

INSTR # 5449433  
 OR BK 03646 PG 2893  
 RECORDED 05/15/2002 04:53:16 PM  
 CHARLIE GREEN, CLERK OF COURT  
 LEE COUNTY  
 RECORDING FEE 136.50  
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## SEAFARER'S PLAZA DEVELOPMENT AGREEMENT

The following Agreement is made between Seafarer's 1997, Inc. (hereinafter "Seafarer's 1997"), Seafarer's 2000, Inc. (hereinafter "Seafarer's 2000"), both Florida corporations whose mailing address is P.O. Box 216, Fort Myers Beach, Florida 33932, and Huntingburg Partners, Ltd. (hereinafter "Huntingburg"), a Florida limited partnership whose mailing address is 5845 Riverside Lane, Fort Myers, Florida 33919, with Seafarer's 1997, Seafarer's 2000, and Huntingburg hereinafter collectively being referred to as the "**Developer**"; and the Town of Fort Myers Beach, a political subdivision of the state of Florida, hereinafter referred to as the "**Town.**"

### ARTICLE I. RECITATIONS

**WHEREAS**, this Agreement is made pursuant to the provisions of the Florida Local Government Development Agreement Act, §§163.3221 – 163.3243, Florida Statutes; and

**WHEREAS**, the Developer is developing a project known as Seafarer's Plaza, hereinafter called the "**Development**" and explained below, the rezoning for which was partially approved simultaneously with this Agreement by Town Resolution 02-07, which Resolution provides for up to 90,455 square feet of commercial uses and up to 65 hotel guest units at buildout, all on the city block surrounded by Estero Boulevard, Crescent Street, and Fifth Avenue in the Town; and

**WHEREAS**, the terms set forth in this Agreement are to be defined consistent with the definitions set forth in the Fort Myers Beach Comprehensive Plan and the Town's Land Development Code ("**LDC**") and if not so set forth then said terms are to be defined according to their plain meaning; and

**WHEREAS**, the Town conducted four public hearings pursuant to §163.3255, F.S., the first on December 10, 2001, the second on February 4, 2002, the third on March 4, 2002, and the fourth on April 15, 2002, all before the Town Council; and

**WHEREAS**, the public hearings were properly noticed by publication in the *News-Press*, a newspaper of general circulation and readership in Lee County, the county in which the Town is located, and by mailed notice to the affected property owners in accordance with §163.3225(2), F.S., copies of these notices being attached hereto as composite Exhibit "D."

**NOW THEREFORE**, for and in consideration of the terms set forth below, the parties hereto agree as follows:

## ARTICLE II. DESCRIPTION OF THE PROJECT

### **A. PROPERTY SUBJECT TO THIS AGREEMENT**

The real property subject to this Agreement is legally described in Exhibit "A" to this Agreement and is hereinafter referred to as the "**Property**."

### **B. OWNERSHIP**

Seafarer's 1997 and Huntingburg are the legal owners of the Property. Seafarer's 2000 owns a leasehold interest in the portion of the Property owned by Huntingburg. All references herein to **Developer** are understood to mean Seafarer's 1997, Seafarer's 2000, and Huntingburg, jointly and severally, and their respective successors or assigns.

### **C. FUTURE LAND USE DESIGNATION.**

The Property is designated as "Pedestrian Commercial" on the future land use map of the Fort Myers Beach Comprehensive Plan.

### **D. ZONING DISTRICT DESIGNATION**

The zoning designation of the Property is Commercial Planned Development ("**CPD**"). The Property was rezoned to CPD by Town Resolution 02-07 on April 15, 2002, hereinafter referred to as "the **Resolution**." A copy of the Resolution is attached hereto as Exhibit "B." The improvements to the Property permitted by the CPD are herein collectively referred to as "the **Development**."

### **E. PARAMETERS OF APPROVED DEVELOPMENT**

The CPD approves up to 90,455 square feet of commercial uses and up to 65 hotel guest units, to be constructed in four phases with a buildout no later than December 31, 2017, with prescribed uses, densities, and heights as set forth in the Resolution (subject to the additional limitations described in Article III.B.1.c) below).

### **F. CONCEPTUAL MASTER PLAN**

A drawing depicting the Development, subject to those limitations contained in the Resolution, is a part of the CPD and is called the Master Concept Plan ("**MCP**"). The MCP includes two sheets, the first depicting Phase 1 only and the second depicting the maximum build-out of the Property (which is further subject to the provisions of Article III.B.1.c) below). The Town finds that the MCP, as modified by the Resolution, is consistent with the Fort Myers Beach Comprehensive Plan and the LDC. The MCP, subject to the limitations contained in the Resolution, is incorporated by reference and made a part hereof.

### **G. SCHEDULE OF PUBLIC FACILITIES SERVICING THE PROPERTY**

The Development will receive potable water from the Town of Fort Myers Beach and sanitary sewer service from Lee County Utilities. Fire control and rescue services will be provided by the Fort Myers Beach Fire District. These public facilities are already in place consistent with the requirements of §163.3227(1)(d), F.S.

## **H. LOCAL DEVELOPMENT PERMITS**

The following is a list of the local development permits that have been approved to date or which need to be approved for the Development of the Property pursuant to the CPD.

1. Town Zoning Resolution No. 02-07 (Case No. DCI 2000-00047);
2. Town development orders;
3. Concurrency certification;
4. Design review certification;
5. Right-of-way and road connection permits;
6. Building permits.

## **I. PROJECT PHASING**

It is anticipated that the Development will be constructed in the following three phases:

Phase 1: Existing buildings (including Building A) and the 4,081 square feet addition as shown on the Phase 1 MCP, with additional surface parking also as shown on the Phase 1 MCP.

Phase 2: Replace existing building with new Building E as shown on the build-out MCP.

Phase 3: Replace existing building with new Building D as shown on the build-out MCP, subject to the additional limitations described in Article III.B.1.c) below.

Phase 4: Demolish remaining building on interior of block, then reconstruct the surface parking lot and construct new Building C along Crescent Street and Fifth Avenue as shown on the build-out MCP, subject to the additional limitations described in Article III.B.1.c) below.

- Phases 3 and 4 may be reversed.
- Prior to the construction of Phases 3 or 4, the Development must demonstrate compliance with the required number of parking spaces either on-site, or through a binding off-site shared parking agreement, or by an approved amendment to this CPD allowing a deviation from the required number of spaces (see Article III.B.1.c)).
- There had been a parking garage originally proposed as Building B, but the request for the parking garage was later withdrawn by the Developer and is not approved by the Resolution or this Agreement.

## **ARTICLE III. TERMS OF THE AGREEMENT**

### **A. DEVELOPER RESPONSIBILITIES**

#### **1. Commercial Building Location and Design**

- a) The Developer shall construct buildings A, C, D, and E only, in accordance with the MCP and in substantial conformance with the architectural elevations attached hereto as Exhibit "C." Building B, a proposed parking garage shown on previous MCPs, has been withdrawn by the Developer and is not approved by the Resolution or this Agreement. Minor changes and refinements to the architectural drawings can be made by the Developer if approved in advance in writing by the Town Manager or a town-appointed architectural review committee. Significant changes to the architectural drawings can be made by the Developer only through an amendment to this Agreement.
- b) The Developer shall also comply with the commercial building design standards and all other parts of the LDC as they exist when development orders and building permits are obtained to the extent they are not inconsistent with Exhibit "C", except where the MCP and this Agreement clearly indicate the Town's intention for different guidelines or regulations to apply, provided however that nothing in this provision shall prevent Developer from making an application for a variance or deviation from specific provisions of the LDC in accordance with the procedures prescribed therein.
- c) All perimeter walls shall meet the full visibility requirements for facade walls in the new LDC, including window openings of at least 60% below the expression line, a maximum height of 30 inches above grade for the bottom of windows, and windows to be transparent (transmitting at least 50% of visible daylight and providing continuous view of interior space), except that to avoid leaving a blank wall along the Crescent Street sidewalk in the event that a new building is constructed over and/or around the existing drive-through lane, the Developer shall construct full display windows along this wall, but the storefronts will not be required. In their place, the display windows shall enclose a fully visible display area at least 18 inches deep.

