

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
WORKSHOP AGENDA ITEM # 4**

SUBJECT: Second Amendment to Captain's BBQ Lease at Bing's Landing

DATE OF MEETING: March 16, 2026

OVERVIEW/SUMMARY: The current Captain's BBQ Lease was prepared in late 2023 as part of the settlement related to the Captain's BBQ against the County. The lease settled the dispute by defining the terms for the continued operation and reconstruction of the Captain's BBQ (officially Captain's Bait, Tackle & BBQ, LLC) building on the Bing's Landing parcel. This Second Amendment is prompted by the request from Captain's BBQ to reduce the proposed scope of the future construction due to increased costs of construction. This Second Amendment specifically:

- amends the lease term by extending the 2023 Lease's August 31, 2026 termination date by five (5) years to expire on August 31, 2031 (the mutual five (5) year renewal option was included under the First Amendment to the 2011 Original Lease);
- confirms and clarifies that Captain's BBQ may continue to occupy and operate at the Original Location while the New Location (both as defined in the 2023 Lease) is under construction, and that the Original Location will be abandoned and vacated following construction of the new building on the New Location (this confirms and clarifies that the timing of the abandonment and vacation of the Original Location is not linked to a specific calendar date and is instead linked to the completion of construction occurring at the New Location);
- clarifying that design and construction of the new building at the New Location shall continue to retain a maximum total area under roof of 5,000 square feet, will be constructed on a stem wall or other approved foundation to minimize the necessity of fill and to avoid flooding of the structure as reasonably practicable, and that the new building will include a concrete slab on grade foundation which will meet or exceed the requirements of the Florida Building Code;
- stipulating that Captain's BBQ will diligently pursue permitting and construction of the new building at the New Location;
- providing a notice and cure period should the County's determine that Captain's BBQ is not diligently and in good faith pursuing permitting and construction; and
- providing that all other terms and conditions of the 2023 Lease and the 2025 First Amendment still control to the extent that these are not amended or superseded by this Second Amendment.

Aside from these items, the 2023 Lease and the First Amendment would remain in full force and effect.

STRATEGIC PLAN:

Focus Area: Effective Government

- Goal 2 – Build and Maintain Relationships to Support Effective and Efficient Government

Focus Area: Growth and Infrastructure

- Goal 1 – Provide Quality Fundamental Infrastructure and Assets

DEPARTMENT CONTACT: Michael Rodriguez, County Attorney, and Adam Mengel, Growth Management Director

FUNDING INFORMATION: As drafted, the Second Amendment would not have an additional funding impact to the County.

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RECOMMENDATION: Staff requests that the Board review the proposed Second Amendment to Captain's BBQ at Bing's Landing lease and provide direction to staff on any changes to be made to the lease document. Staff will schedule this Second Amendment on an upcoming regular meeting agenda of the Board unless a specific meeting date is discussed at the workshop.

ATTACHMENTS:

1. Second Amendment to 2023 Captain's BBQ Lease at Bing's Landing
2. Rendering of Proposed Captain's BBQ Construction

Second Amendment To
2023 Captain's BBQ Lease at Bing's Landing
_____, 2026

SECOND AMENDMENT TO 2023 CAPTAIN'S BBQ LEASE AT BING'S LANDING

This SECOND AMENDMENT TO THE 2023 CAPTAIN'S BBQ LEASE AT BING'S LANDING ("Second Amendment") is made and entered by FLAGLER COUNTY, a political subdivision of the State of Florida, located at 1769 East Moody Boulevard, Building 2, Bunnell, Florida 32110 ("County"), and CAPTAIN'S BAIT, TACKLE & BBQ, LLC, a Florida limited liability company, located at 5862 North Oceanshore Boulevard, Palm Coast, Florida 32137, and whose business address is 13 Capri Court, Palm Coast, Florida 32137 ("Captain's BBQ"). The County and Captain's BBQ collectively may be referred to as the "Parties."

