ORDINANCE 18-04

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A COMMERCIAL PLANNED DEVELOPMENT TO THE CURRENT ZONING MAP FOR A PROPERTY LOCATED AT 1160 ESTERO BOULEVARD FORT MYERS BEACH AND OTHER ADDRESSES FROM COMMERCIAL PLANNED DEVELOPMENT (CPD), DOWNTOWN, AND ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICTS TO COMMERCIAL PLANNED DEVELOPMENT (CPD) (4.4+/= ACRES) AND ENVIRONMENTALLY CRITICAL (EC) (0.33+/- ACRES) WITH A MASTER CONCEPT PLAN (5.1+/- ACRES) FOR A 254 UNIT HOTEL, AQUATIC VENUE AND BEACH CLUB, RESTAURANTS, TIKI BAR, RETAIL, ACCESSORY HOTEL USES, CONSUMPTION ON PREMISE, AND DEVIATIONS TO THE LDC LIMITS ON HEIGHT, NUMBER OF STORIES, HOTEL EQUIVALENCY FACTOR, AND FLOOR AREA RATIO (FAR); CONTAINING 5.1+/- ACRES GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00006.000, 24-46-23-W3-00206.0060, 24-46-23-W3-00206.0050, 24-46-23-W3-00009.0000, 19-46-24-W4-0140B.0070, 19-46-24-W4-014B.0020, 19-46-24-W4-0140B.0010, 19-46-24-W4-0140B.0040, 19-46-24-W4-0140B.0050, 19-46-24-W4-0140A.0030, 24-46-23-W3-00205.0070, PORTIONS OF 5TH STREET RIGHT-OF-WAY, PORTIONS OF ESTERO BOULEVARD RIGHT-OF-WAY, MORE OR LESS; PETITION DCI17-0001; PROVIDING FOR SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

WHEREAS, Tom Torgerson and Tina Ekblad of Morris-Depew Associates, Inc., applicants and agents for the property owners, filed applications to rezone the property from the Commercial Planned Development (CPD), Downtown, and Environmentally Critical (EC) zoning districts to CPD with Master Concept Plan (MCP) in order to develop a hotel resort and associated facilities, on 5.1+/- acres more or less property, located at 1160 Estero Boulevard and other addresses in the Town of Fort Myers Beach; and

WHEREAS, the subject property is located in the Pedestrian Commercial and Recreation Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, with the exception of portions of Town or County right-of-way, the applicant has indicated the subject property is under common control and Tom Torgerson serves as the managing member for each ownership listed in the public records of Lee County Property Appraiser; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on February 13, 2018; and

WHEREAS, at the February 13, 2018 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the

record, and the testimony of all interested persons, as required by Town Land Development Code (LDC) s. 34-85; and

WHEREAS, at the February 13, 2018 public hearing the LPA recommended approval by a 5-2 vote, subject to certain conditions; and

WHEREAS, on April 9th, 2018 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

WHEREAS, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was legally advertised and held before the Town Council on May 21 2018; at which time the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

WHEREAS, the applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

WHEREAS, with the following terms, conditions and requirements which the Town Council finds to be in the public health, safety, and welfare, all of which are in compliance with the comprehensive plan and the Land Development Code; and

WHEREAS, Exhibit A provides the approved property development regulations for this CPD to be used during the permitting process; while Exhibit B provides the approved conditions of approval; and

WHEREAS, the Town Council finds that this rezoning is a unique and individual application which does not set precedent for future development or rezoning applications.

Deviation #1

Deviation from LDC Section 34-1803(a) which establishes equivalency factors for converting allowable dwelling units to hotel rooms.The equivalency remains at three, a total of 254 hotel rooms (224 rooms on Parcel 1 and 30 rooms on Parcel 2) per the revised Master Concept Plan pages dated 5/2018 are authorized due to exceptional circumstances and unique public benefit on record to include view corridor and permanent perpetual transfer of density and development rights from the VE zone to the AE zone.

