

ORDINANCE NO. C-19-

AN ORDINANCE OF THE CITY OF FORT LAUDERDALE, FLORIDA AMENDING CODE SECTION 8-144, ENTITLED "PRIVATE USE OF PUBLIC PROPERTY ABUTTING WATERWAYS" OF THE CITY OF FORT LAUDERDALE CODE OF ORDINANCES IDENTIFYING WHICH PERSONS OR PROPERTIES QUALIFY FOR AN APPLICATION FOR A DOCK PERMIT UNDER CODE SECTION 8-144; IMPOSING AN OBLIGATION UPON A PERMIT HOLDER FOR ONGOING MAINTENANCE, REPAIR, RECONSTRUCTION OF THE DOCK AND SEAWALL AND REMOVAL OF THE DOCK AND APPURTENANCES UPON TERMINATION, EXPIRATION OR REVOCATION OF A DOCK PERMIT; PROVIDING FOR EXECUTION AND DELIVERY TO THE CITY OF A COVENANT RUNNING WITH THE UPLAND PARCEL TO BE RECORDED IN THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA TO PROVIDE SECURITY IN THE FORM OF A POTENTIAL CLAIM OF LIEN TO COVER THE CITY'S COST OF MAINTENANCE OR REPAIR OF THE DOCK OR SEAWALL OR BOTH UPON THE FAILURE OF THE PERMIT HOLDER TO PERFORM SUCH OBLIGATIONS AND TO COVER THE CITY'S COSTS FOR REMOVAL OF DOCKS AND APPURTENANCES THERETO UPON PERMIT HOLDER'S FAILURE TO TIMELY PERFORM SUCH OBLIGATION; IMPOSITION OF AN OBLIGATION TO RECORD IN THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA A CERTIFIED COPY OF THE RESOLUTION GRANTING THE DOCK PERMIT AND THE ADMINISTRATIVE MEMORANDUM FOR THE RENEWAL OF A DOCK PERMIT; PROVIDING FOR ADMINISTRATIVE FEES FOR THE REVIEW OF A DOCK PERMIT APPLICATION AND ISSUANCE OF A RESOLUTION FOR THE GRANTING OF THE DOCK PERMIT AND THE COSTS ASSOCIATED WITH THE ISSUANCE OF AN ADMINISTRATIVE MEMORANDUM RENEWING A DOCK PERMIT, UPON CERTAIN TERMS AND CONDITIONS; ENSURING DOCKS ARE OF SUCH A HEIGHT AS TO TAKE INTO ACCOUNT ADJUSTMENTS FOR RISING SEA

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LEVELS; PROVIDING FOR AN INITIAL TERM FOR THE INITIAL DOCK PERMIT OF FIVE YEARS WITH ADDITIONAL FIVE YEAR RENEWAL TERMS THEREAFTER; IDENTIFYING THE DOCK AREA WHERE THE PERMIT HOLDER HAS CERTAIN RIGHTS EXCLUDING THE GENERAL PUBLIC AND DEFINING THE PUBLIC SWALE AREA WHERE THE GENERAL PUBLIC HAS THE RIGHT OF ACCESS; EXCLUSION AND LIMITATIONS RELATING TO ISSUANCE OF DOCK PERMITS FOR (1) STREET-ENDS, (2) CITY PARKS, (3) UPLAND PARCELS WITH PROPERTY LINES THAT ABUT AND ARE CONTIGUOUS TO A NAVIGABLE WATERWAY UNDER SPECIFIED CONDITIONS, AND (4) CERTAIN LANDS FALLING WITHIN THE AMBIT OF THE FLORIDA SUPREME COURT CASE OF *BURKART V. CITY OF FORT LAUDERDALE*, 168 SO.2d 65 (FLA, 1964); PRESERVATION OF DOCK PERMITS PREVIOUSLY ISSUED FOR (1) STREET-ENDS, (2) CITY PARKS, (3) UPLAND PARCELS THAT ABUT A NAVIGABLE WATERWAY; PROVIDING FOR SEVERABILITY; REPEAL OF CONFLICTING ORDINANCE PROVISIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 8-144 of the City of Fort Lauderdale Code of Ordinances is in need of amendment to provide for the preservation of the character of the neighborhood within which a dock permit is sought and to identify with specificity what persons or properties qualify for an application for a dock permit under Code Sec. 8-144; and

