

RESOLUTION NO. 23-05

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE MAYOR TO EXECUTE RENEWALS FOR THE TWO TOWN SUBMERGED LAND LEASES FOR THE MATANZAS PASS MOORING FIELD AND DINGHY DOCK WITH THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN; AND PROVIDING 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 (“Town”) 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, the Town has continuously operated and maintained a public mooring field known as the Matanzas Pass Mooring Field; and

WHEREAS, the Town has previously executed submerged land leases between the Town and the Florida Department of Environmental Protection (“FDEP”); and

WHEREAS, the Town desires to renew these submerged land leases to continue mooring field operations for the Matanzas Pass Mooring Field once back fully operational from Hurricane Ian; and

WHEREAS, the Town Council deems it to be in the best interests of the business owners, residents, and visitors of the Town to renew the submerged land leases with FDEP.

NOW, THEREFORE, BE IT HEREBY RESOLVED, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

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

Section 2. The two renewal Submerged Land Leases between the Town and FDEP, copies of which are attached as Exhibit “A” and Exhibit “B” is approved. The Mayor is authorized to execute the Leases on behalf of the Town.

Section 3. This Resolution shall take effect immediately upon its adoption.

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

DULY PASSED AND ADOPTED on this 9th day of January 2023.

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Bill Veach, Council Member	Aye
Karen Woodson, Council Member	Aye

TOWN OF FORT MYERS BEACH



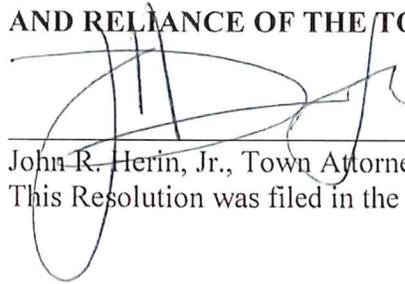
Dan Allers, Mayor

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:**



John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 9th day of January 2023.

This Instrument Prepared By:
Tiana D. Brown
Action No. 46610
Bureau of Public Land Administration
3900 Commonwealth Boulevard
Mail Station No. 125
Tallahassee, Florida 32399

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
OF THE STATE OF FLORIDA

SOVEREIGNTY SUBMERGED LANDS FEE WAIVED LEASE RENEWAL

BOT FILE NO. 360032595

THIS LEASE is hereby issued by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, hereinafter referred to as the Lessor.

WITNESSETH: That for and in consideration of the faithful and timely performance of and compliance with all terms and conditions stated herein, the Lessor does hereby lease to Town of Fort Myers Beach, Florida, hereinafter referred to as the Lessee, the sovereignty lands as defined in 18-21.003, Florida Administrative Code, contained within the following legal description:

A parcel of sovereignty submerged land in Section 24, Township 46 South, Range 23 East, and Section 19, Township 46 South, Range 24 East, in Matanzas Harbor, Lee County, Florida, containing 3,175,464 square feet, more or less, as is more particularly described and shown on Attachment A, dated August 27, 2021.

TO HAVE THE USE OF the hereinabove described premises from November 26, 2022, the effective date of this lease renewal, through November 26, 2032, the expiration date of this lease renewal. The terms and conditions on and for which this lease is granted are as follows:

1. USE OF PROPERTY: The Lessee is hereby authorized to operate an 89-slip managed municipal anchorage public mooring field to be used exclusively for mooring of recreational vessels, operated and maintained by the Lessee who has a contract with a harbormaster to provide shore side amenities and harbormaster facilities, without fueling facilities, with a sewage pumpout facility if it meets the regulatory requirements of the State of Florida Department of Environmental Protection or State of Florida Department of Health, whichever agency has jurisdiction, and with liveaboards as defined in paragraph 24, as shown and conditioned in Attachment A, and the State of Florida Department of Environmental Protection Consolidated Environmental Resource Permit No. 36-0181011-001, dated June 25, 2003, and General Permit No. 0181011-005-EG, dated February 18, 2021, incorporated herein and made a part of this lease by reference. The construction phase of the General Permit for the proposed structures depicted on Attachment A of this lease shall be completed no later than February 18, 2026. The failure to complete construction of such authorized structures within this time period shall constitute a material breach of the lease pursuant to Paragraph 9 herein. All of the foregoing subject to the remaining conditions of this lease.

2. AGREEMENT TO EXTENT OF USE: This lease is given to the Lessee to use or occupy the leased premises only for those activities specified herein and as conditioned by the permit(s) referenced in paragraph 1 of this lease. The Lessee shall not (i) change or add to the approved use of the leased premises as defined herein (e.g., from commercial to multi-family residential, from temporary mooring to rental of wet slips, from rental of wet slips to contractual agreement with third party for docking of cruise ships, from rental of recreational pleasure craft to rental or temporary mooring of charter/tour boats, from loading/offloading commercial to rental of wet slips, etc.) or (ii) change activities in any manner that may have an environmental impact that was not considered in the original authorization or regulatory permit without first obtaining a regulatory permit/modified permit, if applicable, the Lessor's written authorization in the form of a modified lease, the payment of additional fees, if applicable, and, if applicable, the removal of any structures which may no longer qualify for authorization under the modified lease. If at any time during the lease term this lease no longer satisfies the requirements of subparagraph 18-21.011(1)(b)7., Florida Administrative Code, for a fee waived lease, the Lessee shall be required to pay an annual lease fee in accordance with Rule 18-21.011, Florida Administrative Code, and if applicable, remove any structures which may no longer qualify for authorization under this lease.

3. MOORING FIELDS- SUBMITTING ANNUAL CERTIFIED FINANCIAL RECORDS: Within 30 days after each anniversary of the effective date of this lease, the Lessee shall submit annual certified financial records of income derived from the mooring field and expenses incurred by Lessee and the Harbormaster for operation and maintenance of the mooring field to the State of Florida Department of Environmental Protection, Division of State Lands, Bureau of Public Land Administration, 3900 Commonwealth Blvd, MS 130, Tallahassee, FL 32399. "Income" is defined in subsection 18-21.003(32), Florida Administrative Code. The submitted financial records shall be certified by a certified public accountant.

4. EXAMINATION OF LESSEE'S RECORDS: The Lessor is hereby specifically authorized and empowered to examine, for the term of this lease including any renewals, plus three (3) additional years, at all reasonable hours, the books, records, contracts, and other documents confirming and pertaining to the computation of annual lease payments as specified in paragraph two (2) above.

5. MAINTENANCE OF LESSEE'S RECORDS: The Lessee shall maintain separate accounting records for: (i) gross revenue derived directly from the use of the leased premises, (ii) the gross revenue derived indirectly from the use of the leased premises, and (iii) all other gross revenue derived from the Lessee's operations on the riparian upland property. The Lessee shall secure, maintain and keep all records for the term of this lease and any renewals plus three (3) additional years. This period shall be extended for an additional two (2) years upon request for examination of all records and accounts for lease verification purposes by the Lessor.

6. PROPERTY RIGHTS: The Lessee shall make no claim of title or interest to said lands hereinbefore described by reason of the occupancy or use thereof, and all title and interest to said land hereinbefore described is vested in the Lessor. The Lessee is prohibited from including, or making any claim that purports to include, said lands described or the Lessee's leasehold interest in said lands into any form of private ownership, including but not limited to any form of condominium or cooperative ownership. The Lessee is further prohibited from making any claim, including any advertisement, that said land, or the use thereof, may be purchased, sold, or re-sold.

7. ASSIGNMENT OF LEASE: This lease shall not be assigned or otherwise transferred without prior written consent of the Lessor or its duly authorized agent. Such assignment or other transfer shall be subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time. Any assignment or other transfer without prior written consent of the Lessor shall be null and void and without legal effect.

8. LIABILITY/INVESTIGATION OF ALL CLAIMS: The Lessee shall investigate all claims of every nature at its expense. Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. Nothing herein shall be construed as an indemnity or a waiver of sovereign immunity enjoyed by any party hereto, as provided in Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations on claims.

9. NOTICES/COMPLIANCE/TERMINATION: The Lessee binds itself, its successors and assigns, to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants of the Lessee, its successors and assigns. In the event the Lessee fails or refuses to comply with the provisions and conditions herein set forth, or in the event the Lessee violates any of the provisions and conditions herein set forth, and the Lessee fails or refuses to comply with any of said provisions or conditions within twenty (20) days of receipt of the Lessor's notice to correct, this lease may be terminated by the Lessor upon thirty (30) days written notice to the Lessee. If canceled, all of the above-described parcel of land shall revert to the Lessor. All costs and attorneys' fees incurred by the Lessor to enforce the provisions of this lease shall be paid by the Lessee. All notices required to be given to the Lessee by this lease or applicable law or administrative rules shall be sufficient if sent by U.S. Mail to the following address:

Town of Fort Myers Beach, Florida
2523 Estero Boulevard
Fort Myers Beach, FL 33931

The Lessee shall notify the Lessor by certified mail of any change to this address at least ten (10) days before the change is effective.

10. TAXES AND ASSESSMENTS: The Lessee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this lease.

11. NUISANCES OR ILLEGAL OPERATIONS: The Lessee shall not permit the leased premises or any part thereof to be used or occupied for any purpose or business other than herein specified unless such proposed use and occupancy are consented to by the Lessor and the lease is modified accordingly, nor shall Lessee knowingly permit or suffer any nuisances or illegal operations of any kind on the leased premises.

12. MAINTENANCE OF FACILITY/RIGHT TO INSPECT: The Lessee shall maintain the leased premises in good condition, keeping the structures and equipment located thereon in a good state of repair in the interests of public health, safety and welfare. No dock or pier shall be constructed in any manner that would cause harm to wildlife. The leased premises shall be subject to inspection by the Lessor or its designated agent at any reasonable time.

13. NON-DISCRIMINATION: The Lessee shall not discriminate against any individual because of that individual's race, color, religion, sex, national origin, age, handicap, or marital status with respect to any activity occurring within the area subject to this lease or upon lands adjacent to and used as an adjunct of the leased area.

14. ENFORCEMENT OF PROVISIONS: No failure, or successive failures, on the part of the Lessor to enforce any provision, nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right of the Lessor to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

15. PERMISSION GRANTED: Upon expiration or cancellation of this lease all permission granted hereunder shall cease and terminate.

16. RENEWAL PROVISIONS: Renewal of this lease shall be at the sole option of the Lessor. Such renewal shall be subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time. In the event that the Lessee is in full compliance with the terms of this lease, the Lessor will begin the renewal process. The term of any renewal granted by the Lessor shall commence on the last day of the previous lease term. In the event the Lessor does not grant a renewal, the Lessee shall vacate the leased premises and remove all structures and equipment occupying and erected thereon at its expense.

17. REMOVAL OF STRUCTURES/ADMINISTRATIVE FINES: If the Lessee does not remove said structures and equipment occupying and erected upon the leased premises after expiration or cancellation of this lease, such structures and equipment will be deemed forfeited to the Lessor, and the Lessor may authorize removal and may sell such forfeited structures and equipment after ten (10) days written notice by certified mail addressed to the Lessee at the address specified in Paragraph 9 or at such address on record as provided to the Lessor by the Lessee. However, such remedy shall be in addition to all other remedies available to the Lessor under applicable laws, rules and regulations including the right to compel removal of all structures and the right to impose administrative fines.