RECITALS

WHEREAS, the Parties entered into a Lease Agreement, effective September 1, 2011 ("Original Lease"), as amended by a First Amendment dated April 20, 2015, and as amended by a Second Amendment dated June 6, 2016, concerning the lease of an approximately Four Thousand Four Hundred Twenty-Four (4,424) foot building plus appurtenances thereto located at 5862 North Oceanshore Boulevard, Palm Coast, Florida at Bing's Landing Park, Flagler County, Florida;

WHEREAS, the Parties entered into the Amended and Restated Lease, effective as of November 30, 2018;

WHEREAS, the Parties subsequently entered the 2023 Captain's BBQ Lease at Bing's Landing ("2023 Lease") approved November 20, 2023 and agreed to replace the original Lease Agreement and Amended and Restated Lease with the 2023 Lease;

WHEREAS, the Parties entered into a Settlement Agreement and Mutual Release ("Settlement Agreement"), approved November 20, 2023, and executed November 28, 2023, settling Case No. 2019-CA-000381 in the Circuit Court of the Seventh Judicial Circuit, in and for Flagler County, Florida, and the 2023 Lease was executed concurrently with and as part of the Settlement Agreement (the 2023 Lease was recorded on November 28, 2023 at Official Records Book 2829, page 773, Public Records of Flagler County, Florida);

WHEREAS, the 2023 Lease was amended through the First Amendment to 2023 Captain's BBQ Lease at Bing's Landing ("First Amendment"), approved and recorded on April 7, 2025 at Official Records Book 2950, Page 1131, Public Records of Flagler County, Florida, said First Amendment limited to amending Section 5.c. of the 2023 Lease by deleting the exclusivity requirement from the use of the floating dock at the south end of the Bing's Landing boat basin and replacing it with language clarifying that the boat parking spaces will be available on a non-exclusive first-come, first-served basis;

WHEREAS, the 2023 Lease references the Original Lease, which governs Captain's BBQ's occupancy of the existing restaurant building located at 5862 N. Oceanshore Blvd., Palm Coast, Florida at Bing's Landing Park ("Original Location");

WHEREAS, the 2023 Lease affirms and acknowledges that the term of the Original Lease ends on August 31, 2026;

WHEREAS, the 2023 Lease contemplates that Captain's BBQ will continue to occupy and operate at the Original Location while the new restaurant building at the New Location (as defined therein) is designed, permitted, and constructed;

WHEREAS, Captain's BBQ has been diligently pursuing the design of the new building for the New Location and has obtained revised architectural plans and elevations dated January 29, 2026, prepared by BPF Design Incorporated, and intends to submit an application for site plan approval and building permits;

WHEREAS, the design, permitting, and construction of the New Location will not be completed prior to August 31, 2026;

WHEREAS, the Parties desire to exercise the mutual five (5) year renewal option under the First Amendment to the Original Lease, extending the term of the Original Lease through August 31, 2031, in order to ensure that Captain's BBQ may continue to operate at the Original Location without interruption while the New Location is designed, permitted, and constructed; and

WHEREAS, the County desires certain assurances regarding the design and construction of the New Location; and

WHEREAS, the Parties desire to amend the 2023 Lease to reflect the foregoing;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Amendment.** Section 7 of the 2023 Lease is hereby amended as follows:

The term of the Original Lease, as extended by mutual agreement of the Parties, ends on August 31, ~~2026~~2031, which the Parties affirm and acknowledge as the remaining term in the Original Lease as amended and extended. In order to allow Captain's BBQ to amortize the significant funds it will invest for the design, permitting, and construction of the New Location, Captain's BBQ lease of the New Location shall be for 20 years from the date of issuance of the certificate of occupancy.

2. **Continued Occupancy of Original Location.** The Parties confirm and clarify that, consistent with Sections 2, 24.d, and 31 of the 2023 Lease, Captain's BBQ shall have the right to continue occupying and operating at the Original Location until Captain's BBQ relocates its business operations to the New Location, and that pursuant to Section 31, the terms of the Original Lease shall remain valid and binding on the Parties with regard to the Original Location for as long as Captain's BBQ occupies the Original Location. Captain's BBQ's obligation to vacate the Original Location shall be triggered solely by the relocation of its business operations to the New Location, and not by the passage of any fixed calendar date. Upon such relocation, Captain's BBQ shall promptly abandon and vacate the Original Location in accordance with Section 24.d of the 2023 Lease to allow the demolition and removal of the Original Location by the County.
3. **Design and Construction Assurances.** Captain's BBQ represents, warrants, and agrees that the new building to be constructed at the New Location shall comply with the following design and construction requirements, in addition to all requirements set forth in the 2023 Lease:

- a. ***Building Size.*** The new building at the New Location shall not exceed 5,000 square feet in total area under roof. Captain's BBQ represents that the current architectural plans, dated January 29, 2026, prepared by BPF Design Incorporated, depict a total area under roof of approximately 4,678 square feet. Any subsequent revisions to the plans shall maintain the total area under roof at less than 5,000 square feet.
- b. ***Stem Wall Construction.*** The new building at the New Location shall be constructed utilizing stem wall construction, consistent with Section 4.a of the 2023 Lease and the current architectural plans. All structures shall be constructed on a stem wall or other approved foundation method to minimize the necessity for fill and to avoid, as reasonably practicable, flooding of the structure.

- c. ***Concrete Foundation.*** The new building at the New Location shall be constructed with a concrete foundation. Captain's BBQ represents that the current architectural plans specify concrete slab on grade construction. The foundation design shall meet or exceed the requirements of the Florida Building Code.
5. **Diligent Pursuit of Permits and Construction.** Captain's BBQ shall diligently and in good faith pursue the permitting and construction of the New Location. Captain's BBQ's obligations under this Section shall include, but not be limited to, submitting applications for site plan approval and building permits, responding to requests for information from the County and applicable regulatory agencies, and taking such other actions as are reasonably necessary to advance the design, permitting, and construction of the New Location toward completion.
6. **Notice and Cure for Non-Pursuit.** In the event the County reasonably determines that Captain's BBQ is no longer diligently and in good faith pursuing the permitting and construction of the New Location as required by Paragraph 5 above, the County shall provide Captain's BBQ with written notice specifying the nature of the alleged default. Captain's BBQ shall have sixty (60) calendar days from receipt of such notice within which to cure the alleged default or to demonstrate to the County's reasonable satisfaction that Captain's BBQ is actively and diligently pursuing the permitting and construction of the New Location. If Captain's BBQ fails to cure or demonstrate compliance within the sixty (60) day cure period, the County may, upon an additional ninety (90) calendar days' written notice, terminate Captain's BBQ's right to continued occupancy of the Original Location under the extended term of the Original Lease as set forth in Paragraph 1 above. The tolling provisions of Section 4.b of the 2023 Lease and the force majeure provisions of Section 37 of the 2023 Lease shall apply to Captain's BBQ's obligations under Paragraph 5 above and this Paragraph 6.
7. **All Other Terms and Conditions Remain.** Except as expressly amended by this Second Amendment, all other terms and conditions of the 2023 Lease and the First Amendment shall remain in full force and effect and are hereby ratified and confirmed. In the event of any conflict between this Second Amendment and the 2023 Lease and the First Amendment, this Second Amendment shall control.

8. **Counterparts.** This Second Amendment may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one binding instrument.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

APPROVED by the Board of County Commissioners of Flagler County on the _____
day of _____, 2026.

ATTEST:

FLAGLER COUNTY, FLORIDA, a
political subdivision of the State of Florida

Tom Bexley, Clerk and Ex Officio
Clerk to the Board

Leann Pennington, Chair

Approved as to form:

Michael A. Rodríguez,
County Attorney

WITNESSES:

**CAPTAIN'S BAIT, TACKLE & BBQ,
LLC, Florida limited liability company**

Witness Signature

Signature

Print Name

Print Name

Address

Title

Witness Signature

Print Name

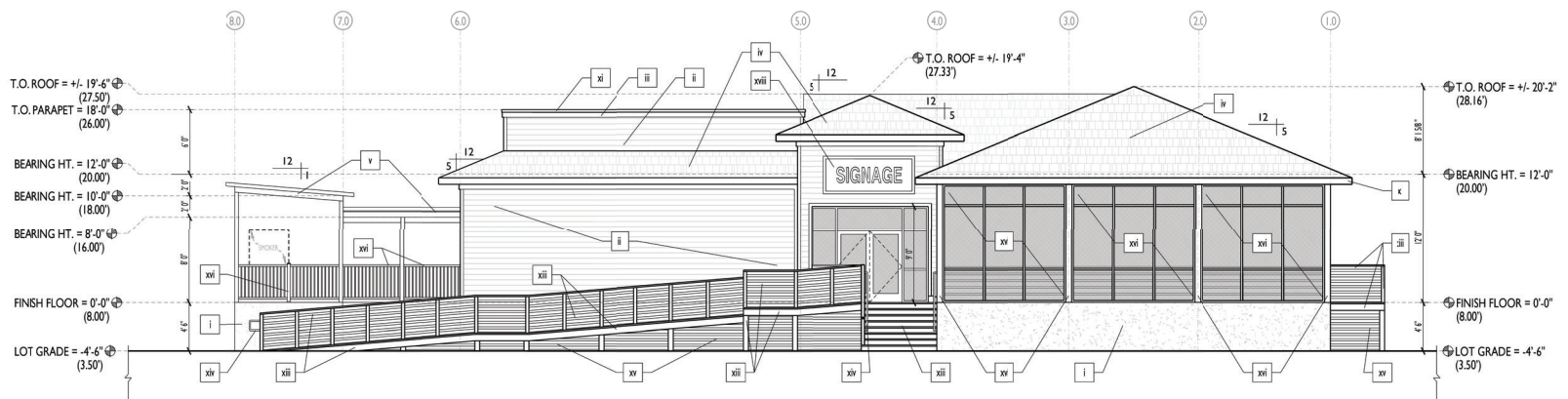
Address

STATE OF FLORIDA

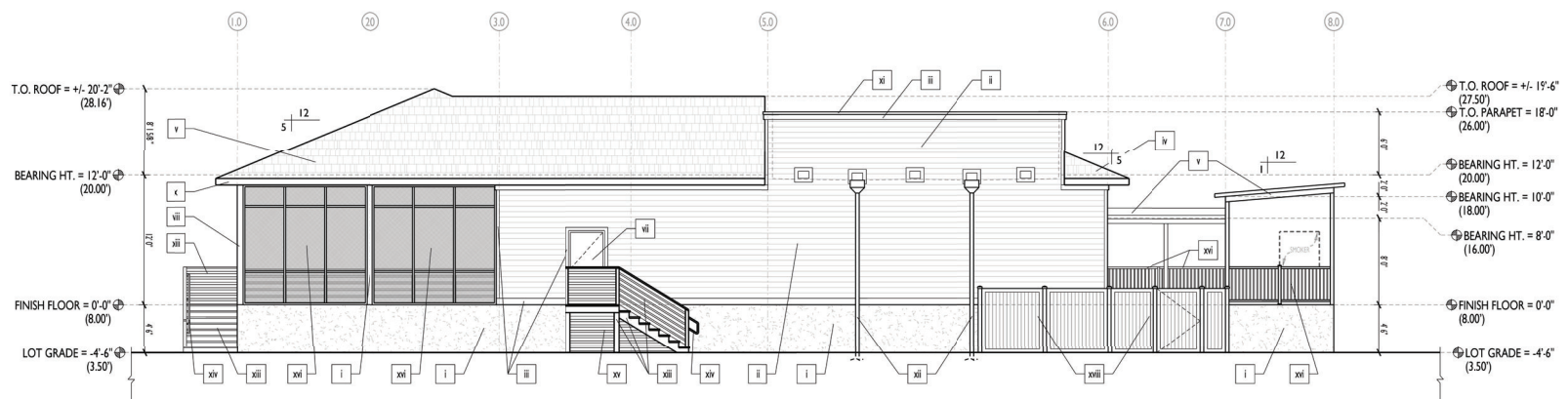
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence
OR online notarization, this ___ day of _____, 2026, by _____
_____, who is personally known to me OR who has produced
_____ as identification.

Notary Public



B PROPOSED FRONT ELEVATION
A-3.0 OPTION I - FACING N. SCALE: 3/16" = 1'-0"



A PROPOSED REAR ELEVATION
A-3.0 OPTION I - FACING S. SCALE: 3/16" = 1'-0"

