

ORDINANCE NO. 24-34

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 3001 ESTERO BOULEVARD, 2943 ESTERO BOULEVARD, 2932 ESTERO BOULEVARD, 211 DONORA BOULEVARD, FORT MYERS BEACH, FL, STRAP NOS. 29-46-24-W1-00145.1000, 29-46-24-W1-00145.5000, 30-46-24-W2-00001.0000, 29-46-24-W1-0120A.0010 AND OWNED BY SEAGATE FORT MYERS BEACH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY PREVIOUSLY KNOWN AS THE RED COCONUT RV PARK; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, Seagate Fort Myers Beach, LLC (the "Developer") wishes to develop certain parcels of land in the Town of Fort Myers Beach, as more explicitly described in the Home Rule Development Agreement, attached hereto as Exhibit "A" (the "Development Agreement"); and

WHEREAS, the Developer presented the Development Agreement to the Town's Local Planning Agency ("LPA") at the October 22, 2024 meeting and the LPA voted to recommend denial of the Development Agreement; and

WHEREAS, the Town Council held its first reading and public hearing on the Development Agreement at its October 28, 2024 Town Council meeting, during which the Town Council determined that the Development Agreement and the accompanying application satisfied the guidelines and criteria set forth in Sections 2-100 and 2-96 of the Town's Code of Ordinances and the procedures for approval of development agreements in Exhibit A to Resolution Number 24-73; and

WHEREAS, on December 16, 2024, the Town Council held the second and final reading and public hearing on the Development Agreement; and

WHEREAS, a Business Impact Estimate was prepared and posted on the Town’s website on the 30th day of October, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in the News-Press on the 22nd day of November, 2024, which is 10 days prior to the final reading of the proposed Ordinance as required by Section 166.041, Florida Statutes; and

WHEREAS, the Town Council determined that adoption of the ordinance as provided herein is in the best interests of the health, safety, welfare, and morals of the Town’s residents.

NOW THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated herein by reference and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council hereby formally approves the Development Agreement attached hereto as Exhibit “A” and authorizes the Developer to proceed with the development as further outlined therein.

Section 3. The Town Clerk is directed to record a copy of the Development Agreement in the Official Records of Lee County, Florida.

Section 4. This Ordinance shall become effective upon adoption by the Town Council.

(intentionally blank)

The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member Safford and seconded by Council Member Woodson, and upon being put on a roll call vote, the results were as follows:

Dan Allers, Mayor	Nay
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Karen Woodson, Council Member	Aye
Scott Safford, Council Member	Nay

ADOPTED this 16th day of December 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers
Dan Allers (Feb. 3, 2025 17:26 EST)
Dan Allers, Town Mayor

ATTEST:

Amy Baker
Amy Baker (Feb. 4, 2025 15:08 EST)
Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

Nancy Stuparich
Nancy Stuparich (Feb. 3, 2025 19:21 EST)
Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 4th day of February 2025.

HOME RULE DEVELOPMENT AGREEMENT
(As Approved December 16, 2024 with 1 underlined amendment)

THIS DEVELOPMENT AGREEMENT (hereinafter, "Agreement" or "Development Agreement") is entered into this 31st day of January 2025, by and between THE TOWN OF FORT MYERS BEACH, FLORIDA, a municipality of the State of Florida (hereinafter "Town"), having its principal office at 2731 Oak Street, Fort Myers Beach, FL, and SEAGATE FORT MYERS BEACH, LLC, a Florida limited liability company (hereinafter "Developer"), whose address is 9921 Interstate Commerce Drive, Fort Myers, FL.

WHEREAS, Section 2-100 of the Town's Land Development Code, authorizes it to enter into a home rule development agreement pursuant to article VIII, § 1(f), of the Constitution of the State of Florida and F.S. chs. 163, 166 and 380, and specifically recognized by the State Legislature in F.S. § 163.3220(5); and

WHEREAS, the Developer has requested approval of this Development Agreement pursuant to Section 2-96 of the Town's Land Development Code and Resolution 24-73; and

WHEREAS, Seagate owns approximately 10.72 +/- acres of land located within the Town, said property, of which 9.43 acres are located landward of the 1978 Coastal Construction Control Line (hereinafter "CCCL"), being legally described in Exhibit "A" attached hereto (hereinafter, "the Property"); and

WHEREAS, the Town and the Developer desire to enter into this Agreement to provide for the approval and a comprehensive understanding of the development parameters consistent with the Town's Land Development Code and Comprehensive Plan as set forth herein; and

WHEREAS, a public hearing was held before the Town of Fort Myers Beach Local Planning Agency("LPA") on the 22nd day of October, 2024, and the LPA reviewed the request and by a vote of 4 to 2 recommended denial_ to the Town Council; and

WHEREAS, the Town conducted three public hearings on the 28th day of October, 2024, the 2nd day of December and the 16th day of December, 2024, prior to entering into this Agreement, both of which were properly noticed on the Town's website and by mailing to affected property owners within a 500 foot radius of the boundaries of the real property at the addresses of such property owners found on the Lee County Property Appraiser's website prior to the first public hearings; and

WHEREAS, the Town Council has determined after consideration of the recommendation of the LPA, Town staff, and following two public hearings, which provided an opportunity for comment, testimony and evidence from the Developer, Town staff, and the public, the Town Council has determined that the Development Agreement is reasonable and not arbitrary and in the best interest of the Town and the residents of the Town Fort Myers Beach.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, for the purposes set forth in Section 2-100 and 2-96 of the Town's Land Development Code, the benefits to accrue to each party, and for other good and valuable consideration, the receipt of which the parties hereby acknowledge, the Town and the Developer agree as follows:

1. **Recitals.** The foregoing recitations are true and correct and are incorporated herein by reference. All exhibits to this Agreement are deemed a part hereof.

2. **Property Subject to this Agreement.** The real property described in Exhibit "A" is subject to the terms and conditions of this Agreement ("Property").

3. **Ownership.** Developer represents that it is the legal and equitable owner, having an interest in the Property pursuant to Instrument No.: 2023000309279 recorded as Doc Type D, Pages 7 on September 20, 2023 in the Official Records of Lee County, Florida, and as such may lawfully enter into this Agreement. The Town is in receipt of a title opinion from a Florida attorney upon which it can rely for the purpose of confirmation of the Developer's ownership representation.

4. **Proposed Development and Use of the Property.** The proposed Uses and development of the Property will be consistent with the following:

A. **Residential Density.** A maximum of 141 residential units to be developed as 4 single and 137 multi-family units on the North side of Estero Blvd., as shown on Page 2 of the Conceptual Plans and Renderings, dated the 5th day of December, 2024 and attached as Exhibit B. Density from other properties owned by the Developer within the Town may be transferred for 8 additional single family units (to be located north of proposed Seahorse Street) and up to a maximum of 149 units. **Any proposed density transfer will require review and approval by the Local Planning Agency and Town Council at a public meeting. Further amendment to this agreement for the density transfer is not required.**

B. **Vehicular Access.** The residential multi-family units will be accessible through a maximum of 2 ingress/egress points from Donora Boulevard and 1 ingress/egress from Estero Boulevard. Additional separate delivery, service, and solid waste pick up access points will be collocated on Donora Boulevard within the building footprint. 4 single family residential units will be accessed through a new, non-gated, east/west local street extending from Donora Boulevard.

The Developer will work with Lee County to implement turn lanes if possible on Estero Boulevard to access the proposed development and Donora Boulevard.

C. **Rental Restrictions.** Rental of any permitted dwelling unit will be limited to a minimum stay of thirty days and a total of three rental

periods per calendar year.

- D. Parking. Parking for the residential uses and commercial restaurant will be provided consistent with the regulations at the time of building permit. An additional 75 membership spaces will be provided to support the beach club.
- E. Commercial Area. Up to 10,000 square feet of commercial uses as identified in the Village Zoning Category. The commercial uses will be open to the public, including but not limited to commercial personal services, such as hair and nail salons, a laundry service, daycares, a small-scale convenience retail, restaurants, coffee shops and other uses as permitted in the underlying zoning district.
- F. Beach Club. A beach club does not exceed 29,000 square feet of enclosed air conditioned space with private recreational amenities and a private membership organization. At least 25% of the memberships in the beach club will be available to non-residents of the Property. The beach club will provide the following uses and amenities: pool and pool deck, event space for members and their guests only (including conference center, wedding venue, and meeting space and similar uses), umbrellas, chairs, cabanas, and a restaurant with consumption on premises (indoor and outdoor) and terrace.
- G. Parks and Access Areas. All parks and access areas will be maintained by the Developer or an association of property owners. A minimum of three (3) parks and access areas upon which the Town will be provided an easement for public use and located as follows (and substantially as shown in Exhibit C):
 - (1) Matanzas Pass Preserve Park. To provide public recreation and access to Matanzas Pass Preserve to be coordinated with Lee County and the Town; and
 - (2) a linear park providing pedestrian and cyclist access from Donora Blvd. to Estero Blvd. through the property a minimum of 20ft wide at all points with a minimum of 8ft wide multi-use path. The Developer will coordinate with the Town regarding directional and safety signage; and
 - (3) The area west of the private beach club and not utilized for public and private vehicular access will be improved to include park like features; such as, bike racks, picnic tables, shade structures and/or landscaping, subject to permitting requirements by the Town and the Florida Department of Environmental Protection. An enhanced beach access to include: a 10ft wide pedestrian-only beach access between Estero Blvd., and the beach.

