

RESOLUTION NUMBER 25-319

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH ACCEPTING AN AMENDED UTILITY EASEMENT FROM THE LEO JAMES DIBIASI LIVING TRUST, UTD 08/20/2025; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Sec. 2(B), Art. VIII of the Florida Constitution and Sec. 166.021, Florida Statutes, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and may 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, during its public meeting on the 11th day of September, the Town Council accepted a Utility Easement from Leo J. Dibiasi, as Trustee of the Leo J. Dibiasi and Valerie J. Dibiasi Revocable Living Trust dated August 20, 2014 as part of a settlement agreement dated April 9, 2025, a copy of which is attached as Exhibit “C” to the proposed Amended Utility Easement Agreement; and

WHEREAS, prior to the Town’s acceptance of the Utility Easement Agreement on the 11th day of September, 2025, title to the property upon which the utility easement is located was conveyed to The Leo James Dibiasi Living Trust, UTD 08/20/2025; and

WHEREAS, acceptance by the Town of an Amended Utility Easement Agreement is needed to fulfill the requirements of the settlement agreement from the current owner of the property where the utility easement is located; and

WHEREAS, the action proposed in this Resolution is in the best interest of the residents of the Town.

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

Section 1. That the above recitals are true and correct and incorporated by reference as though fully set forth herein and are adopted as the legislative and administrative findings of the Town Council.

Section 2. That the utility easement as contained in the Amended Utility Easement Agreement is accepted by the Town as required by the referenced agreement.

Section 3. That this Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Woodson and seconded by Council Member King, and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 3rd day of November 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers
Dan Allers (Jan 30, 2026 15:08:22 EST)

Dan Allers, Mayor

ATTEST:

Amy Baker
Amy Baker (Feb 1, 2026 14:26:28 EST)

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

NSA
Nancy S. Applegate (Jan 30, 2026 16:46:27 EST)

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on Jan 30, 2026.

THIS INSTRUMENT WAS PREPARED BY
AND SHOULD BE RETURNED TO:

Nancy Stuparich, Esq.
Vose Law Firm, LLP
324 W. Morse Blvd.
Winter Park, FL 32789

AMENDED UTILITY EASEMENT

THIS AMENDED UTILITY EASEMENT (“Easement”), is made this 3rd day of October, 2025, by and between e Leo James Dibiasi, as Trustee of The Leo James Dibiasi Living Trust, UTD 08/20/2025 (“Grantor”) and the Town of Fort Myers Beach, Florida, a Florida municipal corporation (“Grantee”), whose mailing address is 6231 Estero Blvd., Fort Myers Beach, Florida 33931-4417.

RECITALS:

WHEREAS, Grantor is the owner of that certain parcel of real property located in the Town of Fort Myers Beach, Lee County, Florida more particularly described in Exhibit A and shown on the sketch attached as Exhibit B (“the Property”) by virtue of that certain Quitclaim deed dated August 20, 2025 and recorded on August 28, 2025 in the Official Records of Lee County, Florida as Instrument No. 2025000232114; and

WHEREAS, Grantee is the owner of certain underground utility improvement, facilities and systems, and all related appurtenances (“Utility Improvements”) located on a portion of Grantor’s Property (hereinafter referred to as “Easement or Easement Property”) as shown on Exhibit A-1; and

WHEREAS, pursuant to a settlement agreement executed by Grantor’s predecessor in title and Grantee on April 9, 2025, a copy of which is attached as Exhibit “C,” Grantee requested, and Grantor’s predecessor in title agreed to grant Grantee an exclusive easement as provided herein for the construction, operation, maintenance and use of Grantee’s Utility Improvements; and

WHEREAS, Grantor is agreeable to the terms and conditions contained herein and the execution of this Amended Utility Easement to correct the name of the Grantor in a Utility Easement previously recorded as Instrument 2025000276947 in the Official Records of Lee County, Florida by Grantor’s predecessor in title.

NOW, THEREFORE, in consideration of the sum of Eighty-Five Thousand Dollars (\$85,000.00) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. **Recitals.** The recitals set forth hereinabove are incorporated herein by this reference as fully as if set forth herein verbatim.
2. **Grant of Easement.** Grantor hereby grants, declares, dedicates, creates and establishes for the use and benefit of Grantee’s utility system an exclusive perpetual easement upon, under, over, though, and across only the Easement Property, for the construction, installation, reconstruction, distribution, operation, maintenance, repair, replacement, cleaning and use of the Utility Improvements and any other rights associated therewith or otherwise useful or necessary in connection with the use and enjoyment of the Easement Property, together with the rights of

ingress and egress over and upon the Easement Property for the purposes of maintenance, replacement, repair and cleaning (collectively, "Grantee's Work") of the Utility Improvements.

