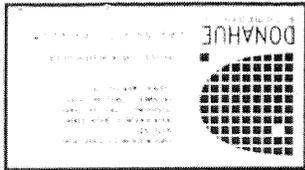
STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by G. Edward Cusick, as Vice President of Kiric Investments, Inc., a Florida corporation. He is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



SNUG HARBOR RESTAURANT  
 FORT MYERS BEACH, FLORIDA

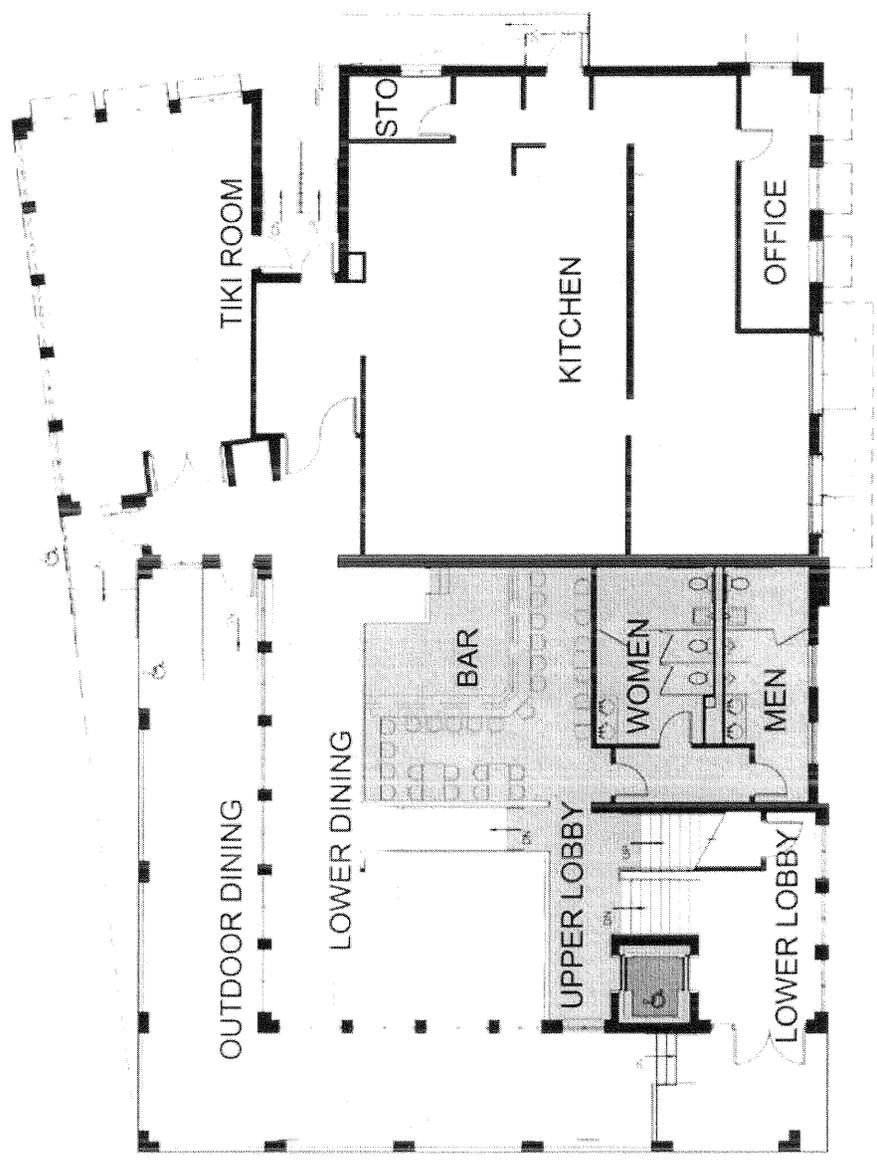
DATE	10/10/11
PROJECT	SNUG HARBOR RESTAURANT
SCALE	AS SHOWN
DESIGNED BY	DONAHUE ARCHITECTS
DRAWN BY	DONAHUE ARCHITECTS

NO.	1
DATE	10/10/11
BY	DONAHUE ARCHITECTS

GROUND FLOOR PLAN

1" = 4' - 0"

EXHIBIT "C"



