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PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA BUILDING COMMISSION
March 7, 2014

Petitioner: Kathleen Morgan, Managing Member
Leah Marie Enterprises, LLC

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Holmes Beach, FL 34217

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DS 2014-035

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Applicable provisions of the Florida Building Code upon which the Declaratory Statement is sought:

2010 Florida Building Code, Building:

Section 1612.2 (*Substantial Damage, Substantial Improvement*)

2010 Florida Building Code, Existing Building:

Section 202 (*Substantial Damage, Substantial Improvement, Substantial Structural Damage*)
Section 303.2
Section 304.5
Section 807.4

Copies of the above provisions are attached as Appendix A.

Petitioner owns a single-family residential pre-FIRM structure and seeks permits to remove portions of the existing truss system in order to create a tray or vaulted ceiling on the interior of the home. Petitioner's alteration project would begin with the removal of existing Spanish tile roofing material, and the construction of a new roof over the existing roof. The new roof would be shingled. Then the interior alterations would be performed. More than 30% of the existing truss system would be removed during the course of the project to create the vaulted ceilings, and approximately 60% of the total existing roof area would be altered. Petitioner concedes that the project constitutes a Level 3 Alteration.

The City of Holmes Beach has suggested that because more than 30% of the roof area has been removed during the course of the project, the project would constitute *Substantial Structural Damage* under FBC Existing Building Section 202, Definitions. Respectfully, Petitioner believes that a voluntary alteration project does not constitute *Substantial Structural Damage* under the Florida Building Code. FBC Existing Building Section 807.4 specifically addresses structural alterations, including substantial structural alterations which remove more than 30% of the existing roof area (See Section 807.4.2). If the City's suggestion were accurate, then the provisions of Section 807.4.2 would be obsolete, because you could never have a substantial structural alteration that was not also *Substantial Structural Damage*.

The City also suggests that once a project is deemed to have incurred *Substantial Structural Damage*, it would appear to also constitute *Substantial Damage* for the purposes of flood design requirements, even if the cost of the project does not meet the "50% Rule", as described in FBC Section 1612.2 Definitions of *Substantial Damage* and *Substantial Improvement*. Essentially, the City suggests that *Substantial Structural Damage* would automatically constitute *Substantial Damage*. So, if more than 30% of the truss system is removed as part of an alteration project to a pre-FIRM home, the entire structure would have to be razed or elevated above base flood elevation, regardless of the cost of the project.

Respectfully, the Petitioner sees no basis for this suggestion. Other than the fact that they sound alike, Petitioner has found nothing in the Code that would create a link between the terms *Substantial Structural Damage* and *Substantial Damage*. The two definitions are referenced in completely independent portions of the Code, and Petitioner has found no reference to *Substantial Structural Damage* in any of the flood design provisions. FBC Existing Building Section 303.2 provides the standards for when an alteration project triggers flood design requirements for new construction, and FBC Existing Building Section 304.5 provides the standards for when a repair project triggers flood design requirements for new construction. Both of these sections refer only to *Substantial Damage* and *Substantial Improvement* (the "50% Rule") under FBC Section 1612.2.

As this is a matter of recurring significance in an island community like the City of Holmes Beach, the City has consented to the Petitioner bringing this matter to the Building Commission for guidance. Likewise, the Petitioner does not object to the City intervening or participating in the Declaratory Statement process.

Petitioner seeks a Declaratory Statement as to the following:

- (1) Does a voluntary alteration project to a pre-FIRM single-family residential structure involving removal of more than 30% of the truss system in order to create a tray or vaulted ceiling constitute *Substantial Structural Damage* pursuant to FBC Existing Building Section 202, or is it reviewed as a structural alteration under FBC Existing Building Section 807.4?

Petitioner asserts that the project would not be classified as *Substantial Structural Damage*, and would be reviewed under Section 807.4.

- (2) If an alteration project is deemed to be *Substantial Structural Damage* under FBC Existing Building Section 202, is it automatically deemed to also be *Substantial Damage* for flood design requirements, regardless of whether the project meets the definitions of *Substantial Damage* and *Substantial Improvement* in FBC Section 1612.2. (ie. the “50% Rule”)?