18. REMOVAL COSTS: Subject to the noticing provisions of Paragraph 17 of this lease, any costs incurred by the Lessor in removal of any structures and equipment constructed or maintained on state lands shall be paid by Lessee.

19. RIPARIAN RIGHTS/FINAL ADJUDICATION: In the event that any part of any structure authorized hereunder is determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with adjacent riparian rights, Lessee agrees to either obtain written consent for the offending structure from the affected riparian owner or to remove the interference or encroachment within 60 days from the date of the adjudication. Failure to comply with this paragraph shall constitute a material breach of this lease agreement and shall be grounds for immediate termination of this lease agreement at the option of the Lessor.

20. AMENDMENTS/MODIFICATIONS: This lease is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this lease must be in writing, must be accepted, acknowledged and executed by the Lessee and Lessor, and must comply with the rules and statutes in existence at the time of the execution of the modification or amendment. Notwithstanding the provisions of this paragraph, if mooring is authorized by this lease, the Lessee may install boatlifts within the leased premises without formal modification of the lease provided that (a) the Lessee obtains any state or local regulatory permit that may be required; and (b) the location or size of the lift does not increase the mooring capacity of the facility.

21. ADVERTISEMENT/SIGNS/NON-WATER DEPENDENT ACTIVITIES/ADDITIONAL ACTIVITIES/MINOR STRUCTURAL REPAIRS: No permanent or temporary signs directed to the boating public advertising the sale of alcoholic beverages shall be erected or placed within the leased premises. No restaurant or dining activities are to occur within the leased premises. The Lessee shall ensure that no permanent, temporary or floating structures, fences, docks, pilings or any structures whose use is not water-dependent shall be erected or conducted over sovereignty submerged lands without prior written consent from the Lessor. No additional structures and/or activities including dredging, relocation/realignment or major repairs or renovations to authorized structures, shall be erected or conducted on or over sovereignty, submerged lands without prior written consent from the Lessor. Unless specifically authorized in writing by the Lessor, such activities or structures shall be considered unauthorized and a violation of Chapter 253, Florida Statutes, and shall subject the Lessee to administrative fines under Chapter 18-14, Florida Administrative Code. This condition does not apply to minor structural repairs required to maintain the authorized structures in a good state of repair in the interests of public health, safety or welfare; provided, however, that such activities shall not exceed the activities authorized by this agreement.

22. USACE AUTHORIZATION: Prior to commencement of construction and/or activities authorized herein, the Lessee shall obtain the U.S. Army Corps of Engineers (USACE) permit if it is required by the USACE. Any modifications to the construction and/or activities authorized herein that may be required by the USACE shall require consideration by and the prior written approval of the Lessor prior to the commencement of construction and/or any activities on sovereign, submerged lands.

23. COMPLIANCE WITH FLORIDA LAWS: On or in conjunction with the use of the leased premises, the Lessee shall at all times comply with all Florida Statutes and all administrative rules promulgated thereunder. Any unlawful activity which occurs on the leased premises or in conjunction with the use of the leased premises shall be grounds for the termination of this lease by the Lessor.

24. LIVEBOARDS: The term "liveboard" is defined as a vessel docked at the facility and inhabited by a person or persons for any five (5) consecutive days or a total of ten (10) days within a thirty (30) day period. If liveboards are authorized by paragraph one (1) of this lease, in no event shall such "liveboard" status exceed six (6) months within any twelve (12) month period, nor shall any such vessel constitute a legal or primary residence.

25. GAMBLING VESSELS: During the term of this lease and any renewals, extensions, modifications or assignments thereof, Lessee shall prohibit the operation of or entry onto the leased premises of gambling cruise ships, or vessels that are used principally for the purpose of gambling, when these vessels are engaged in "cruises to nowhere," where the ships leave and return to the state of Florida without an intervening stop within another state or foreign country or waters within the jurisdiction of another state or foreign country, and any watercraft used to carry passengers to and from such gambling cruise ships.

26. SPECIAL LEASE CONDITIONS:

A. A minimum of ninety percent (90%) of the wet slips at the docking facility shall be made available for rent to the general public on a "first come, first served" basis, as defined in Rule 18-21.003, Florida Administrative Code, with no longer than one-year rental terms and with no automatic renewal rights or conditions. To help ensure compliance with and to assist in providing public awareness of this requirement, the Lessee shall erect permanent signs at the waterward entrance to the docking facility that are clearly visible to passing boaters and at the upland entrance to the docking facility that are clearly visible to the general public. The signs shall contain language clearly indicating that a minimum of ninety percent (90%) of the wet slips at the docking facility are available for rent to the general public. Any dockage rate sheet publications and dockage advertising for the docking facility shall clearly state that a minimum of ninety percent (90%) of the wet slips at the docking facility are open to the general public on a "first come, first served" basis.

B. During the term of this lease and all subsequent renewal terms, the Lessee shall maintain the manatee information display and manage awareness signs as required by the State of Florida Department of Environmental Protection ("DEP") Consolidated Environmental Resource Permit No. 36-0181011-001, dated June 25, 2003.

C. The Lessee shall submit all ordinances that pertain to the "Town of Fort Myers Beach Matanzas Pass Municipal Anchorage", within 30 days of adoption. The Lessee shall ensure that any ordinances that are adopted are not contrary to Permit No. 36-0181011-001, dated June 25, 2003 of this mooring field lease (or any subsequent modification/renewal to either the permit or lease).

D. Prior to allowing any vessel to utilize the mooring field, the Lessee shall implement and maintain for the life of the facility the DEP-approved "Town of Fort Myers Beach Municipal Anchorage Matanzas Harbor Management Plan" (or a DEP-approved modification of the same) attached to Permit No. 36-0181011-001, dated June 25, 2003 and incorporated herein into this mooring field lease by reference. Modifications to the referenced plan may be made upon written agreement by both the Lessee and the Lessor. A violation of the above referenced plan is a direct violation of this lease.

E. Prior to allowing any vessel to utilize the mooring field, the Lessee shall execute and comply for the life of the facility the DEP-approved "Town of Fort Myers Beach Municipal Anchorage Matanzas Harbor Management Plan" (or a DEP-approved modification of the same) attached to Permit No. 36-0181011-001, dated June 25, 2003 and incorporated herein into this mooring field lease by reference. Modifications to the referenced plan may be made upon written agreement by both the Lessee and the Lessor. A violation of the above referenced plan is a direct violation of this lease.

F. This lease allows the following nonstandard use: authorization to allow only 10 slips for use by liveaboard vessel occupants to moor beyond six months for compliance purposes

G. The Lessee shall provide and make available to all vessels utilizing the docking facility operational and well maintained sewage pumpout facilities acceptable to the State of Florida Department of Environmental Protection or State of Florida Department of Health, whichever agency has jurisdiction.

H. The Lessee shall maintain the land-based support facilities for the life of the mooring field. The land-based support facility shall provide amenities and conveniences for the total number of occupants that are using the mooring field (e.g., parking, bathrooms, shower facilities, laundry facilities, etc.). If the mooring field is abandoned, the Lessee shall remove anchors and other structures in a manner that does not cause a water quality violation, impede navigation, or damage resources

I. The Lessee shall submit to the Lessor documentation demonstrating that the service provider agreement for the approved land-based support facility continuously remains valid for the life of the mooring field and provides the necessary level of support services for the upcoming year. Each renewal of the service provided agreement shall be provided to the Lessor within 30 days of the renewal. All required submittals required by lettered special lease conditions shall be submitted to the Florida Department of Environmental Protection, South District Office, Submerged Lands and Environmental Resource Permitting, P.O. Box 2549, Fort Myer, FL 33902-2549 or via e-mail to FTMERP_Compliance@dep.state.fl.us. All submittals shall include the Lessee name and indicated permit number when referring this this project.

J. In the event the service provider changes the Lessee shall submit a revised land-based support facility plan indicating location in relationship to the mooring field and a complete list of amenities and conveniences for review and approval 90 days before the termination of the current service provider agreement and prior to execution.

[Remainder of page intentionally left blank; Signature page follows]

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this instrument on the day and year first above written.

WITNESSES:

BOARD OF TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND OF THE STATE
OF FLORIDA

(SEAL)

Original Signature

Print/Type Name of Witness

Original Signature

Print/Type Name of Witness

BY: _____

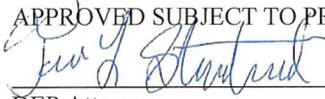
Brad Richardson, Chief, Bureau of Public Land Administration,
Division of State Lands, State of Florida Department of
Environmental Protection, as agent for and on behalf of the Board
of Trustees of the Internal Improvement Trust Fund of the
State of Florida.

"LESSOR"

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me by means of physical presence this _____ day of _____, 20____, by Brad Richardson, Chief, Bureau of Public Land Administration, Division of State Lands, State of Florida Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. He is personally known to me.

APPROVED SUBJECT TO PROPER EXECUTION:



12/13/2022

DEP Attorney

Date

Notary Public, State of Florida

Printed, Typed or Stamped Name

My Commission Expires:

Commission/Serial No.

WITNESSES:

Town of Fort Myers Beach, Florida (SEAL)

Original Signature

BY: _____
Original Signature of Executing Authority

Typed/Printed Name of Witness

Dan Allers
Typed/Printed Name of Executing Authority

Original Signature

Mayor
Title of Executing Authority

Typed/Printed Name of Witness

“LESSEE”

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization this _____ day of _____, 20____, by Dan Allers as Mayor, for and on behalf of Town of Fort Myers Beach, Florida. He is personally known to me or who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of _____

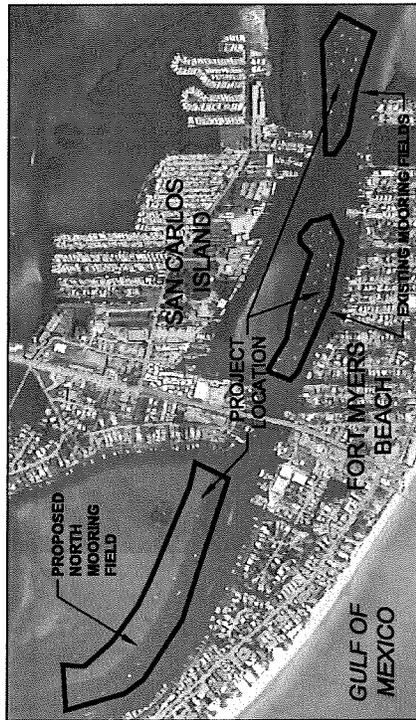
Commission/Serial No. _____

Printed, Typed or Stamped Name

SPECIFIC PURPOSE SURVEY SUBMERGED LANDS LEASE AREAS MATANZAS HARBOR / PASS MOORING FIELD

LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA AND
LYING IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA

PREPARED FOR:
TOWN OF FORT MYERS BEACH



LOCATION MAP
N.T.S.