GROUND FLOOR PLAN  
 0' 4" 8" 16"

C-1

DONAHUE  
 ARCHITECTS  
 1000 W. PALM BEACH BLVD., SUITE 200  
 PALM BEACH, FLORIDA 33480  
 TEL: 561-832-1100  
 FAX: 561-832-1101  
 WWW.DONAHUE-ARCHITECTS.COM

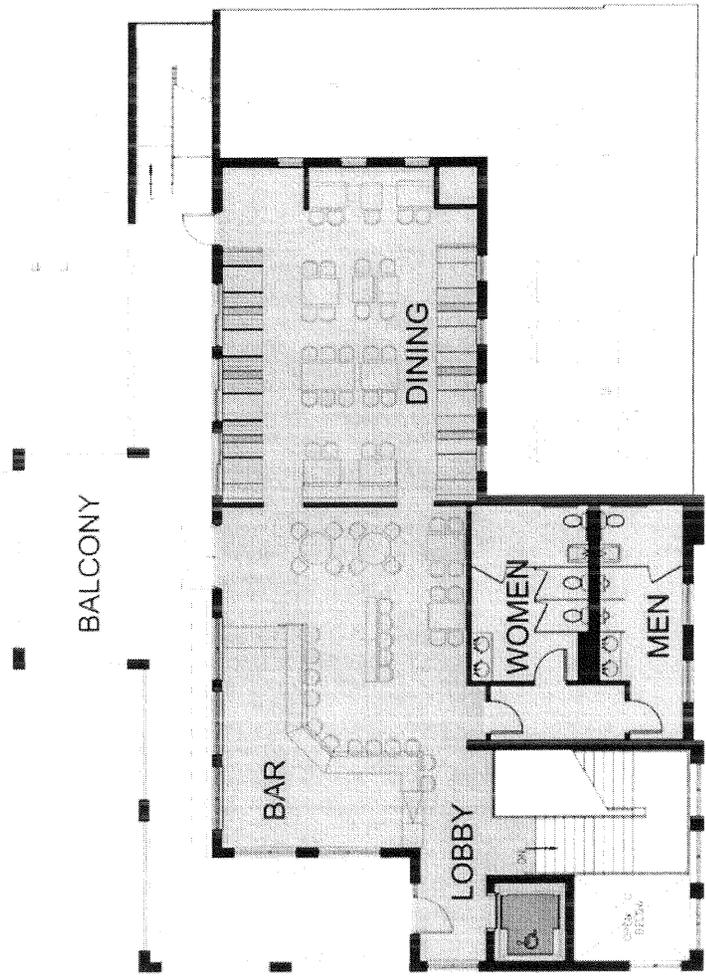
PROJECT: SNUG HARBOR RESTAURANT  
 ARCHITECT: DONAHUE ARCHITECTS  
 DATE: 08/20/10  
 SHEET: 202 OF 202  
 THE FORTNEY COMPANY  
 10111 W. WICK AVENUE, SUITE 100  
 FORT MYERS BEACH, FLORIDA 33908  
 TEL: 941-336-3333 FAX: 941-336-3334