Deviation #2
Deviation from LDC Section 34-675(b) which limits building heights as follows: 3 stories and 30 feet along Crescent Street and Fifth Street; 3 stories and 40 feet along the south side of Estero Boulevard; to allow the main resort building which fronts on Estero, Crescent and Fifth to be 4 stories and 38 feet, 10 inches feet above average base flood elevation and along the south side of Estero Boulevard of 4 stories, and other buildings to be at the lesser heights as shown on the Master Concept Plan.

Deviation #3
Deviations from LDC Section 34-675(c) which limits floor area ratio (FAR) to 1.4 for properties fronting on Estero Boulevard and to 1.0 for all other properties in the CPD to allow a FAR of 1.55 on Parcel 1 and Parcel 2 and Parcel 3.

Deviation #4
Deviation from the LDC Section 10-416(d)(2) which requires a Type D buffer (15 feet wide with 5 trees and staggered hedges to form a 3-foot visual screen between parking and a right-of-way) – to replace the Type D buffer with the buffer and sidewalk plan for Estero Boulevard, Crescent Street, and Fifth Street as shown on the Master Concept Plan.

Findings for the rezoning:

WHEREAS, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested rezoning to Commercial Planned Development (see LDC 34-85 and 34-216):

a. Minor ambiguities were resolved through the deviation process.
b. Long-standing blighted conditions on the subject property can be ameliorated through approval of this rezoning.
c. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
d. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
e. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
f. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
g. Urban services are available and adequate to serve the proposed use.
h. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.

i. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

j. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

k. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.

l. The proposed use or mix of uses is appropriate at the subject location.

m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.

n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

o. The rezoning meets all specific requirements of the Comprehensive Plan that are relevant to the request, including the following:
   - Policy 4-C-4 on building heights taller than the standard height limit
   - Policy 4-C-6 on hotel/motel densities
   - Policy 4-C-8 on density transfers
   - Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts

WHEREAS, the Town Council made the following formal findings before making final decisions on the four requested deviations from "by-right" requirements of the Land Development Code (see LDC 34-216 and 34-1803):

1. Deviations #1, #2, and #3 are being partially approved only due to the exceptional circumstances presented by the coordinated redevelopment of several critical parcels in the downtown zoning district in furtherance of policies in the Comprehensive Plan and design guidance provided by the Old San Carlos Boulevard / Crescent Street Master Plan. Key public benefits offered by the applicant include a perpetual view corridor along 324 feet of the beach side Estero Boulevard across the beach club resulting from a permanent transfer of density and development rights from the VE zone to the AE zone; and a second perpetual view corridor at the foot of the Matanzas Pass Bridge resulting from the permant transfer of density and development rights, no buildings on Parcel 3, and the donation of Parcel 4 to the Town of Fort Myers Beach.
2. All aspects of the proposed development, as limited by the special conditions being imposed by the Town Council, are compatible with the surrounding area, including building height, traffic flow, and intensity of use.
3. The proposed development, as modified by these deviations, clearly exceeds all standards of the Fort Myers Beach Comprehensive Plan.

4. The proposed development, with the modified deviations being approved, does not exceed any maximum intensities contained in the Fort Myers Beach Comprehensive Plan.
5. Granting these deviations will enhance the achievement of the objectives of the proposed development.
6. The general intent of the LDC to protect the public health, safety, and welfare will be preserved and promoted with these deviations.
7. These deviations operate to the benefit, or at least not to the detriment, of the public interest.
8. These deviations are consistent with the Fort Myers Beach Comprehensive Plan; and

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

The Town Council votes to **APPROVE** the request to rezone a portion of the subject property to CPD with the remainder to remain Downtown and EC per MCP X-103-BDNY.01 Boundary Survey and MCP X-102-BDNY.00 Boundary Survey with a Master Concept Plan, subject to the deviations and conditions set forth with specificity. The special conditions imposed for approval are found in Exhibit B. The first four special conditions provide the decisions on each deviation.

CODIFICATION AND SCRIVENER'S ERRORS.

Upon second reading approval, the Town Council intends that this ordinance will not be made part of the Fort Myers Beach Code of Ordinances. Typographical errors that do not affect the intent can be corrected with the authorization of the Town Manager or designee, without the need for a public hearing. Only the specific deviations granted by the Town Council and associated plan sheets reflecting those approvals with or without conditions are so incorporated.