PUBLISHED TIDAL INFORMATION
TIDAL DATUMS AT MATANZAS PASS, ESTERO ISLAND
ARE BASED ON FLORIDA 972 5366

TIDAL EPOCH = JUNE 1973 - JUNE 1973
CONTROL TIDE STATION = 1963 - 2001
= NAPLES, GULF OF MEXICO (972 5110)

ELEVATIONS OF TIDAL DATUMS ARE REFERENCED IN
NAVD 1988.

MEAN HIGHER HIGH WATER (MHHW) = +0.42 FT NAVD
MEAN HIGH WATER (MHW) = +0.16 FT NAVD
MEAN LOW WATER (MLW) = -1.64 FT NAVD
MEAN LOWER LOW WATER (MLLW) = -2.18 FT NAVD

INDEX

1. COVER SHEET
2. SKETCH OF NORTH MOORING FIELD
3. LEGAL DESCRIPTION OF NORTH MOORING FIELD
4. SKETCH OF WEST MOORING FIELD
5. LEGAL DESCRIPTION OF WEST MOORING FIELD
6. SKETCH OF EAST MOORING FIELD
7. LEGAL DESCRIPTION OF EAST MOORING FIELD

GENERAL NOTES

1. = FOUND 4" X 4" CONCRETE MONUMENT WITH BRASS DISC STAMPED "PRM BAI LB6940". BEARINGS SHOWN HEREON ARE RELATIVE TO NORTH AMERICAN DATUM OF 1883, 1990 ADJUSTMENT, FLORIDA WEST ZONE.
2. ELEVATIONS SHOWN HEREON ARE RELATIVE TO N.A.V.D. 1988 (NORTH AMERICAN VERTICAL DATUM 1988) COORDINATES SHOWN HEREON ARE RELATIVE TO NORTH AMERICAN DATUM OF 1983, 1990 ADJUSTMENT, FLORIDA WEST ZONE.
- 3.
- 4.

THIS FIELD SURVEY IS CERTIFIED TO THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF FLORIDA

COASTAL ENGINEERING CONSULTANTS, INC.
FLORIDA BUSINESS AUTHORIZATION NO. LB 2464



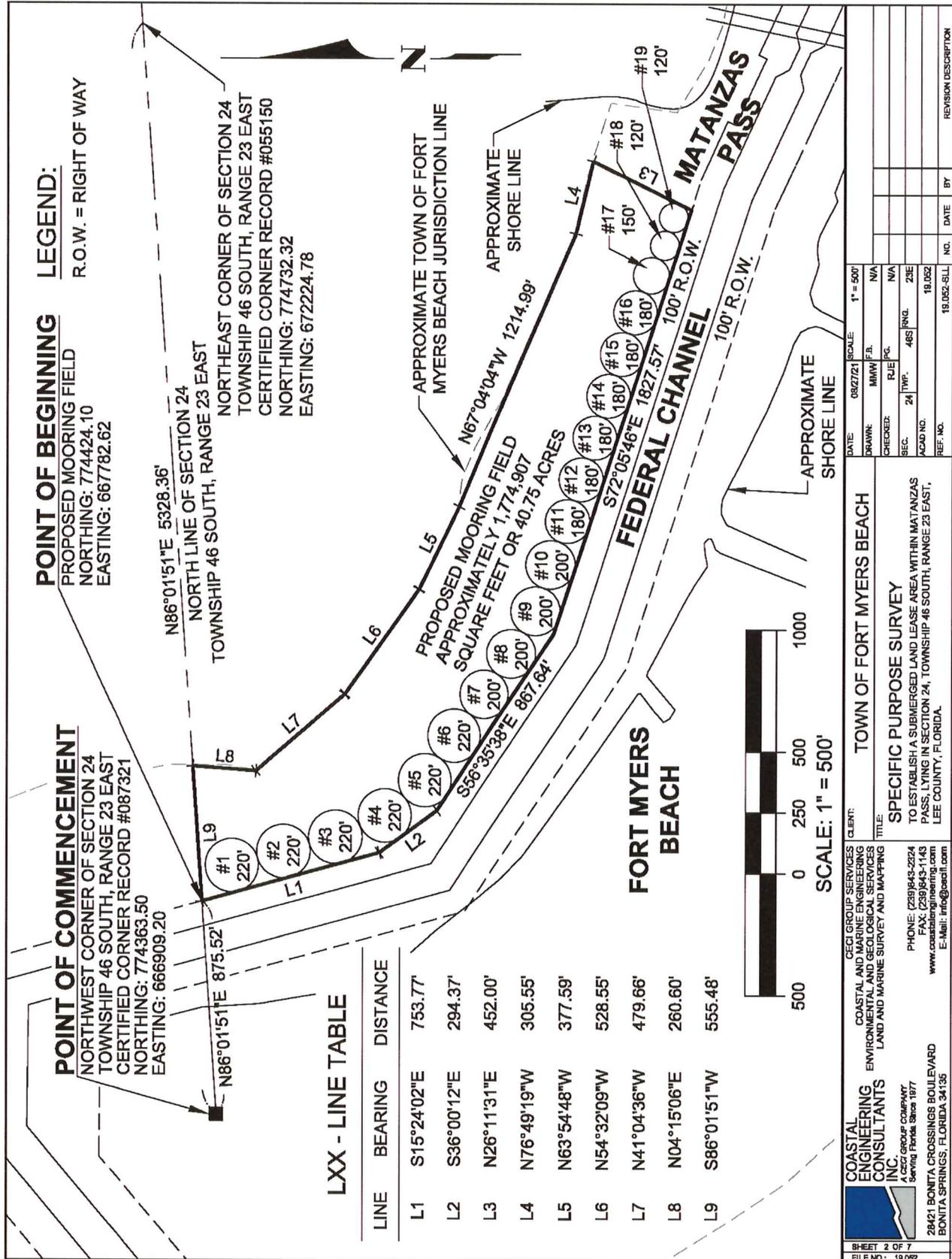
Digitally signed by Richard J. Ewing,
DN: cn=Richard J. Ewing, o=Coastal Engineering Consultants Inc., ou=Survey and Mapping, email=rewing@cecfll.com, c=US
Date: 2021.08.27 14:46:00 -0400

RICHARD J. EWING, VP
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5295
NOT VALID WITHOUT THE SIGNATURE AND
THE ORIGINAL RAISED SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER
DATE OF SIGNATURE:

PROJECT NO. 19.052
FILE No. 19.052-SLL
SHEET 1 OF 7
ACAD DWG. NO. 18.052.DWG

COASTAL ENGINEERING CONSULTANTS, INC.
* COASTAL AND MARINE ENGINEERING * ENVIRONMENTAL AND GEOLOGICAL SERVICES *
* LAND AND MARINE SURVEY AND MAPPING *
28421 BONITA CROSSING BOULEVARD
BONITA SPRINGS, FLORIDA 34135
AUGUST 27, 2021
(239) 643-2324

REVISIONS			
NO.	DATE	BY	REVISION DESCRIPTION



LEGEND:

POINT OF BEGINNING
 PROPOSED MOORING FIELD
 NORTHING: 774424.10
 EASTING: 667782.62

POINT OF COMMENCEMENT

NORTHWEST CORNER OF SECTION 24
 TOWNSHIP 46 SOUTH, RANGE 23 EAST
 CERTIFIED CORNER RECORD #087321
 NORTHING: 774363.50
 EASTING: 666909.20

N86°01'51"E 5328.36'
 NORTH LINE OF SECTION 24
 TOWNSHIP 46 SOUTH, RANGE 23 EAST

NORTHEAST CORNER OF SECTION 24
 TOWNSHIP 46 SOUTH, RANGE 23 EAST
 CERTIFIED CORNER RECORD #055150
 NORTHING: 774732.32
 EASTING: 672224.78

LXX - LINE TABLE

LINE	BEARING	DISTANCE
L1	S15°24'02"E	753.77'
L2	S36°00'12"E	294.37'
L3	N26°11'31"E	452.00'
L4	N76°49'19"W	305.55'
L5	N63°54'48"W	377.59'
L6	N54°32'09"W	528.55'
L7	N41°04'36"W	479.66'
L8	N04°15'06"E	260.60'
L9	S86°01'51"W	555.48'



DATE:	08/27/21	SCALE:	1" = 500'
DRAWN:	MMW/FB	MINOR:	N/A
CHECKED:	RUE/PC	PLATE:	N/A
SEC.	24	TWP.	48S
ACAD NO.		RNG.	23E
REF. NO.			19.052
			19.052-S11

TOWN OF FORT MYERS BEACH
SPECIFIC PURPOSE SURVEY
 TO ESTABLISH A SUBMERGED LAND LEASE AREA WITHIN MATANZAS PASS, LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA.

COASTAL ENGINEERING CONSULTANTS INC.
 A CEGI GROUP COMPANY
 Serving Florida Since 1977
 28421 BONITA CROSSINGS BOULEVARD
 BONITA SPRINGS, FLORIDA 34135
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 www.coastalengineering.com
 E-Mail: info@cecfl.com