The public beach access may not be located with the existing private platted beach access.

The Developer will limit the paved access to the minimum access and/or turn around required by Lee County and the Town of Fort Myers Beach Fire Department.

The Developer will provide public bathrooms accessible from the area west of the private beach club and public water fountain (to include pet hydration) subject to permitting requirements by the Town of Fort Myers Beach, Federal Emergency Management Agency, and Florida Department of Environmental Protection; and

(4) 2943 Estero Blvd. to provide a public recreation park.

The dedication of the parks and access areas will be by easement acceptable to the Town Attorney, together with evidence of title in a form acceptable to the Town Attorney prepared by an attorney who is a member of the Florida Bar, or a title company licensed in Florida, all depicting who is the owner in fee simple of the land subject to the conveyance or dedication, and the holders of any other interest or liens affecting said land.

- H. Height. The maximum height of the tallest residential multi-family tower will not exceed a total of 15 stories over 2 stories of structured parking and 235 feet above base flood elevation. Additional height limitations range from 9 to 14 stories over 2 stories of structured parking and must be in substantial compliance with Page 2 of the Conceptual Plans and Renderings, dated the 5th day of December, 2024 and attached as Exhibit B.
- I. Area. The combined square footage of all the structures within this development, other than the detached single-family residences and the covered motor vehicle parking structures, will not exceed 616,156.2 sf which is the equivalent of a FAR of 1.5.
- J. Mixed Use Structure Setbacks. 10 ft setbacks from all street right-of-ways and 10ft rear setbacks along the proposed Linear Park. The beach-facing property line for the beach club may be built to the 1978 CCCL.
- K. Single Family Lot Setbacks. 10 ft setbacks from the street right-of-way, 20 ft rear setback along the Matanzas Pass Preserve property line for the principal structure and 5 ft rear setback for accessory structures and 5 ft side setbacks.
- L.

- M. Other Permitted Uses. Other permitted uses of the land will be those allowed in the underlying zoning district unless otherwise specifically provided herein.
- N. Internal Traffic Circulation. Pedestrian travel is identified in the conceptual plan, a copy of which is attached as Exhibit B on Sheet 3 of the Conceptual Plans and Renderings dated the 5th of December 2024, which shows the proposed layout, streets, lots, green areas, bikeways, parks, public facilities, and other such amenities.
- O. Environmentally Sensitive Land. There are no environmentally sensitive lands on-site.
- P. Threatened and Endangered Species. There are no threatened or endangered species on-site.
- Q. Conflicts. Any conflict between the matters set forth in this paragraph and paragraph 9 and other paragraphs in this Agreement will be resolved in favor of the terms and conditions in this Paragraph and paragraph 9. Moreover, this Agreement identifies known instances in which the proposed redevelopment conflicts with the Town's existing Land Development Code. Any ambiguity with respect to whether this Development Agreement or an ordinance is to control will be interpreted to favor the ordinance. Failure of this Development Agreement to address a particular permit condition, term or restriction will not relieve the owner or developer of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restriction. Any matter or action required under existing ordinances of the town will not be otherwise amended, modified or waived, unless such modification, amendment or waiver is expressly provided for in the Development Agreement with specific reference to the Code provision so waived, modified or amended ("Deviations").

5. Public Facilities. The following public facilities will serve the Proposed Development on the Property:

- A. Potable Water: Potable water will be supplied by Town of Fort Myers Beach and is presently adequate to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement will be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project will be based on its availability at the time of submission of a Development Order. The Developer is responsible for improvements to the utility system required to service the proposed development.

- B. Sanitary Sewer:** Wastewater services will be provided solely by Lee County, which are presently adequate to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement will be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project will be based on availability at the time of submission of a Development Order. The Developer is responsible for improvements to the utility system required to service the proposed development.
- C. Solid Waste:** Developer will coordinate solid waste services with Lee County, the Town, or a third party service provider, adequate to serve the Proposed Development, prior to issuance of the development order. Notwithstanding the foregoing, this does not create a reservation of capacity. Capacity for the project will be based on availability at the time of submission of a building permit.
- D. Drainage:** Drainage will be in accordance with the applicable environmental resource permit ("ERP") to be issued by the South Florida Water Management District ("SFWMD") for the Property. Prior to issuance of the development order, if applicable, Developer will provide plans related to storm water run-off into the Town's system to the Town. The Developer is responsible for improvements to the drainage system required to service the proposed development.
- E. Fire and Rescue** .. Fire control and rescue services will be provided by the Fort Myers Beach Fire Control District, and Emergency Medical Services will be provided by Lee County Emergency Medical Services. It is the responsibility of the developer to verify the adequacy of service available from the designated entities at the time of development order approval.
- F. Transportation** Developer agrees to assist with installation

and maintenance of a transit shelter and will coordinate the availability of bus service and associated infrastructure with Lee Tran and Lee County School District prior to issuance of development order.

G. Public Schools. Developer will provide a letter of capacity from Lee County School District prior to issuance of development order. Impact fees may be required.

H. Recreation Developer will record an easement acceptable to the Town Attorney dedicating access to the parks for public usage.

In the event new or additional facilities are needed to serve the project, the Developer will bear the burden of the cost of such facilities to be constructed and provide a schedule to the Town to assure that the public facilities and services will be available concurrent with the impact of the development project.

6. Impact Fees. Impact fees, when adopted by Town Ordinance for all new development and change in use, will be calculated at time of issuance of a development order and payment will be required prior to building permit approval. Offsite impacts will be evaluated by the Town at the time of development order application.

7. Development Permits Needed for Proposed Development. A list of all known governmental permits needed for the Proposed Development is set forth below:

Town of Fort Myers Beach Development Order
Town of Fort Myers Beach Building Permit
South Florida Water Management District Environmental Resource Permit
South Florida Water Management District Water Use Permit (dewatering)
South Florida Water Management District Water Use Permit (irrigation)
FDEP Wastewater Permit
LCDOH Potable Water Permit

The failure of this Agreement to address a particular permit, condition, term or restriction will not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions. The Developer will be responsible at its sole cost for obtaining any required approval and will not in any manner obligate the Town or any other governmental agency to grant other required permit approvals. Any reliance on this Agreement or expenditures in pursuance of its terms or any rights accruing to the Developer will not vest any development right in the Developer or the project to a continuation of this Agreement.

8. Developer Commitments and Obligations. For and in consideration of

the benefits received pursuant to this Agreement, the Developer agrees to the following commitments, obligations and associated public benefits; which are deemed to be in the public interest:

- a. The Developer will not utilize the post disaster build-back provisions for 27 dwelling units an acre;
- b. Project density will be limited to 15 dwelling units per acre for a total density of 141 dwelling units consistent with the Village zoning district;
- c. All permitted density of the gulf side parcels (at least 21 units) (south of Estero Boulevard) will be transferred to the bay side parcels (north of Estero Boulevard) (these units are already included in the 141 units identified in paragraph 4(A));
- d. Development of the bay side parcels (north of Estero Boulevard) will be limited to single family and multi-family residential, approved commercial uses and public parks;
- e. Development of the gulf side parcels (south of Estero Boulevard) will be limited to a beach club that provides a private recreational facility and private membership organization significantly reducing the intensity of the previous development and potential disruption to the surrounding neighborhood than the permitted uses of the Village zoning district;
- f. Increase the view corridor to the Gulf from the required 50 feet to 240 feet;
- g. Provide a minimum 120 foot wide view corridor to Matanzas Pass Preserve;
- h. Establish an enhanced beach access with 10 foot pedestrian beach access point, consistent with Exhibit C at no cost to the Town and record a perpetual public access easement;
- i. A private elevated pedestrian crossover above Estero Boulevard will be provided for future residents and guests to eliminate negative impacts to traffic flow;
- j. Establish a public park adjacent to Matanzas Pass Preserve, consistent with Exhibit C at no cost to the Town and record a perpetual public access easement. The Developer will work with Town Staff to establish appropriate programming, infrastructure, and a maximum of 2 public parking spaces for this park;