#### **2. Estero Boulevard Sidewalk, Outdoor Dining, and Gazebo**

- a) The Developer shall donate a perpetual sidewalk easement, subject to the reservations of rights set forth in Article III.A.2.b) below, on the approximately 150-square-foot triangular piece of land now used as a public sidewalk and on five additional feet along the entire length of the Property facing Estero Boulevard, except that at the turn in Estero Boulevard, this easement line shall match the dashed line indicated on the MCP.
  - (1) This easement shall be recorded in form and content reasonably acceptable to the Town Attorney within three months of the execution of this Agreement and prior to the issuance of any building permits for the Development. It shall not be effective to bind Town to this Agreement unless it is accompanied by a Title Insurance Policy issued by the Chicago Title Insurance Company in the amount of \$100,000 or the maximum amount which can be obtained, whichever is less, insuring Town's interest in an enforceable, non-exclusive, perpetual easement recorded in the public records and allowing members of the public to use this portion of the Property for pedestrian passage, which

- easement shall be binding on the heirs, successors, and assigns of the owner of the portion of the Property which the easement will encumber.
- (2) The Title Insurance Policy shall further insure that said easement is not subordinate to any mortgage, covenant, condition, restriction, judgment, lien, or other recorded encumbrance, except accrued taxes and assessments.
- b) The grant of easement described in Article III.A.2.a) above may contain a reservation of rights allowing the grantor to keep the existing gazebo or a replacement therefor on the same footprint, subject to the provisions of Article III.A.2.d) below, and it may also reserve the right to use the space below the existing Cabasca's canvas canopy overhang for outdoor dining for a period of up to three years, after which time the area underneath will be used exclusively for a fully public sidewalk. A permanent awning, canopy, or colonnade may replace the existing canopy if it meets the criteria for awnings, canopies, or colonnades extending over the right-of-way as found in the LDC, provided that Developer first provides the indemnification and hold harmless documents and the proof of insurance described in Article III.B.3 below.
  - c) No additional buildings or structures, other than sidewalks and related street furniture, may be constructed within the easement area. A fence may be installed and maintained by the Developer to separate the outdoor dining tables and seats from moving traffic, but shall be subject to the Town Manager's complete discretion in the approval of design, materials, color, and level of maintenance.
  - d) Notwithstanding the potential reservation of rights to keep the gazebo described in Article III.A.2.b) above, the Developer agrees that, upon request by the Town Council, Developer shall grant Town a non-exclusive easement allowing public use of the gazebo and the adjoining passenger elevator as part of a pedestrian overpass to be built by Town over Estero Boulevard, subject to the following conditions:
    - (1) Developer shall retain the right to use the gazebo and elevator for access to Developer's adjoining structure;
    - (2) The easement shall be extinguished upon Town's failure to utilize it for its stated purpose as part of a public pedestrian overpass for a period of six (6) continuous months once such public use commences;
    - (3) Town shall assume responsibility for the maintenance and repair of the gazebo and elevator, and any upgrades thereto, in good, attractive, and safe working order, with developer to reimburse Town for ten (10%) percent of the costs of such maintenance and repair;
    - (4) Town shall have the right to upgrade the gazebo and elevator at Town's expense and specifications as Town may deem desirable from time to time subject to Developer's approval of plans and specifications and such approval shall not be unreasonably delayed or withheld;
    - (5) Town shall assume responsibility for defending any claims brought upon allegations of injury to persons or property proximately caused by Town's alleged negligence in operating, repairing, maintaining, failing to repair, or failing to maintain the gazebo and elevator in fulfillment of Town's legal duties to persons using the gazebo and elevator; and
    - (6) Town shall be liable for all judgments rendered in connection with such claims of negligence, subject, however, to the limitations set forth in Section 768.28(5), Florida Statutes.

### 3. Crescent Street Sidewalk, Colonnade, and Permanent Fence/Wall

- a) The Developer shall donate a seven (7') foot perpetual sidewalk easement along the entire length of the Property facing Crescent Street within three months of the execution of this Agreement and prior to the issuance of any building permits for the Development.
  - (1) This easement shall be recorded in form and content reasonably acceptable to the Town Attorney within three months of the execution of this Agreement and prior to the issuance of any building permits for the Development.
  - (2) It shall not be effective to bind Town to this Agreement unless it is accompanied by a Title Insurance Policy issued by the Chicago Title Insurance Company in the amount of \$100,000 or the maximum amount which can be obtained, whichever is less, insuring Town's interest in an enforceable, non-exclusive, perpetual easement recorded in the public records and allowing members of the public to use this portion of the Property for pedestrian passage, which easement shall be binding on the heirs, successors, and assigns of the owner of the portion of the Property which the easement encumbers.
  - (3) The Title Insurance Policy shall further insure that said easement is not subordinate to any mortgage, covenant, condition, restriction, judgment, lien, or other recorded encumbrance, except accrued taxes and assessments.
  
- b) Notwithstanding the creation of this sidewalk easement, the Developer shall have the right to construct building space over it where approved on the MCP, conditioned upon compliance with subparagraph d) below; provided, however, that if no building is constructed over the easement by the expiration date of this Agreement, including the extensions contemplated under Article IV.B.2, such right shall expire.
  - (1) If the Developer exercises this option, he shall simultaneously widen the existing concrete public sidewalk to twelve (12') feet in width to the Town's specifications along the entire Crescent Street frontage of the Property.
  - (2) The Developer's actual cost for this sidewalk's base and concrete surface shall be eligible for impact fee credits (see Article III.B.6 below).
  
- c) Any building permitted by the MCP to extend over the existing sidewalk shall create an arcade or colonnade over the open sidewalk.
  - (1) The building shall be supported by rectangular columns between 12 and 24 inches in width, spaced approximately as shown on the architectural elevations as shown in Exhibit "C" and placed 2 feet from the outside face of the curb.
  - (2) At least 10 feet of clearance must be provided between the sidewalk and the bottom of the floor above (not including hanging or projecting signs that may be permitted by the LDC).
  - (3) No other obstructions in the sidewalk are allowed.
  
- d) Developer's rights to build over existing or future public sidewalks shall be conditioned upon Developer first providing the indemnification and hold harmless documents and the proof of insurance described in Article III.B.3 below.
  
- e) Within eighteen months of the date of this Agreement, the Developer shall construct a permanent fence/wall immediately west of the sidewalk easement to provide a visual buffer between the existing parking lot and Crescent Street. This fence/wall shall be of the same style and construction as shown on the build-out

MCP for the portion of Fifth Avenue between the platted alley and the future driveway.

**4. Fifth Avenue Sidewalk, Colonnade, On-Street Parking, and Permanent Fence/Wall**

- a) Within six months of commencing construction on Phase 4, the Developer shall construct a continuous sidewalk at least ten (10') feet wide along the entire portion of Fifth Avenue that is adjacent to the Property. This sidewalk shall be designed and constructed at the Developer's sole expense, but to Town's specifications, and shall include all changes needed to the drainage system to accommodate the wider sidewalk.
- b) Any building space permitted by the MCP to extend over the right-of-way shall create an arcade or colonnade over a sidewalk that is at least eight (8') feet wide.
  - (1) The building shall be supported by rectangular columns between 12 and 24 inches in diameter, spaced approximately as shown on the architectural elevations as shown in Exhibit "C" and placed 2 feet from the outside face of the curb.
  - (2) At least 10 feet of clearance must be provided between the sidewalk and the bottom of the floor above (not including hanging or projecting signs that may be permitted by the LDC).
  - (3) No other obstructions in the sidewalk are allowed.
- c) Developer's rights to build over existing or future public sidewalks shall be conditioned upon Developer first providing the indemnification and hold harmless documents and the proof of insurance described in Article III.B.3 and 4 below.
- d) Developer may construct public parking spaces in the public right-of-way along Fifth Avenue. These parking spaces shall be designed and constructed at the Developer's sole expense, but to Town's specifications, and shall include any changes needed to the drainage system to accommodate the parking spaces. The Developer may count these parking spaces and any other public parking spaces maintained by the Town in the Fifth Avenue right-of-way in the parking computations described in Article III.B.1.c).
- e) Within eighteen months of the date of this Agreement, the Developer shall construct a permanent fence/wall to provide a visual buffer between the existing parking lot and Fifth Avenue. This fence/wall shall be of the same style and construction as shown on the build-out MCP for the portion of Fifth Avenue between the platted alley and the future driveway.

**5. Impact Fees**

The Developer shall pay applicable impact fees in accordance with Town regulations in effect at the time that individual building permits are obtained.

**6. Lift Station Easement**

Any construction in the airspace above the easement for the existing sewer lift station at the corner of Crescent Street and Fifth Avenue shall be subject to Developer providing Town with satisfactory evidence that Developer has obtained the prior, written approval of the easement holder to such construction, which will be designed

and built so as to assure the ability of the easement holder to maintain and upgrade its equipment.