EFFECTIVE DATE.

This ordinance becomes effective immediately upon its adoption.

THE FOREGOING ORDINANCE was enacted by the Town Council upon a motion by Vice Mayor Joanne Shamp and seconded by Council Member Anita Cereceda and, upon being put to a roll call vote, the result was as follows:

Tracey Gore, Mayor	aye	Bruce Butcher, Council Member	aye
Anita Cereceda, Council Member	aye	Joanne Shamp, Vice Mayor	aye
Dennis Boback, Council Member	aye		

DULY PASSED AND ENACTED this 21ST day of May, 2018.

ATTEST:

By: _____
Michelle D. Mayher, Town Clerk

TOWN OF FORT MYERS BEACH

By: _____
Tracey Gore, Mayor

Approved as to form by:

By: _____
Peterson Law Group, Town Attorney

Exhibit B CONDITIONS OF APPROVAL

This project area includes six (6) parcels as demonstrated in MCP X-103-BNDY.01 Boundary Survey. Parcels 1, 2 and 3 are to be rezoned to Commercial Planned Development (CPD). Parcels 4, 5, and 6 will retain their existing zoning classifications. All parcels are included in the Master Concept Plan and subject to the conditions as outlined below:

1 Parcels 1, 2, and 3 are authorized for a maximum of 254 hotel rooms. Parcel 1 is approved for a maximum of 224 hotel rooms. Parcel 2 is approved for a maximum of 30 hotel rooms. Parcel 3 is approved for surface parking only and no other improvements or hotel rooms, other than an accessory surface parking lot, is permitted. The transfer of density and development rights of Parcel 3 is permanent and binding.

2 The CPD is authorized to allow building heights as follows, with these heights measured in accordance with 34-631 of the LDC, as depicted on the Master Concept Plan, and as described:

a. The main resort building on Parcel 1 may be up to 4 stories and up to 38 feet, 10 inches above base flood elevation, provided that the highest points of the roofline and any architectural features across the property shall not exceed 52 feet from 4.5 feet above mean sea level elevation.

b. The larger building on Parcel 2 may be up to 4 stories, provided that the highest points of the roofline and any architectural features shall be a height of 52 feet, 4 inches or less, above existing typical ground level. Approved building heights for all buildings on Parcel 2 are shown in the Master Concept Plan.

c. No buildings or vertical structures are permitted on Parcel 3. The transfer of density and developments rights on Parcel 3 is permanent and binding.

3 The CPD is authorized to allow floor area ratios as follows, measured in accordance with 34-633 of the LDC. The total land area of Parcel 1, 2, and 3 may be utilized for the floor area ratio calculation of 1.55. The square footage of the proposed buildings may be clustered as depicted on the Master Concept Plan and includes:

a. The constructed floor area ratio on Parcel 3 and 5 shall be 0.0. Buildings, or any other improvements other than improvements associated with an at surface grade parking lot on Parcel 3 and a pool security fence on Parcel 5, are prohibited on these parcels.

4 The CPD is authorized to replace the Type D buffer required by 10-416(d)(2) of the LDC with the buffer and sidewalk plan for Estero Boulevard, Crescent Street, and Fifth Street as shown on Sheets X-502-RW.00 through X-504-RW.02 of the Master Concept Plan as revised through May 2018, subject to the following requirements:

a. Prior to obtaining any development orders, the landowner will dedicate to the town/public a perpetual public sidewalk easement to accommodate a sidewalk of seven (7) feet in width on the south side of Fifth Street where the MCP shows portions of the proposed sidewalk on private land.

b. The landowner will construct the sidewalks, curbs, and tree yards and will plant the lawn and street trees, as shown on the Master Concept Plan, prior to the issuance of any temporary certificates of occupancy including for adjoining buildings. These improvements must meet technical specifications of the Town of Fort Myers Beach along Fifth Street and Crescent Street and of Lee County along Estero Boulevard, except for such deviations as granted by the Town when reviewing and approving the Master Concept Plan. The landowner will maintain the tree yards and street trees in perpetuity.