WHEREAS, prior to this amendment to Code Sec. 8-144 for dock permits that are abandoned, terminated, expired or revoked, the City inherits the expense of removal of such dock and there is a need to require the permit holder to provide security to the City to cover the City's cost for the removal of the dock in the event the dock permit is abandoned, terminated, expired or revoked and no new dock permit is issued within three (3) months of the abandonment, termination, expiration or revocation of the former dock permit; and

WHEREAS, prior to this amendment, an obligation is imposed on the permit holder to construct or make substantial repairs to a dock or seawall or both, by past practice the

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permit is issued for a fixed term of five (5) years and there is no fixed term for the permit absent an obligation on the permit holder to construct or make substantial repairs to the dock or seawall or both and to rectify this situation, staff has recommended that the dock permit be issued for an initial term of five (5) years, with administrative renewals every five (5) years thereafter; and

WHEREAS, in order to more definitively identify the area where the general public has access and where the general public has no right to encroach within the permit holder's dock area, the amendments provide definitions for Dock Area for the permit holder and Public Swale Area for which the general public has access; and

WHEREAS, the amendments require an administrative fee to cover the costs of administering the application, review and adoption of the Resolution initially granting the dock permit and similarly an administrative fee to cover the costs of administering the application for renewal of a dock permit, administrative review and issuance of a memorandum, in recordable form, granting the dock permit for a renewal term; and

WHEREAS, in light of rising sea levels the amendments to Code Sec. 8-144 provide that docks must either be (i) floating docks that can adapt to sea level rise over their useful life span or (ii) fixed docks installed at a minimum elevation consistent with the requirements of Code Sec. 47-19.3 (f) or (iii) fixed docks the height of which are even with the City's seawall, and as between (ii) and (iii), whichever is the greater height.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That Code Section 8-144, entitled "Private Use of Public Property Abutting Waterways" is hereby amended to read as follows:

Sec. 8-144. Private Use of Public Property Abutting Waterways.

The City Commission, by Resolution duly adopted, may grant a dock permit for the use by private persons of certain public property abutting or touching a waterway, including all some public property described in Section 8-143 as set forth herein, except (i) areas being utilized as municipal docks for which docking fees are being charged and collected and those areas under license by the City, (ii) street ends as more particularly defined herein, (iii) City Parks, (iv) subject to certain conditions set forth in section 17 hereof, Upland Parcels with

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property lines that abut or are contiguous to a navigable waterway independent of that described in Code Sec. 8-143 (a); and (v) certain Upland Parcels falling within the ambit of the Florida Supreme Court case of *Burkart v. City of Fort Lauderdale*, 168 So.2d 65 (Fla. 1964) and more particularly defined below in section 18 hereof, said dock permits may be granted under the following conditions and restrictions, to-wit:

(1) Application for a dock permit under this section shall be accompanied by an administrative fee, the amount of which shall be reflective of the cost of administering the application, review and adoption of Resolution granting a permit for the use by private persons of public property abutting or touching a waterway and shall be established from time to time by the City Commission by duly adopted Resolution. As to Upland Parcels, the application shall also be accompanied by a survey of the Upland Parcel and adjacent waterway qualifying for the dock permit with the side property lines and side yard setback lines extended into the abutting waterway. The application shall further be accompanied by a sketch and description illustrating the specific location and dimensions of the Dock Area and Public Swale Area, as more particularly defined below, to be reviewed and recommended for approval to the City Commission.

