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

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

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

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

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

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

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

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

A. CONDITIONS

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

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

Schedule of Uses

Residential

Principal:
NONE
Accessory:
NONE

Lodging

Principal:
Hotel/Motel
Resort
Timeshare units

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

Office

Principal:
Offices, general or medical

Personal Services
Automobile rental (by special exception only)
Accessory:
Administrative office
Commercial accessory uses
Subordinate commercial uses

Retail

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

Accessory:
ATM

Marine

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

Civic

Principal:

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

Accessory:

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

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

Site Development Regulations

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

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

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

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

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

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

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

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

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

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

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

B. DEVIATIONS

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

FINDINGS AND CONCLUSIONS

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

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

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

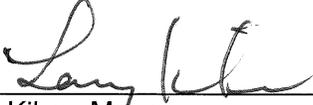
Regarding the request to rezone 1.38± acres of upland from DOWNTOWN to CPD:

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

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

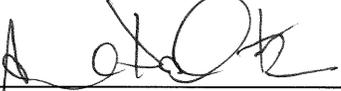
Larry Kiker, Mayor	<u>aye</u>	Herb Acken, Vice Mayor	<u>aye</u>
Tom Babcock	<u>aye</u>	Jo List	<u>aye</u>
Bob Raymond	<u>nay</u>		

DULY PASSED AND ADOPTED THIS 10th DAY OF AUGUST, 2009, BY THE
TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By: 
Larry Kiker, Mayor

ATTEST:
By: 
Michelle D. Mayher, Town Clerk

Approved as to legal sufficiency:

By: 
Anne Dalton, Esquire, Town Attorney



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NO.	DATE	DESCRIPTION
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283	5/20/26	REVISED
284	6/10/26	REVISED
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322	1/10/28	REVISED
323	1/20/28	REVISED
324	2/10/28	REVISED
325	2/20/28	REVISED
326	3/10/28	REVISED
327	3/20/28	REVISED
328	4/10/28	REVISED
329	4/20/28	REVISED
330		

Exhibit A
FMBDCI2007-0005

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

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

AND

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

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

Exhibit B
FMBDCI2007-0005

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

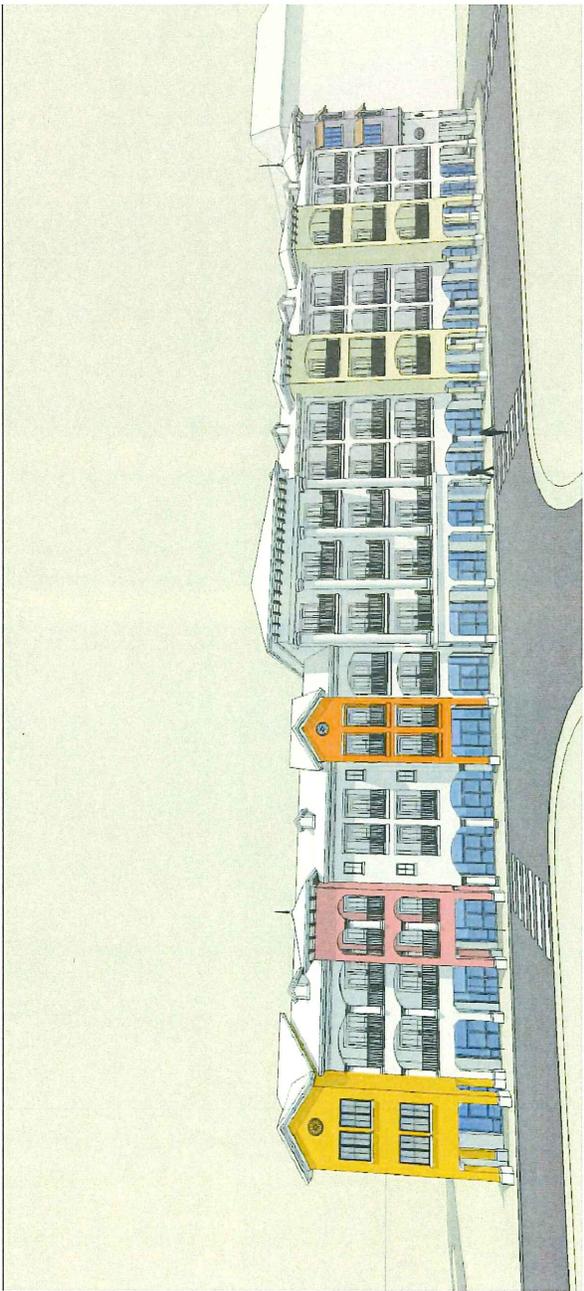
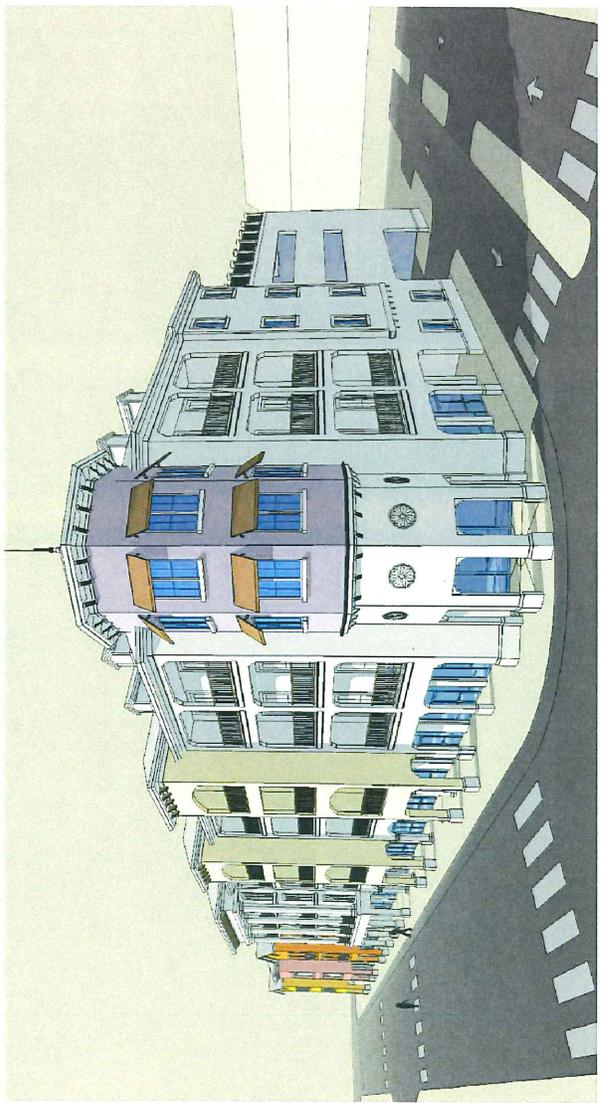
Commencing at the northwesterly corner of Block 1, Business Center Subdivision, as recorded in Plat Book 9, Page 10, Public Records of Lee County, Florida; thence N. 25°00'00" E. on the easterly right-of-way line of San Carlos Boulevard for 125.00 feet to the centerline of First Street (a right-of-way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