c. The street trees shown along Estero Boulevard will be located closer to the curb if, prior to approval of the Development Order, but no later than January 2019 and with appropriate documentation of coordination, FDOT and Lee County approves the new 1.5-foot lateral offset standard alignment of the Florida Department of Transportation.

d. Prior to Development Order application, the landowner will document their efforts to the Town to seek approval from Lee County to re-route stormwater from the existing drainage inlet on Estero Boulevard into the resort's stormwater system so that roots from street trees on this block cannot interfere with any underground exfiltration trench. The conveyance of the Estero Boulevard drainage into the resort stormwater system will only be constructed if there are no adverse impacts or backflow into the existing system.

e. No buffer vegetation may be planted in any public right-of-way or any sidewalk easement other than depicted on the Town approved Master Concept Plan.

f. While the Town approved Master Concept Plan provides conceptual approval of under-building screening of parking areas, as required by LDC 34-992 (d)(1); a compliance and enforcement determination of the materials, technical specifications, and minimum opacity of the latticework around the ground story are subject to approval of the Town Manager or designee, as required by 34-992(c) and 34-992(d)(2) of the LDC. At the concurrence of the land owner, the Town Manager may allow occasional segments of latticework to be replaced by an opaque screen to allow works of art to be displayed in place of climbing vegetation.

g. If at the end of the one (1) year plant establishment period from the end of the Temporary Certificate of Occupancy, the buffer plantings and climbing vegetation planted on the latticework do not visually

screen activities in the ground story, the Town Manager will require corrective action. Corrective actions may include, but are not limited to, different vegetation, different management techniques, and supplemental screening behind the latticework, among other practices. The property owner will take corrective action within 30-days of written notification from the Town regarding the deficiencies in the buffer. Failure to respond to any 30-day written notice shall constitute an appealable $500 per incident per day civil violation.

5 The approved property development regulations for this CPD are presented in the attached Exhibit A, which will be substituted during the permitting process for the property development regulations that the LDC provides for the DOWNTOWN zoning district.

6 The approved schedule of uses for this CPD is limited to the following:

Parcel 1 (Bay Side)	**Parcel 2** (Gulf Side)	**Parcel 3**
LODGING use group: **Hotel** **Uses Accessory to** ATM Administrative Offices Consumption on Premises, outdoor service and seating limited to locations on Sheets X-505-COP.01 & X-506-COP.02 Parking Lot, Accessory Subordinate Uses Temporary Uses, if permitted by Ch. 34 **MARINE** use group No Marina Uses	**LODGING** use group: **Hotel** **RETAIL** use group: **Recreation Facilities, Commercial** (limited to 325 total people per day who are not staying at the hotel) **Restaurant** **Commercial Accessory Uses:** ATM Administrative Offices Consumption on Premises, outdoor service and seating limited to locations on Sheets X-506-COP.01 & X-507-COP.02 Subordinate Commercial Water-oriented Rentals **MARINE** use group: (if permitted by Chapter 27) **Parasailing Operations Office** **Personal Watercraft Operations Office**	**LODGING** use group: **Uses Accessory to** Parking Lot, Accessory (the only use permitted on Parcel 3)

7. The property owner is responsible for accounting and enforcement of the per day limitation of 325 non-resort guests at the aquatic venue or lesser number based upon Fire Department occupancy limitations; and, if requested, for providing records to the Town on demand for verification. Failure to provide records or limit non-hotel guests and/or hotel guests to the approved maximum limits per day shall constitute a $500 per day per incident civil violation.

8 This CPD approves structures up to the following square-footage maximum on Parcels 1 and 2 which are entirely landward of the 1978 coastal construction control line and within the CPD zoning district boundary:

a. Hotel

1. 250,783 SF, of which up to 96,085 SF could be guest units and up to 95,751 SF could be ground-story parking.

2. 224 guest units to be on bay-side Parcel 1 (above parking) and up to 84,745 square feet could be guest units.