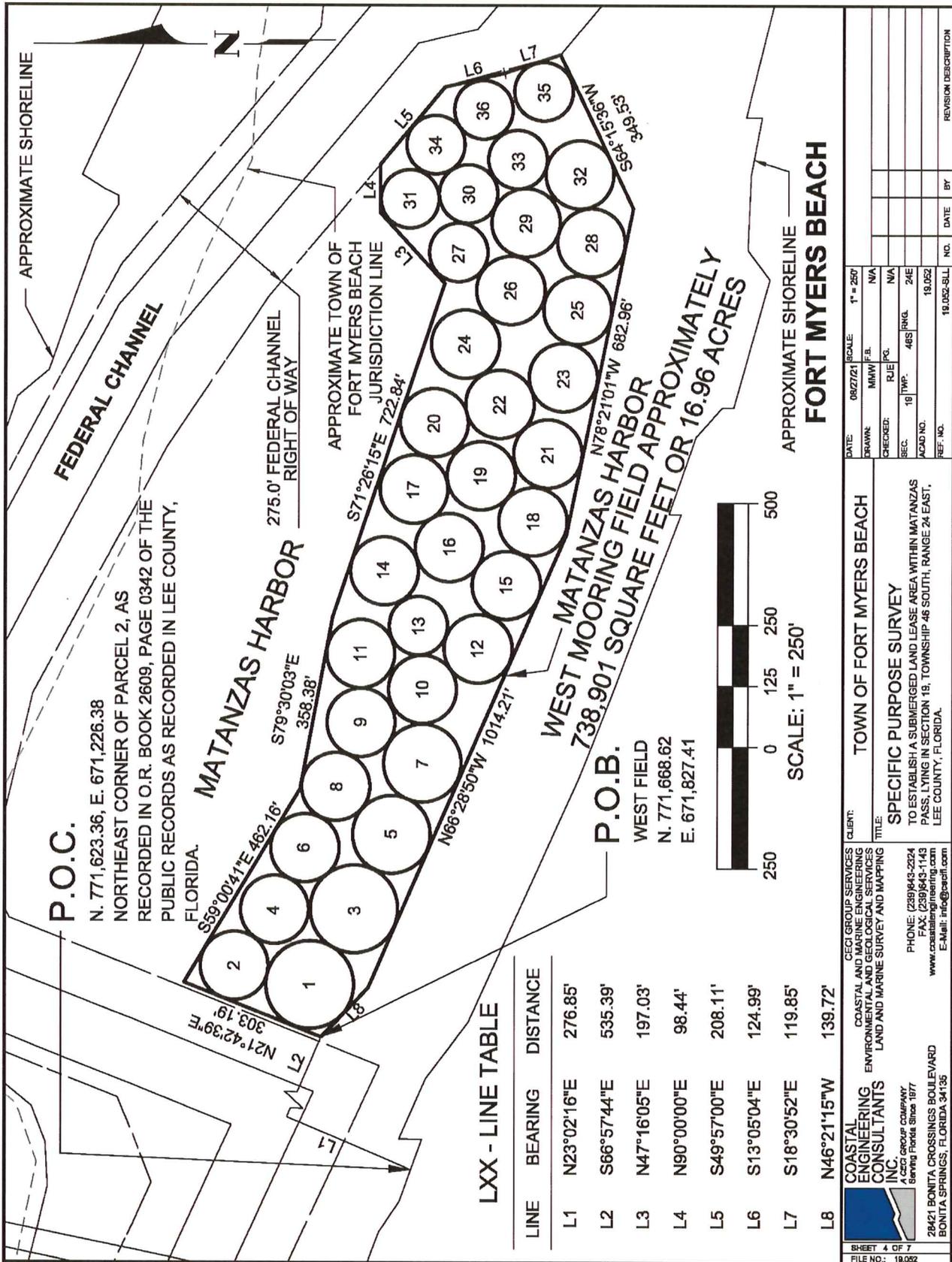
**PROPOSED NORTH MOORING FIELD
LEGAL DESCRIPTION**

A PARCEL OF SUBMERGED LAND LYING IN THE WATERS OF MATANZAS PASS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, SAID CORNER BEING DESCRIBED IN CERTIFIED CORNER RECORD #087321 AS A 4" X 4" CONCRETE MONUMENT WITH BRASS DISC STAMPED "PRM BALB6940"; THENCE RUN NORTH 86°01'51" EAST FOR A DISTANCE OF 875.52 FEET TO THE **POINT OF BEGINNING**;
 THENCE LEAVING SAID NORTH LINE OF SECTION 24 SOUTH 15°24'02" EAST FOR A DISTANCE OF 753.77 FEET;
 THENCE SOUTH 36°00'12" EAST FOR A DISTANCE OF 294.37 FEET;
 THENCE SOUTH 56°35'38" EAST FOR A DISTANCE OF 867.64 FEET;
 THENCE SOUTH 72°05'46" EAST FOR A DISTANCE OF 1,827.57 FEET;
 THENCE NORTH 26°11'31" EAST FOR A DISTANCE OF 452.00 FEET;
 THENCE NORTH 76°49'19" WEST FOR A DISTANCE OF 305.55 FEET;
 THENCE NORTH 67°04'04" WEST FOR A DISTANCE OF 1,214.99 FEET;
 THENCE NORTH 63°54'48" WEST FOR A DISTANCE OF 377.59 FEET;
 THENCE NORTH 54°32'09" WEST FOR A DISTANCE OF 528.55 FEET;
 THENCE NORTH 41°04'36" WEST FOR A DISTANCE OF 479.66 FEET;
 THENCE NORTH 04°15'06" EAST FOR A DISTANCE OF 260.60 FEET TO THE NORTH LINE OF SAID SECTION 24;
 THENCE ALONG SAID NORTH LINE OF SECTION 24 SOUTH 86°01'51" WEST FOR A DISTANCE OF 555.48 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBES AN AREA OF APPROXIMATELY 1,774,907 SQUARE FEET OR 40.75 ACRES OF LAND.

 <p>COASTAL ENGINEERING CONSULTANTS INC. A CECI GROUP COMPANY Serving Florida Since 1977 28421 BONITA CROSSINGS BOULEVARD BONITA SPRINGS, FLORIDA 34135</p>	<p>CECI GROUP SERVICES COASTAL AND MARINE ENGINEERING ENVIRONMENTAL AND GEOLOGICAL SERVICES LAND AND MARINE SURVEY AND MAPPING</p>	<p>CLIENT: TOWN OF FORT MYERS BEACH TITLE: SPECIFIC PURPOSE SURVEY TO ESTABLISH A SUBMERGED LAND LEASE AREA WITHIN MATANZAS PASS, LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA.</p>	<p>DATE: 09/27/21 DRAWN: MMW/E.B. CHECKED: RJE/JG. SEC. 24 TWP. 46S RANG. 23E ACAD NO. 19,052 REF. NO. 19,052-SLL</p>	<p>SCALE: N/A MMW/E.B. RJE/JG. 46S RANG. 23E 19,052</p>	<p>DATE BY 19,052-SLL</p>	<p>REVISION DESCRIPTION</p>	
	<p>PHONE: (239)643-2524 FAX: (239)643-1143 www.coastaleng.com E-Mail: info@ceci.com</p>	<p>SHEET 3 OF 7 FILE NO.: 19,052</p>					



P.O.C.
 N. 771,623.36, E. 671,226.38
 NORTHEAST CORNER OF PARCEL 2, AS
 RECORDED IN O.R. BOOK 2609, PAGE 0342 OF THE
 PUBLIC RECORDS AS RECORDED IN LEE COUNTY,
 FLORIDA.

MATANZAS HARBOR
 S59°00'41"E 462.16'
 S79°30'03"E 358.38'
 275.0' FEDERAL CHANNEL
 RIGHT OF WAY

APPROXIMATE TOWN OF
 FORT MYERS BEACH
 JURISDICTION LINE
 S71°26'15"E 722.84'

MATANZAS HARBOR
 WEST MOORING FIELD APPROXIMATELY
 738,901 SQUARE FEET OR 16.96 ACRES
 N78°21'01"W 682.96'
 S64°15'36"W 349.53'

LXX - LINE TABLE

LINE	BEARING	DISTANCE
L1	N23°02'16"E	276.85'
L2	S66°57'44"E	535.39'
L3	N47°16'05"E	197.03'
L4	N90°00'00"E	98.44'
L5	S49°57'00"E	208.11'
L6	S13°05'04"E	124.99'
L7	S18°30'52"E	119.85'
L8	N46°21'15"W	139.72'



CECI GROUP SERVICES COASTAL AND MARINE ENGINEERING ENVIRONMENTAL AND GEOLOGICAL SERVICES LAND AND MARINE SURVEY AND MAPPING INC. A ceci group company Serving Florida since 1977 28421 BONITA CROSSINGS BOULEVARD BONITA SPRINGS, FLORIDA 34135		CLIENT: TOWN OF FORT MYERS BEACH	
DATE: 08/27/21 SCALE: 1" = 250' DRAWN: MMW CHECKED: RJE SEC. 19 ACAD NO. 18,052 REF. NO. 18,052-SLL		TITLE: SPECIFIC PURPOSE SURVEY TO ESTABLISH A SUBMERGED LAND LEASE AREA WITHIN MATANZAS PASS, LYING IN SECTION 18, TOWNSHIP 46 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA.	
PHONE: (239)643-2324 FAX: (239)643-1143 www.ceciengineering.com E-Mail: info@ceci.com		REVISION DESCRIPTION NO. DATE BY	

**MATANZAS HARBOR
WEST MOORING FIELD
LEGAL DESCRIPTION**

A PARCEL OF LAND SUBMERGED IN MATANZAS HARBOR LYING IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH-EAST CORNER OF PARCEL 2, AS RECORDED IN OFFICIAL RECORD BOOK 2609, PAGE 342 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA:

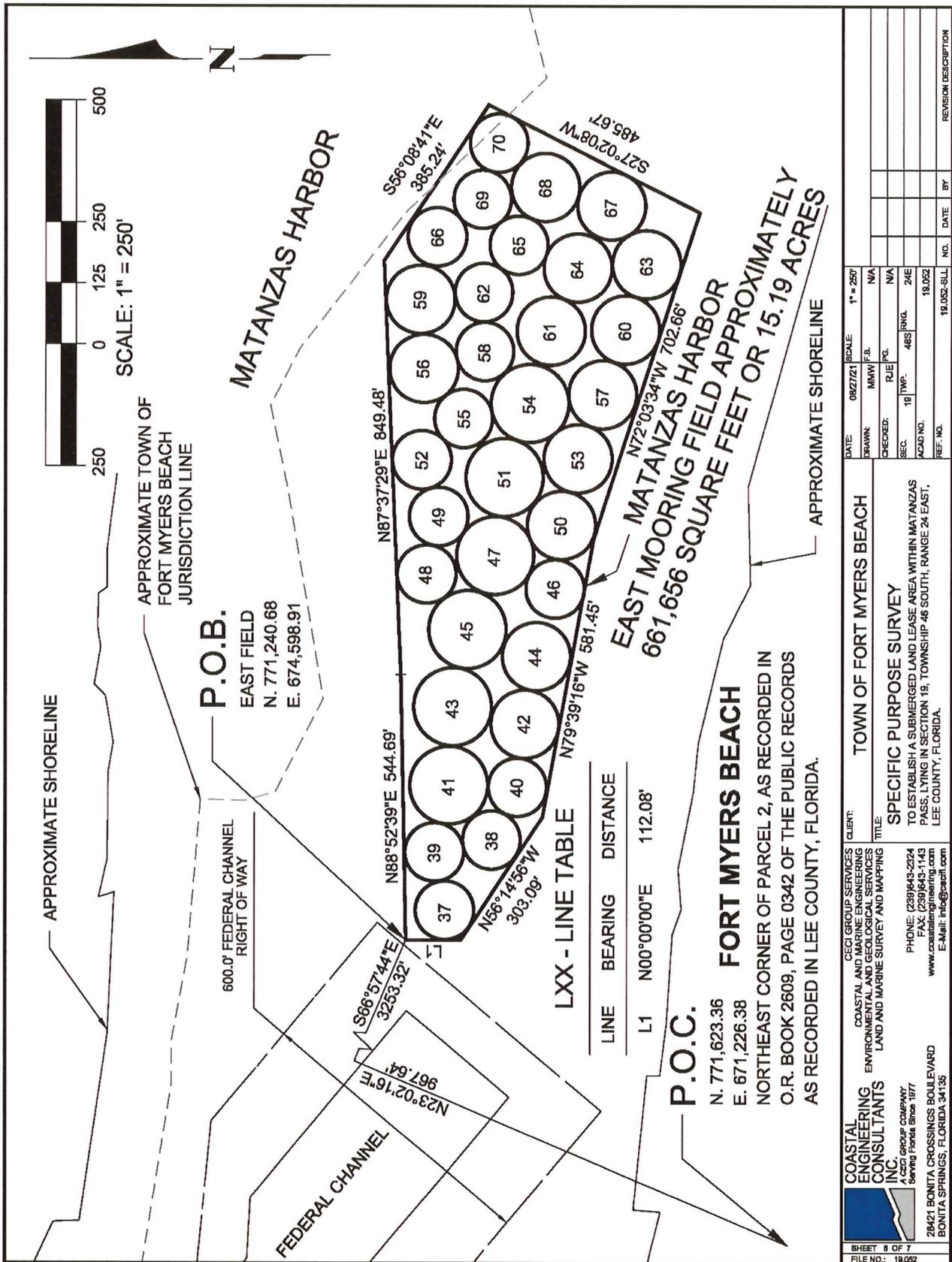
THENCE CONTINUE N23°02'16"E A DISTANCE OF 276.85 FEET, THENCE RUN S66°57'44"E A DISTANCE OF 535.39 FEET TO THE **POINT OF BEGINNING**;

- THENCE N21°42'39"E A DISTANCE OF 303.19 FEET;
- THENCE S59°00'41"E A DISTANCE OF 462.16 FEET;
- THENCE S79°30'03"E A DISTANCE OF 358.38 FEET;
- THENCE S71°26'15"E A DISTANCE OF 722.84 FEET;
- THENCE N47°16'05"E A DISTANCE OF 197.03 FEET;
- THENCE N90°00'00"E A DISTANCE OF 98.44 FEET;
- THENCE S49°57'00"E A DISTANCE OF 208.11 FEET;
- THENCE S13°05'04"E A DISTANCE OF 124.99 FEET;
- THENCE S18°30'52"E A DISTANCE OF 119.85 FEET;
- THENCE S64°15'36"W A DISTANCE OF 349.53 FEET;
- THENCE N78°21'01"W A DISTANCE OF 682.96 FEET;
- THENCE N66°28'50"W A DISTANCE OF 1014.21 FEET;
- THENCE N46°21'15"W A DISTANCE OF 139.72 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBES AN AREA OF 738,901 SQUARE FEET OR 16.96 ACRES OF SUBMERGED LANDS MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, AND RESERVATIONS OF RECORD.