- k. Establish a public park adjacent to the western property boundary and Estero Boulevard that incorporates the origination point for the linear park with multi-use path, consistent with Exhibit C at no cost to the Town and record a perpetual public access easement. The Developer will work with Town Staff to establish appropriate programming and infrastructure for this park;
- l. Implement the Hidden Paths infrastructure within the bay side property through:
 - a. A linear park interconnecting Estero Boulevard and Donora Boulevard;
 - b. An east/west pedestrian and bicycle access connecting Donora Boulevard to the western property boundary;
 - c. Portions of the linear park and pedestrian/bicycle access may occur within the same easement;
 - d. Pedestrian connectivity to Matanzas Pass Preserve through the proposed park;
 - e. Pedestrian connectivity to the Gulf through the proposed park;
 - f. Site specific wayfinding signage along Estero and Donora Boulevards adjacent to the project limits for the linear park, beach access and Matanzas Pass access areas;
 - g. 4 informational and education panels regarding Matanzas Pass resources will be designed with Town Staff and erected prior to Temporary Certificate of Occupancy.
- m. Maintain a sidewalk along the north side of Estero Boulevard and provide a sidewalk along the south side of Estero Boulevard;
- n. Provide a sidewalk along Donora Boulevard;
- o. Along Estero and Donora Boulevards enhanced streetscaping with shade trees will be provided to improve the visual aesthetic for vehicular and pedestrian traffic;
- p. Required landscaping for the development will incorporate Florida Friendly plantings that do not require irrigation;
- q. Vehicular access to the property from Estero Boulevard will be limited to a single access for the north side and a single access for the south side to maintain traffic flow on Estero Boulevard;
- r. The residential multi-family units will be accessible through a maximum of 2 ingress/egress points from Donora Boulevard and 1 ingress/egress from Estero Boulevard. Additional separate delivery,

service, and solid waste pick up access points will be collocated on Donora Boulevard within the building footprint. 4 single family residential units will be accessed through a new east/west local street extending from Donora Boulevard;

- s. One Public Art installation (i.e. sculpture; mural) viewable from Donora Boulevard and location identified during the Development Order process will be installed prior to Certificate of Occupancy.

9. Deviations. The following deviations are granted pursuant to this Agreement, in compliance with the Comprehensive Plan, and found to achieve the objectives of the proposed development, benefit the public interest, and preserve and promote the public health, safety and welfare:

- a. Deviation from LDC Section 34-693(h): Allowable height for the multi-family residential towers of the mixed use structure is increased to 15 stories over 2 stories of structured parking and 235 feet above base flood elevation on the North side of Estero Boulevard; and
- b. Deviation from LDC Section 34-693(e), (f), (g): Project buildings will not be subject to the “build to line” and “building frontage” along Estero and Donora Boulevards, providing a minimum 10 foot front setback and the rear setback will be reduced to 10 for the multi-family structure and 5 feet for accessory structures associated with the single family structures; and
- c. Deviation from LDC Section 34-693(m): The Developer is granted a deviation from the Commercial Design Standards and approval is granted for the architectural design depicted in the Conceptual Plans and Renderings attached hereto as “Exhibit B” And Pattern Book attached hereto as “Exhibit D”; and
- d. Deviation from LDC Section 34-693(c)(1) and (2): The Developer is granted a deviation from the street layout and approval is granted for the limited curb cuts and internal street layout depicted in the Master Conceptual Plans and Renderings attached hereto as “Exhibit B”; and
- e. Deviation from LDC Section 34-692(3)a.1.: The Developer is granted a deviation from the elements of Traditional Neighborhood Design that require interconnected streets, porches or balconies at the front of dwellings, primary entrance visibility from the street and car access from the rear to allow single family units, a mixed use building of multi-family and commercial restaurant and a beach club consistent with the Conceptual Plans and Renderings attached hereto as “Exhibit B”; and

- f. Deviation from LDC Section 34-693(i): Eliminate covered parking and parking decks from the calculation of Floor Area Ratio and increasing the maximum FAR to 1.5 which is equal to 616,156.2 square feet.; and
- g. Deviation from LDC Section 34-693(l): Eliminate required commercial space to separate parking under a building and vehicular connection to a secondary street; and
- h. Deviation from LDC Section 34-631(b)(3): Eliminate the square footage and screening requirements of mechanical structure appurtenances located above 11 stories.

10. Consistency with the Comprehensive Plan. The Proposed Development outlined in this Agreement is consistent with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code. The deviations approved as part of this Agreement are necessary for the zoning district or land use plan designations on the Property that is the subject of this Agreement. The Town's Comprehensive Plan allows the proposed project to be more than 2 stories above flood elevation in height as a matter of right. The Town's Comprehensive Plan also allows the height to be increased as provided in Policy 4-C-4 in redevelopment zoning districts (i.e Village zoning district) and in the event the increase is approved as part of a planned development rezoning. This Agreement has been reviewed and approved by the Town in a manner consistent with the procedures required of a planned development rezoning and this approval and procedure is deemed tantamount to and commensurate to a planned development for purposes of determining consistency with the Comprehensive Plan as outlined in Resolution 24-73. Notwithstanding the foregoing, the deviations identified in paragraph 10 are approved.

11. Existing Ordinances. Any matter or thing required to be performed under existing ordinances of the Town will not be otherwise amended, modified or waived, except as such modification, amendment or waiver is expressly provided for in herein.

12. Post Development Agreement Requirements. Prior to the issuance of any building permits being issued for the development the following must occur:

- a. All existing and proposed utilities and the manner in which existing utilities will be extended to the site and/or expanded for the use of the development including water, sewer, gas, electricity, cable television, and other utilities will have been approved by the Town; and
- b. The proposed drainage plan for the proposed project will have been approved by the South Florida Water Management District. If an interconnection is required to the Town's stormwater management system, approval by the Town will be necessary; and

- c. The proposed grading plan and elevation requirements of the town, including, but not limited to those related to the National Flood Insurance Program as applicable to the town will have been approved by the town; and
- d. The traffic impact and parking plans for the proposed project will have been approved by the town; and
- e. All other town requirements necessary for the initial building permits to build the proposed project on the Land.
- f. The Town will not have any liability whatsoever for any expenses or other damages that may be incurred as a result of denial of the Development Agreement or for denial of building permits due to the failure to meet the Town's requirements as to any Post-Development Agreement requirements.

13. Amendment and Termination.

- A. This Agreement may be amended or terminated with the Parties' mutual consent, in writing signed by both Parties.
- B. This Agreement may be amended administratively by Town staff and the Developer without the need for approval by Town Council to provide for changes to the site plan and/or the Conceptual Plans provided such changes do not include increased building intensity, density, increased height, reduction in open space, reduction in public benefits. Substantial Deviations from the approved Conceptual Plans will require approval by Town Council. Substantial Deviations include but are not limited to, moving the residential towers to an alternative location on-site.
- C. At Developer's option, Developer may terminate this Agreement at any time prior to the issuance by the Town of a building permit for any portion of the Proposed Development of the Property. Notwithstanding the foregoing, in the event of termination, Developer will not leave any improvements in an unsafe condition.

14. Notices. All notices required or permitted under this Agreement will be in writing and will be mailed by certified mail, return receipt requested to the following addresses, or to such other person or address as any Party may designate from time to time in writing:

If to the Developer: Matt Price
Seagate Fort Myers Beach, LLC
9221 Interstate Commerce Drive
Fort Myers, FL 33913

with a copy to: Tim Byal
Seagate Fort Myers Beach, LLC
9221 Interstate Commerce Drive
Fort Myers, FL 33913

If to the Town: Town Manager

with a copy to: Town Attorney

15. Remedies. Any material breach of this Agreement may be enforced by either party as against the other by appropriate action in law or equity filed in a court of competent jurisdiction; provided, however, no such action may be brought until the defaulting party has been given notice and ninety (90) days in which to cure the default. If the default cannot reasonably be cured within the ninety (90) day period, such period will be extended if the cure is commenced within such ninety (90) days and the defaulting party is proceeding with due diligence for such period of time reasonably required to complete such cure.

16. Governing Law. This Agreement will be construed and interpreted according to the laws of the State of Florida, and venue with respect to any litigation between the Parties related to this Agreement will be exclusively in Lee County, Florida.

