

CITY COUNCIL AGENDA STATEMENT



**Meeting Date:** August 11, 2020  
**To:** Honorable Mayor and Council Members  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

**Agenda Item:** Consideration Of A Request Of The City Council Of The City Of Marathon, Florida By Grassy Key Resort Group, LLC For A Modification To Their Conditional Use Permit (Resolution 2019-46) And Development Agreement (Resolution 2019-47) Pursuant To Chapter 102, Articles 13 Respectively Of The City Of Marathon Land Development Regulations (LDRs); Seeking A Modification To Their Site Plan For The Redevelopment Of An Existing Hotel Resort And Commercial Uses On Property Located At 58070 And 58182 Overseas Highway, Which Is Legally Described As Township 65, Section 24, Range 33; Bk 36 Lts 1-2-3-4, Pt Lts 5-6 (Parcel A) And W’yly 15ft Unnamed St Adj Lot 1 Res B-C-C 8/11/61 And Adj Portion Of Flagler Street And Grassy Key Bay Bottom Adj Lts 1-2-3, Lot 12 And Pt Lot 13 In The Crain’s Subdivision, Grassy Key, Marathon, Florida: Having Real Estate Numbers 00370940-000000 And 00371060. Nearest Mile Marker 58.5.

**APPLICANT/ OWNER:** Grassy Key Resort Group, LLC / Matthew Sexton

**AGENT:** Bart Smith / Smith Hawks Attorneys at Law

**LOCATION:** The project site is located at 58070 and 58182 Overseas Highway at nearest Mile Marker 58. See Figure 1.

**Figure 1  
Project Site**



**REQUEST:** A Modified Conditional Use Permit and Development Agreement for re-development of the subject property having the real estate numbers 00370940-000000 and 00371060-000000

**FUTURE LAND USE MAP DESIGNATION:**  
Mixed Use Commercial (MUC). See Figure 2.

**Figure 2  
Future Land Use Map**



**ZONING MAP DESIGNATION:**  
Mixed Use (MU). See Figure 3.

**Figure 3  
Zoning Map**



**LOT SIZES:**

00370940-000000	1.91 acres or 83,251 square feet of upland and 2.61 acres or 113,729 square feet of submerged land
00371060-000000	0.29 acres or 12,540 square feet of upland and 0.07 acres or 3,198 square feet of submerged lands
TOTAL	2.20 acres of upland and 2.67 acres of submerged land

**SURROUNDING ZONING AND USES:**

	<u>Zoning</u>	<u>Use</u>
<b>North</b>	Conservation-Native Area and Residential Conservation	Crain Subdivision, Grassy Key
<b>East</b>	Mixed Use and Residential Medium	Residential Homes and Vacant Lots
<b>South</b>	Atlantic Ocean	N/A
<b>West</b>	Mixed Use and Residential Medium	Crain Subdivision, Hideaway Café, White Sands Inn, and Rainbow Bend

**EXISTING CONDITIONS / PROPOSED REDEVELOPMENT:**

The project site consists of three previously contiguous developed lots now consolidated into one real estate number – 00370970-000000 and an additional nearby parcel – 00371060-000000. The Casa Del Sol Resort and the Yellowtail Inn parcel is currently developed and being rehabilitated after the storm. Bonefish Resort has been demolished after the storm.

In 2019 the City of the City Council, through Resolutions 2019-46 and 47, grant approval to;

- redevelopment of thirty three (38) transient units (Parcel A - RE No. 00370940-000000) and five (5) RV sites (Parcel B - RE No. 00371060-000000) and
- redevelop 11,550 square feet of commercial space, including a hotel/motel/resort lodging, retail store, bar, accessory building and accessory uses, clubs, and two swimming pools

The applicant would like to modify their approval to move transfer the RV transient units associated with the Parcel B to Parcel and redevelop Parcel A utilizing all thirty-eight (38) of it transient residential entitlements o that site

**CURRENT CONDITIONS**

Transient Units: 23 Units (Casa Del Sol / Yellowtail)  
15 Unit Entitlements (Bonefish Resort)

Commercial Floor Area: 11,550 square feet Commercial uses

**PROPOSED REDEVELOPMENT:**

Transient Units: 38 Hotel Units (Parcel A – RE No. 00370940-000000)

Commercial Floor Area:  
Residential Units

11,550 square feet Commercial uses  
1 Single Family Residential Unit (Parcel B – RE No. 00371060-000000)

See Approved Site Plans Via Resolutions 2019-46 & 47 / And Proposed Site Plan Revision Figures 5 A & 5B. See also ATTACHMENTS

Figure 4 A & B for Site Plan layout.

**Figure 4A**  
**Approved Redevelopment Site Plan**



**Figure 4B**  
**Approved Site Plan**  
**Bonefish RV Sites**



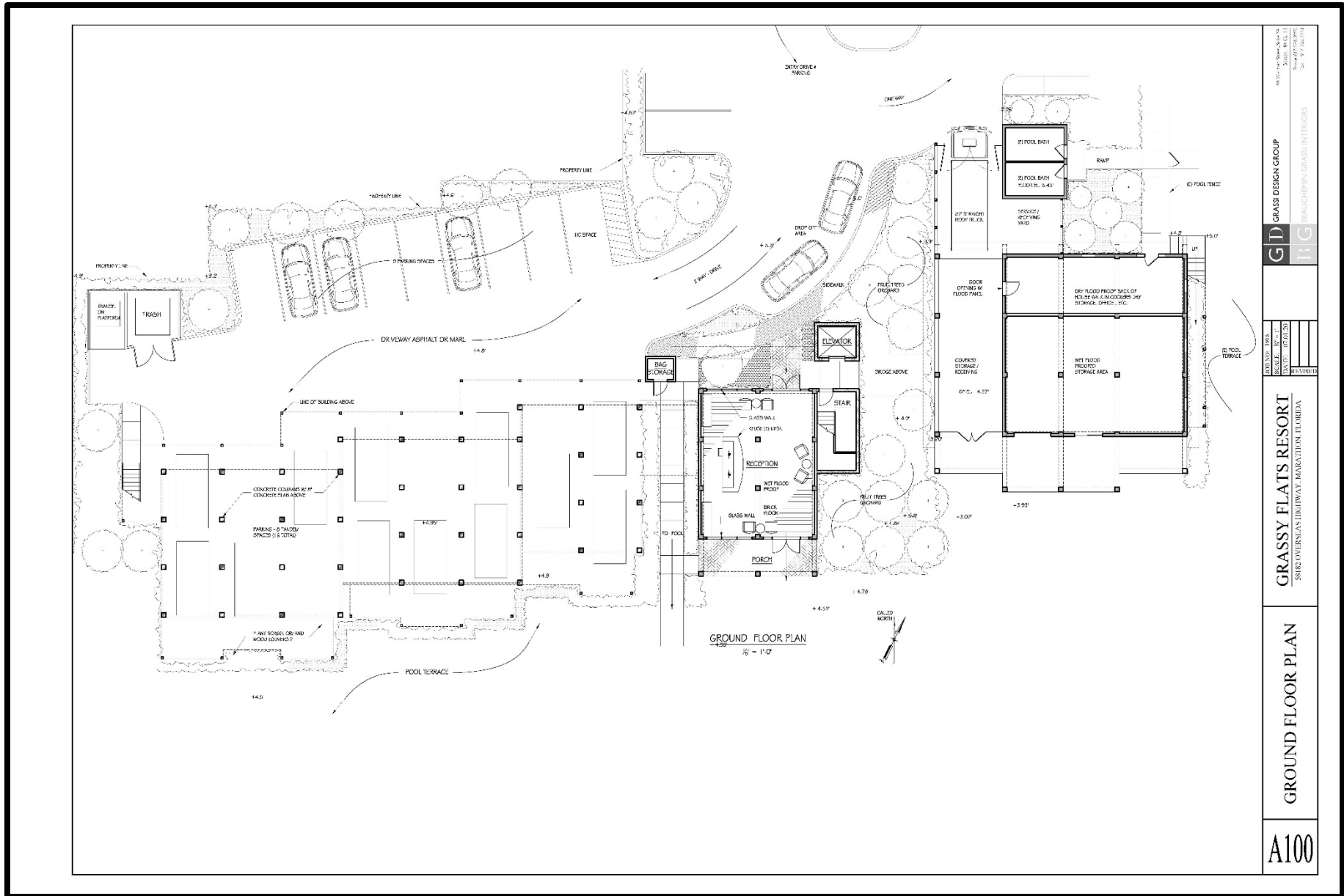
**Figure 5A  
Proposed Modified Site Plan**



City of Marathon, Florida  
Official Map Product  
Grassy Key Resort Group, LLC  
RE Nos. 00370940 & 00371060-000000



**Figure 5b**  
**Exploded Version - Modified Site Plan**



<b>GRASSY FLATS RESORT</b> 3812 OVERSEA HIGHWAY, MARGATE, FLORIDA	<b>G/D</b> GRASSY DESIGN GROUP <b>R/G</b> RAUCHPAIN GRASSY INTERIORS
	DATE: 07/21/20 SCALE: 1/8" = 1'-0" DRAWN BY: [blank]
<b>GROUND FLOOR PLAN</b>	<b>A100</b>

## **BACKGROUND:**

The Casa Del Sol, Yellowtail Resort, and Bonefish properties were purchased approximately one year prior to Hurricane Irma to become La Te Da By The Sea. Post Irma, the property languished as the owners of La Te Da determined to sell the property and entitlements. The combined properties at the time contained 38 transient residential units as hotel units with approximately 12,000 of commercial space. The proposed project is a simple redevelopment of La Te Da By The Sea with no net increase in transient residential units of commercial area. Ten transient residential unit entitlements will be transferred from the old Bonefish property (58070 Overseas Highway) to the Grassy Flats Resort site (58182 Overseas Highway) and will be redeveloped as hotel units. The five (5) transient entitlements that will remain at the old Bonefish site (58070 Overseas Highway) will be utilized as new RV sites. New commercial components will be included in the redevelopment of the Grassy Flats Resort site.

In 2019 the City of the City Council, through Resolutions 2019-46 and 47, grant approval to;

- redevelopment of thirty three (38) transient units (Parcel A - RE No. 00370940-000000) and five (5) RV sites (Parcel B - RE No. 00371060-000000) and
- redevelop 11,550 square feet of commercial space, including a hotel/motel/resort lodging, retail store, bar, accessory building and accessory uses, clubs, and two swimming pools

The applicant would like to modify their approval to move transfer the RV transient units associated with the Parcel B to Parcel and redevelop Parcel A utilizing all thirty-eight (38) of it transient residential entitlements o that site

**All condition of the Conditional Use approval will have to be met before any building permit will be approved.**

## **EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:**

The criteria for evaluating a Conditional Use Permit and Development Agreement Approval are outlined in Chapter 102, Articles 8 and 13, in the City of Marathon Land Development Regulations.