 <p>COASTAL ENGINEERING CONSULTANTS INC. A CECI GROUP COMPANY Serving Florida Since 1977 28421 BONITA CROSSINGS BOULEVARD BONITA SPRINGS, FLORIDA 34136</p>	<p>CECI GROUP SERVICES COASTAL AND MARINE ENGINEERING ENVIRONMENTAL AND GEOLOGICAL SERVICES LAND AND MARINE SURVEY AND MAPPING</p>	<p>CLIENT: TOWN OF FORT MYERS BEACH TITLE: SPECIFIC PURPOSE SURVEY</p>	<p>DATE: 09/27/21 DRAWN: MMW/E.B. CHECKED: RJE/PG. REVISIONS: 18 TWP. 46S RANGE 24E ACAD NO. 19,052 REF. NO. 19,052-SLL</p>	<p>SCALE: N/A MMW/E.B. N/A RJE/PG. N/A 46S RANGE 24E 19,052 19,052-SLL</p>	<p>NO. BY DATE</p>	<p>REVISION DESCRIPTION</p>
	<p>PHONE: (239)943-2524 FAX: (239)943-1143 www.ceci-engineering.com E-Mail: info@ceci.com</p>	<p>19,052-SLL</p>	<p>19,052-SLL</p>	<p>19,052-SLL</p>	<p>19,052-SLL</p>	<p>19,052-SLL</p>



COASTAL ENGINEERING CONSULTANTS INC. <small>4001 GOLF COURSE COMPANY</small> <small>General Practice Since 1977</small> 28421 BONITA CROSSINGS BOULEVARD BONITA SPRINGS, FLORIDA 34135		CECI GROUP SERVICES COASTAL AND MARINE ENGINEERING ENVIRONMENTAL AND GEOLOGICAL SERVICES LAND AND MARINE SURVEY AND MAPPING		CLIENT: TOWN OF FORT MYERS BEACH	DATE: 08/27/21 SCALE: 1" = 250' DRAWN: MMW/F.B. CHECKED: RJE/KG. SEC. 18 TWP. 48S R04G. 24E ACAD NO. 19,052 REF. NO. 19,052-SLL						
P.O.C. N. 771,623.36 E. 671,226.38 NORTHEAST CORNER OF PARCEL 2, AS RECORDED IN O.R. BOOK 2609, PAGE 0342 OF THE PUBLIC RECORDS AS RECORDED IN LEE COUNTY, FLORIDA.		P.O.B. EAST FIELD N. 771,240.68 E. 674,598.91		TITLE: SPECIFIC PURPOSE SURVEY TO ESTABLISH A SUBMERGED LAND LEASE AREA WITHIN MATANZAS PASS, LYING IN SECTION 18, TOWNSHIP 48 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA.							
LXX - LINE TABLE <table border="1"> <thead> <tr> <th>LINE</th> <th>BEARING</th> <th>DISTANCE</th> </tr> </thead> <tbody> <tr> <td>L1</td> <td>N00°00'00"E</td> <td>112.08'</td> </tr> </tbody> </table>		LINE	BEARING	DISTANCE	L1	N00°00'00"E	112.08'	EAST MOORING FIELD APPROXIMATELY 661,656 SQUARE FEET OR 15.19 ACRES		NO. DATE BY 19,052-SLL	
LINE	BEARING	DISTANCE									
L1	N00°00'00"E	112.08'									

**MATANZAS HARBOR
EAST MOORING FIELD
LEGAL DESCRIPTION**

A PARCEL OF LAND SUBMERGED IN MATANZAS HARBOR LYING IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF PARCEL 2, AS RECORDED IN OFFICIAL RECORD BOOK 2609, PAGE 342 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA:

THENCE CONTINUE N23°02'16"E A DISTANCE OF 967.64 FEET, THENCE RUN S66°57'44"E A DISTANCE OF 3,253.32 FEET TO THE **POINT OF BEGINNING**;
 THENCE N88°52'39"E A DISTANCE OF 544.69 FEET;
 THENCE N87°37'29"E A DISTANCE OF 849.48 FEET;
 THENCE S56°08'41"E A DISTANCE OF 385.24 FEET;
 THENCE S27°02'08"W A DISTANCE OF 485.67 FEET;
 THENCE N72°03'34"W A DISTANCE OF 702.66 FEET;
 THENCE N79°39'16"W A DISTANCE OF 581.45 FEET;
 THENCE N56°14'56"W A DISTANCE OF 303.09 FEET;
 THENCE N00°00'00"E A DISTANCE OF 112.08 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBES AN AREA OF 661,656 SQUARE FEET OR 15.19 ACRES OF SUBMERGED LANDS MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, AND RESERVATIONS OF RECORD.

 COASTAL ENGINEERING CONSULTANTS INC. <small>A CECI GROUP COMPANY Serving Florida Since 1977</small> 28421 BONITA CROSSINGS BOULEVARD BONITA SPRINGS, FLORIDA 34135	CECI GROUP SERVICES COASTAL AND ENVIRONMENTAL AND GEOLOGICAL SERVICES LAND AND MARINE SURVEY AND MAPPING	CLIENT: TOWN OF FORT MYERS BEACH	DATE: 08/27/21 DRAWN: MMW CHECKER: RJE REC: 18 ACAD NO.: REF. NO.:	SCALE: N/A F.B.: N/A P.C.: N/A R.K.G.: 24E 18,052	REVISION DESCRIPTION NO. DATE BY
	TITLE: SPECIFIC PURPOSE SURVEY TO ESTABLISH A SUBMERGED LAND LEASE AREA WITHIN MATANZAS PASS, LYING IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA.	PHONE: (239)643-2324 FAX: (239)643-1143 www.coastalengineering.com E-Mail: info@ceci.com	19,052-SLL	18,052	19,052-SLL

This Instrument Prepared By:

Sue Jones

Action No. 45679

Bureau of Public Land Administration

3900 Commonwealth Boulevard

Mail Station No. 125

Tallahassee, Florida 32399

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
OF THE STATE OF FLORIDA

SOVEREIGNTY SUBMERGED LANDS FEE WAIVED LEASE RENEWAL
AND MODIFICATION TO INCORPORATE UPDATED SURVEY AND
REFLECT CURRENT STRUCTURES

BOT FILE NO. 360339155

THIS LEASE is hereby issued by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, hereinafter referred to as the Lessor.

WITNESSETH: That for and in consideration of payment of the annual lease fees hereinafter provided and the faithful and timely performance of and compliance with all terms and conditions stated herein, the Lessor does hereby lease to Town of Fort Myers Beach, Florida, hereinafter referred to as the Lessee, the sovereignty lands as defined in 18-21.003, Florida Administrative Code, contained within the following legal description:

A parcel of sovereignty submerged land in
Section 19, Township 46 South, Range 24 East, in Matanzas Pass,
Lee County, Florida, containing 2,099 square feet, more or less,
as is more particularly described and shown on Attachment A, dated June 6, 2022.

TO HAVE THE USE OF the hereinabove described premises from June 14, 2022, the effective date of this modified lease renewal, through July 6, 2025, the expiration date of this modified lease renewal. The terms and conditions on and for which this modified lease renewal is granted are as follows:

1. USE OF PROPERTY: The Lessee is hereby authorized to operate an 18-slip public docking facility and dingy dock to be used exclusively for the mooring of recreational vessels and the temporary mooring of dinghies, marine patrol and rescue vessels in conjunction with an upland right of way and the Town of Fort Myers mooring field, without fueling facilities, with a sewage pumpout facility if it meets the regulatory requirements of the State of Florida Department of Environmental Protection or State of Florida Department of Health, whichever agency has jurisdiction, and without liveboards as defined in paragraph 25, as shown and conditioned in Attachment A, and the State of Florida Department of Environmental Protection Consolidated Environmental Resource Permit No. 36-0252456-001, dated July 6, 2007, and Permit Modification No. 36-0252456-002, dated January 14, 2008, incorporated herein and made a part of this lease by reference. All of the foregoing subject to the remaining conditions of this lease.

[02/29]

2. AGREEMENT TO EXTENT OF USE: This lease is given to the Lessee to use or occupy the leased premises only for those activities specified herein and as conditioned by the permit referenced in paragraph 1 of this lease. The Lessee shall not (i) change or add to the approved use of the leased premises as defined herein (e.g., from commercial to multi-family residential, from temporary mooring to rental of wet slips, from rental of wet slips to contractual agreement with third party for docking of cruise ships, from rental of recreational pleasure craft to rental or temporary mooring of charter/tour boats, from loading/offloading commercial to rental of wet slips, etc.); (ii) change activities in any manner that may have an environmental impact that was not considered in the original authorization or regulatory permit; or (iii) change the type of use of the riparian uplands or as permitted by the Lessee's interest in the riparian upland property that is more particularly described in Attachment B without first obtaining a regulatory permit/modified permit, if applicable, the Lessor's written authorization in the form of a modified lease, the payment of additional fees, if applicable, and, if applicable, the removal of any structures which may no longer qualify for authorization under the modified lease. If at any time during the lease term this lease no longer satisfies the requirements of subparagraph 18-21.011(1)(b)7., Florida Administrative Code, for a fee waived lease, the Lessee shall be required to pay an annual lease fee in accordance with Rule 18-21.011, Florida Administrative Code, and if applicable, remove any structures which may no longer qualify for authorization under this lease.

3. SUBMITTING ANNUAL CERTIFIED FINANCIAL RECORDS: Within 30 days after each anniversary of the effective date of this lease, the Lessee shall submit annual certified financial records of income and expenses to the State of Florida Department of Environmental Protection, Division of State Lands, Bureau of Public Land Administration, 3900 Commonwealth Blvd, MS 130, Tallahassee, FL 32399. "Income" is defined in subsection 18-21.003(32), Florida Administrative Code. The submitted financial records shall be certified by a certified public accountant.