NO.	DATE	DESCRIPTION
1	08/20/10	ISSUED FOR PERMITS
2	08/20/10	ISSUED FOR CONSTRUCTION
3	08/20/10	ISSUED FOR RECORDS

PROJECT NO.	1000000000
DATE	08/20/10
SCALE	AS SHOWN
DESIGNED BY	DAVID J. DONAHUE
CHECKED BY	DAVID J. DONAHUE

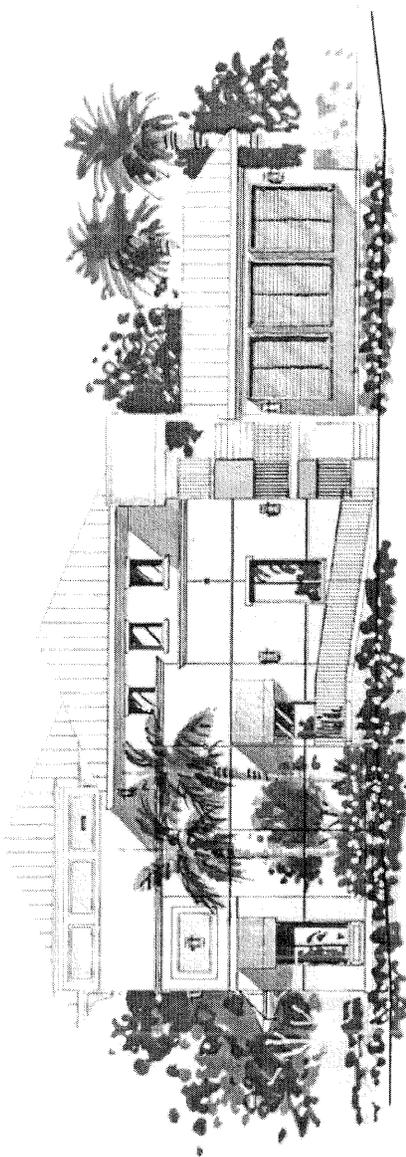
SHEET NO. 202 OF 202  
 SECOND FLOOR PLAN

PROJECT: SNUG HARBOR RESTAURANT  
 ARCHITECT: DONAHUE ARCHITECTS

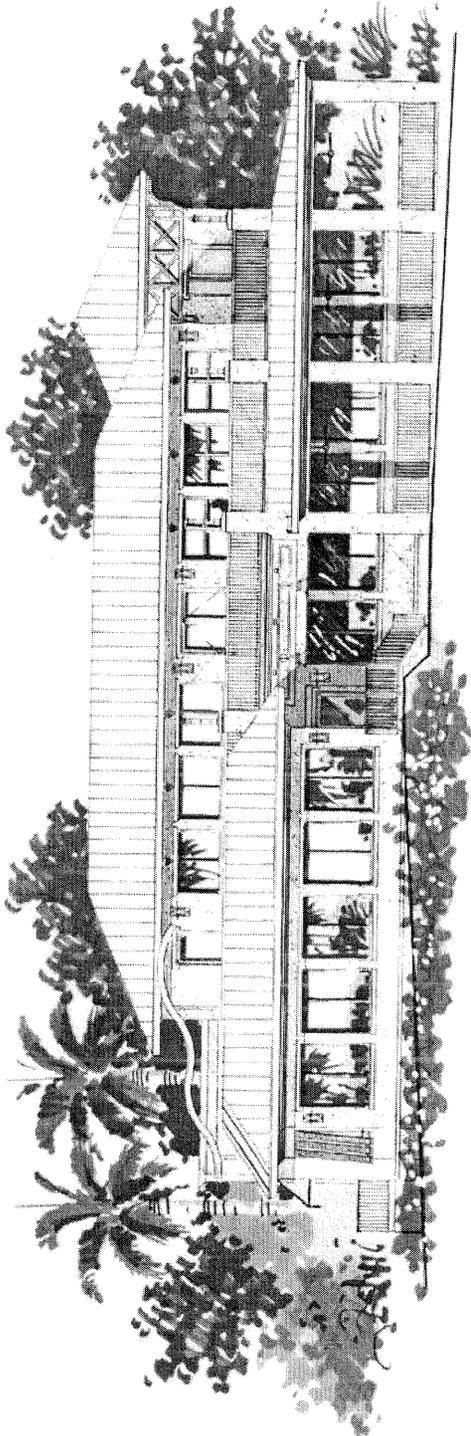


SECOND FLOOR PLAN  
 0 4' 8" 16'