## **7. Access**

- a) Vehicular access points between the Property and adjoining streets shall be limited to the platted alley off Fifth Avenue and to those driveways shown on the MCP. The Developer may make minor adjustments to these access points if approved in writing by the Town Manager and by any other governmental authority having jurisdiction in this matter.
- b) The Developer consents to the elimination of all left turns into and out of the existing driveway to Estero Boulevard that lies about 150 feet northwesterly of Crescent Street. This elimination may be accomplished by the construction of a permanent median in Estero Boulevard at the Town's sole expense. In addition, after construction begins on Phase 3, this driveway shall be converted by the Developer to one-way (northbound) traffic; the only turns allowed would be right turns from Estero Boulevard into the Property.
- c) Except for the right turns into the driveway described in subparagraph (b) above, the Developer shall eliminate vehicular access from the Property to Estero Boulevard at all other points along Estero Boulevard, specifically including existing parking spaces and the existing driveway into the underbuilding parking, within one year after the effective date of this Agreement.
- d) The Developer may use the platted alley off Fifth Avenue for off-street loading and for the removal of garbage; provided, however, that no dumpsters, compactors, or other equipment may be placed on the platted portion of the alley, nor may vehicles be parked on the alley. Dumpsters and compactors must be screened in accordance with Town regulations.

## **8. Audits**

- a) Upon request of Town Manager, the Developer agrees to produce the books and records of the restaurant on the third floor of Building A in the same manner as required for all restaurants that serve alcoholic beverages under Section 34-1264(k) of the LDC. However, the limitation of 49% of gross sales from alcoholic beverages in Section 34-1264(k) shall be modified in accordance with Condition 7.b. of the Resolution.



## **B. TOWN RESPONSIBILITIES**

### **1. Zoning**

- a) The Town has approved the CPD subject to the limitations contained in the Resolution, and also subject to Developer signing this Agreement, which CPD, while consistent with the comprehensive plan, will permit Developer to exceed certain intensity levels and other standards applicable to similar properties. The extra allowances include:
  - (1) Seafarer's Plaza is intended to contain a concentration of entertainment venues including restaurants and bars at a single location.
  - (2) One existing entrance from Estero Boulevard will not be relocated to a secondary street, as encouraged by comprehensive plan policy 7-E-3.
  - (3) The existing restaurant drive-through lane may be retained.
  - (4) The MCP includes several additional deviations from the current LDC.
  
- b) Provided that the Developer complies with the terms of this Agreement, the Town agrees not to rezone the Property to eliminate any of the allowances described in Article III.B.1.a) above for a period of ten years and as may be extended in accordance with Article IV.B.2 below, except as provided in Article IV.A.2 below.
  
- c) The approvals of Phases 1, 2, and 3 are based on the Developer providing 4.5 on-site parking spaces for each 1,000 square feet of commercial space plus 1.5 on-site parking spaces for each hotel guest unit, with the sum multiplied by 0.67 to reflect the Developer's participation in the redevelopment overlay district as described in Sections 34-1141 through 1145 of the LDC. Upon the filing of proper application by the Developer, the Town will consider whether to grant additional deviations to the minimum parking requirements that may be contained in the LDC at that time to allow construction of all parts of Phase 3, and construction of all or part of Phase 4.
  - (1) This application may be filed two or more years after completion of Phase 2 and prior to any construction of Phases 3 or 4, and shall include the complete historic data on the usage of the existing parking spaces within the Development.
  - (2) The Town's decision shall be based on, in addition to other legal requirements, whether the parking data demonstrates that the first two phases of the Development require less on-site parking per square foot of developed area than the parking ratios that otherwise would apply to this property under the LDC. The Town agrees that this decision should reflect the actual measured parking demand of this mixed-use development located near the center of the Town's pedestrian activity and near trolley stops, on-street parking spaces, and other public parking lots. The Town's goals are to require the Developer to provide adequate but not excessive on-site parking and to encourage the rental of any surplus parking spaces in the on-site lot for beach parking.
  - (3) Any deviation granted pursuant to this Article III.B.1.c shall expire if the construction for which said deviation is granted is not commenced within 2 years from the date said deviation is approved and completed and certified for occupancy within 18 months after construction is commenced.

## **2. Estero Boulevard Sidewalk**

- a) The Town consents to the Developer retaining certain existing improvements within the existing and future public sidewalk as described in Article III.A.2 above.
- b) The Town agrees to construct a concrete public sidewalk of about 10 feet in width and to plant regularly spaced street trees along the Estero Boulevard frontage of this Property within eighteen months after written notice by the Developer that he will cease outdoor dining within the sidewalk easement (except as permitted pursuant to Article III.B.2.c) of this Agreement).
  - (1) The Town will permit Developer to upgrade this public sidewalk at Developer's expense to include bricks, pavers, or other enhancements subject to the Town Manager's complete discretion in the approval of design, materials, color, placement, and mode of construction.
  - (2) The Town agrees to retain the two large black olive trees in the public right-of-way at the turn in Estero Boulevard so long as they remain healthy and do not constitute a public nuisance or safety hazard. The Town may reconstruct the planter boxes around these trees while upgrading the surrounding sidewalk.
- c) The Town grants the Developer vending rights for outdoor dining for the placement of two tables between plus an additional table on each side of the black olive trees at the turn in Estero Boulevard, as shown on the MCP. These four tables offset the loss of existing outdoor dining caused by the donation of the sidewalk easement in Article III.A.2.a).

## **3. Crescent Street Sidewalk**

The Town consents to the Developer constructing building space over the existing sidewalk along Crescent Street and over the expanded sidewalk to be built by the Developer on the new sidewalk easement, as described in Article III.A.3. above, provided that Developer, prior to construction, indemnifies and holds Town harmless from any and all claims of injury to persons or property alleged to be caused by said construction and activities related to it and from any and all similar claims alleged to have resulted from objects thrown, dropped, or falling from said buildings, including part of the building itself, during its construction.

- a) Prior to issuance of any permits allowing such construction, Developer shall provide Town with written proof of liability insurance coverage showing Town as one of the named insureds thereunder with coverages of not less than \$3,000,000 per individual claim and \$10,000,000 per occurrence.
- b) This insurance coverage shall remain in force until the construction has been certified as being complete and Developer shall provide Town with written proof of same within thirty (30) calendar days of the annual renewal date therefor.
- c) The promise to indemnify and hold Town harmless shall run with title to the Property for so long as the building encroaches over the pedestrian right-of-way.
- d) The Town in return shall record an instrument consenting to and providing an easement for the encroachment of the building over the pedestrian right-of-way for the duration of the building's existence.

**4. Fifth Avenue Sidewalk**

The Town consents to the Developer constructing building space over the sidewalk along Fifth Avenue, as described in Article III.A.4. above, upon the same terms and with the same requirements as set forth with respect to the Crescent Street sidewalk provisions set forth in Article III.B.3 above.

**5. Alley off Fifth Avenue**

The Town consents to the use of the 20-foot-wide alley off Fifth Avenue for off-street loading and trash pickup for Seafarer's Plaza. This use is not exclusive to Seafarer's Plaza and must be shared with adjoining Property owners. No dumpsters, compactors, or other equipment may be placed on the alley, nor may vehicles be parked on the alley.

**6. Impact Fees**

The Town agrees that the value of land and structures in Article III.A.2.d) above and the Developer's actual cost for constructing the widened sidewalk on Crescent Street as specified in Article III.A.3.b) above shall be eligible for credit against transportation impact fees. Such credits shall be applied for and computed in accordance with Section 2-313 of the LDC and shall be transferable in accordance therewith.

## **ARTICLE IV. OTHER PROVISIONS**

### **A. EFFECT OF AGREEMENT**

1. The failure of this Agreement to address a particular permit, condition, term, or restriction, does not relieve the Developer of the necessity of complying with the law governing those permitting requirements, conditions, terms, or restrictions.
2. The Town may adopt new comprehensive plans, ordinances, zoning categories, or other regulations applicable to the Property. However, any subsequent plans or regulations may not prevent the physical development of the Property as set forth in this Agreement unless it is determined that any one or more of the events described in §163.3233(2), F.S., apply.
3. Consistent with §163.3241, F.S., if State or Federal laws are enacted after the execution of this Agreement which are applicable to and preclude the parties' compliance with the terms of this Agreement, this Agreement will be modified or revoked as necessary to comply with relevant State or Federal laws.
4. In the event any structure on the Property is damaged or destroyed by fire, hurricane, or other natural disaster, the Developer may rebuild such structure in accordance with the buildback provisions of the Town's Comprehensive Plan which are in effect on the date of this agreement.

### **B. DURATION OF AGREEMENT**

#### **1. General**

This Agreement will be effective upon execution of all parties and will continue in force for ten years, but it may be terminated early, amended, or extended as provided herein.