4. EXAMINATION OF LESSEE'S RECORDS: For purposes of this lease, the Lessor is hereby specifically authorized and empowered to examine, for the term of this lease including any extensions thereto plus three (3) additional years, at all reasonable hours, the books, records, contracts, and other documents confirming and pertaining to the computation of annual lease payments as specified in paragraph two (2) above.

5. MAINTENANCE OF LESSEE'S RECORDS: The Lessee shall maintain separate accounting records for: (i) the gross revenue derived directly from the use of the leased premises, (ii) the gross revenue derived indirectly from the use of the leased premises, and (iii) all other gross revenue derived from the Lessee's operations on the riparian upland property. The Lessee shall secure, maintain and keep all records for the entire term of this lease plus three (3) additional years. This period shall be extended for an additional two (2) years upon request for examination of all records and accounts for lease verification purposes by the Lessor.

6. PROPERTY RIGHTS: The Lessee shall make no claim of title or interest to said lands hereinbefore described by reason of the occupancy or use thereof, and all title and interest to said land hereinbefore described is vested in the Lessor. The Lessee is prohibited from including, or making any claim that purports to include, said lands described or the Lessee's leasehold interest in said lands into any form of private ownership, including but not limited to any form of condominium or cooperative ownership. The Lessee is further prohibited from making any claim, including any advertisement, that said land, or the use thereof, may be purchased, sold, or re-sold.

7. INTEREST IN RIPARIAN UPLAND PROPERTY: During the term of this lease, the Lessee shall maintain satisfactory evidence of sufficient upland interest as required by paragraph 18-21.004(3)(b), Florida Administrative Code, in the riparian upland property that is more particularly described in Attachment B and by reference made a part hereof together with the riparian rights appurtenant thereto. If such interest is terminated or the Lessor determines that such interest did not exist on the effective date of this lease, this lease may be terminated at the option of the Lessor. If the Lessor terminates this lease, the Lessee agrees not to assert a claim or defense against the Lessor arising out of this lease. Prior to sale and/or termination of the Lessee's interest in the riparian upland property, the Lessee shall inform any potential buyer or transferee of the Lessee's interest in the riparian upland property and the existence of this lease and all its terms and conditions and shall complete and execute any documents required by the Lessor to effect an assignment of this lease, if consented to by the Lessor. Failure to do so will not relieve the Lessee from responsibility for full compliance with the terms and conditions of this lease which include, but are not limited to, payment of all fees and/or penalty assessments incurred prior to such act.

8. ASSIGNMENT OF LEASE: This lease shall not be assigned or otherwise transferred without prior written consent of the Lessor or its duly authorized agent. Such assignment or other transfer shall be subject to the terms, conditions and provisions of this lease, current management standards and applicable laws, rules and regulations in effect at that time. Any assignment or other transfer without prior written consent of the Lessor shall be null and void and without legal effect.

9. LIABILITY/INVESTIGATION OF ALL CLAIMS: The Lessee shall investigate all claims of every nature at its expense. Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. Nothing herein shall be construed as an indemnity or a waiver of sovereign immunity enjoyed by any party hereto, as provided in Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations on claims.

10. NOTICES/COMPLIANCE/TERMINATION: The Lessee binds itself, its successors and assigns, to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants of the Lessee, its successors and assigns. In the event the Lessee fails or refuses to comply with the provisions and conditions herein set forth, or in the event the Lessee violates any of the provisions and conditions herein set forth, and the Lessee fails or refuses to comply with any of said provisions or conditions within twenty (20) days of receipt of the Lessor's notice to correct, this lease may be terminated by the Lessor upon thirty (30) days written notice to the Lessee. If canceled, all of the above-described parcel of land shall revert to the Lessor. All notices required to be given to the Lessee by this lease or applicable law or administrative rules shall be sufficient if sent by U.S. Mail to the following address:

Town of Fort Myers Beach
2525 Estero Blvd
Fort Myers Beach , FL 33931

The Lessee shall notify the Lessor by certified mail of any change to this address at least ten (10) days before the change is effective.

11. TAXES AND ASSESSMENTS: The Lessee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this lease.

12. NUISANCES OR ILLEGAL OPERATIONS: The Lessee shall not permit the leased premises or any part thereof to be used or occupied for any purpose or business other than herein specified unless such proposed use and occupancy are consented to by the Lessor and the lease is modified accordingly, nor shall Lessee knowingly permit or suffer any nuisances or illegal operations of any kind on the leased premises.

13. MAINTENANCE OF FACILITY/RIGHT TO INSPECT: The Lessee shall maintain the leased premises in good condition, keeping the structures and equipment located thereon in a good state of repair in the interests of public health, safety and welfare. No dock or pier shall be constructed in any manner that would cause harm to wildlife. The leased premises shall be subject to inspection by the Lessor or its designated agent at any reasonable time.

14. NON-DISCRIMINATION: The Lessee shall not discriminate against any individual because of that individual's race, color, religion, sex, national origin, age, handicap, or marital status with respect to any activity occurring within the area subject to this lease or upon lands adjacent to and used as an adjunct of the leased area.

15. ENFORCEMENT OF PROVISIONS: No failure, or successive failures, on the part of the Lessor to enforce any provision, nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right of the Lessor to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

16. PERMISSION GRANTED: Upon expiration or cancellation of this lease all permission granted hereunder shall cease and terminate.

17. RENEWAL PROVISIONS: Renewal of this lease shall be at the sole option of the Lessor. Such renewal shall be subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time. In the event that the Lessee is in full compliance with the terms of this lease, the Lessor will begin the renewal process. The term of any renewal granted by the Lessor shall commence on the last day of the previous lease term. In the event the Lessor does not grant a renewal, the Lessee shall vacate the leased premises and remove all structures and equipment occupying and erected thereon at its expense. The obligation to remove all structures authorized herein upon termination of this lease shall constitute an affirmative covenant upon the Lessee's interest in the riparian upland property more particularly described in Attachment B which shall run with the title to the Lessee's interest in said riparian upland property and shall be binding upon the Lessee and the Lessee's successors in title or successors in interest.

18. REMOVAL OF STRUCTURES/ADMINISTRATIVE FINES: If the Lessee does not remove said structures and equipment occupying and erected upon the leased premises after expiration or cancellation of this lease, such structures and equipment will be deemed forfeited to the Lessor, and the Lessor may authorize removal and may sell such forfeited structures and equipment after ten (10) days written notice by certified mail addressed to the Lessee at the address specified in Paragraph 10 or at such address on record as provided to the Lessor by the Lessee. However, such remedy shall be in addition to all other remedies available to the Lessor under applicable laws, rules and regulations including the right to compel removal of all structures and the right to impose administrative fines.

19. REMOVAL COSTS/LIEN ON RIPARIAN UPLAND PROPERTY: Subject to the noticing provisions of Paragraph 18 of this lease, any costs incurred by the Lessor in removal of any structures and equipment constructed or maintained on state lands shall be paid by Lessee and any unpaid costs and expenses shall constitute a lien upon the Lessee's interest in the riparian upland property that is more particularly described in Attachment B. This lien on the Lessee's interest in the riparian upland property shall be enforceable in summary proceedings as provided by law.

20. RIPARIAN RIGHTS/FINAL ADJUDICATION: In the event that any part of any structure authorized hereunder is determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with adjacent riparian rights, Lessee agrees to either obtain written consent for the offending structure from the affected riparian owner or to remove the interference or encroachment within 60 days from the date of the adjudication. Failure to comply with this paragraph shall constitute a material breach of this lease agreement and shall be grounds for immediate termination of this lease agreement at the option of the Lessor.

21. AMENDMENTS/MODIFICATIONS: This lease is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this lease must be in writing, must be accepted, acknowledged and executed by the Lessee and Lessor, and must comply with the rules and statutes in existence at the time of the execution of the modification or amendment. Notwithstanding the provisions of this paragraph, if mooring is authorized by this lease, the Lessee may install boatlifts within the leased premises without formal modification of the lease provided that (a) the Lessee obtains any state or local regulatory permit that may be required; and (b) the location or size of the lift does not increase the mooring capacity of the docking facility.

22. ADVERTISEMENT/SIGNS/NON-WATER DEPENDENT ACTIVITIES/ADDITIONAL ACTIVITIES/MINOR STRUCTURAL REPAIRS: No permanent or temporary signs directed to the boating public advertising the sale of alcoholic beverages shall be erected or placed within the leased premises. No restaurant or dining activities are to occur within the leased premises. The Lessee shall ensure that no permanent, temporary or floating structures, fences, docks, pilings or any structures whose use is not water-dependent shall be erected or conducted over sovereignty submerged lands without prior written consent from the Lessor. No additional structures and/or activities including dredging, relocation/realignment or major repairs or renovations to authorized structures, shall be erected or conducted on or over sovereignty, submerged lands without prior written consent from the Lessor. Unless specifically authorized in writing by the Lessor, such activities or structures shall be considered unauthorized and a violation of Chapter 253, Florida Statutes, and shall subject the Lessee to administrative fines under Chapter 18-14, Florida Administrative Code. This condition does not apply to minor structural repairs required to maintain the authorized structures in a good state of repair in the interests of public health, safety or welfare; provided, however, that such activities shall not exceed the activities authorized by this lease.

23. USACE AUTHORIZATION: Prior to commencement of construction and/or activities authorized herein, the Lessee shall obtain the U.S. Army Corps of Engineers (USACE) permit if it is required by the USACE. Any modifications to the construction and/or activities authorized herein that may be required by the USACE shall require consideration by and the prior written approval of the Lessor prior to the commencement of construction and/or any activities on sovereign, submerged lands.

24. COMPLIANCE WITH FLORIDA LAWS: On or in conjunction with the use of the leased premises, the Lessee shall at all times comply with all Florida Statutes and all administrative rules promulgated thereunder. Any unlawful activity which occurs on the leased premises or in conjunction with the use of the leased premises shall be grounds for the termination of this lease by the Lessor.

25. LIVEBOARDS: The term "liveboard" is defined as a vessel docked at the facility and inhabited by a person or persons for any five (5) consecutive days or a total of ten (10) days within a thirty (30) day period. If liveboards are authorized by paragraph one (1) of this lease, in no event shall such "liveboard" status exceed six (6) months within any twelve (12) month period, nor shall any such vessel constitute a legal or primary residence.

26. GAMBLING VESSELS: During the term of this lease and any renewals, extensions, modifications or assignments thereof, Lessee shall prohibit the operation of or entry onto the leased premises of gambling cruise ships, or vessels that are used principally for the purpose of gambling, when these vessels are engaged in "cruises to nowhere," where the ships leave and return to the state of Florida without an intervening stop within another state or foreign country or waters within the jurisdiction of another state or foreign country, and any watercraft used to carry passengers to and from such gambling cruise ships.

[Remainder of page intentionally left blank; Signature page follows]

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this instrument on the day and year first above written.