MATERIAL & COLOR SCHEDULE							
NO.	BLDG ELEMENT	MATERIAL	COLOR	NO.	BLDG ELEMENT	MATERIAL	COLOR
i	BUILDING BASE	CMU STEMWALL FOUNDATION W/ STUCCO EXTERIOR FINISH (OPT. FOR STONE VENEER), BACKFILL SLAB ON GRADE.	T.B.D.	vii	MAN DOORS	COMPOSITE FLUSH PANEL SINGLE DOOR	T.B.D.
ii	TYP. EXTERIOR WALL	WOOD FRAME WALL W/ CEMENT BOARD HORIZONTAL LAP SIDING	T.B.D.	viii	PORCH COLUMNS	6" X 6" P.T. POSTS	T.B.D.
iii	WINDOW, DOOR, & ACCENT TRIM	CEMENT BOARD TRIM	T.B.D.	ix	SCREEN ENCLOSURES	ALUM SCREEN ENCLOSURE (BY OTHERS)	T.B.D.
iv	TYP. ROOF	30 YR. ARCH. SHINGLES (COASTAL PRODUCT)	T.B.D.	x	EAVES& SOFFITS	ALUM. FASCIA W/ VENTED ALUMINUM P. SOFFIT	T.B.D.
v	SHOWER ENCLOSURE & WALKWAY ROOF	PRIFAB ALUMINUM (NON-COMBUSTIBLE) SHADE STRUCTURE (BY OTHERS) SLOPED @ 1:12	T.B.D.	xi	PARAPET CAP	ALUM. PARAPET CAP W/ DRIP EDGE	T.B.D.
vi	LOW SLOPE ROOF	TPO ROOF OVER RIGID SLOPED INSULATION (NOT VISIBLE BEHIND PARAPETS)	T.B.D.	xii	DOWNSPOUTS & CONDUCTOR HEADS	PVC W/ DECORATIVE CONDUCTOR HEAD	T.B.D.
xiii	RAMPS, STAIRS & GUARDRAILS	PRESSURE TREATED LUMBER AND DECKING	T.B.D.	xiv	RAMPS & STAIR HANDRAILS	PRF ALUM. HANDRAILS (BY OTHERS)	T.B.D.
xv	RAMPS & STAIRS CHAINSPACE SCREENING	PRESSURE TREATED LUMBER	T.B.D.	xvi	SHOWER ENCLOSURE & WALKWAY RAILING	PRF ALUM. (NON-COMBUSTIBLE) RAILING	T.B.D.
xvii	FENCING	OPAQUE VINYL FENCING	T.B.D.	xviii	SIGNAGE	BY OTHERS	T.B.D.

AHJ APPROVAL STAMP

BPP PROJECT #:

REVISIONS

GENERAL NOTES
ALL WORK MUST COMPLY WITH REQUIREMENTS OF THE APPLICABLE CITY AND STATE CODES. ALL DIMENSIONS ARE TO FINISH FACE UNLESS OTHERWISE NOTED. ALL SPECIALty AND SUBCONTRACTORS TO FIELD VERIFY ALL DIMENSIONS AND LOCATIONS OF WATER, SEWER AND GAS SERVICE LOCATIONS. ALL WORK MUST COMPLY WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE INTERNATIONAL RESIDENTIAL CODE (IRC) FOR THE FOLLOWING CONDITIONS:
EXPOSURE: _____
DESIGN WIND SPEED: _____
RISK CATEGORY: _____
CONSTRUCTION TYPE: _____
BUILDING IS CLASSIFIED AS A LOW-RISE PER IBC 7.2.2 WITH AN INTERNAL PRESSURE COEFFICIENT OF 0.0.
BUILDING IS NOT LOCATED IN THE WIND-BORNE DEBRIS ZONE.
15% GLAZING IS NOT REQUIRED TO BE IMPACT RESISTANT UNLESS:

CAPTAIN'S BBQ
OWNER/DEVELOPER: CAPTAIN CHRIS BERMAN, 3086 NORTH OCCASION DRIVE BOULEVARD, PALM COAST, FL 32137
PROJECT LOCATION: 3086 NORTH OCCASION DRIVE BOULEVARD, PALM COAST, FL 32137
GENERAL CONTRACTOR: LAS CONSTRUCTION SERVICES, LLC, 6887 JAGHANN PRESIDENT, COG, 15849 27th AVENUE, COMONDOR BLVD, FL 32137, PH: (887)73446