(a) Ten (10) days prior to adoption of the Resolution granting a dock permit, the applicant shall (i) execute a covenant running with the land, in a form and content acceptable to the City Attorney, binding the obligation of maintenance, repair, and reconstruction and timely removal of the dock and appurtenant seawall to the Applicant / Permit Holder and qualifying Upland Parcel and providing for a claim of lien to be recorded against the qualifying Upland Parcel for costs expended by the City in maintaining, repairing, or reconstructing the permitted dock upon the failure to perform permit holder's obligations relative thereto and removal of the permitted dock upon failure of the dock permit holder to remove the dock within the time specified in Section 4 (d) hereof, which such covenant shall be recorded by the City in the Public Records of Broward County, Florida, at the permit holder's expense. In the event a claim of lien is recorded against the Upland Parcel and the City is thereafter reimbursed for the costs underlying the claim of lien, the City shall record a release, discharge or satisfaction of the claim of lien. In the event the dock and all appurtenances are timely removed, the covenant running with the land shall be released and discharged by the City, executed by the City Manager or Deputy City Manager and such release or discharge shall be

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recorded by the City in the Public Records of Broward County, Florida, at the expense of the permit holder.

(2) The dock permit granted herein shall not be effective until such time as (i) a certified copy of the Resolution granting the dock permit has been recorded in the Public Records of Broward County, Florida by the City at the expense of the applicant / permit holder, (ii) together with a recorded copy of the covenant running with the land as referenced in Section 1 (a) above and (iii) a copy of the recorded Resolution and covenant running with the land is filed with the City's Office of Marine Facilities. In order to optimize and preserve the existing character of the surrounding neighborhood, Applicants for a permit under Code Sec. 8-144 are limited to owners of Upland Parcels as hereinafter defined.

(a) An "Upland Parcel" is a parcel of land that by extending the side property lines thereof to perpendicularly intersect with the boundary lines of the adjacent waterway defined in City Code Sec. 8-143, where the Upland Parcel lies directly across the street from the public property abutting or touching a waterway identified in City Code Sec. 8-143, for which one may qualify for applying for a dock permit ("Public Dock Permit Parcel"). To qualify as an Upland Parcel, a principal building must be situated thereon. The owner(s) of the Upland Parcel shall be the only person(s) eligible to apply for a dock permit for the Public Dock Permit Parcel across the street from the Upland Parcel.

(b) For a Public Dock Permit Parcel for an Upland Parcel where there is a curvature to the boundaries of the waterway, the Office of Marine Facilities shall make recommendations to the Marine Advisory Board with respect to criteria (i) the length of the dock (ii) the size and dimensions of the envelope within which a vessel may be berthed, (iii) Dock Area and Public Swale Area as defined below. In its review, the Marine Advisory Board shall make recommendations to the City Commission as to (i), (ii) and (iii) above, as well as other relevant terms and conditions. Applicants for a dock permit under this subsection 2 (b) shall be limited to owners of Upland Parcels for which side property lines intersect in a non-perpendicular manner with the boundary lines of the adjacent waterway as defined in City Code Sec. 8-143.

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(3) To allow the general public's access to the waterway abutting the Public Dock Permit Parcel, the permitted length of a marginal permitted dock shall not exceed the width of the corresponding Upland Parcel as measured from the extension into the waterway of the side yard setbacks for the principal building on the Upland Parcel. The permitted length of a marginal permitted dock under Section 2 (b) above shall be determined by the City Commission upon review of the Marine Advisory Board recommendations. No vessel may be berthed in such a manner that it encroaches into the area proscribed under Code Sec. 47-19.3 (h). The permitted berthing envelope for a vessel shall be determined by the City Commission upon review of the Marine Advisory Board recommendations for Public Dock Permit Parcels described in Section 2 (b) above. The berthing of a vessel in such a manner that encroaches into the area proscribed under City Code Sec. 47-19.3 (h) or exceeds the permitted berthing envelope as determined by the City Commission for Public Dock Permit Parcels described in Section 2 (b) hereof shall be unlawful and a violation of this Code as set forth in Code Section 1-6.