17. Enforcement. In the event the Developer, upon approval of the Development Agreement, fails to comply with the terms of this Agreement, the Town may bring an action in a court of law with competent jurisdiction to protect its rights and interests as provided herein. All associated reasonable costs and attorney's fees will be reimbursed to the Town if an action at law is necessary regardless of whether the Town is the prevailing party thereunder. In no event will the Town be liable for payment of the Developer's attorney fees.

18. Post Development Agreement Liability. The parties acknowledge that the Town will not have any liability for any expenses or other damages that may be incurred as a result of denial of building permits due to the failure of the proposed development to meet the Town's requirements as to any Post-Development Agreement requirements.

19. Severability. If any part, term, or provision of this Agreement is held to be illegal, void, or unenforceable, the remaining portions or provisions of this Agreement will not be affected or impaired, each remaining provision will remain in full force and effect, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

20. Entire Agreement; Termination of Prior Agreements. This Agreement embodies the whole agreement of the Parties. There are no promises, terms,

conditions, or obligations other than those contained herein; and this Agreement will supersede all previous communications, representations, or agreements, either verbal or written, regarding the Proposed Development of the Property between the Parties.

21. Covenants Running with the Land and Successors and Assigns. The obligations imposed and entitlements created pursuant to this Agreement will run with the property and bind Seagate's successors and assigns to the covenants as set forth in this Agreement and will be enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees, and assigns. The obligations of the Developer may be assigned to one or more successor developers or, property owners associations, and the Developer will thereafter be relieved of all obligations hereunder.

22. Effective Date and Duration. This Agreement will become effective upon full execution by both Parties and recording of the Agreement in the Public Records of Lee County pursuant to paragraph 23 below. The Developer must apply for a development order for at least a portion of the development contemplated herein within five (5) years of the effective date. In the event no building permits are applied for by the Developer within five (5) years of the effective date, the Agreement will terminate. If requested by the Developer, the term of the Agreement may be extended at the sole discretion of the Town Council and a finding that the Developer is unable to fulfill its obligations due to circumstances beyond its control. The development of the project may proceed in phases in any sequence. Notwithstanding the provisions of this paragraph, unless terminated as provided herein, or pursuant to paragraph 13 above, the obligations imposed and entitlements created pursuant to this Agreement will run with the property will be enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees, and assigns.

23. Recording of Agreement. This Agreement will be recorded by the Town in the Public Records of Lee County within fourteen (14) days of approval by the Town. The costs of recording this Agreement will be paid by the Developer.

24. Representation and Warranties. The parties make the following representations to each other as stated herein:

- A. The execution, delivery and performance of this Agreement by the Developer and a third party will not violate any law, or the terms of any agreement by which they are bound.
- B. The Town and Seagate have the power and authority to enter into this Agreement, and to perform the development as set forth herein, and all the documents have been duly authorized, executed, and delivered and the transactions contemplated herein have been duly authorized.
- C. This Agreement constitutes a valid and legally binding obligation of the Developer and the Town after independent investigation by both of the information contained herein and is enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year written below.

WITNESSES:

SEAGATE FORT MYERS BEACH, LLC, a
Florida limited liability company

By: Seagate Development Group, LLC,
a Florida limited liability company, Manager

[Signature]
Print Name: Jeffrey C Ward

[Signature]
Print Name Jacob Cox

By: [Signature]
Matthew C. Price, Manager

STATE OF Florida
COUNTY OF Collier

The foregoing instrument was acknowledged before me by means of of personal presence or online notarization this 31st day of January 2025, by Matthew C. Price, as Manager of Seagate Development Group, LLC, a Florida limited liability company, Manager of Seagate Fort Myers, LLC, a Florida limited liability company, on behalf of said company, and who is personally known to me or who produced _____ as identification.

[Signature]
Notary Public Signature

My Commission Expires: 03/27/2027

LISA M GONDOS
Type/Print Notary Public Name

Commission No.: 335962



**TOWN OF FORT MYERS
BEACH**

Dan Allers, Town Mayor

ATTEST

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE
USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Vose Law Firm, Town Attorney

Exhibits:

- A. Legal Description and Sketch of the Property
- B. Conceptual Plans and Renderings dated the 4th day of September and 5th day of December, 2024 (16 Pages)
- C. Public Easement Overlay dated the 16th day of September, 2024 (1 Page)
- D. Pattern Book dated the 4th day of September, 2024 (6 Pages)

Exhibit A

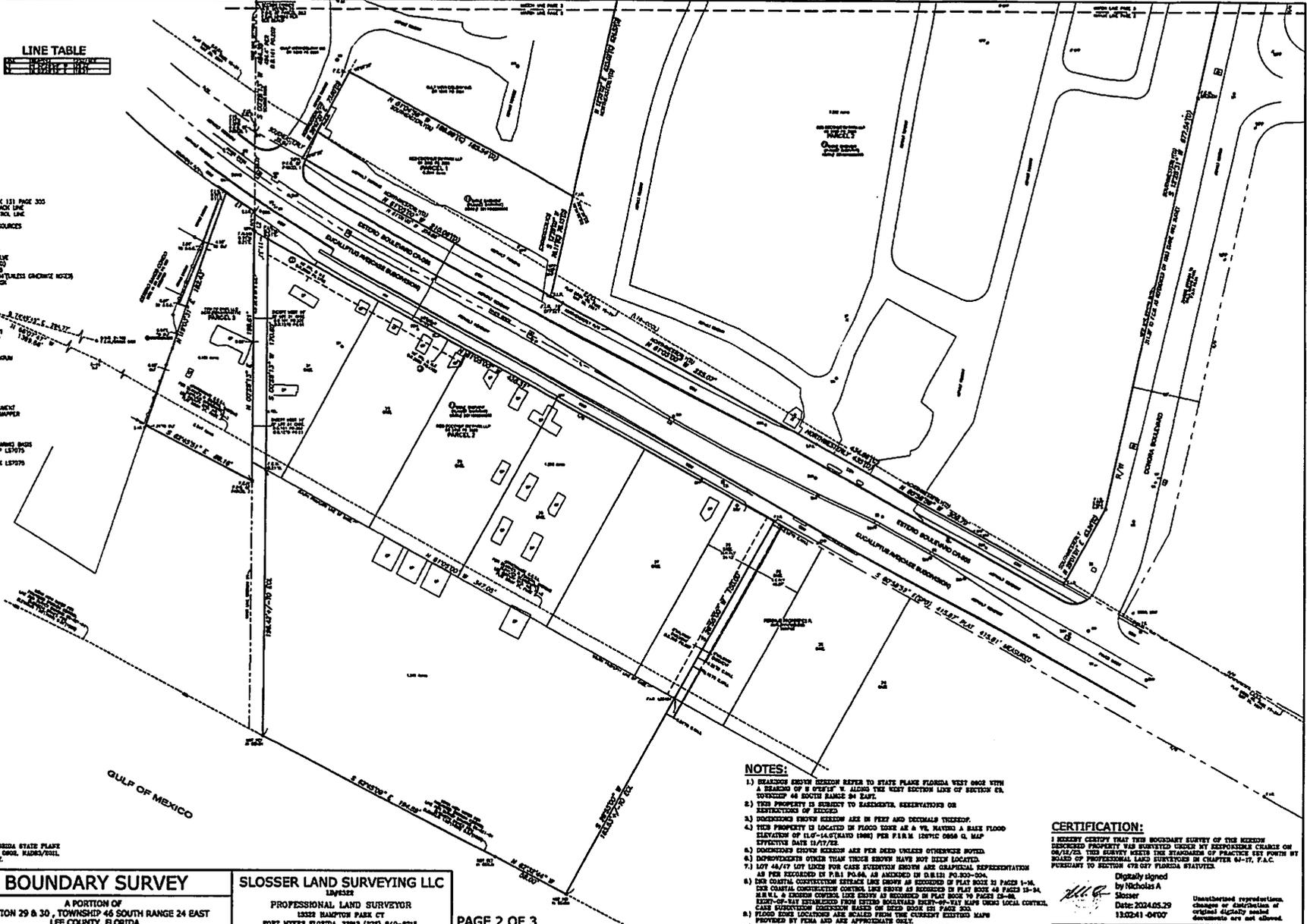
Legal Description and Sketch of the Property:



LINE TABLE

1	2	3	4
1	2	3	4
1	2	3	4
1	2	3	4

- LEGEND**
- AW AN IRREGULAR VALUE
 - B.C. BENCH MARK
 - CP CONCRETE PILE
 - CLF CONCRETE FOUNDATION
 - CLW CONCRETE WALL
 - CS CONCRETE SLAB
 - CSH CONCRETE SHEET
 - CSM CONCRETE MASONRY
 - CSN CONCRETE NAIL
 - CSO CONCRETE OVERLAP
 - CSU CONCRETE UNDERLAYER
 - CSV CONCRETE VENEER
 - CSW CONCRETE WALL
 - CSX CONCRETE SLAB
 - CSY CONCRETE SHEET
 - CSZ CONCRETE MASONRY
 - CSAA CONCRETE ANCHOR
 - CSAB CONCRETE ANCHOR
 - CSAC CONCRETE ANCHOR
 - CSAD CONCRETE ANCHOR
 - CSAE CONCRETE ANCHOR
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 - CSBB CONCRETE ANCHOR
 - CSBC CONCRETE ANCHOR
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 - CS CZ CONCRETE ANCHOR



SURVEY DATUM
 1. HORIZONTAL DATUM: BATHY FLORIDA STATE PLAIN
 2. VERTICAL DATUM: MEAN TIDE LEVEL, BATHY FLORIDA
 AS REFERENCED ON SAID SURVEY.