3. 30 guest units to be on gulf-side Parcel 2 and up to 11,340 square feet.

b. Restaurant on Parcel 2

1. 15,870 SF for a restaurant, of which 1,514 SF would be a bar; plus, an additional 1,364 SF for outdoor seating and an additional 2,000 SF for indoor storage

c. Beach Club on Parcel 2

1. 3,786 SF for an ancillary restaurant

2. 2,508 SF in an existing building for ancillary restrooms and lockers

d. Pedestrian Bridges between Parcels 1– 2 if approved by Lee County

1. 2,691 SF for the access area required for a publicly accessible pedestrian bridge;

2. 1,380 SF for the pedestrian bridge that is not included in the FAR.

9 Redevelopment and future uses on the subject property must be consistent with the attached Master Concept Plan as approved by the Town Council as part of this request. All prior Master Concept Plans, CPD zoning approvals, special conditions, and development agreements for the subject property are no longer valid. All development activities and future uses must comply with all the requirements of the Town of Fort Myers Beach Land Development Code at the time of Development Order approval, except as explicitly modified by this CPD approval. Lot lines

shown on existing plats must be vacated or replatted, as appropriate and as administratively determined by the Town Attorney, prior to issuance of Development Orders. If changes to this approval are requested, they will be reviewed as requests to formally modify this CPD. This CPD's new Master Concept Plan consists of these 26 sheets:

a. X-G01 — Cover Sheet

b. X-101-FLU — Future Land Use and Project Boundary

c. X-103-BNDY.00 — Boundary Survey (1 of 2)

d. X-103-BNDY.01 – Boundary Survey (2 of 2)

e. X-104-DA — Developable Area Exhibit

f. X-105-MCP.00 — *Floor Area Ratio* First Floor

g. X-106-MCP.01 — Floor Area Ratio Second Floor

h. X-107-MCP.02 — Floor Area Ratio Third Floor

i. X-108-MCP.03 — Floor Area Ratio Fourth Floor

j. X-109-MCP.00 — Master Concept Plan First Floor

k. X-110-MCP.01 — Master Concept Plan Second Floor

l. X-111-MCP.02 — Master Concept Plan Third Floor

m. X-112-MCP.03 — Master Concept Plan Fourth Floor

n. X-113-MCP.04 — Master Concept Plan Deviations and Notes

o. X-114-MCP.05 — Master Concept Plan Building Height

p. X-A201 —Exterior Elevations

q. X-A202 —Exterior Elevations

r. X-A203 — Exterior Elevations

s. X-A301 — Building Sections

t. X-501 — Parking Locations and Calculations

u. X-502-RW.00 — Right-of-way and sidewalk/buffer plan

v. X-503-RW.01 — Right-of-way and sidewalk/buffer plan

w. X-504-RW.02 — Right-of-way and sidewalk/buffer plan

x. X-505-COP.01 — Consumption on Premises Diagrams

y. X-506-COP.02 — Consumption on Premises Diagrams Pedestrian Circulation

z. X-507-VT — Visibility Triangles

10 A pedestrian bridge across Estero Boulevard is shown on the Master Concept Plan. Conceptual approval of this bridge is subject to the following requirements for design, approval, and operation:

a. The pedestrian bridge must be constructed simultaneously with the buildings it connects.

b. The elevated terrace on the second story of the main resort building on Parcel 1 must include a public ADA compliant access for public use.

c. Visible publicly accessible stairwells and elevators on both sides of Estero Boulevard must connect the sidewalks to each end of the pedestrian bridge. The stairwell on Parcel 2 must provide access to publicly accessible restrooms in the restaurant building, with clear signage indicating the public's access and rights to use these restrooms and pedestrian bridge, if approved, without a fee or charge.

d. In order to guarantee the general public's permanent right to use the bridge and the adjoining stairways, elevators, and restrooms, the landowner must execute an instrument that guarantees this access in a form suitable to the Town Attorney.

e. Before constructing the bridge over Estero Boulevard, the landowner must obtain review and approval from Lee County and must enter into a formal agreement with Lee County regarding design, maintenance, liability, operations, future changes, and other relevant details. The bridge design must allow and not interfere with nor prevent all elements necessary for a traffic signal and grade level pedestrian crosswalk at the Estero Boulevard-Crescent Street intersection. If necessary, FDOT review and approval must be obtained.

f. All FDOT and Lee County approvals must be received by the applicant prior to approval by the Town. The Town's approval shall be limited to aesthetic and non-structural design.