Grantor warrants that Grantor has fee simple title to and possession of the Easement Property and that it has the right and authority to grant this Easement, and that Grantee, its successors and assigns shall have all of the rights to the Easement Property not otherwise inconsistent with the easement as stated herein. Grantor hereby reserves unto itself, and its successors and assigns, the right to utilize the Easement Property for such purposes as deemed necessary, advisable, appropriate or convenient by Grantor that do not interfere with Grantee's rights under this Easement, including but not limited to, the exclusive right to use, pass and repass over and upon the Easement Property, and to construct, reconstruct, replace, install, maintain and repair any improvements located or to be located over, under, across and upon the Easement Property, or any part thereof, including but not limited to a dock. The parties acknowledge that Grantor intends to construct a dock which extends over the Easement Property, which shall be removeable upon reasonable notice from Grantee to allow Grantee physical access to its improvements. Grantor shall be responsible for obtaining any required permits for construction of the dock, the cost of the dock and fees, and restoration of the Easement Property to allow Grantee's continued use and enjoyment of the Easement granted herein. Notwithstanding the foregoing, Grantee shall have the right upon reasonable notice to Grantor to alter or make improvements on the Easement Property required for its continued occupancy and access to its Utility Improvements.

This Easement and the obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, and the benefits and burdens hereof shall run with the land. No action shall be taken by the Grantee, its agents, contractors or others on the property that would cause damage outside the Easement Property to the remaining property or the improvements located thereon.

3. **Release or Amendment of Easement.** This Easement shall not be released or amended in any manner without the written consent of Grantee.
4. **Enforcement.** The easements, covenants and agreements contained herein shall be enforceable by suit for damages, specific performance, declaratory judgment and/or injunctive relief, in addition to any other remedy provided by law or equity.

[Signatures to Follow]

IN WITNESS WHEREOF, the Grantor has caused this Utility Easement to be executed in Grantor's name.

Leo James Dibiasi, as Trustee of The Leo James Dibiasi Living Trust, UTD 08/20/2025

[Handwritten signature of Leo James Dibiasi]

Print Name: LEO DIBIASI

Signed, sealed, and delivered in

STATE OF FLORIDA
COUNTY OF LEE

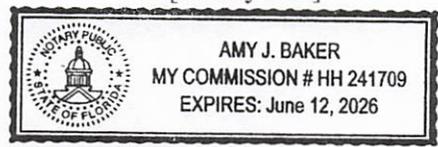
Witness: Claudia Briten
Print Name: [Signature]
Address: 6231 Estero Blvd
City/State: FM B, FL 33931

Witness: Lisa Hollywood
Print Name: LISA HOLLYWOOD
Address: 6231 Estero Blvd
City/State: Fort Myers Beach FL 33931

STATE OF Florida
COUNTY OF lee

The foregoing instrument was acknowledged before me by means of physical physical presence or online online notarization, this 21 day of Octobert 2025, by Leo James Dibiasi, as Trustee of The Leo James Dibiasi Living Trust, UTD 08/20/2025 , who is personally know to me or who has produced FL Driver License as identification.

[Notary seal]



[Handwritten signature of Amy J. Baker]
Print Name Amy J. Baker
Notary Public, State of Florida
My Commission Expires: June 12, 2026

ACCEPTANCE BY TOWN

This AMENDED UTILITY EASEMENT was accepted for public use by the Town of Fort Myers Beach, Florida, as authorized by action of the Town Council of the Town of Fort Myers Beach, Florida, at its meeting held on the 3rd day of November, 2025.