~~(4)(1) Unless a fixed period of time is prescribed in the resolution, permits shall be temporary in nature, revocable at the will of the city commission without cause. Permission granted for fixed periods of time may be conditioned upon the requirement that the permit holder shall repair, replace or maintain the adjacent seawall during the term. In such event, permission may be revoked by the city upon at least ninety (90) days of advance notice to the permit holder.~~

(a) The dock permit granted under this Sec. 8-144 shall be for an initial term of five (5) years, with administrative renewals required every five (5) years thereafter. The permit holder shall be notified by the City of the required renewal and granted ninety (90) days to file an application for the granting of the renewal term with the Office of Marine Facilities. Application for any renewal term shall be accompanied by an administrative fee, the amount of which shall be reflective of the cost of administering the renewal application, review, inspection and administrative approval or denial of the renewal term, the amount of which shall be established from time to time by the City Commission by duly adopted Resolution. The application for an administrative renewal term shall be reviewed initially by the Office of Marine Facilities who, after reviewing the history of compliance with the terms and conditions set forth in the Resolution granting the dock permit

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for the initial term and reviewing the physical condition of the dock, seawall, and Public Swale Area, shall make a recommendation to the City Manager as to whether to grant or deny the application for a renewal term and specifying additional relevant terms and conditions, if any, for the renewal term. The administrative approval or denial shall be set forth in a memorandum in recordable form executed by the City Manager or Deputy City Manager and recorded in the Public Records of Broward County, Florida by the City at the expense of the permit holder.

- (b) During the term of the dock permit, the permit holder shall be required to repair, replace, reconstruct or maintain the dock or adjacent seawall or both to meet the requirements of Code Sec. 47-19.3 (f), "Boat slips, docks, boat davits, hoists and similar mooring structures" of the City's Unified Land Development Code and other relevant terms and conditions imposed by the Resolution granting the dock permit or imposed by the administrative issuance of the renewal of the dock permit during a renewal term.
- (c) The permit to use the dock shall expire upon the (i) abandonment of the use of the dock or (ii) recordation of the deed of conveyance transferring title to the Upland Parcel, or (iii) termination, expiration or revocation of the dock permit by the City Commission, whichever (i), (ii) or (iii) shall first occur, subject to survivability of the obligation to remove the dock pursuant to Section 4 (d) below and the obligations within the covenant running with the land as set forth in Section 1 (a) hereof.
- (d) Except as set forth in Section 4 (e) below, upon expiration of the permit to use the dock, the permit holder shall be obligated to remove the dock and all appurtenances thereto no later than three (3) months after the termination, revocation or expiration of the permit to use the dock. This provision shall be a continuing obligation that survives expiration of the permit to use the dock.
- (e) In the event a dock permit is granted to a successor applicant for the same Public Dock Permit Parcel within the time proscribed in Section 4 (d) hereof, the obligation to remove the dock and all appurtenances

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thereto shall be discharged as to the former permit holder and a release and discharge of the covenant running with the Upland Parcel shall be executed by the City Manager or Deputy City Manager and recorded by the City in the Public Records of Broward County, Florida at the expense of the permit holder.

- (f) The dock permit granted may be revoked by the City Commission for good cause shown upon at least ninety (90) days advance notice to the permit holder and an opportunity for the permit holder to be heard.

~~(5)(2)~~ All improvements such as docks, seawalls and the like which are made or placed upon the Public Dock Permit Parcel ~~such public property~~ or within the Dock Area and Public Swale Area by a private person shall be constructed with appropriate permits from all applicable regulatory authorities having subject matter jurisdiction regarding such matters. All and all maintenance and repairs shall be performed according to city engineering ~~division~~ standards and all applicable regulatory codes including the City's Unified Land Development Code regulations, Florida Building Code and Broward County Amendments thereto and in compliance with building permits obtained from the Department of Sustainable Development.