## **CRITERIA**

### **A. The proposed use is consistent with the Comprehensive Plan and LDRs;**

The proposed development project is located within the Mixed Use (MU) Zoning District. Per Chapter 103, Article 2, Section 103.09 of the Land Development Regulations, the district is designed to “accommodate a wide variety of commercial and retail activities that will result in the most efficient and attractive use of the City’s historic business district and the US1 Corridor, in an effort to recognize the role of US1 as the City of Marathon’s ‘Main Street.’ The MU district also provides for large-scale retail and commercial business opportunities in other areas, including larger shopping center, specialty shopping centers, individual multi-tenant commercial buildings, automotive services and sales, fast food restaurants, affordable housing uses, transient lodging and other retail establishments that serve the community at large”.

The proposed project consists of the redevelopment of existing commercial use within the Mixed Use Zoning District. Section 103.15, Table 103.15.2, “Uses By Zoning District,” establishes whether specific uses are allowed as of right, limited, accessory or conditional use permit. That table shows that Hotel/Motel/Resort lodging uses are allowed as Conditional Uses in the MU District. Conditional Use Permit review is intended to allow a broader view of the potential impacts of a project on adjacent uses and on City concurrency related resources such as road capacity, solid waste, sewer, and potable water availability.

Table 103.15.2 in the Land Development Regulations establishes constraints on density and intensity allowed in the MU district based on the types of uses proposed. Using the property area, the proposed use can have up to (5-25 transient per acre – between 11-55 units) hotel units. Table 103.15.3 further qualifies the allowed range of intensities based on the intensity of retail use.

<b>Development Type</b>	<b>Existing</b>	<b>Proposed</b>	<b>Max Allowed</b>	<b>% Total Area Utilized</b>
Transient Units	38	38	55	69%*
Commercial Floor Area	11,550	11,550	17,825**	20%

Assumes that Transient Units have extinguished 60% of property for density/intensity calculations  
 Assumes that the Commercial Uses proposed are of “Medium Intensity” allowing a 60% FAR.  
 Remaining Area allowed for development (density, intensity, or combination) is approximately 0.44 acres.

The project as proposed meets the basic definition of development in the MU zoning district.

Therefore, with conditions, the request is **in compliance** with the requirements of these sections.

**B. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;**

The proposed project is located within the Mixed Use Commercial Future Land Use District. Policy 1-3.1.4 of the City of Marathon Comprehensive Plan states that the “principal purpose of the Mixed Use Commercial land use category is to provide for the establishment of mixed use development patterns and to recognize established mixed use development patterns within the City.” The proposed project includes redevelopment of an existing conditional use (Hotel, Motel, Resort) into a similar conditional use (Hotel, Motel, Resort), which is consistent with the Mixed Use classification.

The existing land use pattern in the project vicinity consists of mangroves to the North, Atlantic Ocean to the South, Residential homes to the east and west, and commercial and residential uses in between.



Otherwise, the redevelopment of the site will result in significant improvement to the site development quality, including upgraded landscaping, stormwater management, and architecture. The improvements are expected to have a positive benefit on the surrounding uses and the City of Marathon.

Therefore, the request is ***in compliance*** with the requirements of these sections.

**C. The proposed use shall not adversely affect the health, safety, and welfare of the public;**

The proposed conditional use is a redevelopment of an existing use which has not had any known impact to the health, safety and welfare of the public. No new impacts are expected to arise with the redevelopment. The infrastructure on the site will be upgraded and the site heavily landscaped, creating a substantial improvement to the sites.

Plans submitted with the project are suitable for the Conditional Use Approval as they relate to Chapter 107, Article 12, 100 Year Floodplain. Final review of floodplain compliance will occur as part of building permit issuance.

Therefore, the request is ***in compliance*** with the requirements of these sections.

**D. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment:**

The existing conditions maps indicate the subject area is designated as Developed Land. A site inspection showed the current conditions as scarified with existing buildings and asphalt parking lot. Two of the parcels are designated as Turtle Nesting Beaches. Figure 6 shows the nesting beach areas in yellow. The structure that exist currently on site are within the turtle nesting beach setback. The applicant is proposing the new structures to be no further into the setback than the existing structures, and where possible to locate them further from the setbacks.

The area to include the new hotel development is not a turtle nesting beach. The remaining area is located directly landward of the designated turtle nesting beach this includes, the old Yellowtail Resort Building, the Casa Del Sol Resort structure, the pool and pool deck and a tiki structure. Pursuant to P2018-2251 (Site Work), P2019-0017 (Exterior remodel), P2019-0325 (repair dock) development waterward of these structures is limited to a vegetated berm and walkover which has been permitted and is currently in place. All other redevelopment within the area designated as turtle nesting beaches must comply with Chapter 14, Article II of the Code of Ordinances.

**Figure 6  
Turtle Nesting Beach Map**



Further improvements to water quality are expected to arise from stormwater improvements to the site, which should provide up-to-date treatment and eliminate any existing discharges to surface waters. The applicant has submitted preliminary stormwater plans suitable for the Conditional Use Application, and final plans are required prior to building permit issuance.

Site landscaping will be selected from Table 107.68.1, Appendix A, Article 8, Section 107 of the City of Marathon Code of Ordinances. The native vegetation will improve the environmental quality of the site and reduce irrigation needs. The applicant has submitted a detailed vegetation plan that is compliant with the landscaping requirements. Additionally, the applicant will provide additional landscaping to reduce light spillage onto neighboring properties and turtle nesting beaches.

Therefore, with conditions, the request is ***in compliance*** with the requirements of these sections.

- All lighting, beach raking, and redevelopment must comply with Article II of Chapter 14 of the Code of Ordinances.
- Setbacks in front of Casa del Sol is defined in permit P2019-0017 (Exterior remodel), P2019-0325 (dock repair).

**E. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:**

**1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in cases of fire or catastrophe;**

The applicant has provided a breakdown of the proposed occupancy of the onsite buildings. The “Trip Generation Analysis” schedule provided in the Traffic Study indicated that there will be an increase in trip generation from the existing use to the proposed use for the site. The traffic study determined that based on the expected trip generation for the project, there would be no adverse effect on the operating characteristics of U.S. 1. The submitted study finds that the proposed expansion will not inhibit the safe flow of traffic travelling through the City of Marathon, and that no additional improvements are warranted on U.S. 1.

Ingress and egress to the property is being provided through driveways onto Overseas Highway. The trip generation analysis of the traffic study shows that currently the existing uses generate 304 daily trips from the 33 units. With the proposed hotel/resort 38 units, residential units, and commercial space, the daily trip would be a total of 394 total. Therefore, the proposed redevelopment would create an increase in trip generation by 90 trips.

Section 107.43 requires site triangles where the access drive intersects with the street. Clear site triangles must be shown on the site plan at time of building permit issuance.

The redevelopment of these properties will require additional fire suppression measures. The applicant has coordinated with the Fire Marshall on the proposed locations of new fire hydrants as well as fire sprinklers. Additional fire truck vehicle access and turnarounds are required.

Therefore, with conditions, the request is ***in compliance*** with the requirements of these sections.

- Clear sight triangles must be shown on the site plan at time of building permit issuance.
- All conditions of the Fire Marshall must be met in site planning and in permit application preparation prior to permit issuance.

**2. Off-street parking and loading areas where required, with particular attention to item 1 above;**

Parking requirements are outlined in Section 107.46 (Parking Schedule). The following table shows the parking requirement for the commercial uses on the parcel:

<b>Use</b>	<b>Code Citation</b>	<b>Requirement</b>	<b>Spaces Required</b>
Hotel or Motel	107.47.A	1 per every 3 employees	2

		1 per guest room	32
Retail		3 per 1,000 SF	6
		1 per employee at largest shift	2
Total Required			59
Total Provided			59

Section 107.52 includes a requirement that one handicapped space be provided for every 25 spaces required. For 59 spaces, three (3) handicapped spaces are required. Parking space sizes are 9' x 18' for 90 degree parking, and handicapped spaces are 12' x 21' as required by Code. The proposed site plan is consistent with the code requirements for parking and aisle width. Additionally, the applicant proposed that the parking for the hotel be handled through a valet, allowing for stacking parking under the motel structures.

The Code also requires bicycle parking to be provided for educational facilities, multifamily dwellings, commercial, institutional and industrial uses, as well as all developments adjacent to a bike path, at a rate of one (1) space for every ten (10) parking spaces, per Section 107.48. The developer has proposed a bike rack for the project// six bicycle spaces on site.

Therefore, with the conditions noted above, the request is ***in compliance*** with the requirements of these sections.

- Bike racks must be shown on the final site plan.

**3. The noise, glare or odor effects of the conditional use on surrounding properties;**

The proposed project consists of redevelopment of three existing commercial use. New lighting will be necessary for this project. The applicant has provided a typical lighting plan which conforms with the City of marathon LDR's. A more detailed lighting plan must be submitted for permitting purposes. The applicant's detailed plans should achieve the net result of no detrimental noise, glare or odors being generated by any of the uses.

Therefore, with conditions, the request is ***in compliance*** with the requirements of this section.

- A detailed lighting plan must be submitted before the project is permitted, including turtle lighting.

**4. Refuse and service areas, with particular reference to locations, screening and Items 1 and 2 above;**

**5. Utilities, with reference to location and availability;**

Chapter 107, Article 13, establishes the City's Concurrency Management and certification requirements. This Conditional Use constitutes the City's Concurrency Level of Service Certificate, as follows:

- Wastewater: The applicant is currently working with the Utilities department to accommodate the wastewater needs, and assess the additional impacts and wastewater fees.
- Water: The Florida Keys Aqueduct Authority currently provides potable water for the facility. Staff recommends a separate meter for irrigation and landscaping.
- Solid Waste: Marathon Garbage Service will provide solid waste disposal.
- Surface Water: The applicant has provided stormwater design information suitable for the Conditional Use application review which demonstrates compliance with City standards. However, a final stormwater plan will be required for building permit issuance.
- Recreation and Open Space: This redevelopment will have a de minimis impact on recreation and open space.
- Roadways: The applicant is redeveloping the site with a higher intensity than was contained within the prior development; therefore, a traffic study was completed to analyze the impact on transportation facilities.
- Educational Facilities: This redevelopment will have a de minimis impact on educational facilities since existing uses are being replaced in kind.

Therefore, with conditions, the request is ***in compliance*** with the requirements of these sections.