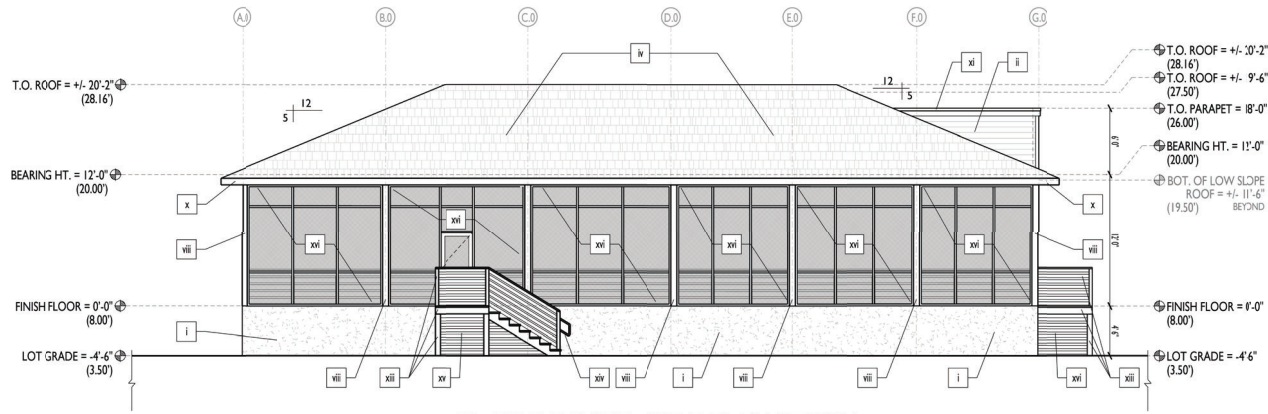
BPP DESIGN INCORPORATED
Building Design and Architecture
BRIAN P. FRIEDEL, ASSOCIATE AIA, PROJECT MANAGER
THOMAS E. HANCOCK, ARCHITECT
644 00350
301 FARMHOUSE AVENUE
DAYTONA BEACH, FL 32114
PH: (386) 252-0000, FX: (386) 252-0000
EMAIL: BPPDESIGN@BPPDESIGN.COM, WEBSITE: BPPDESIGN.COM

PROPOSED ELEVATIONS (N & S)

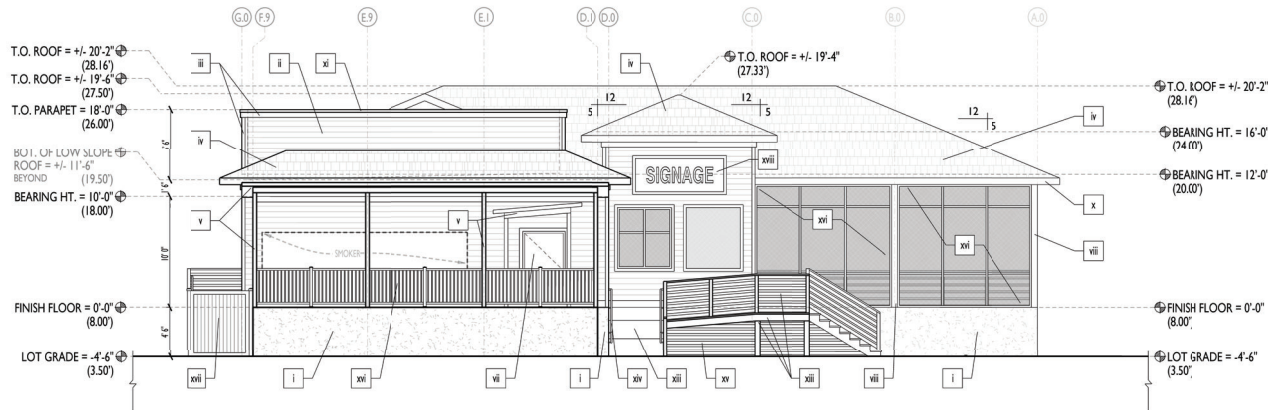
DRAWN BY: TEH
CHECKED BY: TBM/BPP
DATE: FEBRUARY 27, 2024
SCALE: 3/16" = 1'-0"
SHEET NO. A-3.0

ARCHITECTS / ENGINEERS SEAL

© COPYRIGHT 2024 BPP DESIGN, INC.