#### **2. Future Extensions of Agreement Contemplated**

Section 163.3229, F.S., currently limits a statutory development Agreement to a maximum term of ten years. The parties contemplate that this Agreement will be renewed to allow the scheduled build-out of the Development. This Agreement may be extended by mutual consent of the governing body and the Developer, subject to a public hearing in accordance with §163.3225, F.S.

#### **3. Procedure to Declare and Cure Default**

If Developer fails to comply with the terms of this Agreement within thirty (30) days of receipt of written notice from the Town Manager alleging that Developer is in violation of those specific provisions of this Agreement which are identified in said notice, unless said notice provides Developer with a longer period of time in which to cure the violation, Developer shall have the right, but not the obligation, to take the Town Manager's determination before the Town Council using the procedures set forth in Article IV.D.2 below. The Town Council may declare the Developer to be in default, provide Developer with an additional period of time in which to cure a default, or take such other action as it deems appropriate, the purpose of this provision being to provide Developer with the means to bring before the Town Council, for its

consideration, any dispute Developer may have with the Town Manager's notice of a violation. The Town Council's review of any such dispute is not a quasi-judicial proceeding which requires the Council to observe any particular rule of procedure or evidence. The purpose of the Council's review is to provide an informal means of dispute resolution to the parties. It is not intended to confer any procedural or substantive right or obligation on any party to this Agreement.

### **C. AMENDMENT OF AGREEMENT**

This Agreement may be amended or canceled by mutual consent of the parties or by their successors in interest. If State or Federal laws are enacted after the execution of this Agreement that are applicable to, and preclude the parties' compliance with the terms of this Agreement, this Agreement will be modified as necessary to comply with the relevant State or Federal laws after a public hearing.

### **D. ANNUAL REVIEW AND RIGHT OF APPEAL**

1. Pursuant to §163.2335, F.S., this Agreement will be reviewed annually by Town, beginning one year after its effective date. This review shall be included in the annual concurrency assessment as required by Section 2-47 of the LDC. If the review concludes that the Developer has complied in good faith with the terms and conditions of the Agreement during the period under review, the review will be considered complete. If the review makes a preliminary finding that there has been a failure to comply with the terms of the Agreement, the Developer shall be provided the notice prescribed in Article IV.B.3 above and the opportunity to cure its failure in accordance within the time prescribed in said notice.
2. Notwithstanding any provisions in the LDC regulating appeals of administrative decisions, if Town makes a finding of non-compliance pursuant to subparagraph (1) above and/or a notice of violation sent by the Town manager pursuant to Article IV.B.3 above, and Developer, within thirty (30) days after receipt of notice thereof, disputes in writing the finding of such non-compliance and/or the allegation of such violation, then such finding and the written response of the Developer will be referred to the Town Council which, consistent with the provisions and purposes set forth in Article IV.B.3 above, will conduct an informal hearing, of which Developer shall be given the right to present its arguments.

### **E. REVOCATION OR TERMINATION OF AGREEMENT**

Subject to the provisions of Articles IV.B.3 and IV.D.2 above, this Agreement may be terminated by any party hereto upon a breach of an obligation required of another party and owed to the party exercising its right of termination, or by mutual consent of the parties.

### **F. SEVERABILITY**

In the event that any portion or section of this Agreement is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Agreement which shall remain in full force and effect.

**G. BINDING EFFECT**

All terms, conditions, responsibilities, duties, promises, and obligations of the parties are binding upon the parties, their successors and assigns.

**H. PUBLIC RECORDS AND EFFECTIVE DATE**

The date of this Agreement shall be the date when the last party to sign it has signed it. In accordance with §163.3239, F.S., Town will record this Agreement with the Clerk of the Circuit Court promptly after the Mayor's signature, but in no event later than 14 days of its execution. The Town will submit a copy of the recorded Agreement to the Department of Community Affairs. This Agreement is not effective until it is properly recorded in the public records of Lee County and until 30 days after receipt by the Department of Community Affairs.

**I. ENFORCEMENT**

1. Any party, any aggrieved party, or adversely affected person as defined in §163.3215(2), F.S. or the Department of Community Affairs may file an action for injunctive relief in the Twentieth Judicial Circuit Court to enforce the terms of this Agreement or to challenge compliance of this Agreement with the provisions of the Florida Local Government Development Agreement Act.
2. The parties have also have all other rights available by law to enforce this Agreement.

**J. NOTICES**

1. Any notice required to be provided to Developer herein shall be sent to such address as Seafarer's 1997, Seafarer's 2000, and Huntingburg shall provide to Town in writing from time to time. Until changed pursuant to the terms of this Article IV.J., such notice shall be sent as follows:

To Seafarer's 1997 and Seafarer's 2000 c/o Joerg Wiebe, president, P.O. Box 216, Fort Myers Beach, Florida 33932

To Huntingburg c/o Huntingburg Management Corp., attention Frank Helmerich, president, 5845 Riverside Lane, Fort Myers, Florida 33919

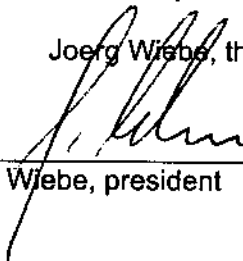
2. Any notice required to be provided to Town herein shall be addressed to the Town Manager at the Town's Town Hall address, which currently is 2523 Estero Boulevard, Fort Myers Beach, Florida 33931.

**IN WITNESS WHEREOF**, the undersigned have approved this Agreement on April 15, 2002.

**SEAFARER'S 1997, INC. and  
SEAFARER'S 2000, INC.,  
both Florida Corporations**

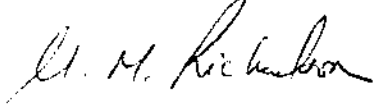
By: Joerg Wiebe, their president

Corporate Seal

By:   
Joerg Wiebe, president

**STATE OF FLORIDA  
COUNTY OF LEE**

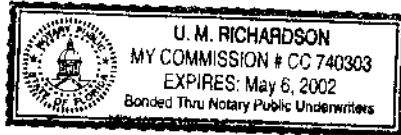
The forgoing Agreement was acknowledged before me this 25 day of April, 2002 by Joerg Wiebe as president of Seafarer's 1997, Inc. and Seafarer's 2000, Inc. Joerg Wiebe is either personally known to me or has produced Identification. The type of identification produced was:

Signature of Notary Public: 

Printed name of Notary Public:

**UNA M. RICHARDSON**


Stamp:



**HUNTINGBURG PARTNERS, LTD.**

By: Huntingburg Management Corporation,  
the general partner

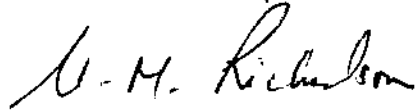
Corporate Seal

By:   
Frank W. Helmerich II, president

**STATE OF FLORIDA  
COUNTY OF LEE**

The forgoing Agreement was acknowledged before me this 6 day of May, 2002 by Frank W. Helmerich II as president of Huntingburg Management Corporation. Frank W. Helmerich II is either personally known to me or has produced Identification. The type of identification produced was:

Signature of Notary Public:



Printed name of Notary Public:

**UNA M. RICHARDSON**

Stamp:





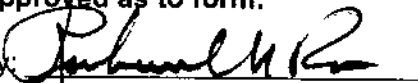
**ATTEST:**

**TOWN OF FORT MYERS BEACH**

By:   
Town Clerk

By:   
Daniel Hughes, Mayor

**Approved as to form:**

By:   
Richard V. S. Roosa  
Town Attorney

**EXHIBIT "A" – LEGAL DESCRIPTION (2 pages)**

**EXHIBIT "B" – CPD RESOLUTION (7 pages)**

**EXHIBIT "C" – ARCHITECTURAL ELEVATIONS (1 page)**

**EXHIBIT "D" – PUBLIC NOTICES (3 pages)**

**Exhibit "A" — page 1 of 2**  
**LEGAL DESCRIPTION**

**LEGAL DESCRIPTION**

**DESCRIPTION: (TRACT "B")**

Part of Block 6, Business Center Subdivision as recorded in Plat Book 9, Page 9, Public Records of Lee County, Florida and part of Section 24, Township 46 South, Range 23 East, Lee County, Florida, described as follows:

