

THIS INSTRUMENT PREPARED BY:
Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, Florida 33932

STRAP # 29-46-24-W2-00146.0010

**RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 06- 08**

WHEREAS, the Town of Fort Myers Beach owns the real property located at 289 Connecticut Street, Fort Myers Beach, Florida, in S29-T46S-R24E, Lee County, Florida, with the property's legal description being attached as Exhibit "A" and hereby incorporated by reference; and

WHEREAS, the main structure on the subject property (William H. Case House, 8LL1101) is commonly referred to as the "Mound House" due to its being constructed on an archaeologically significant Calusa Indian shell mound (Estero Island Site, 8LL4); and

WHEREAS, the Mound House is believed to be the oldest remaining residence on Estero Island, Fort Myers Beach, Florida; and

WHEREAS, Section 13 of the Comprehensive Plan of the Town specifies it is a goal of the Town to advance the preservation and stewardship of historic resources to enhance the town's natural, historic, and cultural systems and ensure their sustainability for future generations. It further states that, in preserving the "best of the old" as the community redevelops, the Mound House is a significant historical and archaeological component of the Town's history and the means by which that legacy is shared with the broader community; and

WHEREAS, on October 5, 2004, the Town of Fort Myers Beach received a Historic Preservation Grant (Grant No. SC547) from the State of Florida, Department of State, Division of Historical Resources; to "construct a walk-in exhibit within the footprint of an existing in-ground swimming pool to display and interpret the exposed profile of a portion of the Estero Island Site, a Calusa Indian shell mound"; and

WHEREAS, a condition of the aforesaid 2004 Grant required that various Restrictive Covenants be recorded in the Public Record of Lee County, Florida, encumbering the subject property to preserve for a ten-year period the interest of the State of Florida in the historical nature of the Mound House; and

WHEREAS, on September 27, 2004, the Town Council approved Resolution 04-32 with its attached Restrictive Covenants, which authorized the Mayor to sign the covenants on behalf of the Town and authorized the Town Manager to cause said documents to be recorded in the Public Records of Lee County, Florida, and to sign the necessary documents to implement the intent of the resolution; and

WHEREAS, the Florida Department of State, Division of Historic Resources, has notified the Town that a grant would be awarded, conditioned upon the Town's execution of the grant award agreement and recording of the Restrictive Covenants in the Public

of the grant award agreement and recording of the Restrictive Covenants in the Public Records of Lee County, Florida, to restore the Mound House to its 1921 form for continued use as a cultural and environmental learning center, with a condition of said Grant is that the Town must sign Restrictive Covenants for the benefit of the State of Florida, which covenants are identical to those signed and recorded by the Town as to the subject property in 2004;

WHEREAS, the Town Council has determined that it is in the public's interest and in furtherance of the objectives set forth above in the Town's Comprehensive Plan for the Town to receive such grant funds from the Division of Historical Resources and to further the conversion of the Mound House to public use and support the facility's mission of informing and educating Florida residents and visitors about Florida prehistory, early pioneer settlement and life on Estero Island, and the sensitive estuarine environment upon which past cultures and present inhabitants have always depended; and

WHEREAS, the Town Council hereby determines that the Restrictive Covenants which are attached hereto are proper and reasonable; and consistent with obligations outlined in the Grant Award Agreement with Florida Communities Trust that appropriated funds for the acquisition of the Mound House.

NOW therefore be it resolved by the Town Council of Fort Myers Beach, as follows:

1. The Town accepts the encumbrance represented by the Restrictive Covenants in favor of the State of Florida, as delineated on the attached Exhibit "B" as being in the best interest of the citizens of the Town and in compliance with the goals and objectives of the Town's Comprehensive Plan.

2. The Mayor of the Town is hereby authorized and directed to sign these Restrictive Covenants on behalf of the Town, as owner and grant recipient.

3. The Town Manager is hereby authorized and directed to cause the necessary documents to be recorded in the Public Records of Lee County, Florida and to sign any documents necessary to implement the intention of this Resolution.

4. This resolution will be effective immediately upon adoption.

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

Dennis Boback, Mayor	aye
Don Massucco, Vice Mayor	aye
Garr Reynolds	aye
Charles Meador, Jr.	aye
William Shenko, Jr.	aye

DULY PASSED AND ENACTED this 21st day of August 2006.

ATTEST:

TOWN OF FORT MYERS BEACH

By: 
Michelle D. Mayher, Town Clerk

By: 
Dennis C. Boback, Mayor

Approved as to form by:


Anne Dalton, Town Attorney

EXHIBIT "A"

Lot 46, CASE SUBDIVISION OF GOVERNMENT LOTS NO. ONE, TWO AND THREE of Section 29, Township 46 South, Range 24 East, in Lee County, Florida, according to the plat recorded in Plat Book 1, page 58, as affected by conveyance and affidavit recorded in Deed Book 131, pages 300 through 304, all of the public records of Lee County, Florida.

LESS AND EXCEPTING THE FOLLOWING:

Beginning at the southeasterly corner of Lot 47 of CASE'S SUBDIVISION; thence running Northeasterly along the Easterly boundary of Lot 47 of said subdivision to the Northeasterly corner of said Lot 47 to the point of Beginning of the land herein excepted; thence running Northeasterly in a direct line along the Easterly boundary of said Lot 47 projected in a Northerly direction to a point intersecting the South line of Section 20, Township 46 South, Range 24 East; thence running West along the South line of said Section 20 to a point intersecting the Northeasterly corner of Lot 45 of CASE'S SUBDIVISION aforesaid; thence running Southwesterly along the Easterly boundary of said Lot 45 to the Northwesterly corner of Lot 47 of said subdivision; thence running Southeasterly along the Northwesterly boundary of said Lot 47 to the Point of Beginning.