~~(6)~~ All docks installed pursuant to this Code Sec. 8-144 must be either (i) floating docks that can adapt to sea level rise over their useful life span or (ii) fixed docks installed at a minimum elevation consistent with the requirements of Code Sec. 47-19.3 (f) or (iii) fixed docks the height of which are even with the City's seawall, whichever (ii) or (iii) is the greatest. Penetrating the City seawall to support the dock or permanently attaching improvements, such as cleats, ladders, ramps, mooring whips or similar devices to the City's seawall is prohibited, unless (a) specifically recommended pursuant to the dock building permit review process or (b) where the seawall and dock are being constructed by the dock permit holder, or (c) upon demonstration of hardship, as it relates to accommodations under the Americans with Disability Act, as same may be amended from time to time and as authorized in the Resolution granting the dock permit.

~~(7)(3)~~ The holder of the permit shall be responsible for maintaining improvements within the Dock Area, as hereinafter defined ~~to the area~~ and for maintaining and beautifying the Public Swale Area, as hereinafter defined. ~~a reasonable area in and around the~~

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~~dock location to be specified~~ The Public Swale Area shall be landscaped in accordance with (i) the established landscape plan for the area in question adopted by the Department of Sustainable Development or (ii) a landscape plan approved by the Department of Sustainable Development and embodied in the Resolution adopted by the City Commission granting the permit under this section. Failure and failure to do so shall be grounds for revocation of permission the permit.

- (a) For the purposes of this Code Sec. 8-144, the term "Dock Area" shall mean that area bounded by (i) the upland cap of the seawall abutting the dock and (ii) extending over the water the length and width of the dock, and (iii) including the area within which the vessel may be berthed and all appurtenances to the Dock Area. The length of the dock shall not exceed (1) the distance between the extension into the waterway of the two side yard setbacks for the principal building on the corresponding Upland Parcel nor (2) the boundaries of the dock as set by the City Commission pursuant to Section 2 (b) above, whichever (1) or (2) above is applicable.
- (b) For the purposes of this Code Sec. 8-144, the term "Public Swale Area" shall be the area (1) within the waterward extension of the side property lines of the Upland Parcel from the edge of the paved portion of the adjacent publicly dedicated right-of-way closest to the waterway to the wet-faced edge of the seawall cap, excluding therefrom the Dock Area, or (2) the boundaries of the dock as set by the City Commission pursuant to Section 2 (b) above, whichever (1) or (2) above is applicable.
- (8) Parking in the Public Swale Area, where allowed, is intended to be temporary in nature. Overnight or long-term parking by persons associated with Upland Property Owner(s) under section 2 (a) or (b) hereof both with and without a dock permit is discouraged. There shall be no fueling of vessels from tank trucks along the adjacent publicly dedicated right-of-way.
- ~~(4) Such permits shall not be assignable without the written approval by Resolution of the City Commission.~~
- (9)(5) The holder of such dock permit shall not charge or collect any rent or fees from anyone using such dock constructed on the Public Dock Permit Parcel. Signage such

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as "Private Dock" may be placed on the dock within the Dock Area. No signage shall be placed upon such dock indicating it is a private dock or within the Public Swale Area. Only vessels owned by the permit holder and registered with the City as part of the dock permit application or amended thereafter may be moored at the permitted dock. Except as to a tender, there shall be no rafting of vessels from the vessel moored at the permitted dock. The berthing of a vessel at a Public Dock Permit Parcel that is not authorized pursuant to the City Commission granting a dock permit ("Unauthorized Vessel") shall be unlawful and a violation of the Code pursuant to Code Sec. 1-6.

- (10)(6) A permit granted to a permit holder ~~private individual~~ to construct a dock or authorization to use an existing dock upon the Public Dock Permit Parcel ~~public property~~ and the acceptance and use of same by the permit holder ~~such private person~~ shall constitute a guarantee from the permit holder ~~such private person~~ to the City to hold the City harmless for any damage or injury to any person using such facilities.
- (11)(7) The Public Swale Area ~~Such street ends or public property abutting waterways so used by a private person~~ shall be kept open at all times as means of reasonable ingress and egress to the public, but the permit holder shall have the right to exclude the public from the Dock Area ~~a reasonable portion upon which he has placed improvements [not exceeding fifty (50) percent of the area].~~
- (12)(8) The violation of any provisions of this Section 8-144 or any regulations relating thereto ~~hereinafter enacted~~ or violations of any of the terms or conditions relative to the granting or renewal of a dock permit shall be unlawful and a violation of this Code pursuant to Code Sec. 1-6 and may also constitute cause for revocation of the permit.
- (9) ~~Upon direction of the city, the former holder of a permit shall remove at his own expense any nonfixture improvements placed by him upon public lands, whenever permission is revoked, and shall make the necessary repairs to the city property to place the same in good condition.~~
- (13)(10) The Resolution granting the permit or the administrative approval of the permit for a renewal term may specify ~~other~~ additional reasonable terms and conditions pertaining to the use or improvement of the ~~property~~ Public Dock Permit Parcel.