Commencing at the intersection of the Northeasterly right-of-way line of Estero Boulevard and the Southwest corner of Block "E", Crescent Park Addition as recorded in Plat Book 4, Page 46, Public Records of Lee County, Florida; thence run N.70°37'09"W. along said Northeasterly right-of-way line for 195.75 feet to the point of beginning; thence continue N.70°37'09"W. along said right-of-way line for 93.70 feet; thence run N.19°22'51"E. for 123.05 feet; thence run N.70°37'09"W for 50.02 feet; thence run N.19°22'51" E. for 35.01 feet to the Southeasterly corner of Lot 7, Block 6, of the aforesaid Business Center Subdivision; thence run N.70°37'09"W. for 100.05 feet; thence run N.22°23'59"W. for 80.04 feet to the Northwesterly corner of Lot 6, Block 6, of said Business Center Subdivision, being the Southerly right-of-way line of Fifth Avenue; thence run N.67°36'01"E. along said right-of-way line for 205.16 feet; thence run N.25°59'51"E. along the Southeasterly right-of-way line of said Fifth Avenue for 16.45 feet to a point on a curve; thence run Northeasterly along said right-of-way line for 75.05 feet along the arc of a curve concave Northwesterly, with a radius of 209.00 feet, a delta of 20°34'26", a chord bearing of N.35°32'37"E. and a chord distance of 74.65 feet to a point of reverse curvature; thence continue Northeasterly along said right-of-way line for 108.07 feet along the arc of a curve concave Southeasterly, with a radius of 151.00 feet, a delta of 41°00'25", a chord bearing of N.45°45'34"E. and a chord distance of 105.78 feet; thence run S.64°00'09"E. along the Southerly right of way line of said Fifth avenue for 45.46 feet (said line not radial to the previously described line) to a point on the Westerly right-of-way line of Crescent Street; thence run S.01°20'13"E. along the Westerly right-of-way line of said Crescent Street for 48.08 feet; thence run S.00°09'30"W. along said Westerly right-of-way line for 350.04 feet; thence run S.00°39'36"E. along said right-of-way line for 19.94 feet; thence run N.70°28'31"W. for 80.88 feet; thence run S.19°31'29"W. for 42.50 feet; thence run N.70°37'09"W. for 29.08 feet; thence run S.19°22'51"W. for 94.80 feet to the point of beginning.

Said tract contains 2.330 acres, more or less and is subject to easements, restrictions and reservations of record.

**TOGETHER WITH: (TRACT "C")**

**DESCRIPTION:**

Lots 7, 8 & 9, Block 5, Business Center Subdivision as recorded in Plat Book 9, Page 9, Public Records of Lee County, Florida, Said Lot 7 is less right-of-way taken by Florida Department of Transportation for State Road 865.

Said tract contains 9,041.5 square feet, more or less and is subject to easements, restrictions and reservations of record.

Bearings are based on the Northeasterly right-of-way line of Estero Boulevard as being N.70°37'09"W.

**Exhibit "A" — page 2 of 2**  
**LEGAL DESCRIPTION**

TOGETHER WITH: (TRACT "E")

DESCRIPTION:

Lots 1, 2, 3 and 4, Block 6, of that certain subdivision known as Business Center, according to the Plat thereof recorded in Plat Book 9, Pages 9 and 10, Public Records of Lee County, Florida;

Also, a parcel in Government Lot 1, Section 24, Township 46 South, Range 23 East, Estero Island, Lee County, Florida, described as follows:

From the concrete monument (P.R.M.) marking the Southerly corner of Lot 1, Block 6 of the aforesaid Business Center subdivision, run North  $20^{\circ}06'00''$  East for 158.00 feet; thence run South  $69^{\circ}51'55''$  East for 100.00 feet; thence run South  $20^{\circ}07'40''$  West for 35.00 feet; thence run South  $69^{\circ}52'50''$  East for 50.00 feet; thence run South  $20^{\circ}06'50''$  West for 123.00 feet; thence run North  $69^{\circ}53'10''$  West for 150.00 feet to the Point of Beginning.

Less and except that part of the above described land shown as parcel 102 in that Order of Taking recorded in O.R. Book 1164, Page 102, Public Records of Lee County, Florida, and described as follows:

Commence at the Southwest corner of Lot 7, Block 8, of the aforesaid Business Center subdivision, thence run South  $70^{\circ}37'09''$  East 185.55 feet to a point of beginning; thence continue South  $70^{\circ}37'09''$  East 82.00 feet; thence North  $60^{\circ}15'10''$  West 83.36 feet; thence North  $42^{\circ}58'04''$  West 28.45 feet; thence South  $22^{\circ}23'59''$  East 37.82 feet to the Point of Beginning.

Bearings are from assuming the East line of the aforesaid Business Center subdivision to be North.

TOGETHER WITH: (TRACT "A")

DESCRIPTION:

A tract or parcel of land lying in Section 24, Township 46 South, Range 23 East, Lee County, Florida, described as follows:

Commencing at the intersection of the Northeasterly right-of-way line of Estero Boulevard and the Southwest corner of Block "E", Crescent Park Addition as recorded in Plat Book 4, Page 46, Public Records of Lee County, Florida; thence run N. $70^{\circ}37'09''$ W. along said Northeasterly right-of-way line for 77.82 feet to the point of beginning; thence continue N. $70^{\circ}37'09''$ W. along said Northeasterly right-of-way line for 117.93 feet; thence run N. $19^{\circ}22'51''$ E. for 94.80 feet; thence run S. $70^{\circ}37'09''$ E. for 29.08 feet; thence run N. $19^{\circ}31'29''$ E. for 42.50 feet; thence run S. $70^{\circ}28'31''$ E. for 80.73 feet to the West right-of-way line of Crescent Street as shown on Lee County Department of Transportation Project number 4965; thence run S. $00^{\circ}43'09''$ E. along said West right-of-way line for 103.86 feet; thence run S. $54^{\circ}21'33''$ W. along said right-of-way line for 48.28 feet (48.32 feet per right-of-way plans) to the point of beginning.

Said tract contains 16,452.7 square feet, more or less and is subject to easements, restrictions and reservations of record.

Bearings are based on the Northeasterly right-of-way line of Estero Boulevard as being N. $70^{\circ}37'09''$ W.

**Exhibit "B"**  
**CPD RESOLUTION**

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 02-07

WHEREAS, Seafarer's 2000, Inc. and Seafarer's 1997, Inc. have filed a request for Seafarer's Plaza to rezone 3.64 acres from Commercial Planned Development and C-1 to Commercial Planned Development (CPD) to permit up to 90,455 square feet of commercial uses and up to 65 hotel guest units in buildings not to exceed 40 feet above base flood elevation; and

WHEREAS, the subject properties are located at 1113 & 1133-1155 Estero Boulevard and 1150-1190 Fifth Avenue, Fort Myers Beach, Florida, legally described as shown in Exhibit "A"; and

WHEREAS, the applicant has indicated the property's current STRAP numbers are 24-46-23-W3-00006.0000, 24-46-23-W3-00206.0010, 24-46-23-W3-00206.0060, and 24-46-23-W3-00205.0070; and

WHEREAS, a public hearing was held before the Local Planning Agency, which recommended that the request be approved subject to numerous conditions; and

WHEREAS, several public hearings were held and the Town Council considered the following criteria, whenever applicable:

- a. Whether there exist changed or changing conditions that make approval of the request appropriate.
- b. The testimony of any applicant.
- c. The recommendation of staff.
- d. The testimony of the public.
- e. Whether the request is consistent with the goals, objectives, policies, and intent of the Town's Comprehensive Plan.
- f. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
- g. Whether the request will protect, conserve or preserve environmentally critical areas and natural resources.
- h. Whether the request will be compatible with existing or planned uses.
- i. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.
- j. Whether a requested use will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

NOW THEREFORE BE IT RESOLVED that the application for the parking garage is hereby denied; phases 1 and 2 are approved subject to the conditions listed below; Phase 3 is partially approved subject to the conditions listed below, and Phase 4 is conditionally approved subject to the conditions listed below. The following conditions and requirements are necessary for the protection of the health, safety, comfort, convenience, and welfare of the general public and that are reasonably related to the applicants' request:

1. The development of this project must be consistent with the two-page Master Concept Plan entitled "Master Concept Plan for Seafarer's Plaza," "Received, April 8, 2002," last revised 04-08-02, except as modified by the conditions below. This development must comply with all requirements of the Fort Myers Beach LDC at time of local development order approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan (MCP) are subsequently pursued, appropriate approvals will be necessary.