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

NO.	DESCRIPTION	DATE	BY	CHKD
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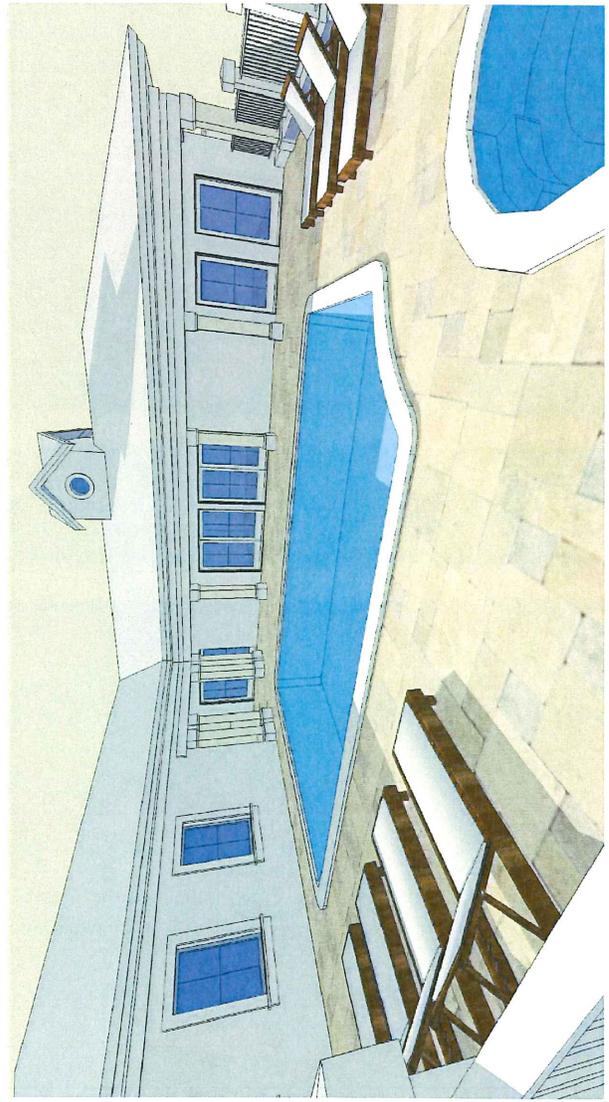
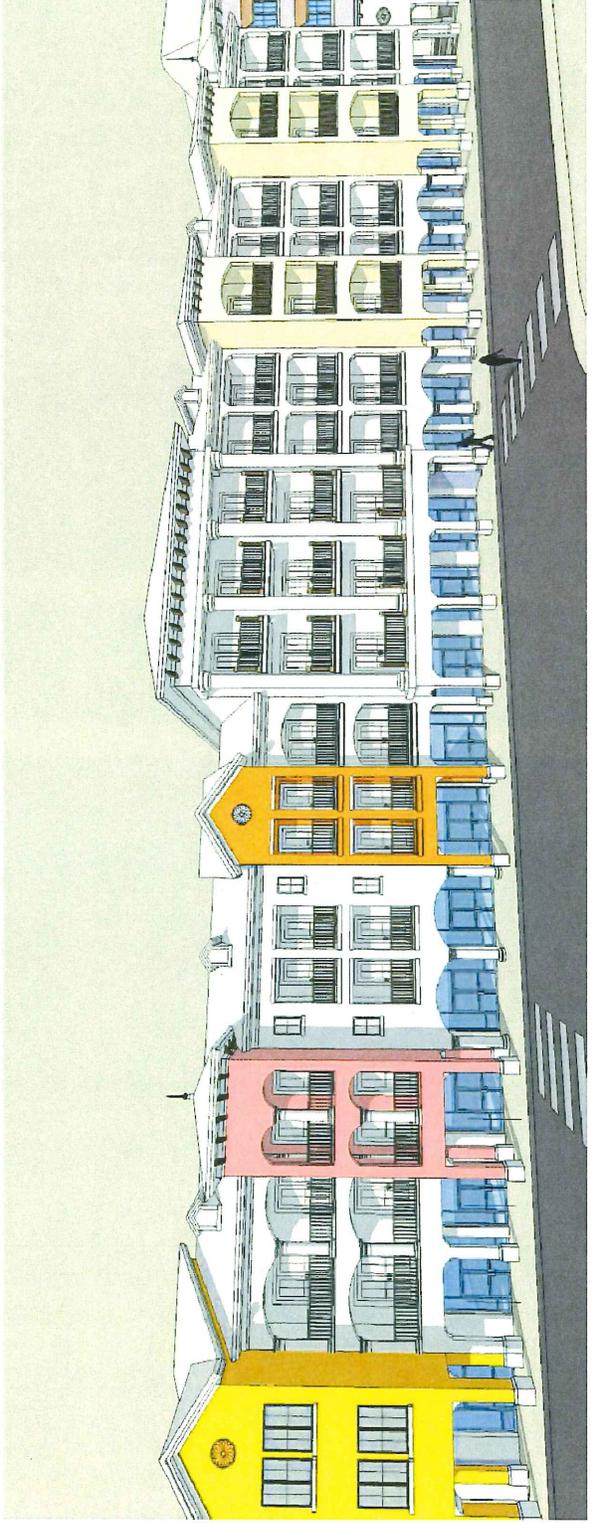
MCHARRIS
PLANNING & DESIGN
INC.
1000 W. PALM BEACH BLVD., SUITE 200
WEST PALM BEACH, FL 33411
TEL: 561-833-1111
WWW.MCHARRISPLANNING.COM



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NO.	DATE	DESCRIPTION	BY	APP.
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NO.	DATE	DESCRIPTION	BY	APP.
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THIS INSTRUMENT PREPARED BY
AND, AFTER RECORDING, RETURN TO:
THE TOWN OF FORT MYERS BEACH
2523 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931

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

AGREEMENT FOR USE OF TOWN RIGHT- OF-WAY

COMMERCIAL DESIGN STANDARDS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Licensee:

Witness for Licensee:

KIRIC INVESTMENTS, INC

BY: _____

Print name of person signing:

Richard Hendricks, CEO

Print name: _____

Shawn V. Wood

ATTEST:

Michelle D. Mayher
Michelle D. Mayher, Town Clerk

TOWN OF FORT MYERS BEACH

Jack Green
_____, Town Manager

Approved as to Legal Form and Sufficiency:

By: _____

Anne Dalton
Anne Dalton, Esquire, Town Attorney

EXHIBIT A:

LEGAL DESCRIPTION OF SUBJECT PROPERTY

EXHIBIT A

Parcel 1

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

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

Parcel 3

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

Parcel 4

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

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

Parcel 6

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

EXHIBIT B:

DESCRIPTION OF PROPOSED STRUCTURE(S)

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

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

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

HOLD HARMLESS AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

WITNESSES:

Cynthia Henderson
(Witness Sign Name)

Dolonda Campbell
(Witness Sign Name)

KIRIC INVESTMENTS, INC.

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

City STATE OF Virginia
COUNTY OF Wynnesboro

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

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

TOWN OF FORT MYERS BEACH

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

ATTEST:

By: [Signature]
Approved as to form by:

[Signature]
Name: ANNE DALTON
Town Attorney

EXHIBIT A

Parcel 1

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

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

Parcel 3

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

Parcel 4

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

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

Parcel 6

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