ALSO LESS AND EXCEPTING that part of Lot 46, CASE SUBDIVISION, according to a plat thereof recorded in Plat Book 1, at page 58 and plat and affidavit recorded in Deed Book 131, at pages 300 to 304, of the public records of Lee County described as follows:

Beginning at the corner common to Lots 46 and 50 of said CASE SUBDIVISION on the Northwesterly side of Connecticut Street, run Northeasterly along said street for 461 feet; thence run Northwesterly perpendicular to said street for 100 feet; thence run Northwesterly parallel with said street for 100 feet; thence run Northwesterly perpendicular to said street for 315 feet; thence run Northeasterly parallel to said street for 400 feet, more or less, to the waters of Ostego Bay; thence run Northwesterly along said Bay to a point on the North line of said Section 29; thence run West along said section line to an intersection with a Northeasterly prolongation of the line dividing Lots 47 and 48 of CASE SUBDIVISION; thence run Southwesterly along said prolongation for 564.9 feet to the Northeasterly corner of said Lot 47; thence run Southeasterly along the southwesterly line of said Lot 46 to the Point of Beginning.

ALSO LESS AND EXCEPTING:

A tract or parcel of land lying in Lot 46 of CASE SUBDIVISION, according to plat recorded in Plat Book 1, at page 58 and plat and affidavit recorded in Deed Book 131, at pages 300 to 304, inclusive, of the public records of Lee County, which tract or parcel is described as follows:

Beginning at the most Easterly corner of Lot 6, Block A of Shell Mound Park, according to plat recorded in Plat Book 11, at page 4 of said public records, run Northeasterly along a prolongation of the southeasterly line of said Lot 6, along the Northwesterly line of Connecticut Street for 100 feet; thence deflect 90°00' to the left and run Northwesterly, parallel with the Northwesterly line of said Lot 6 for 100.0 feet to the southeasterly corner of a waterway as shown on said plat of Shell Mound Park; thence deflect 90°00' to the left and run Southwesterly along the southeasterly line of said waterway for 100.0 feet to the most Northwesterly corner of said Lot 6; thence run Southeasterly along said Northeasterly line of said lot for 100 feet to the Point of Beginning.

RECORDER'S MEMO

Legibility of Writing, Typing or
Printing Unsatisfactory in this
Document When Received.

EXHIBIT "B"

RESTRICTIVE COVENANTS

THESE COVENANTS are entered into this ___ day of _____, 20___, by _____, hereinafter referred to as the Owner, and **Town of Fort Myers Beach** hereinafter referred to as the Grant Recipient, and shall be effective for a period of ten years from the date of recordation by the Clerk of the Circuit Court of **Lee County, Florida**.

WHEREAS, the Owner is the fee simple titleholder of the Property located at **289 Connecticut Street, Fort Myers, Lee County, Florida**, as described in **Exhibit A**, attached to and made a part hereof and

WHEREAS, the Grant Recipient is to receive State Historic Preservation Grant assistance funds administered by the State of Florida, Department of State, Division of Historical Resources, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250, hereinafter referred to as the Department, in the amount of **\$349,650.00**, to be used for the restoration and preservation of the property of the Owner as described in Exhibit A, and

WHEREAS, said State funds have been or will be expended for the purpose of preserving the historic qualities of the property or contributing to the historic character of the district in which the property is located,

Now THEREFORE, as part of the consideration for the State grant, the Owner and the Grant Recipient hereby make and declare the following restrictive covenants which shall run with the title to said Property and be binding on the Owner and its successors in interest, if any, for a period stated in the preamble above:

1. The Owner and the Grant Recipient agree to maintain the property in accordance with good preservation practices and the Secretary of the Interior's Standards for Rehabilitation.
2. The Owner and the Grant Recipient agree that no modifications will be made to the Property, other than routine repairs and maintenance, without advance review and approval of the plans and specifications by the Department's Bureau of Historic Preservation.
3. The Owner and the Grant Recipient agree that every effort will be made to design any modifications to the Property in a manner consistent with the Secretary of the Interior's Standards for Rehabilitation.

4. The Owner and the Grant Recipient agree that the Department, its agents and its designees shall have the right to inspect the Property at all reasonable times in order to ascertain whether the conditions of the Grant Award Agreement and these covenants are being observed.
5. The Owner and the Grant Recipient agree that these restrictions shall encumber the property for a period of ten years from the date of recordation, and that if the restrictions are violated within the ten year period, the Department shall be entitled to liquidated damages pursuant to the following schedule:
 - a. If the violation occurs within the first five years of the effective date of these covenants, the Department shall be entitled to return of the entire grant amount.
 - b. If the violation occurs after the first five years, the Department shall be entitled to return of the entire grant amount, less 10% for each year past the first five. For instance, if the violation occurs after the sixth anniversary of the effective date of these covenants, but prior to the seventh anniversary, the Department shall be entitled to return of 80% of the original grant amount.
6. The Owner agrees to file these covenants with the Clerk of the Circuit Court of **Lee County**, Florida, and shall pay any and all expenses associated with their filing and recording.
7. The Owner and Grant Recipient agree that the Department shall incur no tax liability as a result of these restrictive covenants.