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

**a. SCHEDULE OF USES**

- Accessory Uses and Structures
- Administrative Offices
- Animal Clinic
- Bait & Tackle Shop
- Banks and Financial Establishments (no drive-throughs)
- Bar and Cocktail Lounge (see Condition # 5)
- Broadcast Studio
- Business Services Group I
- Caretaker's Residence (Buildings C & E only)
- Clothing Store General
- Computers and Data Processing Services
- Consumption on Premises (See Condition # 6)
- Convenience Food and Beverage Store (no gas pumps)
- Drug Store/Pharmacy
- Entrance Gates
- Food & Beverage Service-Limited
- Food Stores Group I (excluding supermarket)
- Gift and Souvenir Shop
- Hardware Store
- Healthcare Facility Group I
- Hobby Toy and Game Shop
- Hotel/Motel
- Insurance Company
- Laundromat/Laundry Facility & Dry Cleaning Group I
- Library
- Medical Office
- Nonstore Retailers
- Package Store
- Parking Lots, Commercial
- Paint, Glass, & Wallpaper
- Personal Services Group I & II
- Pet Services

Pet Shop  
 Police or Sheriff's Station  
 Post Office  
 Recreational Facilities- Commercial Group I  
 Real Estate Sales Office  
 Rental or Leasing Establishment Group I & II  
 Repair Shop Group I & II  
 Restaurant, Fast Food (walk-In & existing McDonald's drive-thru only)  
 Restaurant Group I, II, III  
 Signs in accordance with LDC Chapter 30  
 Social Services Group I & II  
 Specialty Retail Shops Groups I, II  
 Storage (indoor only, does not include mini-warehouse)  
 Studios  
 Temporary Uses (in accordance with LDC Chapter 34)  
 Used Merchandise Stores Group I & II  
 Variety Stores

**b. SITE DEVELOPMENT REGULATIONS**

Setbacks as shown on Approved Master Concept Plan

**Maximum Uses**

Retail: 40,592 SF  
 Restaurant: 32,265 SF  
 (includes bar & cocktail lounges)  
 Outdoor seating: 4,533 SF  
 Office: 13,065 SF  
**TOTAL:** 90,455 SF (not including hotel guest units)  
 Hotel guest units: 65

Uses must comply with maximum SF and footprints for Building A, C, D & E allowances shown on approved Master Concept Plan, and must also comply with the additional limitations described in Article III.B.1.c) of the development agreement.

**Required and Projected Parking Based on Current LDC**

3 parking spaces per 1000 square feet of any approved use, except 1 parking space per hotel unit (based on 4.5 per 1000 square feet and 1.5 per hotel unit, with 1/3 reduction allowed in overlay)

Phase 1 (all existing buildings, including Building A):

181 parking spaces  
 Building A: 99 parking spaces  
 Building B: *[BUILDING B WAS DENIED]*  
 Building C: 105 parking spaces  
 Building D: 45 parking spaces (1<sup>st</sup> floor)  
 15 parking spaces (2<sup>nd</sup> floor)  
 Building E: 73 parking spaces

If the minimum parking requirements in the LDC are lowered, the Developer may use the adjusted ratios for applying for development order approval for later phases.

**c. PHASING**

- Phase 1: As shown on approved Phase 1 MCP, includes addition to Seafarer's Mall and parking control gates.
- Phase 2: Replace existing Helmerich Plaza building with new Building E as shown on the build-out MCP.
- Phase 3: Replace existing McDonald's building with new Building D as shown on the build-out MCP, subject to the additional limitations described in Article III.B.1.c) of the development agreement.
- Phase 4: Demolish remaining Helmerich building on interior of block, then reconstruct the surface parking lot and construct new Building C along Crescent Street and Fifth Avenue as shown on the build-out MCP, subject to the additional limitations described in Article III.B.1.c) of the development agreement.

Additional Phasing Notes:

- i. Phases 3 & 4 may be reversed.
  - ii. Prior to the construction of Phases 3 or 4, the Development must demonstrate compliance with the required number of parking spaces either on-site, or through a binding off-site shared parking agreement, or by an approved amendment to this CPD allowing a deviation from the required number of spaces (see Article III.B.1.c) of the development agreement).
  - iii. Build-out of all phases will be no later than December 31, 2017.
3. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Fort Myers Beach LDC may be required to obtain a local development order.
  4. Approval of this rezoning does not give the Developer an undeniable right to receive local development order approval. This development must comply with all of the requirements of the LDC at the time of local development order approval, except as may be granted by LDC deviations approved as part of this planned development.
  5. The requested Dance Hall/Night Club is DENIED. However, a Type III Restaurant may be developed in the existing Helmerich Plaza building on the interior of the block with no more than 720 square feet dedicated for use as a dance floor. Operation of the restaurant must comply with LDC Chapter 34-1264, which states in part that the sale of alcoholic beverages may not account for more than 49% of the combined gross sales attributable to the sale of food and all beverages during any continuous twelve-month period. Maximum hours of operation for the restaurant shall be 6:00 a.m. to 2:00 a.m., and in no case later than the hours of food service operation.
  6. Consumption on Premises of Alcoholic Beverages.
    - a. Consumption on premises is permitted by right in restaurants.

- b. Any other uses, including Bars and Cocktail Lounges, and in conjunction with outdoor seating, will require a Special Permit, except as allowed by Condition #7.
7. Outdoor Seating.
- a. Consumption on premises is allowed in the outdoor seating areas approved in Special Permit 92-2-6-SP-3, AA COP2000-00020, and AA COP2000-00064 as described below:
    - 1. 1677 SF and tables shown on MCP with 84 outdoor seats (1<sup>st</sup> floor)
    - 2. 1571 SF with 132 outdoor seats (1<sup>st</sup> floor)
    - 3. 1017 SF with 56 outdoor seats (2<sup>nd</sup> floor)
    - 4. 1086 SF with 60 outdoor seats (3<sup>rd</sup> floor)
    - 5. Duesseldorf's (1035 SF, 1<sup>st</sup> floor)
  - b. All consumption on premises in the Seafarer's Mall (Building A) are approved for use in conjunction with restaurants and must comply with LDC Section 34-1264 which states no more than 49% of gross sales may be from alcoholic beverages. The only exception to this requirement is the proposed restaurant on the third floor of Seafarer's Mall in which no more than 70% of the gross sales may be from alcoholic beverages. A full menu of food items must be offered.
  - c. Hours of operation for consumption on premises within these outdoor seating areas will be the same as the restaurant's food service operations, but in no case later than 12:00 a.m. and earlier than 10:00 a.m.
  - d. Live entertainment is limited to accordion and string acoustic musicians and is limited to 11:00 p.m. No other live entertainment is permitted in the outdoor seating areas.
  - e. Recorded music may be piped into the outdoor seating areas until 11:00 p.m.
  - f. All other outdoor seating areas shown on the approved Master Concept Plan must have a special permit prior to allowing consumption on premises.
8. One tattoo and piercing establishment is permitted within the approved commercial Planned Development. If located in the existing Papa John's building, the building will be repainted to be consistent with the colors and style of Seafarer's Plaza. All signage for the use must be brought into compliance with Chapter 30 of the LDC. The freestanding Helmerich Plaza sign next to the building must be removed. All of these changes must be completed within 30 days of the approval of this resolution.
9. All approved buildings must be in substantial conformance with the architectural elevations presented to the Town Council, entitled "Seafarer's Plaza", prepared by McHarris Planning and Design, stamped "Received Oct. 29, 2001" and attached to the development agreement as Exhibit "C." Minor changes and refinements to the architectural drawings can be made by the Developer if approved by the Town Manager or a Town appointed architectural review committee. Significant changes to the architectural drawings can be made by the Developer only through an amendment to the development agreement.
10. The CPD zoning granted by this resolution does not become effective until the development agreement between the Town of Fort Myers Beach and all legal and equitable owners of the property has been executed by all parties. Any violation of any term of the development agreement by the owners shall also constitute a violation of this resolution.