11 Sheet X-109-MCP.00 of the Master Concept Plan identifies certain important features on Parcels 2 and 6 (the beach-side parcels) that will require separate critical actions by the Town and by the landowner at a later date. This sheet is being included in the Master Concept Plan with these understandings:

a. As shown on Sheet X-105, the landowner intends to request the vacation of a narrow right-of way at the end of Crescent Street, plus the first 185 feet of Canal Street south of Estero Boulevard which is part of Town-maintained Beach Access #36. Understanding that the Town's Comprehensive Plan strictly limits vacations of rights-of-way in order to preserve future access to the water, the landowner has agreed to provide a net increase in public access by donating Parcel 6 to the Town and constructing on it a new public street replacing Canal Street. The new public street will also be providing beach access and public parking spaces on 67 feet wide new rectangular

right-of-way beginning at Estero Boulevard. The Town Manager or designee shall be responsible for design approval of the new street. The new street will be completed on or before twelve (12) months following the issuance of a Development Order.

b. The landowner has also agreed to construct and dedicate a five-feet wide perpetual public access easement for a new pedestrian beach access at the "north" end of Parcel 2 that meets ADA accessibility requirements and the Town Manager's specifications as to design, surfacing and signage. The easement shall be constructed, completed, and open to the public on or before twenty-four (24) months following the issuance of the associated Development Order. During construction of the project the property owner shall maintain a minimum of one 25' wide ADA accessible beach access from Estero to the end of the property at or near the water.

c. The landowner will execute instruments to complete donations, the easement(s) for new pedestrian beach access easement and Parcel 6, in a form suitable to the Town Attorney and will provide them to the Town Attorney, who will not record either instrument unless the Town Council formally vacates the two existing rights-of-way shown on Sheet X-105; and:

   i. The landowner either completes the construction of the new street or allows continued public use of Canal Street or Temporary Beach Access until the new street is completed.

   ii. The Town will not issue development orders for demolition, site work, or new buildings on Parcels 1 or 2 unless the Town agrees to vacate both rights-of-way and related or associated property transfers are executed.

   iii. After the new street is constructed by the applicant and turned over to the Town, Parcel 6 will no longer be subject to any requirements of this CPD.

12 The beach club on Parcel 2 must meet these additional requirements:

a. To allow the reduced building frontage on the south side of Estero Boulevard (see LDC 34-675), development order plans must demonstrate three view corridors from Estero Boulevard to the beach (two totaling 319 feet; one totaling five feet) that total at least 324 feet along Estero Boulevard.

b. Any perimeter fence on the beach side of Estero Boulevard must be at least 80 percent transparent, must be placed within a landscaped planting area at least five (5) feet wide, and shall be maintained at a height of three (3) feet. If the Florida Building Code requires a taller fence at this location, the Fort Myers Beach Building Official shall adjust the fence height accordingly.

c. A detailed lighting plan, including any lit signage, must be provided with the development order application for the beach club; this plan must comply with LDC requirements in 10-154(8) and 14-76 for sea turtle conservation.

d. A detailed landscaping plan showing the location and type of all plantings, including beach plantings adjacent to the existing retaining wall, must be provided with the development order application for the beach club.

e. Directional signage approved by the Town as to design, installation methodology, and location shall be erected along Estero Boulevard that advises the public of both new public beach accesses.

f. The beach club and its ancillary uses may operate only from 7am to one hour after sunset, but never later than 9 pm. That is the Beach Clubs hours of operation unless otherwise temporarily altered in the Town's special event use regulations in Section 34-1264 of the LDC.

g. To implement the applicant's commitment to limit access to the beach club to 325 people per day who are not staying at the hotel, the resort will be required to submit monthly reports to the Town within 10 days after the end of each month showing the number of non-guest admissions for each day; and shall provide such information on demand and allow Town officials immediate access to this information for the current day at a designated location in the resort.

h. The beach club and aquatic venue shall provide no less than one security personnel per 200 guests.

i. All necessary dune plantings and walkovers shall be provided in compliance with Town codes and ordinances.