PROFESSIONAL SURVEYOR	BOUNDARY SURVEY
DATE: 01/11/2011	
SCALE: 1" = 30'	

BOUNDARY SURVEY
 A PORTION OF
 SECTION 29 & 30, TOWNSHIP 46 SOUTH RANGE 24 EAST
 LEE COUNTY, FLORIDA

SLOSSER LAND SURVEYING LLC
 18222 RAMPTON PARK CT
 FORT MYERS FLORIDA, 33823 (823) 840-8215

NOTES:

- 1) BOUNDARY SURVEY REFER TO STATE PLAIN FLORIDA WEST ZONE WITH A BEARING OF 8° 05' 12" W ALONG THE WEST BOUNDARY LINE OF SECTION 29, TOWNSHIP 46 SOUTH RANGE 24 EAST.
- 2) THIS PROPERTY IS SUBJECT TO EASEMENTS, ENCUMBRANCES OR RESTRICTIONS OF RECORD.
- 3) DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
- 4) THIS PROPERTY IS LOCATED IN FLOOD ZONE AS A V.F. HAVING A BASE FLOOD ELEVATION OF 12.0'-14.0' (BASED 1988) PER F.I.R.M. (FEDERAL EMERGENCY MANAGEMENT AGENCY) DATE 10/17/92.
- 5) DIMENSIONS SHOWN HEREON ARE PER DEED UNLESS OTHERWISE NOTED.
- 6) IMPROVEMENTS OTHER THAN THOSE SHOWN HAVE NOT BEEN LOCATED.
- 7) 1/4" 44/7" 1/4" 1/4" 1/4" FOR CASE IDENTIFICATION SHOWN ARE CALIFORNIA REPRESENTATION AS PER RECORDED IN P.B. 1044, AS AMENDED IN O.B. 121, P.O. 300-004.
- 8) THE COASTAL CONSTRUCTION ENTRANCE LINE SHOWN AS RECORDED IN PLAT BOOK 24 PAGES 1-14, 15-18, 19-21, 22-24, 25-28, 29-31, 32-35, 36-39, 40-43, 44-47, 48-51, 52-55, 56-59, 60-63, 64-67, 68-71, 72-75, 76-79, 80-83, 84-87, 88-91, 92-95, 96-99, 100-103, 104-107, 108-111, 112-115, 116-119, 120-123, 124-127, 128-131, 132-135, 136-139, 140-143, 144-147, 148-151, 152-155, 156-159, 160-163, 164-167, 168-171, 172-175, 176-179, 180-183, 184-187, 188-191, 192-195, 196-199, 200-203, 204-207, 208-211, 212-215, 216-219, 220-223, 224-227, 228-231, 232-235, 236-239, 240-243, 244-247, 248-251, 252-255, 256-259, 260-263, 264-267, 268-271, 272-275, 276-279, 280-283, 284-287, 288-291, 292-295, 296-299, 300-303, 304-307, 308-311, 312-315, 316-319, 320-323, 324-327, 328-331, 332-335, 336-339, 340-343, 344-347, 348-351, 352-355, 356-359, 360-363, 364-367, 368-371, 372-375, 376-379, 380-383, 384-387, 388-391, 392-395, 396-399, 400-403, 404-407, 408-411, 412-415, 416-419, 420-423, 424-427, 428-431, 432-435, 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NORTH LINE SECTION 22

1200
1.2000 Acres

ESTERIO ROBERTO DE LOS
RUCALPITA AMERICA EUROPEA

1.2237 Acres

1.1192 Acres

1.1192 Acres
LAW OFFICE OF JAMES C. O'NEILL
1000 N. GULF BLVD. SUITE 100
DALLAS, TEXAS 75202

FOR INFORMATION ONLY
THIS DOCUMENT IS NOT
A GUARANTEE OF TITLE
OR A SUBSTITUTE FOR
A TITLE CURATIVE
ACT OR A TITLE
INSURANCE POLICY

0.1875 Acres

0.0402 Acres

GULF OF MEXICO

FOR INFORMATION ONLY
THIS DOCUMENT IS NOT
A GUARANTEE OF TITLE
OR A SUBSTITUTE FOR
A TITLE CURATIVE
ACT OR A TITLE
INSURANCE POLICY

Exhibit B

**Conceptual Plans and Renderings
September 4, 2024 and December 4, 2024**



SOLOMON CORDWELL BUENZ

3001 Estero Blvd, Fort Myers Beach, FL

STEARNS WEAVER MILLER



Henderson|Franklin
ATTORNEYS AT LAW





USE LEGEND & SUMMARY

- 1 North Building A**
 - 15 Story Residential Bldg
 - On 2 Story Parking Podium and Mech. Penthouse
 - 69 Units
- 2 South Building B**
 - 15 Story Residential Bldg
 - On 2 Story Parking Podium and Mech. Penthouse
 - 68 Units

Amenities included in both building

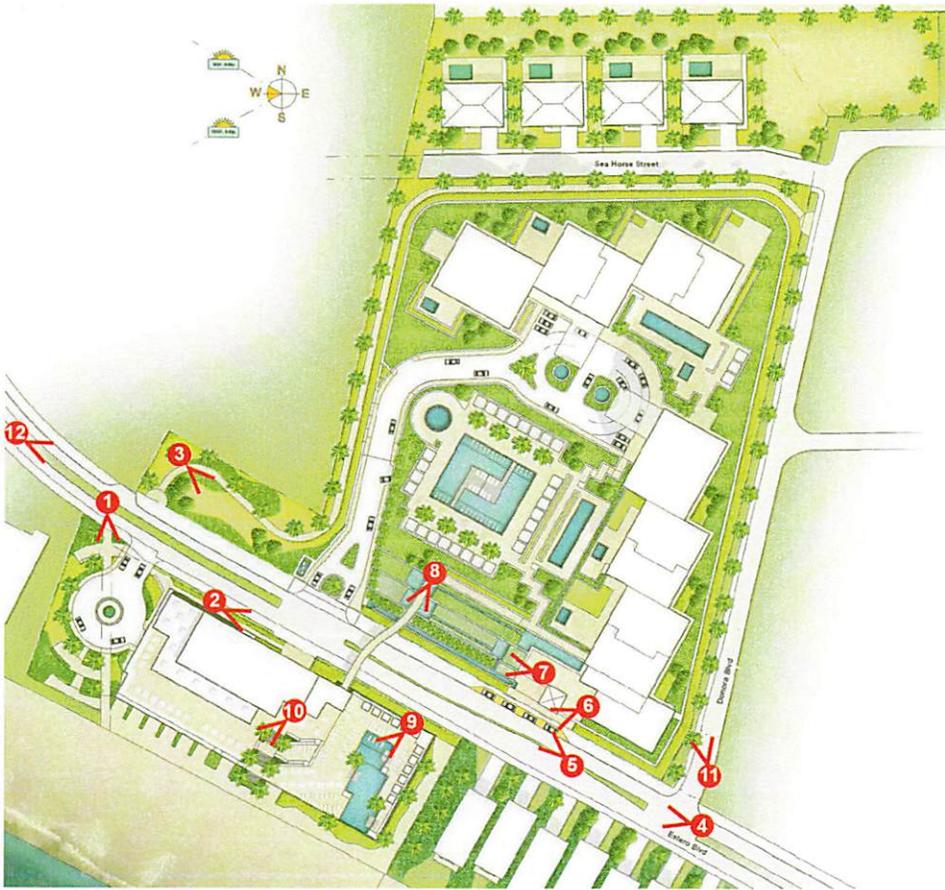
 - Lobby, Fitness & Spa Facilities, Conference Room, Social Lounges, Outdoor Pools, Spas and Cabanas, Pet Facilities, Resident Storage.
 - No consumption on premises
- 3 Bay Homes**
 - 4 Units
 - Single Family Homes
- 4 Private Beach Club**
 - 29,000 SF
 - Access from Estero Blvd & Private Overpass
 - Consumption on premises
 - 2 Stories over Parking Spaces and Valet Operation
 - Additional Parking Provided in Bldg A Parking Podium
- 5 Sunset Restaurant & Terrace (Public)**
 - 7,500 SF Restaurant / 2,500 SF Dining Terrace
 - Consumption on Premises
 - 1 Story over 1st Parking Podium Level
 - Required Parking within Bldg A Parking Podium
- 6 Pedestrian Overpass (Private)**
 - Estero Blvd. Feature Portal
 - Allows safe private access over Estero Blvd.
- 7 Linear Park & Feature Fountain**
 - Terraced landscaping to buffer podium height
 - Improves public experience and safety
- 8 Public Beach Park**
 - 90' to 120' View Corridors
 - Built & maintained by developer
 - Public beach access
- 9 Public Parks**
 - South outparcel location
 - Linkage to Kayak Path / Water Taxi
 - Walking / Bicycling / Dog Park