- City approval is required for the stormwater management system prior to Building Permit Approval.
- City approval of the modified connection to the City Wastewater Utility will be required.
- The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for a one year.

#### **6. Screening and buffering with reference to type, dimensions and character;**

Table 107.66.1 establishes project boundary buffer standards applicable to the project. The subject parcel is zoned MU and is bordered by properties zoned RM, requiring a 'high' boundary buffer. The preliminary landscape plans show that this buffer is maintained. The final landscape plans must be approved by the City Biologist. The existing Casa del Sol property has a driveway within the buffer area that provides parking and access under the structure. Staff recommends landscaping as much as possible within the area without hindering the existing vehicle access.

Section 107.71 A. requires that parcels with a MU zoning designation provide a Type 1 Streetscape Treatment for all parcels along U.S. 1. The proposed landscape plan meets the minimum requirements. According to the Code, four canopy trees shall be planted in and about access points. In addition smaller accent trees shall be planted every 120 feet and staggered midway between the large canopy trees. Additionally, all parking not located to the rear of buildings shall be screened from the right-of-way by a landscaped buffer along U.S. 1, including a continuous hedge or combination hedge and earth berm providing a three-foot high visual screen within two (2) years of planting.

Table 103.15.2 outlines setback requirements in the MU district as follow: front yard 0 – 30’; side yard 1 and 2, 0 – 10; interior side yard, 10; and, street side, 0-5’. Accessory structures, including pools, have a 10’ setback.

Table 106.28.1 outlines setbacks requirements for a principle structure on in-fill lots, along open water shorelines not adjacent to manmade canals, channels or basins, and which have been altered by the legal placement of fill, which are surrounded by significant development where principal structures are set back less than fifty (50) feet from the MHWL. A resource buffer distance is set at a 20 foot minimum.

This plan shows a 10’ setback on the front yard, 3’ setback on the western side, and a 14’ setback on the eastern side yard, and 50’ rear yard setback.

Section 107.36 A.1 states that for parcels in the MU district the required interior yard setback may be reduced through the conditional use process. The existing use has an interior setback of 10’, therefore so long as the proposed redevelopment meets all other setback requirements, the interior side setback is allowed at the proposed 10’.

Setback	Required	Required Landscape	Proposed	Compliant
Front	0-30	10	10	Y
East Side	0-10	20	14	N
West Side	0-10	N/A	3	Y
Shoreline	10	N/A	50	N

As mentioned above, the existing structures are further into the setbacks than is currently proposed. These are being pulled back to the greatest extent practicable. Additionally, TRC review can reduce the required landscape buffer distance in half. Therefore, the 20’ buffer can be reduced to 10’ making the existing driveway as compliant as possible.

Parking area landscaping is required by Section 107.66 of the Code. The City Biologist has reviewed the submitted parking area landscape plan and has found it to be in compliance with the code.

Therefore, with conditions, the request is ***in compliance*** with the requirements of these sections.

**7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding uses;**

A review of sign requirements at this stage in development approval is not necessary. Signs for the project will be reviewed prior to issuance of building permit according to Chapter 107, Article 7, Signs.

Article 107.54 establishes criteria for lighting, including light pole light limitations and other technical criteria. Final lighting plans will be submitted along with final landscaping plans, and will include verification from the landscape architect that all provisions of the article are met.

Therefore, the request is ***in compliance*** with the requirements of these sections.

- All signs will be reviewed and approved for compliance with the City of Marathon LDR’s.

- All final lighting plan must be submitted prior to building permit issuance, and must comply with turtle lighting requirements.
- A final landscaping plan must be submitted prior to building permit issuance.

#### **8. Required yards and other open space;**

Section 106.16 established required open space for the project. The site is scarified; therefore, a twenty percent open space requirement applies. Additionally, the shoreline open space requirement is 70% is open. For the 5,163 SF buffer area, the maximum coverage is 1,549 SF by accessory structures. The applicant proposes 1,000 SF, which exceeds the open space requirement.

Therefore, the request is ***in compliance*** with the requirements of these sections.

#### **9. General compatibility with surrounding properties; and**

The project is a redevelopment of long standing existing uses in an area of the City which has been acknowledged as an area suitable for redevelopment. Adjacent uses include a commercial establishment and residential uses. A redevelopment of existing hotels is expected to be fully compatible with these uses. The proposed project represents improvement to the current state of prior development, and is expected to increase compatibility with surrounding properties.

Section 107.40 restricts the height of buildings to 37' as measured from the crown of the roadway or unimproved grade. The site plans show that buildings range from 31' to 33'.

Therefore, the request is ***in compliance*** with the requirements of these sections.

#### **10. Any special requirements set forth in the LDRs for the particular use involved.**

Section 104.25 Hotels or Motels contains special requirements.

The following criteria are applicable to this redevelopment:

- As a condition of development, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.
- All hotel or motels shall provide on- or off-site employee housing living space in an amount equal to a minimum of twenty (20) percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units.

Therefore, with the conditions note above, the request is ***in compliance*** with the requirements of this section.

#### **CONCLUSION:**

The Conditional Use Approval is intended to allow for the integration of certain land uses and structures within the City of Marathon based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses. Conditional uses shall

not be allowed where the conditional use would create a nuisance, traffic congestion, a threat to the public health, safety or welfare of the community.

The proposed redevelopment consists of the replacement and enhancement of a long standing existing commercial use. As such the development, including the overall upgrading and improvement of the site, furthers the policies for development in the City and is consistent with the Comprehensive Plan and Land Development Regulations. The project is compatible with surrounding uses, and is not expected to create a nuisance, traffic congestion or threat to public, health, safety or welfare.

### **RECOMMENDATION:**

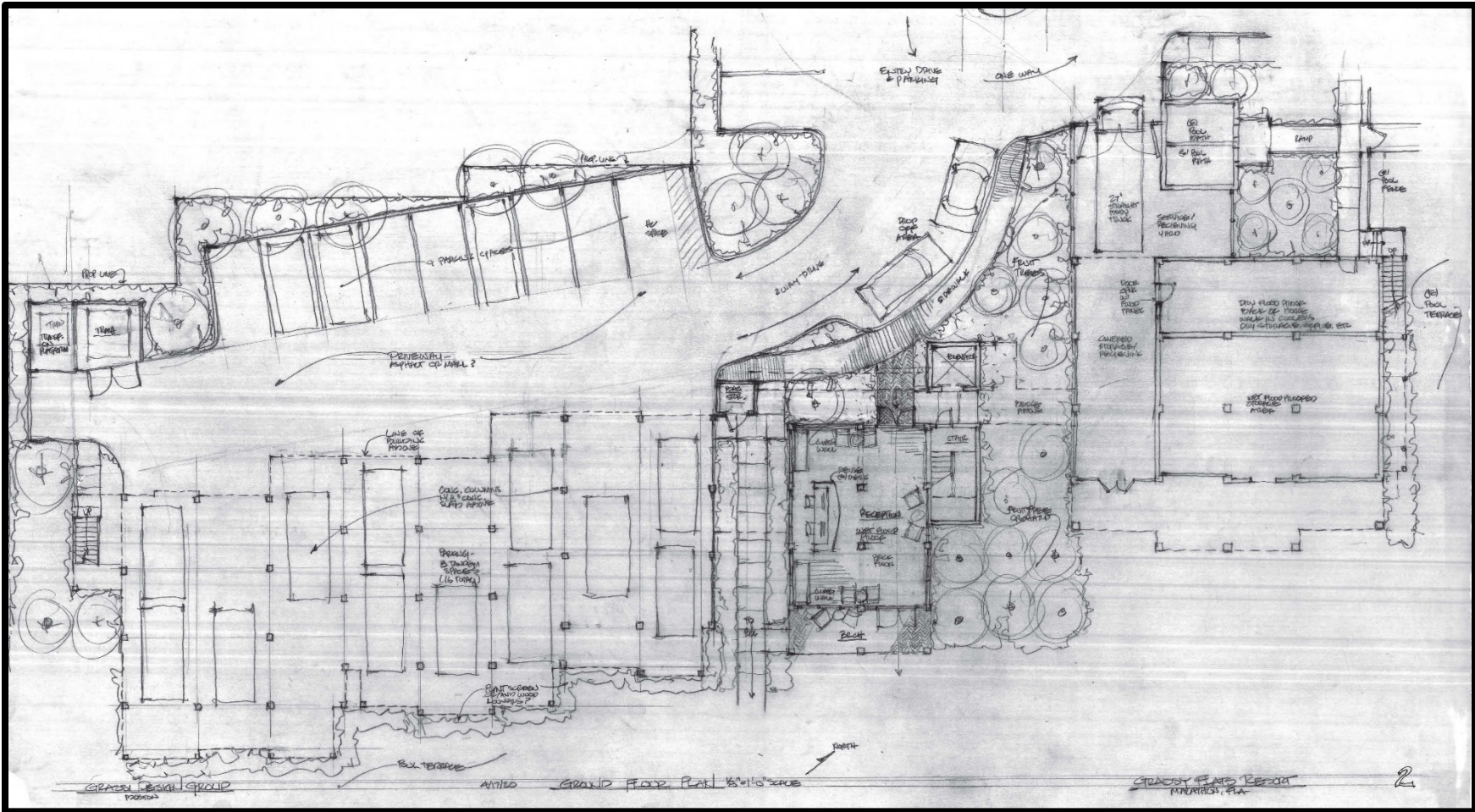
Planning Staff recommends Approval of the requested modification to the approved site plan, including the transfer of development rights within the boundaries of the project.