13 The following transportation and access features are shown on the Master Concept Plan and are an integral part of this approval:

a. All existing vehicular access points on Estero Boulevard shall be closed except the access to the one new public street on Parcel 6.

b. The one and only access point on Crescent Street will be an entrance-only driveway near the intersection with Fifth Street, which will be the main entrance for resort guests.

c. Access points on Fifth Street are limited to the one main exit for resort guests and a separate entrance and exit for service vehicles on Parcel 1, plus two existing driveways to the surface parking lot on Parcel 3.

14 Prior to the Town issuing any development orders for demolition, site work, or new buildings on Parcel 2, the landowner must execute and record a restrictive covenant in favor of and enforceable by the Town in perpetuity that acknowledges that this CPD approval has consumed all

allowable density and intensity on Parcels 1, 2, 3, and 5 and that no additional development may occur beyond that which is approved by this CPD. Prior to issuance of a temporary or final certificate of completion on Parcel 2 (but not later than 36 months after commencing construction), the landowner must convey to the Town a perpetual conservation easement in a form acceptable to the Town Attorney, which after acceptance will be recorded in the Public Records of Lee County, over those portions of Parcels 2 and 3 on which structures or pavement are not constructed or proposed to be constructed under the Master Concept Plan adopted as part of this CPD. The intent of this condition is to limit in perpetuity the density and intensity of Parcels 2 and 3 to that which is approved by this CPD and to maintain all areas on which buildings and pavement are not constructed and as shown on the Master Concept Plan, only for outdoor recreation area on Parcel 2 and a single-level surface parking lot on Parcel 3, but specifically excluding any additional parking facilities, buildings, and other similar structures or any additional improvements.

15 Development order plans must identify the location of 359 off-street parking spaces within the area now identified for parking on Parcels 1 and 3. The public parking spaces to be constructed on Parcel 6 cannot be counted toward the 359 spaces reserved for resort parking.

a. None of the 359 spaces are eligible for joint-use agreements or sharing agreements that would allow any of these spaces to substitute for off-street parking that is required by the LDC for businesses located outside this CPD's Master Concept Plan.

b. Prior to the issuance of a Temporary Certificate of Occupancy, the applicant will also construct or provide 75 dedicated parking spaces at an off-site location along the trolley route from the Beach Park & Ride facility to be available for the entire resorts parking needs within 2.8 miles of Parcel 1.

c. Three or more years after issuance of the resort's certificate of occupancy, the applicant may request to modify this condition to eliminate some or all of these off-site parking spaces upon a convincing showing that this condition requires more parking spaces than are needed for the entire resorts parking needs.

d. Identify to the Town if any shared use parking agreements are currently in existence and will be terminated to meet to meet this CPD condition.

16 Development order plans must demonstrate that vehicles can be accommodated by a multi-vehicle parking mechanism per parking spot. Valet parking must be managed so that vehicles are never stacked on Crescent Street or 5th Street waiting to access the valet area. The property owner shall install No Stop/Stand signs on Crescent and 5th Street.

17 Individual signs may be placed on this site during and after development as may be allowed by the LDC regulations that are in effect at that time. Murals are permitted in compliance with LDC regulations.

18 Service of alcoholic beverages for on-premises consumption is approved at the locations shown on Sheets X-505-COP.01 and X-506-COP.02 of the Master Concept Plan, subject to these limitations:

a. Service to outdoor seating is permitted on the second story outdoor terrace on Parcel 1, in the public restaurant on Parcel 2, and in the beach club on Parcel 2 provided service remains in substantial compliance with the COP diagrams on Sheets X-506-COP.O1 and X-507-COP.02. Beverages purchased in approved indoor or outdoor service areas on Parcels 1 or 2 shall not be carried across the pedestrian bridge. The designated service areas shall be identified separately from areas where consumption is permitted, but not part of a service and/or seating area.

b. Alcoholic beverages and amplified music in the beach club are limited to 7:00 a.m. to one hour after sunset, but not later than 9:00 p.m. Expansion of COP onto the sandy beach seaward of the seawall is prohibited.

c. Amplified music on the outdoor terrace on Parcel 1 is limited 7:00 a.m. to one hour after sunset, but not later than 9:00 p.m.

d. Amplified music in unenclosed hotel restaurant and bar on Parcel 2 are limited to 7:00 a.m. to midnight.

e. Alcoholic beverages may not be served at locations other than those shown on the Master Concept Plan unless approved by special use permit, special exception or by administrative approval, as provided in 34-1264 of the LDC.