11. Prior to issuance of a certificate of completion for the parking control gates, directional arrows will be painted onto the parking lot surface which reflects the internal traffic pattern shown on the Phase 1 MCP.
12. Prior to issuance of local development order for any portion of Phases 2 or 3 the applicant will submit a sign package for the entire Seafarer's Plaza development. If the sign package is not in substantial compliance with LDC Chapter 30, than an amendment to the approved CPD will be necessary.
- 13. ACTION ON DEVIATIONS:**
  1. APPROVE – allows connection separation on Fifth Avenue of 30' and 101' instead of 125'
  2. APPROVE – allows connection separation of 72' and 121' on Crescent Street instead of 125'0
  3. WITHDRAWN
  4. APPROVE – allows connection separation of 101' on Crescent Street near Fifth Avenue instead of 125'
  5. APPROVE – allows a multiplier of 3 hotel guest units for each dwelling unit instead of the allowed 1:1. In no case will the total number of hotel guest units exceed 65, and approval of any hotel guest units is subject to the additional limitations described in Article III.B.1.c) of the development agreement.
  6. APPROVE – allows stacking of 4 cars before the drive-through menu board instead of 5.
  7. APPROVE – allows hotel guest units 600 & 700 square feet in size instead of the maximum 550 SF, however the total SF of the hotel units cannot exceed 42,250 SF, and approval of any hotel guest units is subject to the additional limitations described in Article III.B.1.c) of the development agreement.
  8. APPROVE – allows loading and unloading to occur in the identified alleyway. Vehicles may only be parked in the public alley while loading or unloading or left unattended. Access from the alley shall remain open at all other times.
  9. APPROVE – allows the control gates to be located as shown on the Phase 1 MCP.
  10. APPROVE – allows the stacking lanes to vary in width from 15' to 9'.
  11. WITHDRAWN
  12. APPROVE – One 24 SF identification sign for the desired use on the third floor (Tradewind's) will be permitted on the stairwell, and allow a second, separate, 24 SF identification sign for Tetley's to be located on the stairwell. In no case will either sign exceed 24 SF each. Approval of this deviation does not relieve the applicant of the requirement to obtain the necessary sign permits, which includes review by Lee County Environmental Sciences for compliance with sea turtle nesting regulations. Approve a temporary 24 SF identification sign for parking at the corner of Estero Boulevard and Crescent Street; this temporary sign will be allowed for a maximum of six months from the date of this approval, will be mounted on the wall of the McDonald's on Crescent Street, and will not be illuminated.

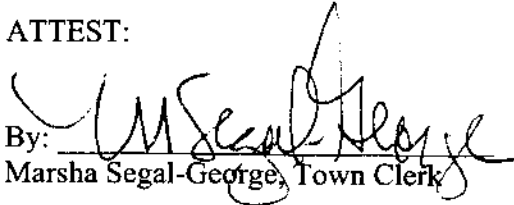
The foregoing resolution was adopted by the Fort Myers Beach Town Council on a motion by Council Member Van Duzer and a second by Council Member Cain; upon being put to a vote, the result was as follows:

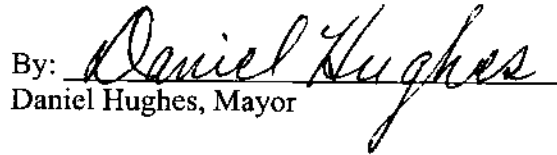
Howard Rynearson	nay
Daniel Hughes	aye
Bill Thomas	nay
W. H. "Bill" Van Duzer	aye
Terry Cain	aye

APPROVED this 15th day of April, 2002.

ATTEST:

TOWN OF FORT MYERS BEACH

By:   
Marsha Segal-George, Town Clerk

By:   
Daniel Hughes, Mayor

Approved as to form by:

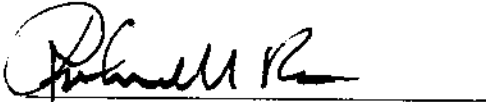
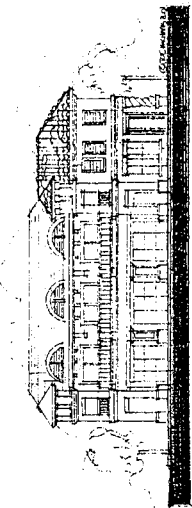
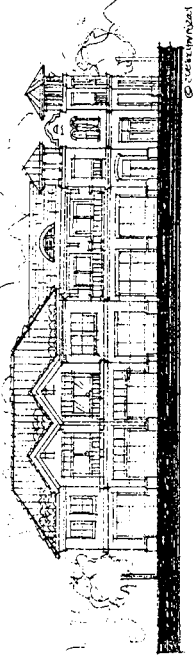
  
Richard V.S. Roosa, Town Attorney

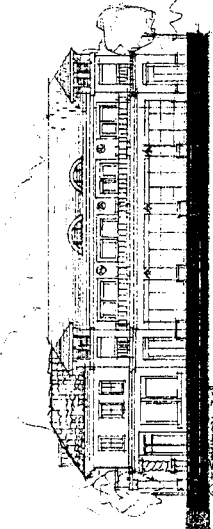
Exhibit "C" — page 1 of 1  
ARCHITECTURAL ELEVATIONS



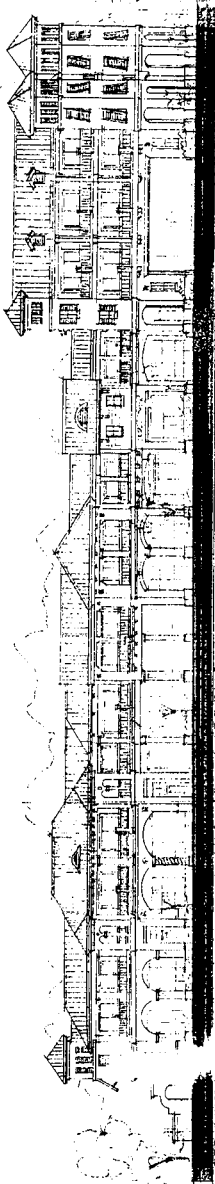
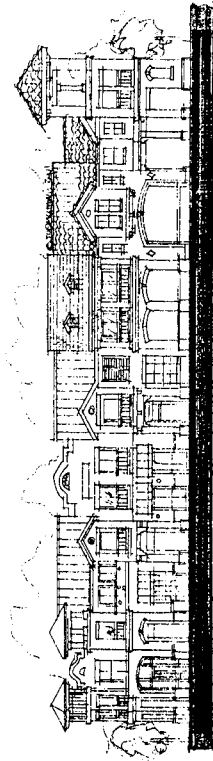
ESTERO BOULEVARD



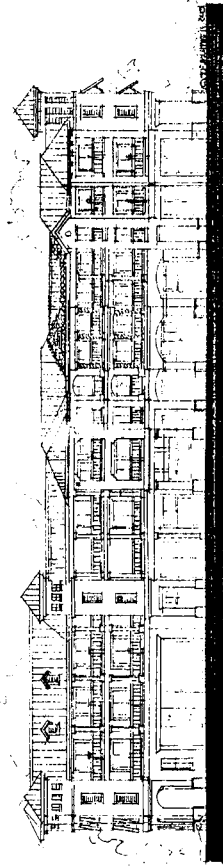
ESTERO BOULEVARD



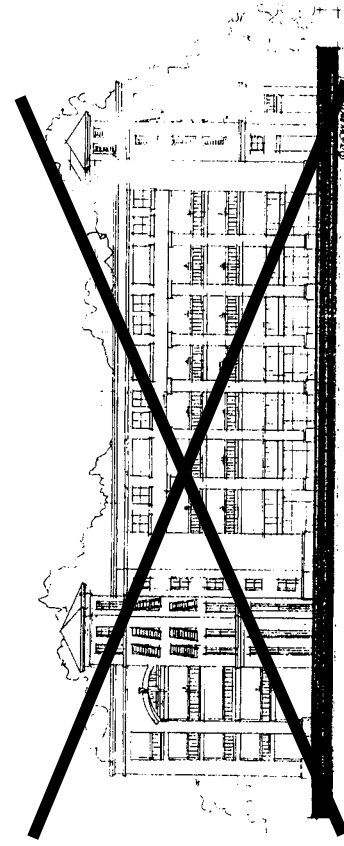
INTERIOR STREET



Descent Street Elevation



Fifth Avenue Elevation—Hotel



Fifth Avenue Elevation—Parking Garage

Exhibit "D" — page 1 of 3  
PUBLIC NOTICES

**NEWS-PRESS**

Published every morning – Daily and  
Sunday  
Fort Myers, Florida

**Affidavit of Publication**

STATE OF FLORIDA  
COUNTY OF LEE

Before the undersigned authority, personally appeared  
**Kieanna Henry**  
who on oath says that he/she is the  
**Asst. Legal Clerk** of the News-Press, a  
daily newspaper, published at Fort Myers, in Lee County,  
Florida; that the attached copy of advertisement, being a  
**display**  
in the matter of  
**Notice of Consideration of Development  
Agreement by Town of Fort Myers Beach**  
in the Court was  
published in said newspaper in the issues of  
**December 3, 2001**

Affiant further says that the said News-Press is a paper of general  
circulation daily in Lee, Charlotte, Collier, Glades and Hendry  
Counties and published at Fort Myers, in said Lee County,  
Florida and that said newspaper has heretofore been  
continuously published in said Lee County; Florida, each day,  
and has been entered as a second class mail matter at the post  
office in Fort Myers in said Lee County, Florida, for a period of  
one year next preceding the first publication of the attached copy  
of the advertisement; and affiant further says that he/she has  
neither paid nor promised any person, firm or corporation any  
discount, rebate, commission or refund for the purpose of  
securing this advertisement for publication in the said  
newspaper.