WITNESSES:

BOARD OF TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND OF THE STATE
OF FLORIDA

Original Signature

(SEAL)

Print/Type Name of Witness

BY: _____

Brad Richardson, Chief, Bureau of Public Land Administration,
Division of State Lands, State of Florida Department of
Environmental Protection, as agent for and on behalf of the Board
of Trustees of the Internal Improvement Trust Fund of the
State of Florida.

Original Signature

Print/Type Name of Witness

"LESSOR"

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me by means of physical presence this _____ day of _____, 20____, by Brad Richardson, Chief, Bureau of Public Land Administration, Division of State Lands, State of Florida Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. He is personally known to me.

APPROVED SUBJECT TO PROPER EXECUTION:



9/11/2022

DEP Attorney

Date

Notary Public, State of Florida

Printed, Typed or Stamped Name

My Commission Expires:

Commission/Serial No. _____

WITNESSES:

Town of Fort Myers Beach, Florida (SEAL)

Original Signature

BY:

Original Signature of Executing Authority

Typed/Printed Name of Witness

Ray Murphy

Typed/Printed Name of Executing Authority

Original Signature

Mayor

Title of Executing Authority

Typed/Printed Name of Witness

“LESSEE”

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of __ physical presence or __ online notarization this _____ day of _____, 20____, by Ray Murphy as Mayor, for and on behalf of Town of Fort Myers Beach, Florida. He is personally known to me or who has produced _____, as identification.

My Commission Expires:

Signature of Notary Public

Notary Public, State of _____

Commission/Serial No. _____

Printed, Typed or Stamped Name

SPECIFIC PURPOSE SURVEY SUBMERGED LANDS LEASE AREA MATANZAS HARBOR DINGHY DOCK

LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA

PREPARED FOR:
 TOWN OF FORT MYERS BEACH

PUBLISHED TIDAL INFORMATION

TIDAL DATUMS AT MATANZAS PASS, ESTERO ISLAND
 ARE BASED ON FLORIDA 872 5366

TIME PERIOD = JUNE 1973 - JUNE 1973
 TIDAL EPOCH = 1983 - 2001
 CONTROL TIDE STATION = NAPLES, GULF OF MEXICO (872 5110)

ELEVATIONS OF TIDAL DATUMS ARE
 REFERENCED IN NAVD 1988.

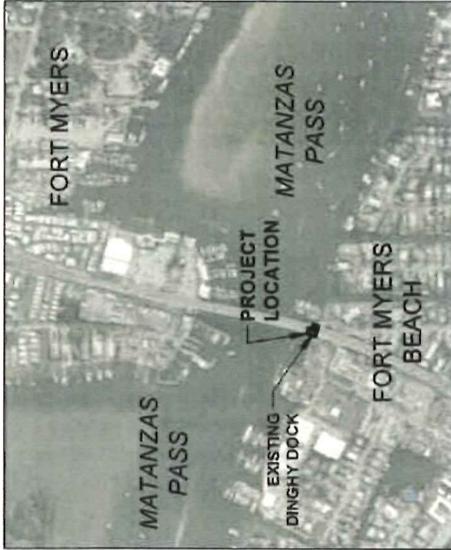
MEAN HIGHER HIGH WATER (MHHW) = +0.42 FT NAVD
 MEAN HIGH WATER (MHW) = +0.16 FT NAVD
 MEAN LOW WATER (MLW) = -1.64 FT NAVD
 MEAN LOWER LOW WATER (MLLW) = -2.18 FT NAVD

INDEX

1. COVER SHEET
2. SKETCH OF DINGHY DOCK
3. LEGAL DESCRIPTION OF DINGHY DOCK

GENERAL NOTES

1. ■ = FOUND 4" X 4" CONCRETE MONUMENT WITH BRASS DISC STAMPED "PRM BAI LB6940".
2. BEARINGS SHOWN HEREON ARE RELATIVE TO NORTH AMERICAN DATUM OF 1983, 1990 ADJUSTMENT, FLORIDA WEST ZONE.
3. ELEVATIONS SHOWN HEREON ARE RELATIVE TO N.A.V.D. 1988 (NORTH AMERICAN VERTICAL DATUM 1988)
4. COORDINATES SHOWN HEREON ARE RELATIVE TO NORTH AMERICAN DATUM OF 1983, 1990 ADJUSTMENT, FLORIDA WEST ZONE.



LOCATION MAP
 N.T.S.

THIS FIELD SURVEY IS CERTIFIED TO THE BOARD
 OF TRUSTEES OF THE INTERNAL IMPROVEMENT
 TRUST FUND OF FLORIDA

NOTE

MEAN HIGH WATER VALUE OF +0.16 N.A.V.D. WAS
 APPROVED BY THE F.D.E.P. BUREAU OF SURVEY AND MAPPING.



COASTAL ENGINEERING CONSULTANTS, INC.
 * COASTAL AND MARINE ENGINEERING * ENVIRONMENTAL AND GEOLOGICAL SERVICES *
 * LAND AND MARINE SURVEY AND MAPPING *
 28421 BONITA CROSSING BOULEVARD
 BONITA SPRINGS, FLORIDA 34135
 JUNE 03, 2022
 (239) 643-2324



Digitally signed by Richard J. Ewing, PS/M
 DN: cn=Richard J. Ewing, PS/M, o=Coastal Engineering Consultants, Inc., ou=Survey and Mapping, email=rjewing@cecfl.com, c=US
 Date: 2022.06.06 13:29:09 -0400

COASTAL ENGINEERING CONSULTANTS, INC.
 FLORIDA BUSINESS AUTHORIZATION NO. LB 2464

RICHARD J. EWING, VP
 PROFESSIONAL SURVEYOR AND MAPPER
 FLORIDA CERTIFICATE NO. 5295
 NOT VALID WITHOUT THE SIGNATURE AND
 THE ORIGINAL RAISED SEAL OF A FLORIDA
 LICENSED SURVEYOR AND MAPPER
 DATE OF SIGNATURE:

MATANZAS HARBOR DINGHY DOCK LEGAL DESCRIPTION

A PARCEL OF LAND SUBMERGED IN MATANZAS HARBOR LYING IN SECTION 24,
 TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, BEING MORE
 PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PART OF THE SOVEREIGN LANDS OF THE STATE OF FLORIDA THAT LIE WITHIN THE
 FOLLOWING DESCRIBED AREA:

COMMENCING AT THE NORTHEAST CORNER OF PARCEL 2, SAID POINT ALSO BEING THE
 NORTHWEST CORNER OF LANDS DESCRIBED IN THE UPLAND DESCRIPTION, AS
 RECORDED IN OFFICIAL RECORD BOOK 2609, PAGE 342 OF THE PUBLIC RECORDS OF LEE
 COUNTY, FLORIDA:

THENCE RUN N17°15'58"E A DISTANCE OF 0.24 FEET TO THE FACE OF AN EXISTING
 CONCRETE SEAWALL;
 THENCE CONTINUE ALONG THE FACE OF SAID SEAWALL AND THE MEAN HIGH WATER
 LINE OF THE TIDAL WATERS OF MANTANZAS PASS, S71°31'57"E A DISTANCE OF 12.74
 FEET TO THE **POINT OF BEGINNING** OF THE HEREIN DESCRIBED LANDS;
 THENCE LEAVING SAID SEAWALL N18°28'06"E A DISTANCE OF 43.68 FEET;
 THENCE S75°21'40"E A DISTANCE OF 28.98 FEET;
 THENCE S14°41'59"W A DISTANCE OF 17.41 FEET;
 THENCE S71°31'54"E A DISTANCE OF 27.10 FEET;
 THENCE S18°28'06"W A DISTANCE OF 28.25 FEET TO SAID CONCRETE SEAWALL;
 THENCE ALONG SAID SEAWALL FACE N71°31'57"W A DISTANCE OF 57.17 FEET TO THE
POINT OF BEGINNING.

THE ABOVE DESCRIBES APPROXIMATELY 2,099 SQUARE FEET OR 0.05 ACRES OF
 SUBMERGED LAND.

 <p>COASTAL ENGINEERING CONSULTANTS INC. A CECI GROUP COMPANY Serving Florida Since 1977 28421 BONITA CROSSINGS BOULEVARD BONITA SPRINGS, FLORIDA 34135</p>	<p>CECI GROUP SERVICES COASTAL AND MARINE ENGINEERING ENVIRONMENTAL AND GEOLOGICAL SERVICES LAND AND MARINE SURVEY AND MAPPING</p> <p>PHONE: (239)643-2324 FAX: (239)643-1143 www.coastalengineering.com E-Mail: info@ceci.com</p>	<p>CLIENT: TOWN OF FORT MYERS BEACH</p> <p>TITLE: SPECIFIC PURPOSE SURVEY TO ESTABLISH A SUBMERGED LAND LEASE AREA WITHIN MATANZAS PASS, LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA.</p>	<p>DATE: 06/03/22 SCALE: N/A</p> <p>DRAWN: MMW/F.B. N/A</p> <p>CHECKED: RJE/PG. N/A</p> <p>SEC. 24 TWP 46S R23E</p> <p>ACAD NO. 19.052</p> <p>REF. NO. 19.052-SLL</p>
SHEET 3 OF 1	FILE NO 19.052	NO.	DATE
		BY	REVISION DESCRIPTION

FLORIDA DEPARTMENT OF TRANSPORTATION
LEASE AGREEMENT

FOR
PUBLIC PURPOSE

FORM 573-009-02
RIGHT OF WAY - 0094
Page 1 of 4

State Project No. 12530-2614
F.M. No. 1995431
F.A.P. No. N/A
State Road No. 865
Parcel No. Malanzas Pass Bridge (106 to 111 &
113 to 116 & 125)
County LEE

THIS AGREEMENT, made this 15th day of August, 2009, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, (hereinafter called the Lessor), and the TOWN OF FORT MYERS BEACH, in the STATE of FLORIDA (hereinafter called the Lessee),

WITNESSETH:

In consideration of One Dollar (\$1.00) and other good and valuable considerations, the Parties agree as follows:

1. Property and Term. Lessor does hereby lease unto Lessee the lands described in Exhibit "A", for a term of Twenty Five (25) Years beginning August 15, 2000 and ending August 14, 2025. This Agreement may be renewed at Lessee's option, subject to the rent adjustment as provided in Paragraph 3 below. Lessee shall provide Lessor sixty (60) days advance written notice of its exercise of the renewal option.

If Lessee holds over and remains in possession of the land after the expiration of the term specified in this Lease, or any renewals of such term, Lessee's tenancy shall be considered a tenancy at sufferance, subject to the same terms and conditions as herein contained in this Lease.

This Lease is subject to all utilities in place and to the maintenance thereof as well as any other covenants, easements, or restrictions of record.

This lease shall be construed as a lease of only the interest, if any, of Lessor, and no warranty of title shall be deemed to be given herewith.

2. Use. The leased land shall be used solely for the purpose of VEHICLE PARKING & LANDSCAPE BEAUTIFICATION. If the land is used for any other purpose, the Lessor shall have the option of immediately terminating this Agreement. Lessee shall not permit any use of the land in any manner that would obstruct or interfere with any transportation facilities.