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- ~~(14)~~(11) Only public lands which are not needed by the City for public docking purposes are available for private use under the terms hereof, and the Supervisor of Marine Facilities shall furnish to the City Manager a complete list of all street-ends and other City-owned property abutting waterways which is not needed for dockage purposes from time to time, provided, however, no dock permits shall be issued under City Code Sec. 8-144 (15), (16), (17), and (18), except in compliance with the terms and conditions thereof.
- (15) No dock permits shall be issued for Public Dock Permit Parcels where the public right-of-way terminates at the waterway (e.g. "street ends"). For dock permits that were issued for street-ends prior to June 1, 2019, those dock permits shall continue to remain valid, until expiration of their initial term, and, upon renewal such dock permit shall be subject to the terms and conditions set forth in any renewal permits and this Sec. 8-144, other than the prohibition against issuance of dock permits for street-ends.
- (16) To preserve the general public's right to intermittently use and have access to City parks located on waterways, no dock permits shall be issued for parcels where the public right-of-way is located within City owned land that is used for park purposes. For dock permits that were issued for City owned land that was used for park purposes at the time of issuance, those dock permits shall continue to remain valid, until expiration of their initial term, and, upon renewal such dock permit shall be subject to the terms and conditions set forth in any renewal permits and in this Sec. 8-144, other than the prohibition against issuance of dock permits along public rights-of-way within City owned lands used for park purposes.
- (17) Other than Upland Parcels referenced in Sec. 8-144 (18) below, subject to exceptions hereinafter set forth, no dock permits shall be issued for Upland Parcels that abut and are contiguous to a waterway and have riparian rights relative thereto after June 1, 2019 or after such date that the City raises the seawall with municipal funds, whichever is first. For dock permits that were issued prior to June 1, 2019 for Upland Parcels that abutted and are contiguous to a waterway and to which riparian rights have attached thereto, those dock permits shall continue to remain valid until expiration of their initial term, and, upon renewal such dock permit shall be subject to the terms and conditions set forth in any renewal permits and this Sec. 8-144, other than the prohibition against issuance of dock permits for Upland Parcels that abut a waterway and have riparian rights. Any permits for these Upland Parcels issued after June 1, 2019 will require the raising of the seawall by the applicant to the current elevation standard as a condition of

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the dock permit.

(18) In accordance with the Florida Supreme Court holding in *Burkart v. City of Fort Lauderdale*, 168 So.2d 65 (Fla. 1964) dock permits shall not be required for the following lots and blocks set forth on the Plat of IDLEWYLD, as recorded in Plat Book 1, Page 19 of the Public Records of Broward County, Florida: Lots 1 – 5 and 10 – 12 Block 1; Lots 1 – 6 Blocks 2, 3, 4, 5, 6 and 8; Lots 1 – 7 Block 8; and Lots 1 – 3 and 27 – 32, Block 12 thereof.

SECTION 2. That if any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

SECTION 3. That all ordinances or parts of ordinances in conflict herewith, be and the same are hereby repealed.

SECTION 4. That this Ordinance shall be in full force and effect within ten (10) days from the date of final passage.

PASSED FIRST READING this the _____ day of _____, 2019.

PASSED SECOND READING this the _____ day of _____, 2019.

Mayor
DEAN J. TRANTALIS

ATTEST:

City Clerk
JEFFREY A. MODARELLI

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