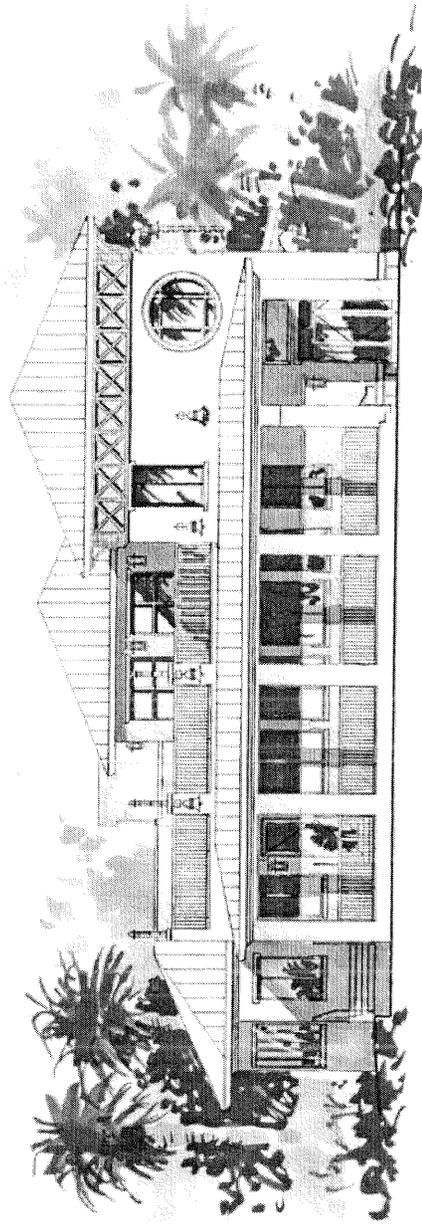
C-2



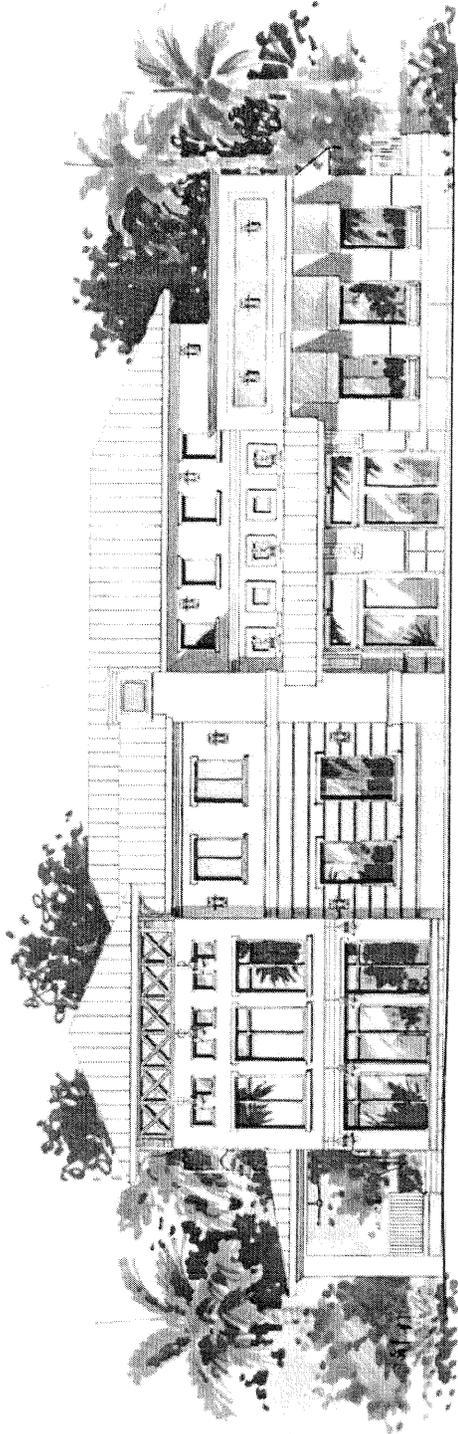
C 3



42

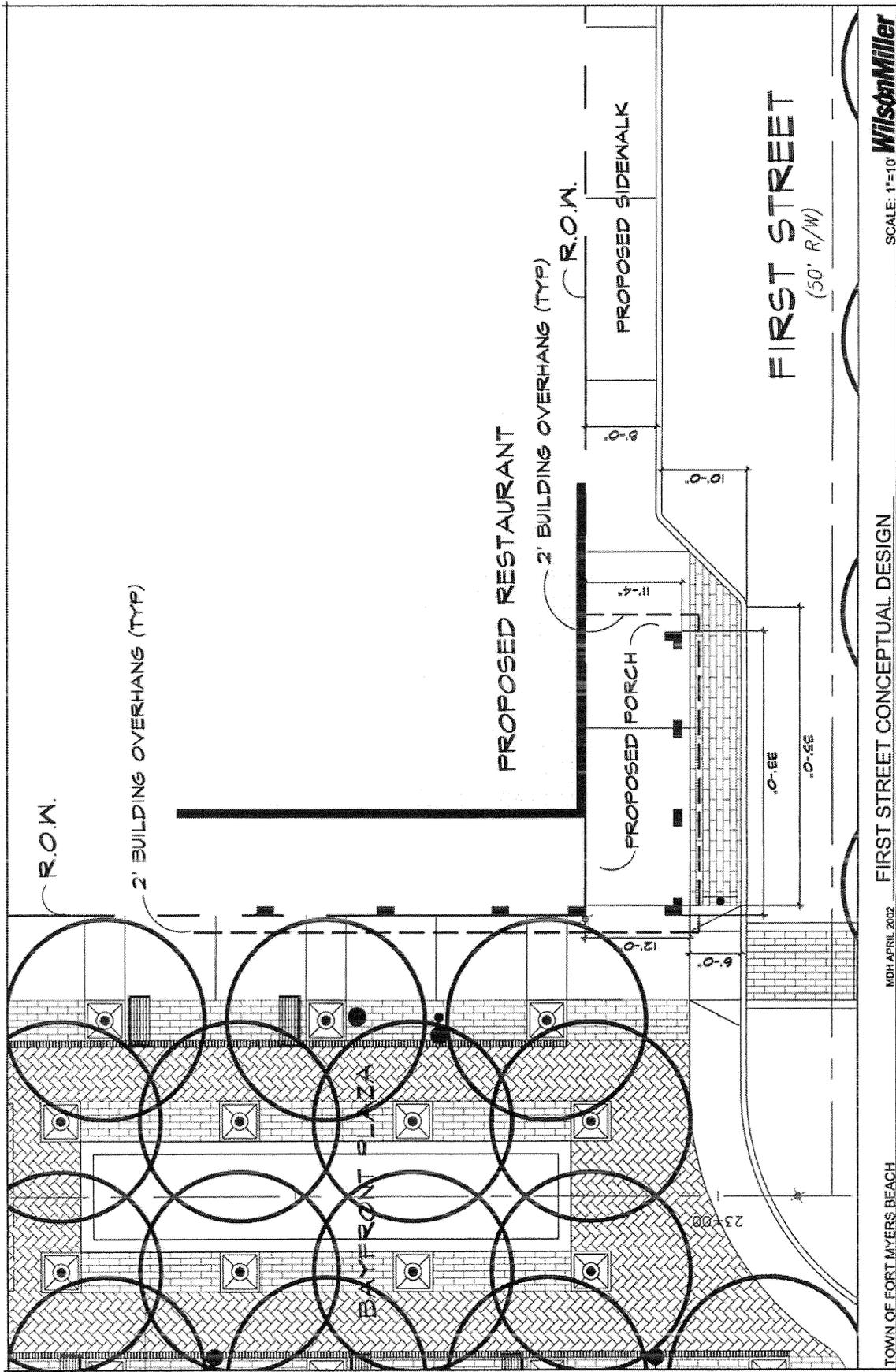


05



26

EXHIBIT "D"



SCALE: 1"=10'

WisdomMiller

FIRST STREET CONCEPTUAL DESIGN

MDH APRIL 2002

TOWN OF FORT MYERS BEACH

## EXHIBIT "E"

Prior to approved construction over an existing or future public sidewalk, the Developer shall indemnify and hold the Town harmless from any and all claims of injury to persons or property alleged to be caused by said construction and activities related to it and from any and all similar claims alleged to have resulted from objects thrown, dropped, or falling from said buildings, including part of the building itself, during its construction.

- a) Prior to issuance of any permits allowing such construction, the Developer shall provide the Town with written proof of liability insurance coverage showing the Town as one of the named insureds thereunder with coverages of not less than \$6,000,000 combined single limit, with \$1,000,000 per occurrence and \$5,000,000 umbrella coverage.
- b) This insurance coverage shall remain in force until the construction has been certified as being complete, and the Developer shall provide the Town with written proof of same within thirty (30) calendar days of the annual renewal date therefor.
- c) The promise to indemnify and hold the Town harmless shall run with title to the property for so long as the building encroaches over the public sidewalk.
- d) The Town in return shall record an instrument consenting to and providing an easement for the encroachment of the building over the public sidewalk for the duration of the encroachment's existence.