USE LEGEND

- 1 Public Beach Park**
 - 90' to 120' View Corridors
 - Built & maintained by developer
 - Public beach access
- 2 Public Parks and Trails**
 - South outparcel location
 - Linkage to Kayak Path / Water Taxi
 - Walking / Bicycling / Dog Park
- 3 Linear Park and Feature Fountain**
 - Terraced landscaping to buffer podium height
 - Improves public experience and safety
- 4 Public Restaurant and Sunset Terrace**
 - 7,500 SF Restaurant / 2,500 SF Dining Terrace
 - Consumption on Premises
 - 1 Story over 1st Parking Podium Level
 - Required Parking within Bldg A Parking Podium
- 5 New Sidewalk and Landscaping**
 - Improved Landscaping along Donora Blvd
 - Linkage to Public Parks/Trails
 - Walking / Bicycling / Dog Park
- 6 School Bus Stop**
 - New School Bus Stop on Estero



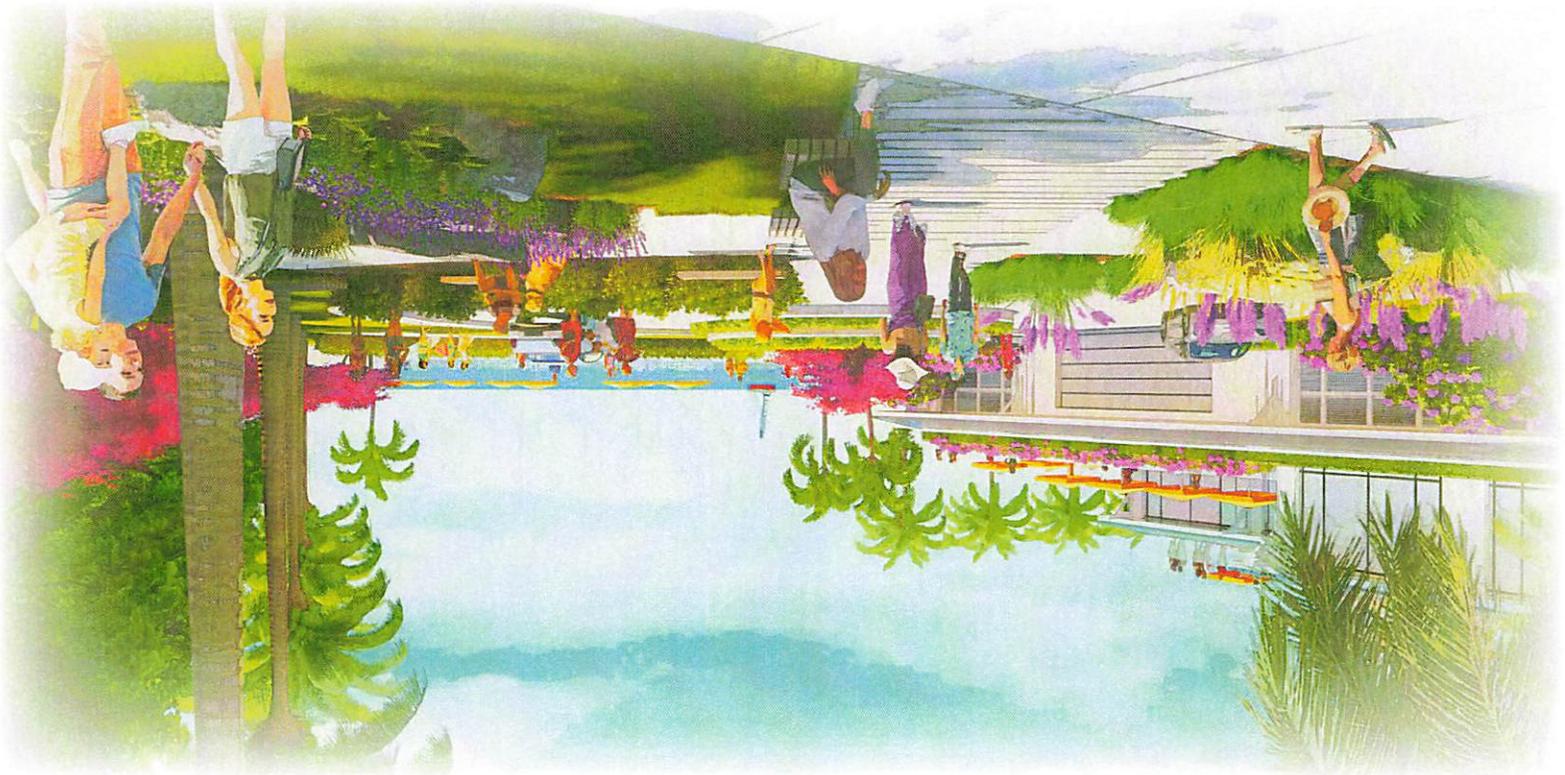




STAIRS WEAVER MILLER

HENDERSON FRANKLIN

NEW BEACH CLUB AND PUBLIC BEACH PARK FRAME THE OPEN VIEW TOWARD THE GULF



VIEW 1

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WALKING ALONG ESTERO BLVD IS FRAMED BY THE TRADITIONAL ARCHITECTURE AND LANDSCAPING OF THE BEACH CLUB TO THE WEST AND THE NEW PUBLIC PARK AND FEATURE FOUNTAINS TO THE EAST