B PROPOSED SIDE ELEVATION
A-3.1 OPTION I - FACING W. SCALE: 3/16" = 1'-0"



A PROPOSED SIDE ELEVATION
A-3.1 OPTION I - FACING E. SCALE: 3/16" = 1'-0"

MATERIAL & COLOR SCHEDULE

NO.	BLDG ELEMENT	MATERIAL	COLOR	NO.	BLDG ELEMENT	MATERIAL	COLOR	NO.	BLDG ELEMENT	MATERIAL	COLOR
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ii	TYP. EXTERIOR WALL	WOOD FRAME WALL W/ CEMENT BOARD HORIZONTAL LAP SIDING	T.B.D.	viii	PORCH COLUMNS	6" X 6" P.T. POSTS	T.B.D.	xiv	RAMPS & STAIR HANDRAILS	PREF ALUM. HANDRAILS (BY OTHERS)	T.B.D.
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iv	TYP. ROOF	30 YR. ARCH. SHINGLES (COASTAL PRODUCT)	T.B.D.	x	EAVES& SOFFITS	ALUM. FASCIA W/ VENTED ALUMINUM SOFFIT	T.B.D.	xvi	SHOWER ENCLOSURE & WALKWAY RAILING	PREF ALUM. (NON-COMBUSTIBLE) RAILING	T.B.D.
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vi	LOW SLOPE ROOF	TPO ROOF OVER RIGID SLOPED INSULATION (NOT VISIBLE BEHIND PARAPETS)	T.B.D.	xii	DOWNSPOUTS & CONDUCTOR HEADS	PVC W/ DECORATIVE CONDUCTOR HEAD	T.B.D.	xviii	SIGNAGE	BY OTHERS	T.B.D.

AHJ APPROVAL STAMP

BPF PROJECT #:

REVISIONS

GENERAL NOTES

ALL WORK MUST COMPLY WITH REQUIREMENTS OF THE ACCESSIBILITY ACT AND THE ADA. ALL DIMENSIONS ARE TO FINISH FACE UNLESS OTHERWISE NOTED. ALL SPINNALES & SUBSPINNALES TO FIELD MUST BE DRILLED THROUGH EXISTING WATER, SEWER AND GAS SERVICE LOCATIONS. ALL WORK MUST COMPLY WITH THE IBC OF THE IBC BUILDING (8TH EDITION 2018) FOR THE FOLLOWING CONDITIONS:
 EXPOSURE: _____
 DESIGN WIND SPEED: _____
 RISK CATEGORY: _____
 CONSTRUCTION TYPE: _____
 BUILDING IS CLASSIFIED AS HAZARDOUS PER ASCE 7-16 WITH AN INTERNAL PRESSURE COEFFICIENT OF 0.18.
 BUILDING IS NOT LOCATED IN THE WIND-BORNE DEBRIS ZONE.
 EYE GLASSING IS NOT REQUIRED TO BE IMPACT RESISTANT UNLESS OTHERWISE NOTED.

CAPTAIN'S BBQ
 OWNER/DEVELOPER: CAPTAIN CHRIS BERMAN, 3084 NORTH OCEANSHORE BOULEVARD, PALM COAST, FL 32137
 PROJECT LOCATION: 3084 NORTH OCEANSHORE BOULEVARD, PALM COAST, FL 32137
 GENERAL CONTRACTOR: LAS CONSTRUCTION SERVICES LLC (OFFER) ADRIAN W. PRESBY, C.C. 158967
 27 WILGEMORE COMMONS BLVD, FL 32137, PH: (887)73446

BPF
 DESIGN INCORPORATED
 Building Design and Architecture
 BRIAN P. FREDLEY, ASSOCIATE AIA, PROJECT MANAGER
 THOMAS E. HANCOCK, ARCHITECT
 444 N. 100TH ST.
 301 FORTWORTH AVENUE
 DAITON BACH, FL 32114
 PH: (386) 321-0000, FX: (386) 321-0000
 EMAIL: BPFDESIGN@BPFDESIGN.COM, WEBSITE: BPFDESIGN.COM

PROPOSED ELEVATIONS (E & W)

DRAWN BY: TEB | CHECKED BY: TEB/BPF
 DATE: FEBRUARY 27, 2024
 SCALE: 3/16" = 1'-0"
 SHEET NO. A-3.1

ARCHITECTS / ENGINEERS SEAL