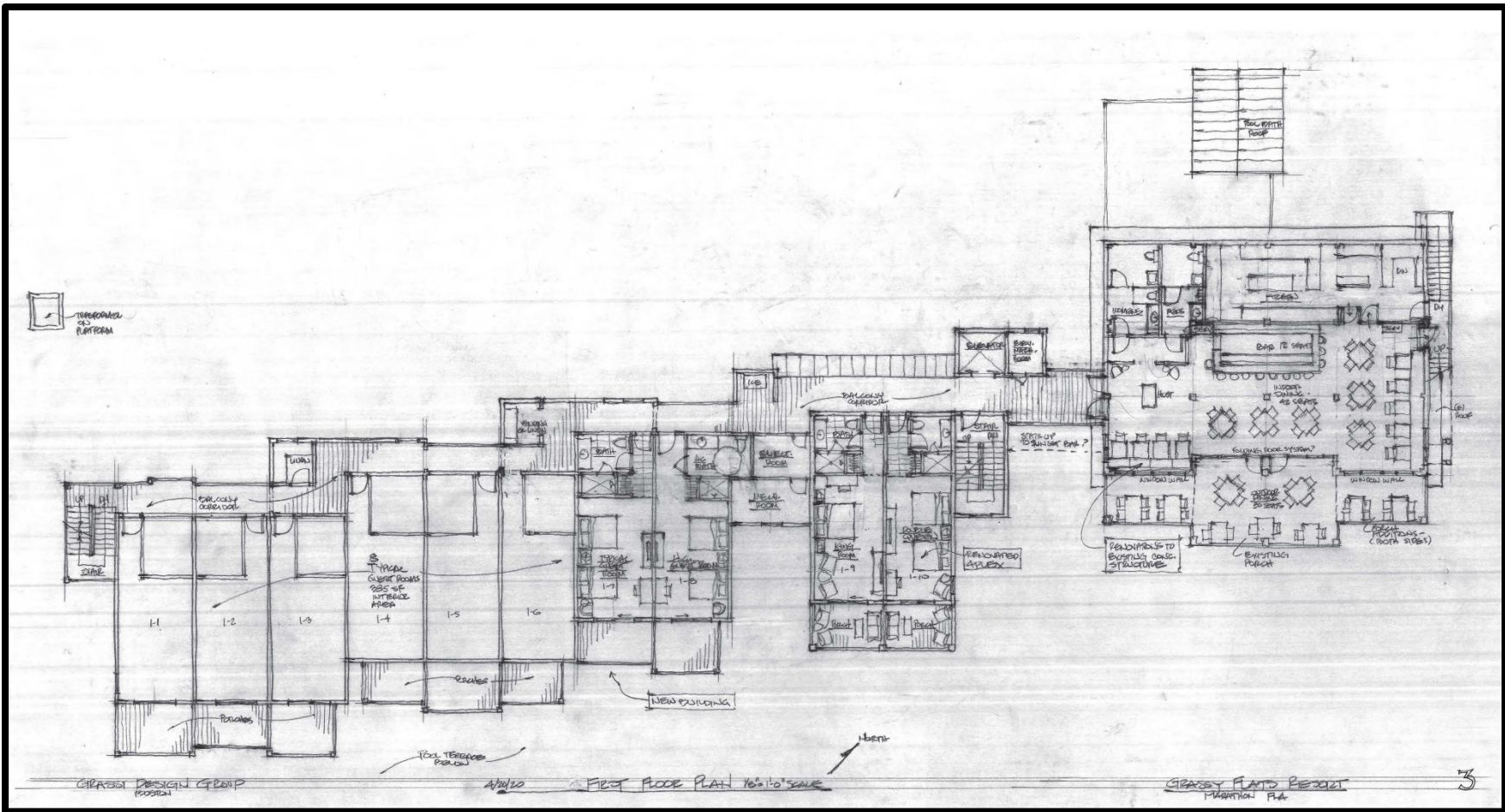
### Conditions of Approval

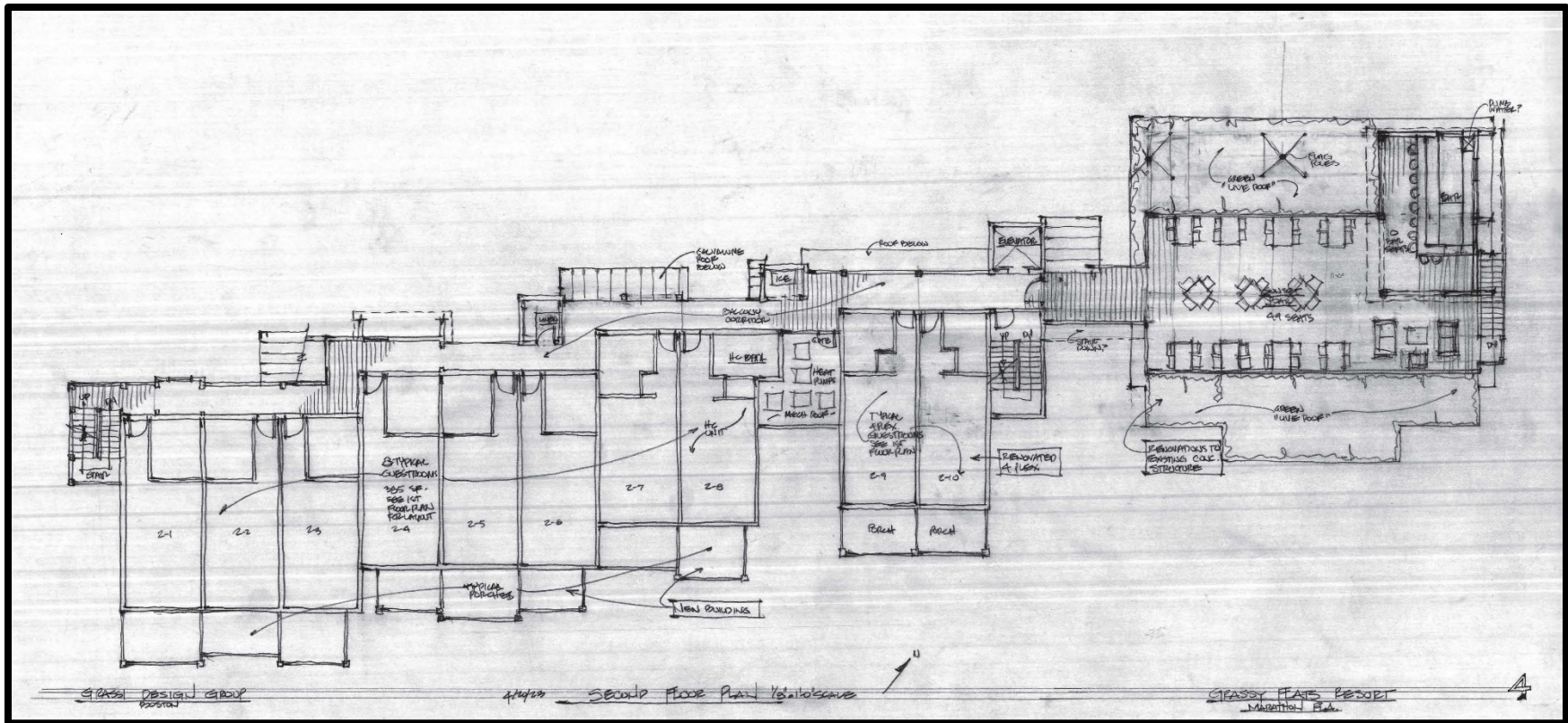
- 1) Redevelopment area not in turtle nesting beach. Area within the turtle nesting beach shall comply with setbacks established in P2018-0251, (Site Work), P2019-0017 (Exterior remodel), P2019-0325 (dock repair).
- 2) The applicant will meet all floodplain related requirements as part of the Building Permit process.
- 3) A detailed lighting plan must be submitted before permit issuance, including requirements for turtle nesting beach lighting.
- 4) City approval is required for the stormwater management system prior to Building Permit Approval.
- 5) City approval of the modified connection to the City Wastewater Utility will be required.
- 6) All signs and turtle lighting will be reviewed and approved for compliance with the City of Marathon LDR's.
- 7) A final landscaping plan must be submitted prior to building issuance.
- 8) Clear sight triangles must be shown on the site plan at time of building permit issuance.
- 9) All hotel or motels shall provide on- or off-site employee housing living space in an amount equal to a minimum of 20 percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units.
- 10) The applicant will obtain any required permits from ACOE and DEP prior to building permit issuance.
- 11) The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshall.
- 12) As a condition of redevelopment, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.
- 13) The Conditional Use Development Order will shall run concurrently and have the same term as the Development Agreement approved as part of the approval of this project.
- 14) The Conditional Use Permit shall constitute the Certificate of Concurrency for the project.