*Kieanna Henry*  
\_\_\_\_\_

Sworn to and subscribed before me this

6th day of December, 2001 by

**Kieanna Henry**  
personally known to me or who has produced

\_\_\_\_\_ as identification, and who did or did not take an  
oath.

Notary Public *Brenda Leighton*  
\_\_\_\_\_

Print Name \_\_\_\_\_

My commission Expires:



Brenda Leighton  
MY COMMISSION # CC808905 EXPIRES  
February 14, 2003  
BONDED THRU TROY FAIR INSURANCE, INC

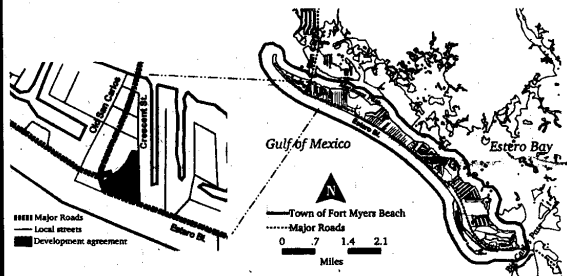
**NOTICE  
OF CONSIDERATION OF A  
DEVELOPMENT AGREEMENT  
BY THE TOWN OF  
FORT MYERS BEACH, FLORIDA**

The Town of Fort Myers Beach is considering entering into a  
development agreement with the owners and lessors of land  
which is proposed for a private redevelopment project  
known as Seafarer's Plaza.

Seafarer's Plaza would be located on 3.64 acres of land  
primarily on the city block surrounded by Estero Boulevard,  
Crescent Street, and Fifth Avenue in the Town of Fort Myers  
Beach. Street addresses include: 1113 & 1133-1155 Estero  
Bl. and 1150-1190 Fifth Avenue, all in Section 24, Township  
46S, Range 23E.

The proposed development would consist of up to 90,903  
square feet of commercial uses, 65 hotel units, and a  
proposed parking garage with about 364 parking spaces, in  
buildings not to exceed 40 feet in height above base flood  
elevation. The development may include interim use of  
existing buildings, including a night club/dance hall.

The Fort Myers Beach Town Council will hold its first public  
hearing on this development agreement on December 10,  
2001 at 9:00A.M. This hearing will be held at Town Hall,  
2523 Estero Boulevard, Fort Myers Beach, Florida 33931. If  
the Town Council wishes to enter into this development  
agreement, it will announce the time and date of a second  
public hearing at the end of the first hearing. A request to  
rezone this property for the proposed uses will also be  
considered at this public hearing (case number DCI-2000-  
00047).



Copies of the rezoning application and the draft  
development agreement may be reviewed at Town Hall,  
which is open daily from 8:30 A.M. to 4:30 P.M. A copy of  
the draft development agreement can also be downloaded  
from [www.spikowski.com/seafarers.pdf](http://www.spikowski.com/seafarers.pdf) Further information  
may be obtained by contacting Dan Folke at Town Hall at  
765-0202.

These public hearings are open to the public and all  
interested parties are encouraged to attend and be heard. If  
a person decides to appeal any decision considered at this  
hearing, he or she may need a record of the proceedings,  
and for such purpose may need to ensure that a verbatim  
record is made, including the testimony and evidence upon  
which the appeal would be based.

Exhibit "D" — page 2 of 3  
PUBLIC NOTICES

I, William M. Spikowski, planning consultant to the Town of Fort Myers Beach, certify that I personally mailed the notice on the next page to the adjacent property owners within 375 feet of the area subject to the proposed Seafarer's Plaza development agreement (as shown on the map below). These notices were sent prior to the first public hearing by first class mail to the most recent mailing addresses available for each parcel from the Lee County Property Appraiser.

*William M. Spikowski*

William M. Spikowski

STATE OF FLORIDA, COUNTY OF LEE: Sworn to and subscribed before me this 29<sup>th</sup> day of January, 2002, by William M. Spikowski, who is personally known to me.

Signature of Notary Public: FRED A. BLUMBERG

**Notary Public, State of Florida**  
**My comm. exp. Nov. 7, 2003**  
**Comm. No. CC886447**

Printed name of Notary Public: \_\_\_\_\_

Stamp: \_\_\_\_\_



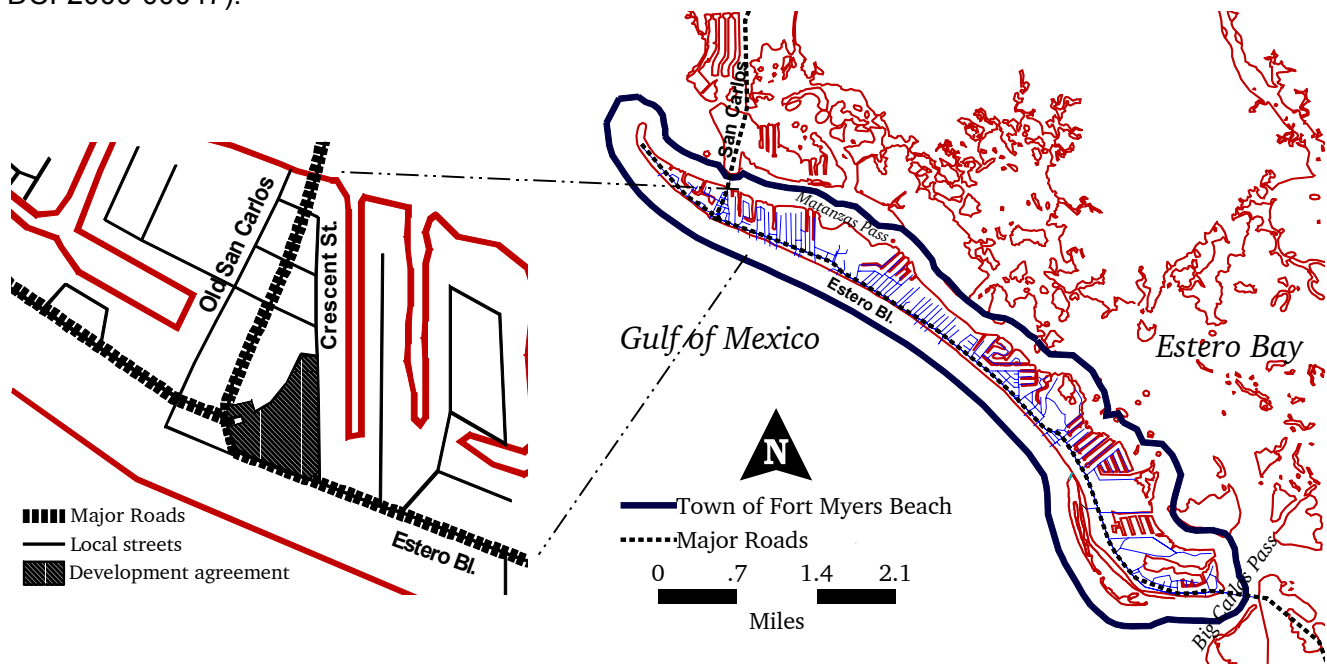
## NOTICE OF CONSIDERATION OF A DEVELOPMENT AGREEMENT BY THE TOWN OF FORT MYERS BEACH, FLORIDA

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Seafarer's Plaza would be located on 3.64 acres of land primarily on the city block surrounded by Estero Boulevard, Crescent Street, and Fifth Avenue in the Town of Fort Myers Beach. Street addresses include: 1113 & 1133-1155 Estero Bl. and 1150-1190 Fifth Avenue, all in Section 24, Township 46S, Range 23E.

The proposed development would consist of up to 90,903 square feet of commercial uses, 65 hotel units, and a proposed parking garage with about 364 parking spaces, in buildings not to exceed 40 feet in height above base flood elevation. The development may include interim use of existing buildings, including a night club/dance hall.

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Copies of the rezoning application and the draft development agreement may be reviewed at Town Hall, which is open daily from 8:30 A.M. to 4:30 P.M. A copy of the draft development agreement can also be downloaded from [www.spikowski.com/seafarers.pdf](http://www.spikowski.com/seafarers.pdf). Further information may be obtained by contacting Dan Folke at Town Hall at 765-0202.

These public hearings are open to the public and all interested parties are encouraged to attend and be heard. If a person decides to appeal any decision considered at this hearing, he or she may need a record of the proceedings, and for such purpose may need to ensure that a verbatim record is made, including the testimony and evidence upon which the appeal would be based.