VIEW 2



3001 Estero Boulevard / Fort Myers Beach, FL
09.04.2024 2024010



THE NEW PUBLIC PARK EAST OF ESTERO PROVIDE PEDESTRIAN AND BICYCLE ACCESS TO THE MANTANZAS PARK PRESERVE

VIEW 3



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09.04.2024 2024010



AERIAL VIEW LOOKING NORTHWEST ALONG ESTERO BLVD

VIEW 4



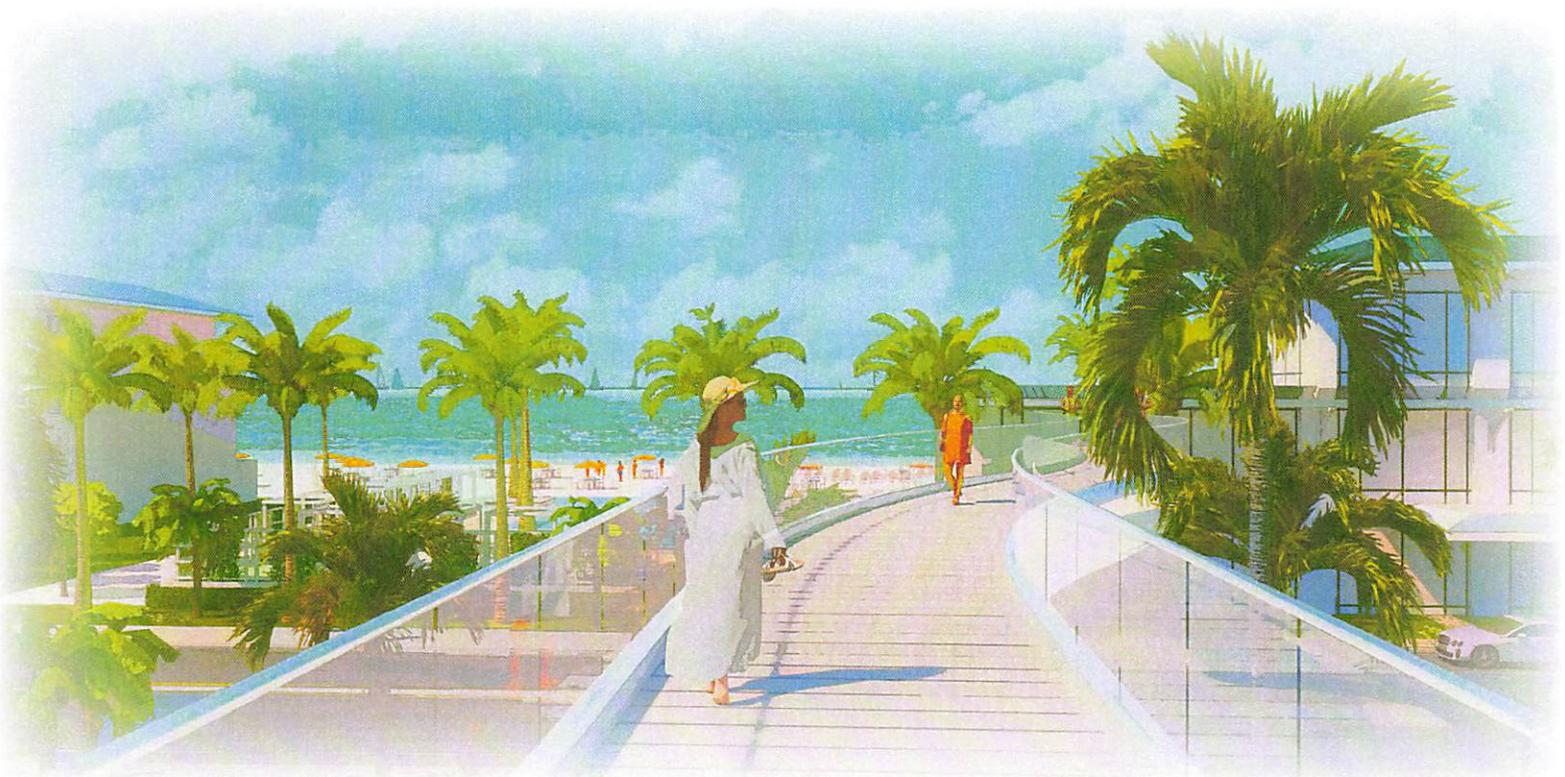
THE ENTRY TO THE SUNSET RESTAURANT ALONG WITH THE TERRACED PARK AND WATER FEATURES CREATE AN ACTIVE URBAN STREETScape ALONG ESTERO BLVD

VIEW 5



SUNSET VIEW FROM THE RESTAURANT LOOKING ACROSS THE LANDSCAPED TERRACES
STEPPING DOWN TO ESTERO BLVD

VIEW 7



THE SCULPTURAL PEDESTRIAN BRIDGE ALLOWS SAFE ACCESS OVER ESTERO BLVD FOR RESIDENTS TO THE BEACH CLUB

VIEW 8



THE SCULPTED BEACH CLUB POOL WITH A VISTA OVERLOOKING THE GULF

VIEW 9



THE SUNSET TERRACE AT THE BEACH CLUB WITH ACCESS DOWN TO THE BEACH AND VIEWS OF THE GULF.

VIEW 10



THE WALK ALONG DONORA BLVD IS FRAMED BY THE TRADITIONAL ARCHITECTURE AND LANDSCAPING TO THE WEST, CONTINUING NORTH TOWARDS THE MATANZAS PARK PRESERVE

VIEW 11



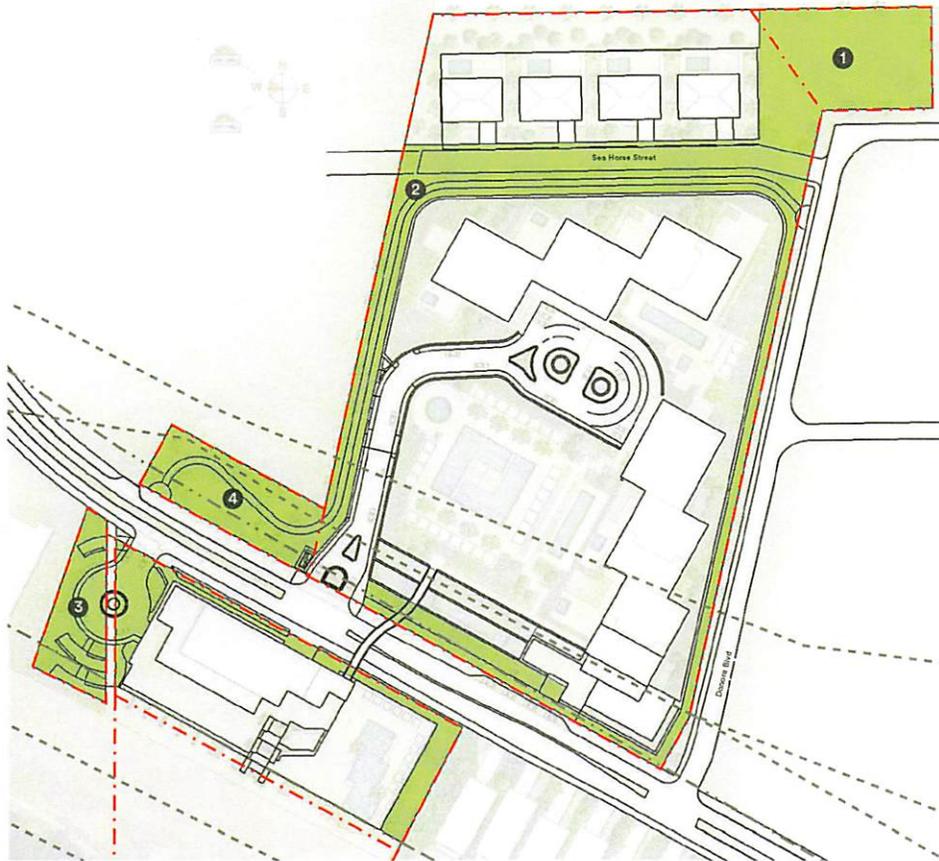
THE NEW PUBLIC PARK EAST OF ESTERO PROVIDE PEDESTRIAN AND BICYCLE ACCESS TO ESTERO BLVD

VIEW 12

Exhibit C

**Public Easement Overlay
September 16, 2024**

Exhibit C



Public Easement Area

Green shaded area represents the approximate area that will be included in the dedicated easement to the Town of Fort Myers Beach for public access and the following parks:

- ① 211 Donora Blvd. to provide public recreation and access to Matanzas Pass Preserve to be coordinated with Lee County
- A linear park providing pedestrian and cyclist access from Donora Blvd. to Estero Blvd. through the property a minimum of 20ft wide at all points with a minimum of 8ft wide multi-use path.
- ③ A Beach Park to include a 10ft wide pedestrian-only beach access between Estero Blvd and the beach.
- ④ 2943 Estero Blvd. to provide a public recreation park.

Exhibit D

**Pattern Book
September 4, 2024**

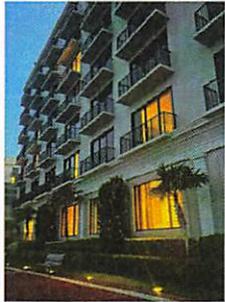
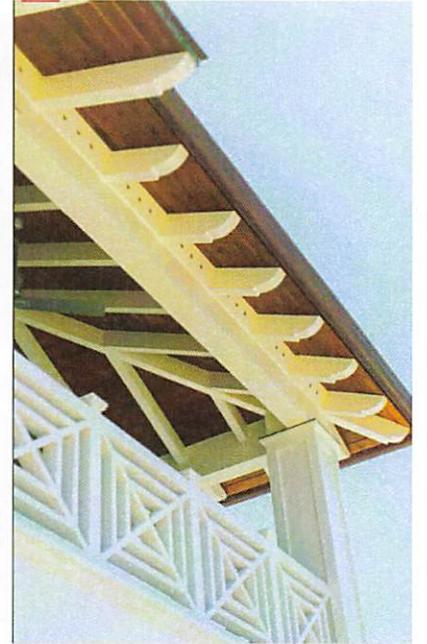