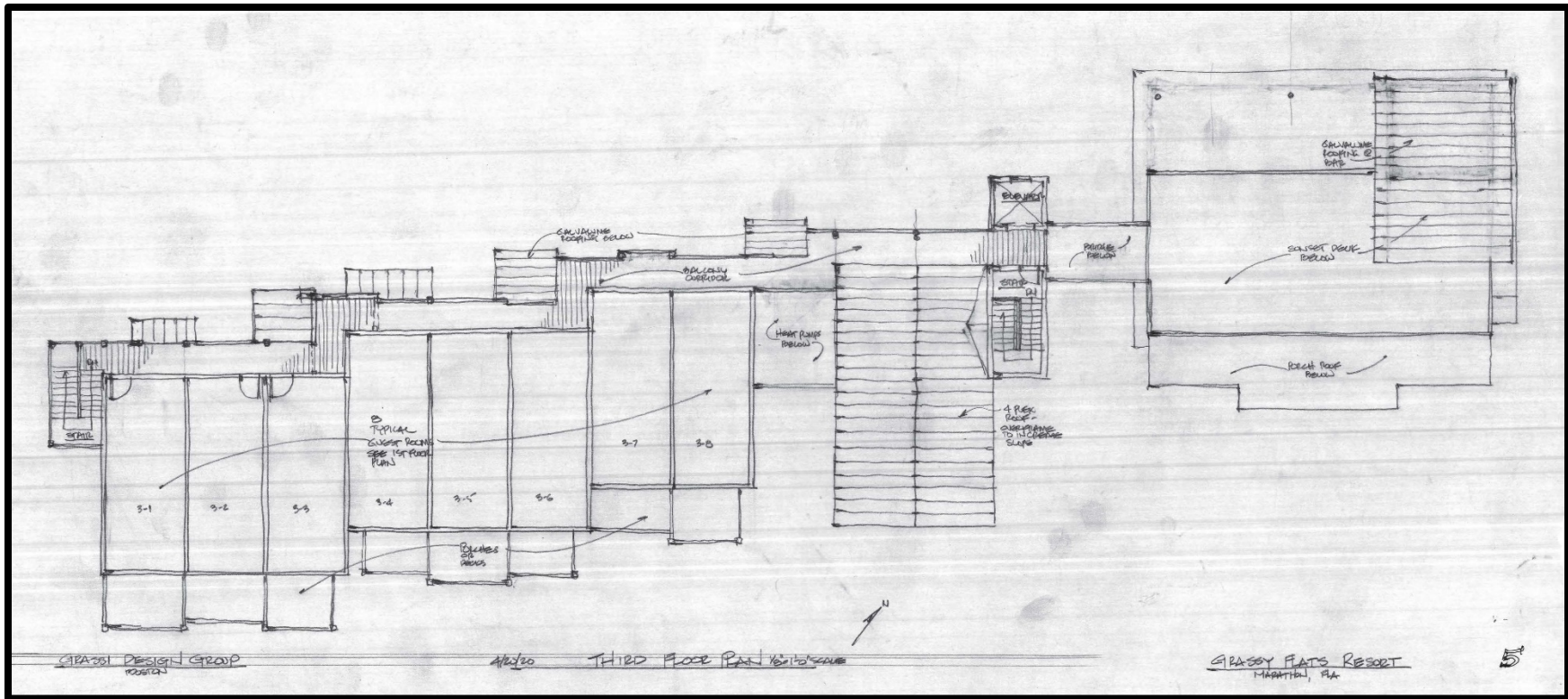














Sponsored By: Chuck Lindsey

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2020-XXX**

**APPROVAL BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA OF A REQUEST OF BY GRASSY KEY RESORT GROUP, LLC FOR A MODIFICATION TO THEIR CONDITIONAL USE PERMIT (RESOLUTION 2019-46) PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS); SEEKING A MODIFICATION TO THEIR SITE PLAN FOR THE REDEVELOPMENT OF AN EXISTING HOTEL RESORT AND COMMERCIAL USES ON PROPERTY LOCATED AT 58070 AND 58182 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS TOWNSHIP 65, SECTION 24, RANGE 33; BK 36 LTS 1-2-3-4, PT LTS 5-6 (PARCEL A) AND W'LY 15FT UNNAMED ST ADJ LOT 1 RES B-C-C 8/11/61 AND ADJ PORTION OF FLAGLER STREET AND GRASSY KEY BAY BOTTOM ADJ LTS 1-2-3, LOT 12 AND PT LOT 13 IN THE CRAIN'S SUBDIVISION, GRASSY KEY, MARATHON, FLORIDA: HAVING REAL ESTATE NUMBERS 00370940-000000 AND 00371060. NEAREST MILE MARKER 58.5.**

**WHEREAS**, Grassy Key Resort Group, LLC (The "Applicant") filed an Application on July 1, 2020 for a modification to their Conditional Use Permit (Resolution 2019-46) and Development Agreement (Resolution 2019-47) pursuant to Chapter 102, Article 8 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, pursuant to the Resolutions noted above, the applicant has been approved for the redevelopment of thirty three (38) transient units (two properties, one motel complex of thirty-three (33) units and five (5) RV sites) and 11,550 square feet of commercial space, including a hotel/motel/resort lodging, retail store, bar, accessory building and accessory uses, clubs, and two swimming pools; and

**WHEREAS**, the Applicant is proposing a modification on to their approvals to revise their project approved site plan allowing them to move transient allocations (originally approved as RV sites) to the Grassy Flats principal project site; and

**WHEREAS**, the transient units thus approved and moved will become additional transient hotel units, thus expanding the number of transient units on the Grassy Flats site while eliminating all units on the secondary Bonefish Resort site; and

**WHEREAS**, the Applicant is not proposing ANY additional transient units to the overall project approval; and

**WHEREAS**, the City staff reviewed the Applicant's request for a revision to the their Conditional Use Permit determining that the Applicant's project proposal was in compliance with the City's Comprehensive Plan and Land Development Regulations (LDRs) and further that there was no substantial impact on the City's Level of Service (LOS); and

**WHEREAS**, pursuant to Chapter 102, Articles 8 and 13, the City Council reviewed the requested modification as two public hearings held on August 11, 2020 and September 8, 2020 taking input from staff, the Applicant, and the public present for the hearing; and

**WHEREAS**, the City Council made a determination that the Applicant's request for a modification to their Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, are in Compliance with the City's Comprehensive Plan and LDRs, is consistent with its policy to encourage the development of mixed commercial development in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:**

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves a revised Development Order to Grassy Key Resort Group, LLC, a copy of which is attached hereto as Exhibit "A," subject to the Conditions imposed. The Director of Planning is authorized to sign the Development Order on behalf of the City.

Section 3. This Resolution shall take effect immediately upon execution.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8<sup>TH</sup> DAY OF SEPTEMBER, 2020.**



**EXHIBIT "A"**  
**CITY OF MARATHON, FLORIDA**  
**CONDITIONAL USE PERMIT**  
**DEVELOPMENT ORDER 2020-XXX**

**A DEVELOPMENT ORDER APPROVING A REQUEST BY GRASSY KEY RESORT GROUP, LLC FOR A MODIFICATION TO THEIR CONDITIONAL USE PERMIT (RESOLUTION 2019-46) PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS); SEEKING A MODIFICATION TO THEIR SITE PLAN FOR THE REDEVELOPMENT OF AN EXISTING HOTEL RESORT AND COMMERCIAL USES ON PROPERTY LOCATED AT 58070 AND 58182 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS TOWNSHIP 65, SECTION 24, RANGE 33; BK 36 LTS 1-2-3-4, PT LTS 5-6 (PARCEL A) AND W'LY 15FT UNNAMED ST ADJ LOT 1 RES B-C-C 8/11/61 AND ADJ PORTION OF FLAGLER STREET AND GRASSY KEY BAY BOTTOM ADJ LTS 1-2-3, LOT 12 AND PT LOT 13 IN THE CRAIN'S SUBDIVISION, GRASSY KEY, MARATHON, FLORIDA: HAVING REAL ESTATE NUMBERS 00370940-000000 AND 00371060. NEAREST MILE MARKER 58.5.**

**WHEREAS**, Grassy Key Resort Group, LLC (The "Applicant") filed an Application on July 1, 2020 for a modification to their Conditional Use Permit (Resolution 2019-46) and Development Agreement (Resolution 2019-47) pursuant to Chapter 102, Article 8 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, pursuant to the Resolutions noted above, the applicant has been approved for the redevelopment of thirty three (38) transient units (two properties, one motel complex of thirty-three (33) units and five (5) RV sites) and 11,550 square feet of commercial space, including a hotel/motel/resort lodging, retail store, bar, accessory building and accessory uses, clubs, and two swimming pools; and

**WHEREAS**, the Applicant is proposing a modification on to their approvals to revise their project approved site plan allowing them to move transient allocations (originally approved as RV sites) to the Grassy Flats principal project site; and

**WHEREAS**, the transient units thus approved and moved will become additional transient hotel units, thus expanding the number of transient units on the Grassy Flats site while eliminating all units on the secondary Bonefish Resort site; and

**WHEREAS**, the Applicant is not proposing ANY additional transient units to the overall project approval; and

**WHEREAS**, the City staff reviewed the Applicant's request for a revision to their Conditional Use Permit determining that the Applicant's project proposal was in compliance with

the City's Comprehensive Plan and Land Development Regulations (LDRs) and further that there was no substantial impact on the City's Level of Service (LOS); and

**WHEREAS**, pursuant to Chapter 102, Articles 8 and 13, the City Council reviewed the requested modification as two public hearings held on August 11, 2020 and September 8, 2020 taking input from staff, the Applicant, and the public present for the hearing; and

**WHEREAS**, the City Council made a determination that the Applicant's request for a modification to their Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, are in Compliance with the City's Comprehensive Plan and LDRs, is consistent with its policy to encourage the development of mixed commercial development in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**FINDINGS OF FACT:**

1. The applicant has proposed, and is approved herein, for the redevelopment of thirty-eight (38) transient units and 11,550 square feet of commercial space, including a hotel/motel/resort lodging, retail store, bar, accessory building and accessory uses, clubs, and two swimming pools as follows:

- a. Transference of five (5) lawfully established transient residential building rights from the Applicant's property bearing Monroe County Parcel ID No. 00371060-000000 (Parcel B) to Applicant's property bearing Monroe County Parcel ID No. 00370940-000000 (Parcel A);
- b. Transference of one lawfully established residential building right onto Parcel B;
- c. The development (redevelopment) of Parcel A to add up to twenty-four (24) hotel/motel resort lodging (transient residential units) and ancillary structures for a total of thirty-eight (38) hotel/motel units.

2. In accordance with Section 102.77 of the Code, the Commission and Council considered and determined the Applicant met the following criteria:

- a. The proposed use is consistent with the Comprehensive Plan and LDRs;
- b. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;
- c. The proposed use shall not adversely affect the health, safety, and welfare of the public; and
- d. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and
- e. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:
  1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
  2. Off-street parking and loading areas where required, with particular attention to item 1 above;
  3. The noise, glare or odor effects of the conditional use on surrounding properties;
  4. Refuse and service areas, with particular reference to location, screening and Items 1 and 2 above;

5. Utilities, with reference to location and availability;
6. Screening and buffering with reference to type, dimensions and character;
7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
8. Required yards and other open space;
9. General compatibility with surrounding properties; and

**CONDITIONS IMPOSED:**

Granting approval of the Application is subject to the following conditions:

Conditions of Approval

**VIOLATION OF CONDITIONS:**

The applicant understands and acknowledges that it must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicant or its successor or designee is in non-compliance with this Resolution or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

**CONCLUSIONS OF LAW:**

Based upon the above Findings of Fact, the Council does hereby make the following Conclusions of Law:

1. The Application has been processed in accordance with the applicable provisions of the City Code, and will not be detrimental to the community as a whole; and
2. In rendering its decision, as reflected in this Resolution, the Council has:
  - (a) Accorded procedural due process;
  - (b) Observed the essential requirements of the law;
  - (c) Supported its decision by substantial competent evidence of record; and
3. The Application for a conditional use is hereby GRANTED subject to the conditions specified herein.

**EFFECTIVE DATE:**

This development order shall not take effect for thirty (30) days following the date it is filed with the City Clerk, and during that time, the conditional use approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this development order until said appeal is resolved.

\_\_\_\_\_  
Date

\_\_\_\_\_  
George Garrett  
Director of Planning

This Development Order was filed in the Office of the City Clerk of this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Diane Clavier, City Clerk

**NOTICE**

Under the authority of Section 102.79(c) of the City of Marathon Land Development Regulations, this development order shall become null and void with no further notice required by the City, unless a business license has been issued for the use or a complete building permit application for site preparation and building construction with revised plans as required herein is submitted to the City of Marathon Building Official within one (1) year from the date of conditional use approval, or the date when the Department of Community Affairs waives its appeal and all required certificates of occupancy are procured with three (3) years of the date of this development order is approved by the City Council.