Again, Petition asserts that the answer is no. Regardless of the impact to the roof system, flood design requirements for new construction are only triggered if the project exceeds the “50% Rule”, as described in the definitions of *Substantial Damage* and *Substantial Improvement* in FBC Section 1612.2.

Respectfully Submitted,



Scott E. Rudacille, Esq.
For the Petitioner

APPENDIX A

SECTION 1612.2 DEFINITIONS

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT. Any repair, reconstruction, rehabilitation, *addition* or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

SECTION 202 GENERAL DEFINITIONS

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT. Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

SUBSTANTIAL STRUCTURAL DAMAGE. A condition where:

1. In any story, the elements of the lateral force-resisting system have suffered damage such that the lateral load-carrying capacity of the structure in any horizontal direction has been reduced by more than 20 percent from its pre-damaged condition; or
2. The capacity of any vertical load-carrying component, or any group of such components, that supports more than 30 percent of the total area of the structure's floor(s) and roof(s) has been reduced more than 20 percent from its predamaged condition and the remaining capacity of such affected elements, with respect to all dead

and live loads, is less than 75 percent of that required by the *Florida Building Code, Building* for new buildings of similar structure, purpose and location.

303.2 Flood hazard areas.

For buildings and structures in flood hazard areas established in Section 1612.3 of the *Florida Building Code, Building*, any *alteration* that constitutes *substantial improvement* of the existing structure, as defined in Section 1612.2 of the *Florida Building Code, Building*, shall comply with the flood design requirements for new construction, and all aspects of the existing structure shall be brought into compliance with the requirements for new construction for flood design. For buildings and structures in flood hazard areas established in Section 1612.3 of the *Florida Building Code, Building*, any alterations that do not constitute *substantial improvement* or *substantial damage* of the existing structure, as defined in Section 1612.2 of the *Florida Building Code, Building*, are not required to comply with the flood design requirements for new construction.

304.5 Flood hazard areas.

For buildings and structures in flood hazard areas established in Section 1612.3 of the *Florida Building Code, Building*, any *repair* that constitutes *substantial improvement* of the existing structure, as defined in Section 1612.2 of the *Florida Building Code, Building* shall comply with the flood design requirements for new construction, and all aspects of the existing structure shall be brought into compliance with the requirements for new construction for flood design. For buildings and structures in flood hazard areas established in Section 1612.3 of the *Florida Building Code, Building*, any repairs that do not constitute *substantial improvement* or *substantial damage* of the existing structure, as defined in Section 1612.2 of the *Florida Building Code, Building*, are not required to comply with the flood design requirements for new construction.

807.4 Structural alterations.

All structural elements of the lateral-force-resisting system in buildings undergoing Level 3 structural alterations or buildings undergoing Level 2 alterations as triggered by Section 707.5 shall comply with this section.

Exceptions:

1. Buildings of Group R occupancy with no more than five dwelling or sleeping units used solely for residential purposes that are altered based on the conventional light-frame construction methods of the *Florida Building Code, Building* or in compliance with the provisions of the *Florida Building Code, Residential*.

2. Where such *alterations* involve only the lowest story of a building and the *change of occupancy* provisions of Chapter 9 do not apply, only the lateral-force-resisting components in and below that story need comply with this section.

807.4.1 Evaluation and analysis.

An engineering evaluation and analysis that establishes the structural adequacy of the altered structure shall be prepared by a registered architect or engineer and submitted to the *code official*.

807.4.2 Substantial structural alteration.

Where more than 30 percent of the total floor and roof areas of the building or structure have been or are proposed to be involved in structural *alteration* within a 12-month period, the evaluation and analysis shall demonstrate that the altered building or structure complies with the *Florida Building Code, Building* for wind loading.

807.4.3 Limited structural alteration.

Where not more than 30 percent of the total floor and roof areas of the building are involved in structural *alteration* within a 12-month period, the evaluation and analysis shall demonstrate that the altered building or structure complies with the loads applicable at the time of the original construction or of the most recent substantial structural *alteration* as defined by Section 807.4.2.