19 Prior to applying for a permit for the stormwater management system from the SFWMD, the landowner shall evaluate the receiving of drainage from the intersection of Crescent and Fifth for suitability and consistency with SFWMD requirements. Provided these two components can be combined under those requirements, the landowner will design and construct the project to receive stormwater from the intersection of Crescent Street and Fifth Street into and through the project's stormwater system, including cost of upsizing the project stormwater system. In order to be considered feasible, any routing of stormwater from the intersection of Crescent and Fifth Streets must accommodate the project's design as approved by this CPD and it shall be borne by the property owner. The property owner will provide copies of the SFWMD permit application, and all subsequent responses to requests for additional information, to the Town's stormwater consultant for review and concurrent with filing with the SFWMD.

20 In order to provide an additional view corridor along the approach to the Town from the Matanzas Pass Bridge, the applicant has offered and the Town has accepted the following changes to the Master Concept Plan:

a. No buildings will be constructed on Parcel 3 in perpetuity. Parcel 3 shall remain as a 21-space surface parking lot for the resort because all development rights on Parcel 3 are being used on Parcels 1 and 2. Parcel 3 will be included in the covenants and conservation easement described in Condition 14. Landscape buffers shall be done in accordance with MCP X-504-RW.02.

b. No buildings will be constructed on Parcel 4 by the applicant and the existing building will be removed. Parcel 4 will be donated by the applicant to the Town for civic, public purposes and will include a reverter in the event the parcel is not used for such civic, public purposes. The demolition and re-grading of the property will be completed no later than September 30th, 2018. The Town shall receive Parcel 4 within 60 calendar days of the issuance of all necessary approvals related to the development order and approvals of the pedestrian bridge. After the existing building is removed by the applicant and the property transfer is completed, Parcel 4 will no longer be subject to any requirements of this CPD. Demolition of Parcel 4 may be completed prior to development order being issued.

21 Barring a direct hurricane or other Acts of God and governmental-related delays, Parcel 1 and the Parcel 1 main hotel shall be completed and open for operation within three years of the issuance of a development order approval. All other portions, phases, and uses shall be in operation within five years of issuance of a development order approval. A Development Order application for development of Parcel 1 shall be submitted no later than 270 calendar days from effective date of the rezoning ordinance.

22 Additional approvals of special events are allowed. Application for such special event approvals shall be submitted through the Town's adopted Special Event processes and may temporarily alter hours of operation, amplified music limits, and public user capacity, among other items.

23 Bicycle racks for public use will be provided as shown on the Master Concept Plan. All bicycles and similar alternative transportation options shall be provided within the approved development footprint. Operations of any bicycle loan business or operation shall require the returning of bicycles to the CPD properties on a daily basis; as well as comply with Town Codes, and provide education materials about Town codes and regulations to bicycle users.

24 Construction staging shall be authorized when in compliance with all applicable Town codes, except that concrete delivery/pumping for the building's foundations and terrace may occur no earlier than 4:00 am. No staging shall be permitted on Parcel 4 or Parcel 6 after donation to the

Town. No other approvals are inferred from approval of the CPD. The landowner or developer shall be responsible for submittal of any requests for additional staging or construction management approvals from the Town Council.

25 Any violation of the CPD conditions of approval or deviations shall constitute a $500 per day per incident civil violation.

26 The applicant has offered to provide residents of the Fort Myers Beach community a "Discount Plan," which provides a 25 percent discount on food, alcohol and non-alcohol beverages, Family Beach Club Admission, and retail store purchases, to anyone with a valid FL Driver's License with a home address in zip code 33931.

27 Per LDC Section 34-216(b)(5), the revised Master Concept Plan must be submitted to the director reflecting all modifications to the deviations and conditions as made herein by the Town Council.

Findings Regarding the Conditions

1. All recommended special conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.