In addition, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Community Affairs. During that forty-five days, the Florida Department of Economic Opportunity may appeal this instrument to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

**CERTIFICATE OF SERVICE**

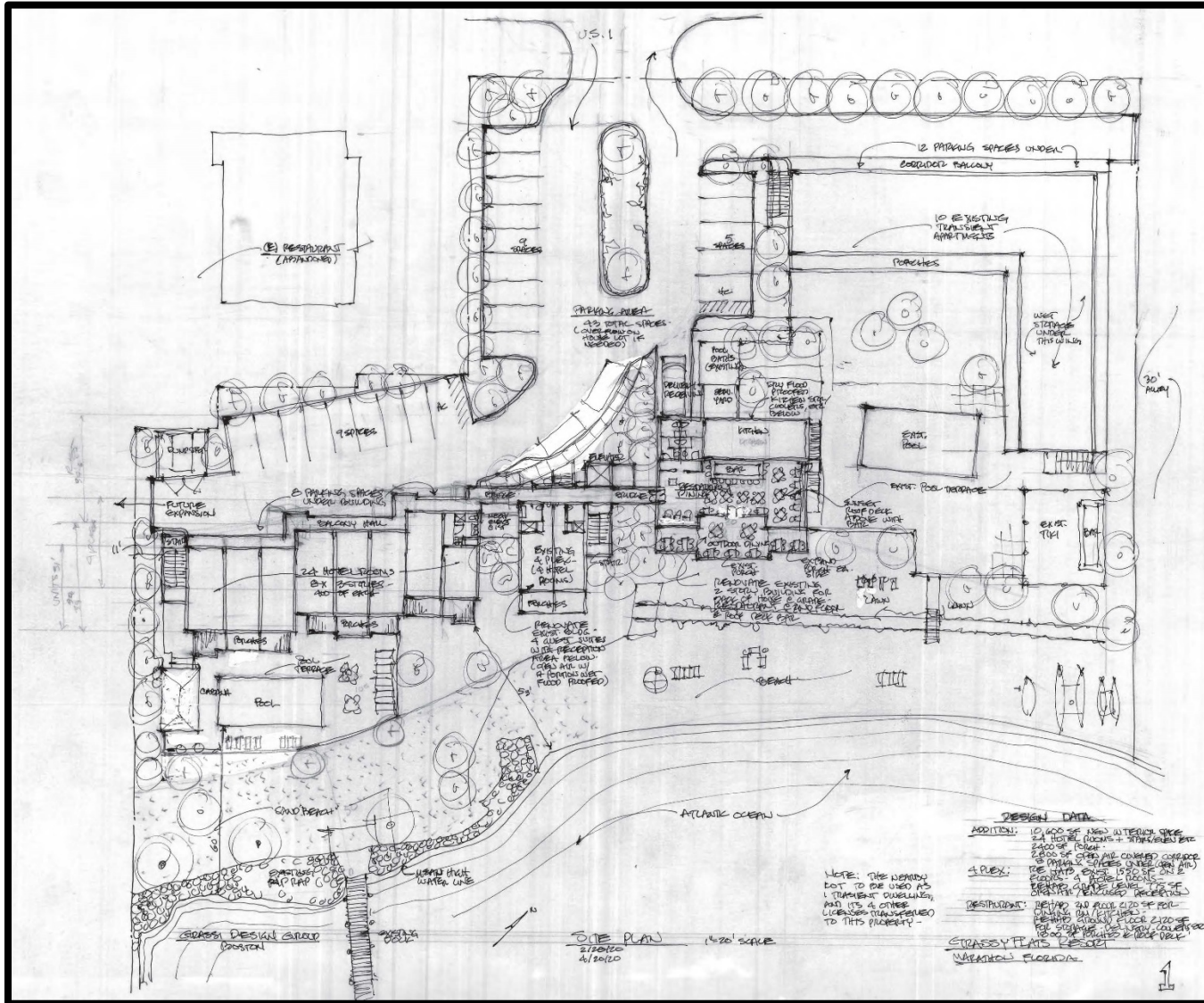
A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail,

return receipt requested, addressed to \_\_\_\_\_,

this \_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Diane Clavier City Clerk

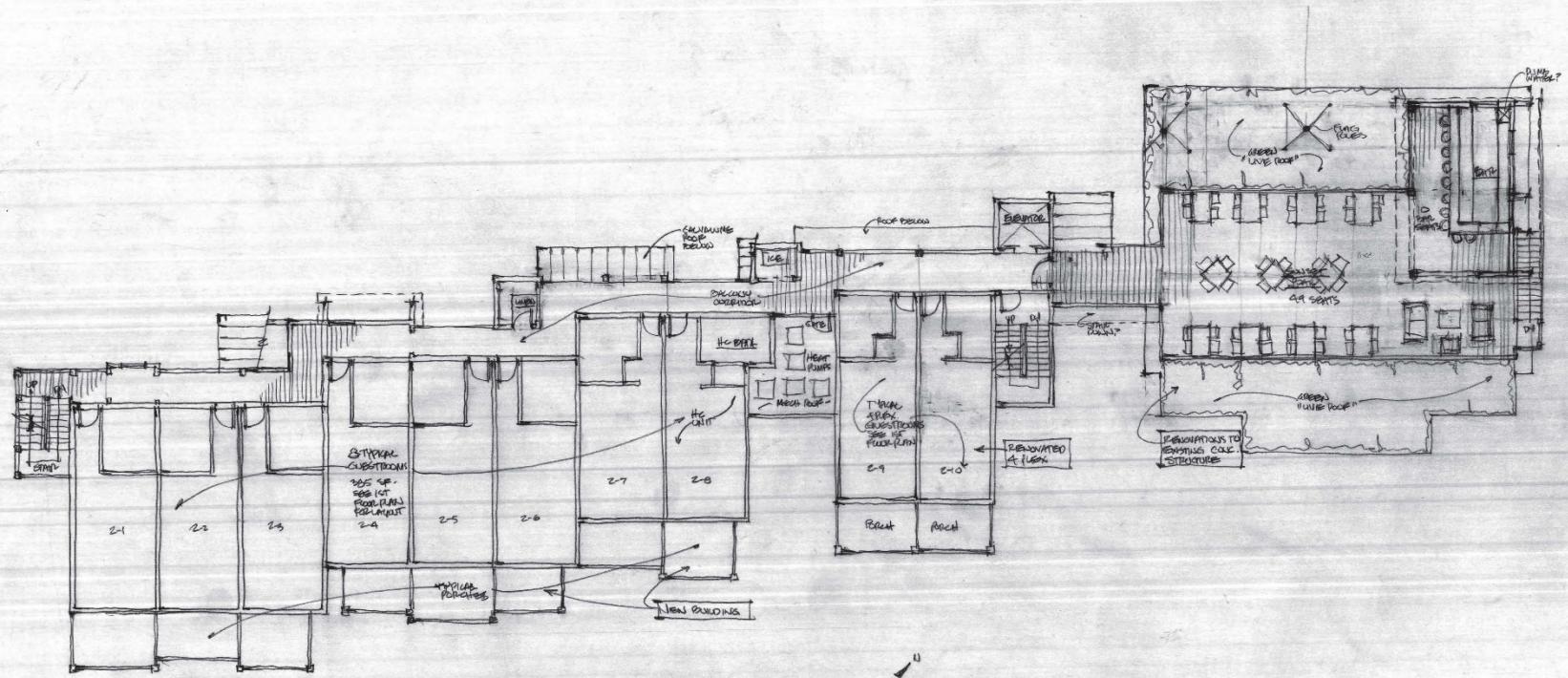
# ATTACHMENTS:







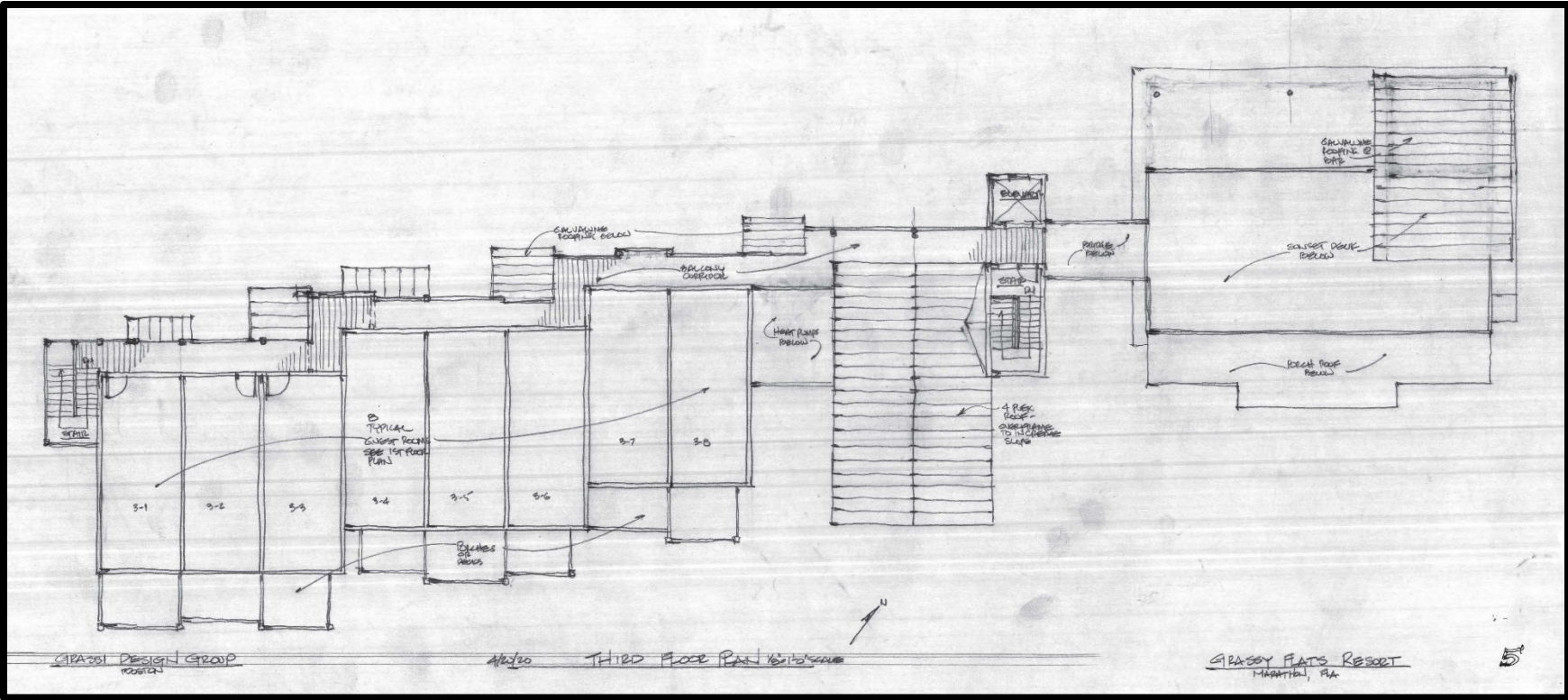




GRASSY DESIGN GROUP  
P. 2000

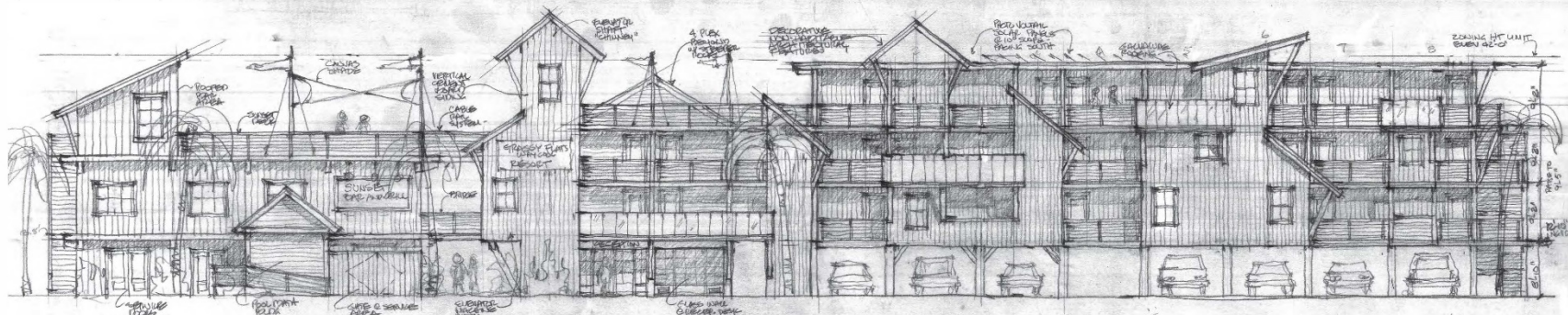
4/15/02 SECOND FLOOR PLAN KALATOLKAVE

GRASSY FLATS RESORT  
INITIAL PLAN





WATER SIDE ELEVATION 1/8" SCALE



ROADWAY SIDE ELEVATION 1/8" SCALE

SPACED FLOOR PLAN PARALLEL PLAN

RE Nos. 00370940-000000 & 00371060-000000

(Space Reserved for Recording)

**Amended and Restated Development Agreement  
Grassy Key Resort Group, LLC  
Marathon, Florida**

This Amended and Restated Development Agreement (“Agreement”) is entered into by and between the City of Marathon, a Florida Municipal Corporation (“City”), and Grassy Key Resort Group, LLC, a Florida limited liability company, whose address is 58182 Overseas Highway, Marathon, FL 33050 (“Owner”), pursuant to *Chapter 102, Article 8* of the Land Development Regulations of the City of Marathon (“Code”), and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes, and is binding on the effective date as set forth herein.

**WITNESSETH:**

**WHEREAS**, Owner owns two (2) parcels located at (i) 58182 Overseas Hwy. and bearing Monroe County Real Estate No. 00370940-000000, which includes a hotel and beach club and its proposed expansion (hereinafter referred to as the “Resort Parcel”), and (ii) 58070 Overseas Hwy., bearing Monroe County Real Estate No. 00371060-000000 (hereinafter referred to as the “Vacation Parcel”), both parcels described in Exhibit “A” hereto (Resort Parcel and Vacation Parcel together hereinafter referred to as the “Property”); and

**WHEREAS**, the City and Owner entered into a Development Agreement recorded in Monroe County Official Record Book 2971, Page 2 on June 19, 2019 (“Original Development Agreement”);

**WHEREAS**, the City and Owner wish to enter into this Agreement to amend certain provisions of the Original Development Agreement;

**WHEREAS**, by Resolution 2019-46, incorporated herein by reference, the City Council of the City granted a Conditional Use Permit authorizing the transfer of transient hotel/motel units and the redevelopment of the Property (“CU Permit”);

**WHEREAS**, the Resort Parcel and Vacation Parcel are designated on the City’s Future Land Use Map (FLUM) as Mixed Use Commercial (MU-C), and is zoned as Mixed Use (MU), which land use designation and zoning allow the property to be used for transient rentals, vacation rentals, and accessory uses;

**WHEREAS**, the Resort Parcel consists of **33** transient hotel/motel units, **1** non-transient residential unit, and 86,051 square feet of commercial uses, including a

hotel/motel/resort lodging, restaurant, bar, accessory building and accessory uses, clubs, swimming pool, and retail store;

**WHEREAS**, the Vacation Parcel consists of **5** transient hotel/motel units and 11,550 square feet of commercial uses;

**WHEREAS**, *Section 107.13, et seq.* of the Code allows for the transference of lawfully established units from one site to another site;

**WHEREAS**, Owner desires to transfer **5** transient hotel/motel units from the Vacation Parcel to the Resort Parcel to redevelop the Resort Parcel;

**WHEREAS**, Owner desires to transfer the **1** non-transient residential unit from the Resort Parcel to the Vacation Parcel to be utilized a vacation rental upon approval pursuant to *Chapter 8, Article 2* of the Code;

**WHEREAS**, the City desires to encourage development and redevelopment of hotels, motels, and recreational vehicle parks in the City to attract tourism, enhance the economy of the City for the benefit of its residents, improve the good appearance of the City, enhance the City's ability to support needed improvements in infrastructure, and encourage other redevelopment efforts for the economic growth, prosperity and welfare of the residents of the City of Marathon;

**WHEREAS**, the City has determined that this Agreement is consistent with the local comprehensive plan, is in the public interest, and will further the health, safety, welfare, and goals of the residents of the City of Marathon; and

**WHEREAS**, the proposed redevelopment is permissible and appropriate for the City's Transitional Comprehensive Plan Future Land Use designations of Mixed Use Commercial applicable to the Property and for the Mixed Use Commercial designation in the City's Comprehensive Plan;

**WHEREAS**, the Marathon Planning Commission held a public hearing on \*\*\*\*\*, to consider this agreement, and recommended approval of this agreement;

**WHEREAS**, the City Council of Marathon held public hearings on \*\*\*\*\*, to consider this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as Follows:

#### **I. RECITALS.**

The foregoing recitals are a part of this Agreement on which the parties have relied and are incorporated into this Agreement by reference.

## **II. PURPOSES OF AGREEMENT.**

The purposes of this Agreement are as follows:

A. To provide certainty in development of the Property.

B. To expand the redevelopment of the Resort Parcel to include **38** transient hotel/motel units and commercial uses, including a hotel/motel/resort lodging, restaurant, bar, accessory building and accessory uses, clubs, swimming pool, and retail store as per the Conceptual Site Plan attached as Exhibit "B" and allow development of a residential unit on the Vacation, consistent with the City of Marathon's Comprehensive Plan and Objective 1-3.4 of the City of Marathon's Comprehensive Plan.

## **III. Definitions.**

For the purposes of this Agreement, all terms shall have the definitions as found in the City of Marathon's Land Development Regulations, Comprehensive Plan and in Chapter 163, Florida Statutes, or in other applicable Florida Statutes, and if not defined in the Code, Plan, or Statute, the term shall be understood by its usual and customary meaning.

## **IV. Statutory and Code Requirements.**

The Parties recognize the binding effect of the Florida Local Government Development Agreement Act, Sections 163.3221, et seq., Florida Statutes, as to the form and content of this Agreement and in accordance therewith set forth and agree to the following:

### A. Legal Description and Ownership.

Grassy Key Resort Group, LLC is the Owner of the Resort Parcel and Vacation Parcel. Deeds to the Property with legal descriptions are attached as Exhibit "A".

### B. Duration of Agreement.

This Agreement shall remain in effect for a period of ten (10) years, commencing on the Effective Date set forth below. The Owner shall have a period of two (2) years from the Effective Date of this Agreement to obtain the first building permit and five (5) years from the Effective Date of this Agreement to obtain all Certificates of Occupancy and/or Final Inspections for structures on the Property as shown on the Site Plan.

This Agreement may be renewed or extended as provided herein.

### C. Permitted Uses.

1. The Development permitted on the Property shall consist of those uses set forth herein, as identified on the conceptual site plan attached hereto in composite Exhibit B and incorporated herein by reference. The permitted uses are as follows:

- i. Existing Development; and
  - ii. Transient Units: **38** transient hotel/motel units on the Resort Parcel and 1 non-transient residential unit on the Vacation Parcel or any use consistent with the City of Marathon's Comprehensive Plan.
2. For the duration of this Agreement, the Parties agree that any and all of the approved development shall adhere to, conform to, and be controlled by this Agreement, the Exhibits attached hereto and incorporated by reference, the Code and the Comprehensive Plan governing the development of the Property on the Effective Date of this Agreement. In the event that all or a portion of the existing or authorized development subject to this Agreement should be destroyed by storm, fire or other disaster, the Owner, it's grantees, successors, or assigns shall have the absolute right to rebuild or repair the affected structure(s) and reinitiate the prior approved use so long as such development is in compliance with this Agreement.
3. The Conceptual Site Plan is attached as Exhibit "B" hereto and incorporated by reference, showing the Existing and Proposed Uses.
4. Maximum Building Height shall be forty-two (42) feet, except as provided by Code.

#### D. Public Facilities

1. The Florida Keys Aqueduct Authority provides domestic potable water.
2. Electric Service is provided by the Florida Keys Electric Co-op.
3. Solid Waste Service is provided by Marathon Garbage Service.
4. Owner shall provide wastewater and sewage collection and disposal by expanding its current connection to the City.
5. Stormwater. A Stormwater Management System which meets all applicable local, state and federal requirements shall be constructed onsite as part of the Site Redevelopment. This system will retain, detain, and treat Stormwater on the Property and therefore will provide a substantial benefit to water quality in the area. There shall be no direct discharge to the City of Marathon Nearshore Waters.
6. Any increased impacts on Public Facilities or Public Services attributable to each unit of the development, and the cost of capital improvement to meet the associated increased demand on such facilities or services, shall be assured by payment to the City, concurrent with the issuance of the building permits for each unit, of any City of Marathon Impact Fees required by the ordinance then in effect, as well as by payment by owner of any applicable utility system Development Fees. In addition, Owner agrees to be subject to any reasonable impact fee ordinance adopted by the City within twenty-four (24) months after the Effective Date of the Agreement, providing such ordinance applies equally and uniformly to all redevelopment in Marathon.

9. Fire Protection. The Owner shall provide fire hydrants and other such fire protection facilities as required by the Life Safety Code administered by the City Fire Department. Fire sprinklers will be installed as required by Code.

E. Local Development Permits.

The following is a list of all Development Permits approved or needed to be approved for the redevelopment of the Property as specified and requested in this Agreement:

1. This Development Agreement.
2. Conditional Use Approval.
3. The Final Site Plan, Landscape Plan, Drainage Plan, Building Elevations and Floor Plan approvals.
4. Building and related construction permits for all structures utilized for principal use or accessory use, land clearing, and landscaping.
5. Federal, State, Regional, and Local Permits for Stormwater runoff.