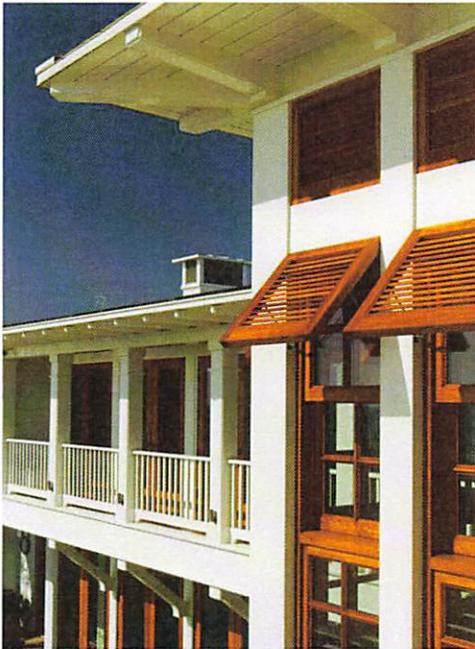
SOLOMON CORDWELL BUENZ

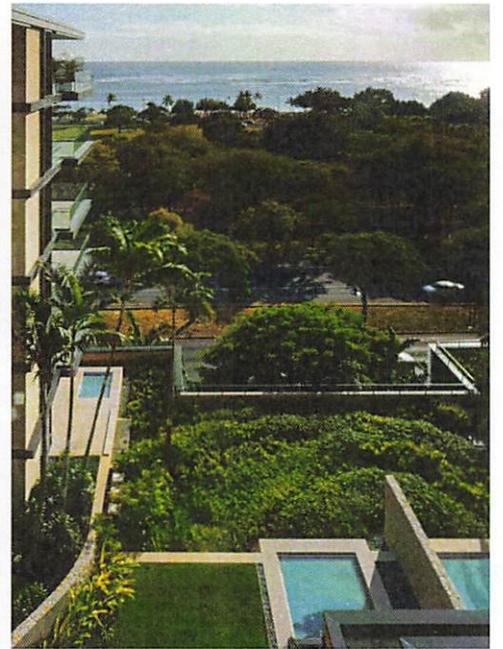
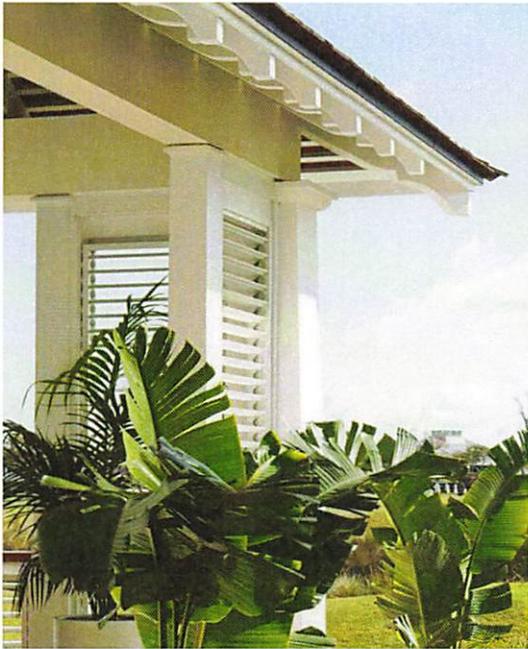
3001 Estero Blvd, Fort Myers Beach, FL

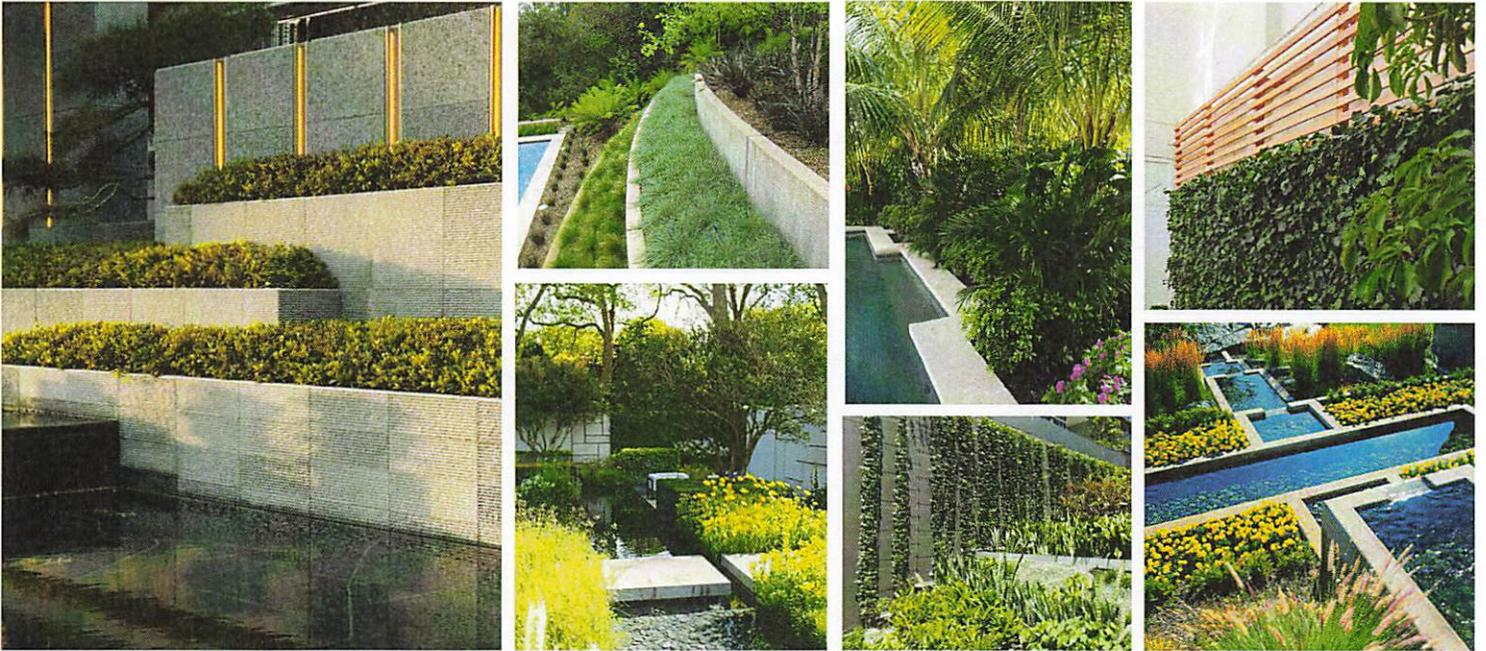
STEARNS WEAVER MILLER

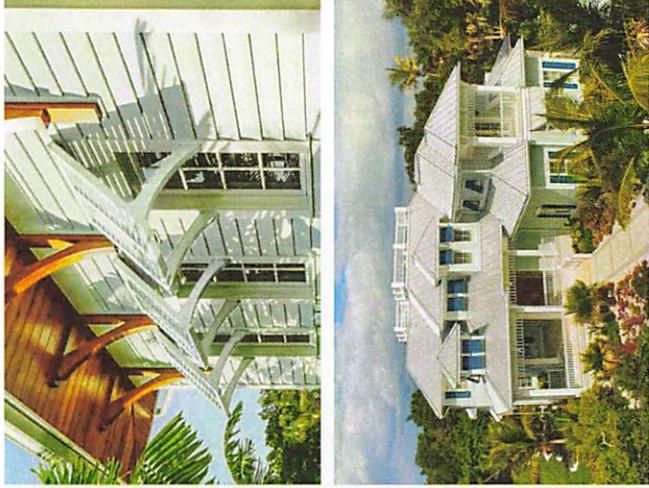
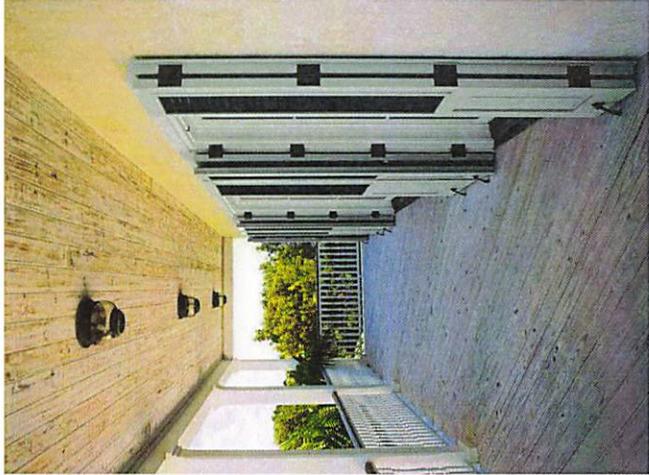












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