The Lessee will further use and occupy said premises in a careful and proper manner, and not commit any waste thereon. Lessee will not cause, or allow to be caused, any nuisance or objectionable activity of any nature on the premises. Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations or as those terms are understood in common usage, are specifically prohibited. The Lessee will not use or occupy said premises for any unlawful purpose and will, at Lessee's sole cost and expense, conform to and obey any present or future ordinances and/or rules, regulations, requirements and orders of governmental authorities or agencies respecting the use and occupation of said premises.

3. Rent. Lessee shall pay to Lessor as rent, on or before the first day of each rent payment period, the sum of \$0.00, for each YEAR of the term. The Lessor reserves the right to review and adjust the rental fee biannually and at renewal to reflect market conditions.

4. Improvements. No signs other than No Trespassing signs or improvements of any kind shall be placed upon the land without prior approval in writing by the District Secretary for District 1 of Lessor. Any such signs or improvements shall be constructed in a good and workmanlike manner at Lessee's sole cost and expense. Subject to any landlords lien, any signs or improvements constructed by Lessee shall be removed by the Lessee, at Lessee's sole cost and expense, by midnight on the day of termination of this Agreement and the land restored as nearly as practical to its condition at the time this agreement is executed. Portable or temporary advertising signs are prohibited.

Lessee shall perform, at the sole expense of Lessee, all work required in the preparation of the property or premises hereby leased for occupancy by Lessee, in the absence of any special provision herein contained to the contrary; and Lessee does hereby accept the leased property or premises as now being in fit and tenable condition for all purposes of Lessee.

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Lessor reserves the right to inspect the leased area and to require whatever adjustment to signs or improvements as Lessor, in its sole discretion, deems necessary. Any adjustments shall be done at Lessee's sole cost and expense.

5. **Maintenance.** Lessee shall keep and maintain the land and any signs, now or hereafter erected thereon, in good and safe condition and repair at Lessee's own expense during the existence of this lease, and shall keep the same free and clear of any and all grass, weeds, brush and debris of any kind, so as to prevent the same becoming dangerous, inflammable or objectionable. Lessor shall have no duty to inspect or maintain any of the signs or improvements during the term of this Lease; however, Lessor shall have the right, upon twenty-four (24) hours notice to Lessee, to enter the property for purposes of inspection, including conducting an environmental assessment. Such assessment may include but would not be limited to: surveying; sampling of soil and groundwater; monitoring well installations; soil excavation; groundwater remediation; emergency asbestos abatement; operation and maintenance inspections; and, any other action which might be reasonable and necessary. Lessor's right of entry shall not obligate inspection of the property by Lessor, nor shall it relieve the Lessee of its duty to maintain the property. In the event of emergency due to a release or suspected release of hazardous waste on the premises, Lessor shall have the right of immediate inspection, and the right, but not the obligation, to engage in remedial action, without notice.

6. **Indemnification.** Lessee shall indemnify, defend, save and hold Lessor, its agents and employees, harmless of and from any losses, fines, penalties, costs, damage, claims, demands, suits and liabilities of any nature, including attorneys fees (including regulatory and appellate fees), arising out of, because of, or due to any accident, happening or occurrence on the leased land or arising in any manner on account of the exercise or attempted exercise of Lessee's rights hereunder, whether the same regards person or property of any nature whatsoever, regardless of the apportionment of negligence, unless due to the sole negligence of Lessor.

Lessee's obligation to indemnify, defend, and pay for the defense or at the Department's option, to participate and associate with the Department in the defense and trial of any claim and any related settlement negotiations, shall be triggered by the Department's notice of claim for indemnification to Lessee. Lessee's inability to evaluate liability or its evaluation of liability shall not exonerate Lessee's duty to defend and indemnify within seven days after such notice by the Department is given by registered mail. Only an adjudication or judgment after the highest appeal is exhausted specifically finding the Department solely negligent shall exonerate performance of this provision by Lessee. Lessee shall pay all costs and fees related to this obligation and its enforcement by the Department. Department's failure to notify Lessee of a claim shall not release Lessee of the above duty to defend.

7. **Eminent Domain.** Lessee acknowledges and agrees that its relationship with Lessor under this Lease is one of Landlord and Tenant and no other relationship either expressed or implied shall be deemed to apply to the parties under this Lease. Termination of this Lease for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Lease, including but not limited to (i) any residual interest in the Lease, or (ii) any other facts or circumstances arising out of or in connection with this Lease.

Lessee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including but not limited to special damages, sovereign damages, removal costs or loss of business profits resulting from its loss of occupancy of the leased property specified in this Agreement, or adjacent properties owned or leased by it, when any or all such properties are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether (i) this Lease is still in existence on the date of taking or sale; or, (ii) has been terminated prior thereto.

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8. **Miscellaneous.**

a. This Agreement may be terminated by Lessor immediately, without prior notice, upon default by Lessee hereunder, and may be terminated by either party upon SIXTY (60) days prior written notice to the other party.

PUNTA GORDA BIAH
D.E.P. SOUTH DISTRICT

b. In the case of litigation arising out of the enforcement of any terms, covenants or provisions of this Lease, the prevailing party shall be entitled to recover its reasonable attorneys' fees from the non-prevailing party.

c. Lessee acknowledges that it has reviewed this Lease, is familiar with its terms and has had adequate opportunity to review this Lease with legal counsel of Lessee's choosing. Lessee has entered into this Lease freely and voluntarily. This Lease contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties and/or between Lessee and the previous owner of the leased property and landlord of Lessee are merged in this Lease, which alone, fully and completely expresses the agreement between Lessee and Lessor with respect to the subject matter hereof. No modification, waiver or amendment of this Lease or any of its conditions or provisions shall be binding upon Lessor or Lessee.

unless in writing and signed by both such parties.

d. Lessee shall not sublet the leased property or any part thereof, nor assign this Lease, without the prior consent in writing of Lessor, this Lease being executed by Lessor upon the credit and reputation of Lessee. Acceptance by Lessor of rental from a third party shall not be considered as an assignment or sublease.

e. Lessee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone and telegraph services, or any other utility or service used on the land.

f. This Agreement shall be governed by the laws of the State of Florida, and any applicable laws of the United States of America.

g. All notices to Lessor shall be sent to the following address: Florida Department of Transportation, Property Management, P. O. Box 1249, Bartow, Florida 33831-1249.

h. All notices to Lessee shall be sent to the following address: Town of Fort Myers Beach, Florida, P.O. Box 3077, Fort Myers Beach, Florida 33932.

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PUNTA GORDA BRANCH
D.E.P. SOUTH DISTRICT

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

APPROVED AS TO FORM,
AND LEGALITY:

Christopher K. V. [Signature]
Attorney for Florida Department of Transportation

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: [Signature]
District Secretary

Attest: [Signature] (SEAL)
Executive Secretary

LESSOR

By: [Signature]

Title: Mayor

Attest: [Signature] (SEAL)

Title: Town Manager

LESSEE

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PUNTA GORDA BRANCH
D.E.P., SOUTH DISTRICT

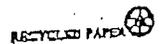


EXHIBIT "A"

T. S. N/A, M. S. 2

SECTION 12530-2614

DESCRIPTION OF PROPERTY TO BE LEASED

PARCEL 106-111 incl., 113-116 incl & 125

Those portions of Blocks 1, 2 & 3 of Business Center Subdivision, as per plat thereof recorded in Plat Book 9, Page 9, Public Records of Lee County, Florida, and Government Lot 1, All in Section 24, Township 46 South, Range 23 East, Lee County, Florida.

Being described as follows:

Commence at a 1" iron pin marking the Southwest corner of Lot 4 in said Block 2; thence South 64°00'09" East along the South line of said Block 2 a distance of 160.05 feet to the Westerly existing R/W line of SR 865 (Proj. 12530-2614) and the point of beginning; thence South 25°59'51" West along said R/W line a distance of 175.19 feet; thence South 64°00'09" East a distance of 80.00 feet to the Easterly existing R/W line of said SR 865; thence North 25°59'51" East along said Easterly R/W line a distance of 482.79 feet; thence North 64°00'09" West a distance of 8.77 feet to the point of curvature of a non-tangent curve concave to the Westerly; thence along the arc of said curve having a radius of 2,904.79 feet, a central angle of 5°16'23", an arc length of 267.33 feet, the chord for which bears North 18°54'28" East, a chord distance of 267.23 feet to the end of said curve; thence North 72°31'59" West, 28.27 feet; thence North 71°11'49" West, 51.79 feet to the said Westerly R/W line of SR 865 and the point of curvature of a non-tangent curve concave to the Westerly; thence along the arc of said curve having a radius of 2,824.79 feet, a central angle of 5°12'18", an arc length of 256.61, the chord for which bears South 18°48'56" West, a chord distance of 256.62 feet to the end of said curve; thence South 64°00'09" East, a distance of 9.02 feet; thence South 25°59'51" West along said Westerly R/W line a distance of 277.60 feet to the point of beginning.

"The area herein described is subject to any existing rights of way in use by the public, and limited to those portions lying underneath the existing bridge structure."

Prepared by: H. A. Kysar

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PUNTA GORDA BRANCH
D.E.P. SOUTH DISTRICT

FM NO.: 1995431
 SEC/JOB NO.: 12530-2614
 F.A.P. NO.: N/A
 STATE ROAD NO.: 866
 COUNTY: Lee
 PARCEL NO.: 106 to 111 &
 113 to 116 &
 125

ADDENDUM

This is an Addendum to that certain Lease Agreement between the Town of Fort Myers Beach and the State of Florida Department of Transportation dated the 15th day of August, 2000. In addition to the provisions contained in said Agreement, the following terms and conditions shall be deemed to be a part thereof:

1) The first sentence of Paragraph 2 of the subject lease agreement, entitled "Use" which states: "The leased land shall be used solely for the purpose of VEHICLE PARKING & LANDSCAPE BEAUTIFICATION." shall be deleted in its entirety and replaced with the following:

"The leased land shall be used solely for the purpose of VEHICLE PARKING & LANDSCAPE BEAUTIFICATION, AND SUBJECT TO APPROVAL BY THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND TO CONSTRUCT A DOCK WITHIN THE WATERS ADJACENT TO THE LEASED LAND, LESSEE MAY USE THE LEASED LAND FOR ACCESS TO THE WATER TO CONSTRUCT THE DOCK, ACCESS TO THE WATER TO REPAIR AND MAINTAIN THE DOCK, AND ACCESS TO THE WATER TO UTILIZE THE DOCK."

2) Except as mentioned above, all other provisions of the subject lease agreement shall remain in full force and effect.

TOWN OF FORT MYERS BEACH
 Lessee (Company Name, if applicable)

By:

Dennis C. Boback

DENNIS C. BOBACK
 Print Name

Title:

Mayor - Town of Ft. Myers Beach

Attest:

Michelle D. Mayher (SEAL)

MICHELLE D. MAYHER
DENNIS C. BOBACK
 Print Name

TOWN CLERK

Title:

Mayor - Town of Ft. Myers Beach

STATE OF FLORIDA
 DEPARTMENT OF TRANSPORTATION
 By: [Signature]
 District Secretary

Stanley M. Cann, P.E.
 Print Name

Attest:

Mallene J. Bridgford

Name/Title:

Administrative Assistant

LEGAL REVIEW:

[Signature]
 District Counsel

BRUCE P. CURY
 Print Name