ATTEST:

**TOWN OF FORT MYERS BEACH,
FLORIDA, a Florida municipal corporation**



Amy Baker (Feb 1, 2026 14:28:28 EST)
Amy Baker, Town Clerk
Date: Jan 30, 2026



Dan Allers (Jan 30, 2026 15:08:22 EST)
Dan Allers, Town Mayor
Date: Jan 30, 2026

**Approved as to form and legality for use and reliance
only by the Town of Fort Myers Beach, Florida:**



Nancy Spalych (Jan 30, 2026 16:46:27 EST)
Vose Law Firm, LLP, Town Attorney

EXHIBIT "A"

A parcel of land upon which infrastructure owned, operated and maintained by the Town of Fort Myers Beach which is shown in Exhibit A-1 and which is located within the following described property:

**Description of a Parcel of Land
Lying In
Government Lot 2, Section 33, Township 46 South, Range 24 East
Town of Fort Myers Beach, Lee County, Florida
(Portion of Outlot A, El Sol, Unit No. 1)**

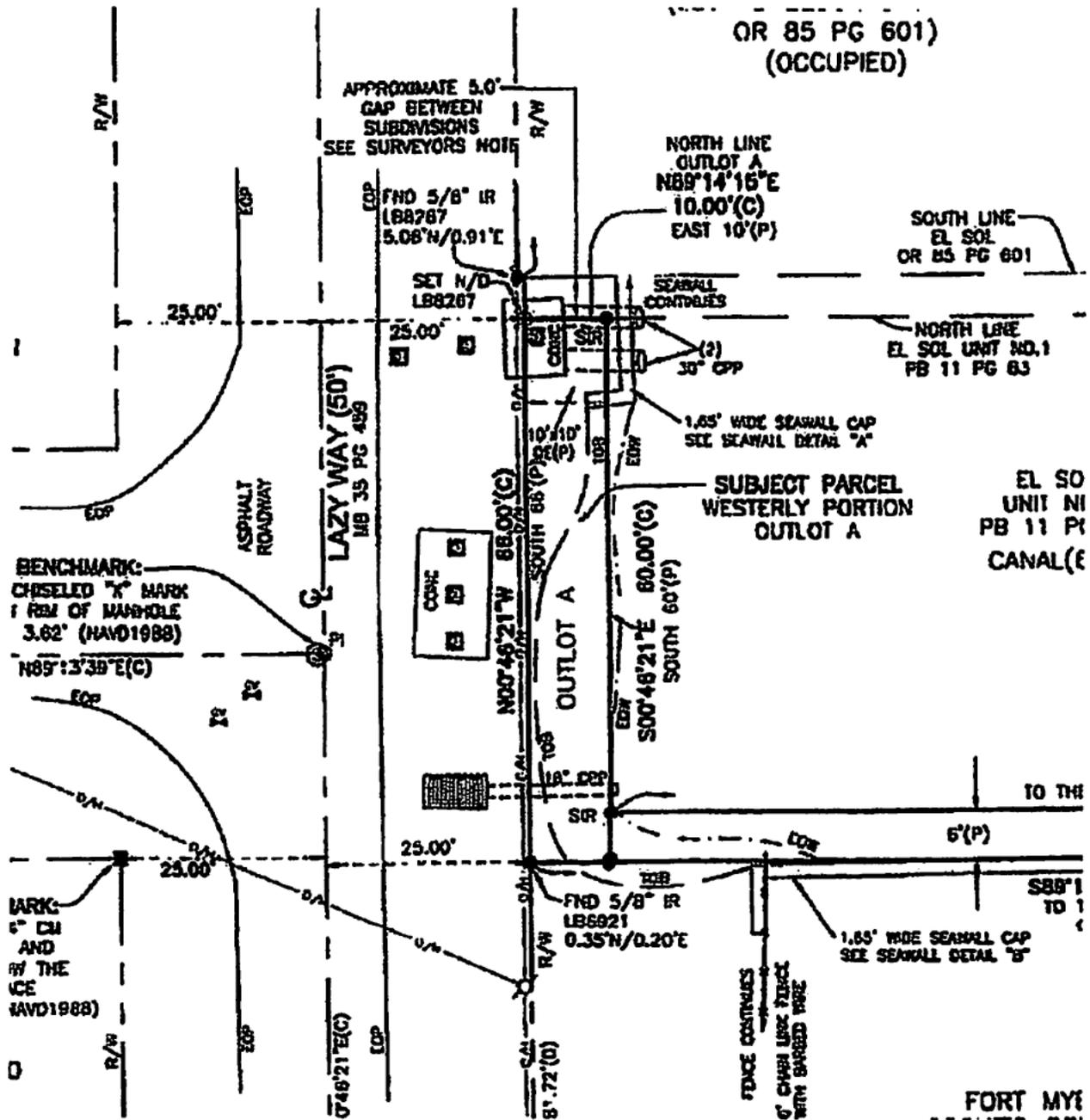
A parcel of land lying in the State of Florida, County of Lee, Town of Fort Myers Beach, situated in Government Lot 2, Section 33, Township 46 South, Range 24 East, being that portion of Outlot A as shown in the Plat of El Sol Unit No. 1, a subdivision as recorded in Plat Book 11 at Page 63, public records of Lee County, lying adjacent to Lazy Way, 50.00 foot Right-of-Way as described in Miscellaneous Book 35 at page 459 and more particularly described as follows:

Beginning at the northwest corner of said Outlot A, thence N89°14'15"E along the north line of said Outlot A for 10.00' to the westerly line of a 60.00' wide canal as shown on said subdivision Plat of El Sol Unit No. 1, thence S00°46'21"E for 66.00 feet to the southerly line of said Outlot A; thence S89°14'15"W, along said southerly line for 10.00 feet to the westerly line of said Outlot A and the Easterly Right-of-Way line of Lazy Way, a 50.00 foot wide Right-of-Way as described in Miscellaneous Book 35 at Page 459, thence N00°46'21"W, along said westerly line for 66.00 feet to the Point of Beginning.

Containing 660 square feet (0.02 acres), more or less.

Bearings are based on the State plane co-ordinate system Florida West Zone NAD83/2007.

EXHIBIT A-1



Settlement Agreement

LEO J. DIBIASI, TRUSTEE OF THE LEO J. DIBIASI and VALERI J. DIBIASI REVOCABLE LIVING TRUST, dated August 19, 2014 (collectively "Dibiasi"), and the TOWN OF FORT MYERS BEACH, hereby enter into this Settlement Agreement to formalize the agreements reached by the parties as resolution of Case No. 23-CA-005377 filed in the Circuit Court in the 20th Judicial Circuit in and for Lee County, Florida as follows:

1. The undersigned have agreed to settle all claims upon the following terms:

- (a) The Town will pay Dibiasi the total sum of \$85,0000 which includes compensation to Dibiasi and all attorney's fees and costs (inclusive of expert costs) following recording of the easement further described in Paragraph 1(b) below.
- (b) Dibiasi will grant the Town an easement for the drainage structures and an easement for the pipe which currently runs through the property together with rights to access the easement area. The Town shall be responsible for maintenance of the easement area. Prior to delivery, the easement shall be released from any and all existing encumbrances, unless otherwise accepted by the Town, with the exception of any existing mortgage(s), which will be subordinated to the Town's easement. The easement will be prepared by the Town and subject to review and approval by the Dibiasi's Attorney. The Town will be responsible and pay for the cost of a survey identifying the easement area. The Town shall be responsible for obtaining a

title report prior to delivery of the easement. Thereafter, the easement shall be presented to the Town Council for acceptance into the Town's records and recorded in the Official Records of Lee County, Florida at the Town's expense.

- (c) The Town will pay the mediator costs. Each party shall pay their own attorney fees.
- (d) Dibiasi will execute a specific release of any and all claims against the Town emanating from the inverse claim which shall be provided prior to recording of the easement. Such release shall be drafted by the Town and subject to the review of Dibiasi's attorney.

2. Upon execution of this Settlement Agreement and the Town's receipt of the specific release, the parties shall file a joint dismissal of this lawsuit with prejudice.

3. The parties agree and acknowledge that the foregoing terms of settlement are acceptable and have been approved the Town Council at a public meeting on the 17th day of March, 2025.

Signed, sealed, and delivered in the presence of:


 Print Name: Clara LeJoly
 Witness


 LEO J. DIBIASI, as TRUSTEE OF THE
 LEO J. DIBIASI and VALERI J.
 DIBIASI-REVOCALE LIVING TRUST,
 dated August 19, 2014


 Print Name: Levi Morris
 Witness

Date: 4-3-2025

TOWN COUNCIL OF FORT MYERS
BEACH, FLORIDA

ATTEST:

BY: Amy Bale
Town Clerk

Date: April 7, 2025

BY: D Dan Allers
Dan Allers, Mayor

Date: 4/7/2025

APPROVED AS TO FORM

BY: Nancy Strickland
Town Attorney