Nothing in this Agreement shall preclude the parties from applying additional conditions, by mutual agreement, during Final Site Plan review or permitting.

F. Finding of Consistency.

By Entering into this Agreement, the City finds that the redevelopment permitted or proposed herein is consistent with and furthers the Comprehensive Plan (as defined herein), applicable LDRs and the Principles for Guiding Development set forth at Section 380.0552(7), Florida Statutes.

G. Existing BPAS Exempt Units

The Parties acknowledge that there exists on the Property **38** transient hotel/resort units and **1** non-transient residential unit that are exempt from the City Building Permit Allocation System. These units were acknowledged in the Original Development Agreement and the CU Permit.

H. Reservations or Dedications of Land for Public Purposes.

The parties anticipate that Owner may reserve or dedicate land for public purposes in connection with the Redevelopment but is currently unaware of the specifics of such reservation(s) or dedication(s). Reservations and dedications for public purposes in connection with this Agreement may be requested by the City's Comprehensive Plan and City Code. Such reservations or rededications may include, by way of example, easements necessary for the provision of stormwater, utility, and wastewater services to the Property.



I. Mutual Cooperation.

City and Owner agree to cooperate fully and assist each other in the performance of the provisions of this Agreement.

J. Development to Comply with Permits and City Comprehensive Plan and Code Provisions.

The redevelopment shall be developed in accordance with all required permits and in accordance with all applicable provisions of the City's Comprehensive Plan and Land Development Regulations in effect on the effective date of this Agreement. No Certificate of Occupancy for an individual building shall be issued until all plans for that building are approved by the City and Owner has complied with all conditions in permits issued by the City and the other regulatory entities for that building. The City agrees that any permits or certificates of occupancy to be issued by the City shall not be unreasonably withheld or delayed.

K. Compliance With Permit, Terms, Conditions, and Restrictions Not Identified Herein.

The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve Owner of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

L. Laws Governing.

1. For the duration of this Agreement, all approved development of the Property shall comply with and be controlled by this Agreement and provisions of the City of Marathon's Comprehensive Plan and City Code in effect on the date of execution of this Agreement, inclusive of text changes and rezoning approved by the City Council on the date of the City's approval of this Agreement, if any. The parties do not anticipate that the City will apply subsequently adopted laws and policies to the Property, except as expressly provided in this Agreement.

2. Pursuant to Section 163.3233, Florida Statutes, the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that:

- i. The new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent development of the land uses, intensities, or densities set forth in this Agreement;
- ii. The new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they shall apply to the development that is subject to this Agreement;
- iii. The City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or
- iv. The Agreement is based on substantially inaccurate information supplied by Owner.

Provided, however, nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

3. If state or federal laws enacted after the Effective Date of this Agreement preclude any party's compliance with the terms of this Agreement, it shall be modified as necessary to comply with the relevant state or Federal laws. However, this Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common law.

M. Amendment, Renewal and Termination.

This Agreement may be amended, renewed, or terminated as follows:

1. As provided in Section 163.3237, Florida Statutes, this Agreement may be amended by mutual consent of the parties to this Agreement or by their successors in interest. Amendment under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.

2. As provided in Section 163.3237, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirement in Section 163.3225, Florida Statutes, and applicable LDRs. The City shall conduct at least two (2) public hearings, one of which may be held by the local planning agency at the option of the City. Notice of intent to consider renewal of the Agreement shall be advertised approximately fifteen (15) days before each public hearing in a newspaper of general circulation and readership in Marathon, and shall be mailed to all affected property owners before the first public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing. The notice shall specify the location of the land subject to the Agreement, the development uses on the Property, the population densities, and the building intensities and height and shall specify a place where a copy of the Agreement can be obtained.

3. This Agreement may be terminated by Owner or its successor(s) in interest following a breach of this Agreement by the City upon written notice to the City as provided in this Agreement.

4. Pursuant to Section 163.3235, Florida Statutes, this Agreement may be revoked or modified by the City if, on the basis of substantial competent evidence, the City finds there has been a failure by Owner to comply with the terms of this Agreement.

5. This Agreement may be terminated by mutual consent of the parties.

N. Breach of Agreement and Cure Provisions.

1. If the City concludes that there has been a material breach in this Agreement by Owner, prior to revoking this Agreement, the City shall serve written notice on Owner identifying the term of condition the City contends has been materially breached and providing Owner with ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Agreement. Each of the following events shall be considered a material

breach of this Agreement:

- (i) Failure to comply with the provisions of this Agreement;
- (ii) Failure to comply with terms and conditions of permits issued by the City or other regulatory entity for the development authorized by this Agreement.

2. If Owner concludes that there has been a material breach in the terms of this Agreement by the City, Owner shall serve written notice on the City identifying the term or condition Owner contends has been materially breached and providing the City with ninety (90) days from the date of receipt of the notice to cure the breach, or negotiate an amendment to this Agreement. The following events shall be considered a material breach of this Agreement:

- (i) Failure to comply with the provisions of this Agreement;
- (ii) Failure to timely process any application for Site Plan approval or other development authorized by this Agreement.

3. If either party waives a material breach in this Agreement, such a waiver shall not be deemed a waiver of any subsequent breach.

4. Notwithstanding any other provisions of this Development Agreement to the contrary, neither party hereto shall be deemed to be in default under this Development Agreement where delay in the construction or performance of the obligations imposed by this Development Agreement are caused by war, revolution, labor strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions, embargoes, litigation (excluding litigation between the City and the Owner), tornadoes, hurricanes, tropical storms or other severe weather events, or any other causes beyond the control of such party. The time of performance hereunder, as well as the term of this Development Agreement, shall be extended for the period of any forced delays or delays caused or resulting from any of the foregoing causes. The Owner must submit evidence to the City's reasonable satisfaction of any such delay.

O. Notices.

All notices, demands, requests, or replies provided for or permitted by this Agreement, including notification of a change of address, shall be in writing to the addressees identified below, and may be delivered by anyone of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Services as certified or registered mail, return receipt requested, postage prepaid; or (c) by deposit with an overnight express delivery service with a signed receipt required. Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

TO OWNER:

Grassy Key Resort Group, LLC .  
c/o Matthew Sexton  
58182 Overseas Hwy  
Marathon, FL 33050

With a copy by regular U.S. Mail to:

Barton W. Smith  
Smith Hawks, PL  
138 Simonton St.  
Key West, FL 33040

TO THE CITY:

City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
(305) 743-0033

P. Annual Report.

On each anniversary date of the Effective Date of this Agreement, Owner shall provide the City with a report identifying (a) the amount of development authorized by this Agreement that has been completed, (b) the amount of development authorized by this Agreement that remains to be completed, and (c) any changes to the plan of development that have occurred during the one (1) year period from the Effective Date of this Agreement or from the date of the last Annual Report.

Q. Enforcement.

In accordance with Section 163.3243, Florida Statutes, any party to this Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes, or the State Land Planning Agency may file an action for injunctive relief in the Circuit Court of Monroe County, Florida, to enforce the terms of this Agreement or to challenge the compliance of this Agreement with the provisions of Section 163.3220-163.3243, Florida Statutes.

R. Binding Effect.

This Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns, and personal representatives.

S. Assignment.

This Agreement may not be assigned without the written consent of the parties, which consent shall not be unreasonably withheld.

T. Drafting of Agreement.

The parties acknowledge that they jointly participated in the drafting of this Agreement and that no term or provision of this Agreement shall be construed in favor of or against either party based solely on the drafting of the Agreement.

U. Severability.

In the event any provision, paragraph or section of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the enforceability or validity of the remaining provisions of this Agreement.

V. Applicable Laws.

This Agreement was drafted and delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida.

W. Litigation/Attorneys Fees; Venue; Waiver of Right to Jury Trial.

As between the City and Owner, in the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorney's fees. This includes, but is not limited to, reimbursement for reasonable attorney's fees and costs incurred with respect to any appellate, bankruptcy, post-judgment, or trial proceedings related to this Agreement. Venue for any legal proceeding arising out of this Agreement shall be in Monroe County, Florida.

THE PARTIES TO THIS AGREEMENT WAIVE THE RIGHT TO A JURY TRIAL IN ANY LITIGATION ARISING OUT OF THIS AGREEMENT.

X. Use of Singular and Plural.

Where the context requires, the singular includes the plural, and plural includes the singular.

Y. Duplicate Originals; Counterparts.

This Agreement may be executed in any number of originals and in counterparts, all of which evidence one agreement. Only one original is required to be produced for any purpose.

Z. Headings.

The headings contained in this Agreement are for identification purposes only and shall not be construed to amend, modify, or alter the terms of this Agreement.

AA. Entirety of Agreement.

This Agreement incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, or understandings regarding the matters contained herein. The parties agree that there are no commitments, agreements, or understandings concerning the subjects covered by this Agreement that are not contained in or incorporated into this document and, accordingly, no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether written or oral. This Agreement contains the entire and exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing signed by the parties.

BB. Recording; Effective Date.

The Owner shall record this Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date the last party signs this Agreement. A copy of the recorded Agreement showing the date, page and book where recorded shall be submitted to the State Land Planning Agency at the Department of Community Affairs, Division of Community Planning, 2555 Shumard Oak Boulevard, Tallahassee FL 32399-2100 by hand delivery or registered or certified United States mail, or by a delivery service that provides a signed receipt showing the date of delivery, within fourteen (14) days after the Agreement is recorded and received by the Owner or his agents. Owner shall also provide a copy of the recorded Agreement to the City at 9805 Overseas Highway, Marathon, Florida 33050, within the same time period. This Agreement shall become effective thirty (30) days after the date the State Land Planning Agency receives its copy pursuant to Section 163.3239, Florida Statutes.

CC. Date of Agreement.

The Date of this Agreement is the date the last party signs and acknowledges this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year below written. Signed, sealed, and delivered in the presence of:

WITNESSES:

OWNER:

GRASSY KEY RESORT GROUP, LLC

\_\_\_\_\_  
Signature

By: \_\_\_\_\_

\_\_\_\_\_  
Name of witness (printed or typed)

Name: Matthew Sexton

Title: Authorized Representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of witness (printed or typed)

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me by means of  physical presence or  online notarization on this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Matthew Sexton, as authorized representative of Grassy Key Resort Group, LLC., who is personally known to me or who produced \_\_\_\_\_ as identification, and who did/did not take an oath.

\_\_\_\_\_  
Notary Public, State of Florida At Large  
My commission expires:

On the \_\_\_\_\_ day of \_\_\_\_\_, 2020, The City Council of the City of Marathon approved this Agreement by Resolution No. \_\_\_\_\_

ATTEST:

CITY OF MARATHON

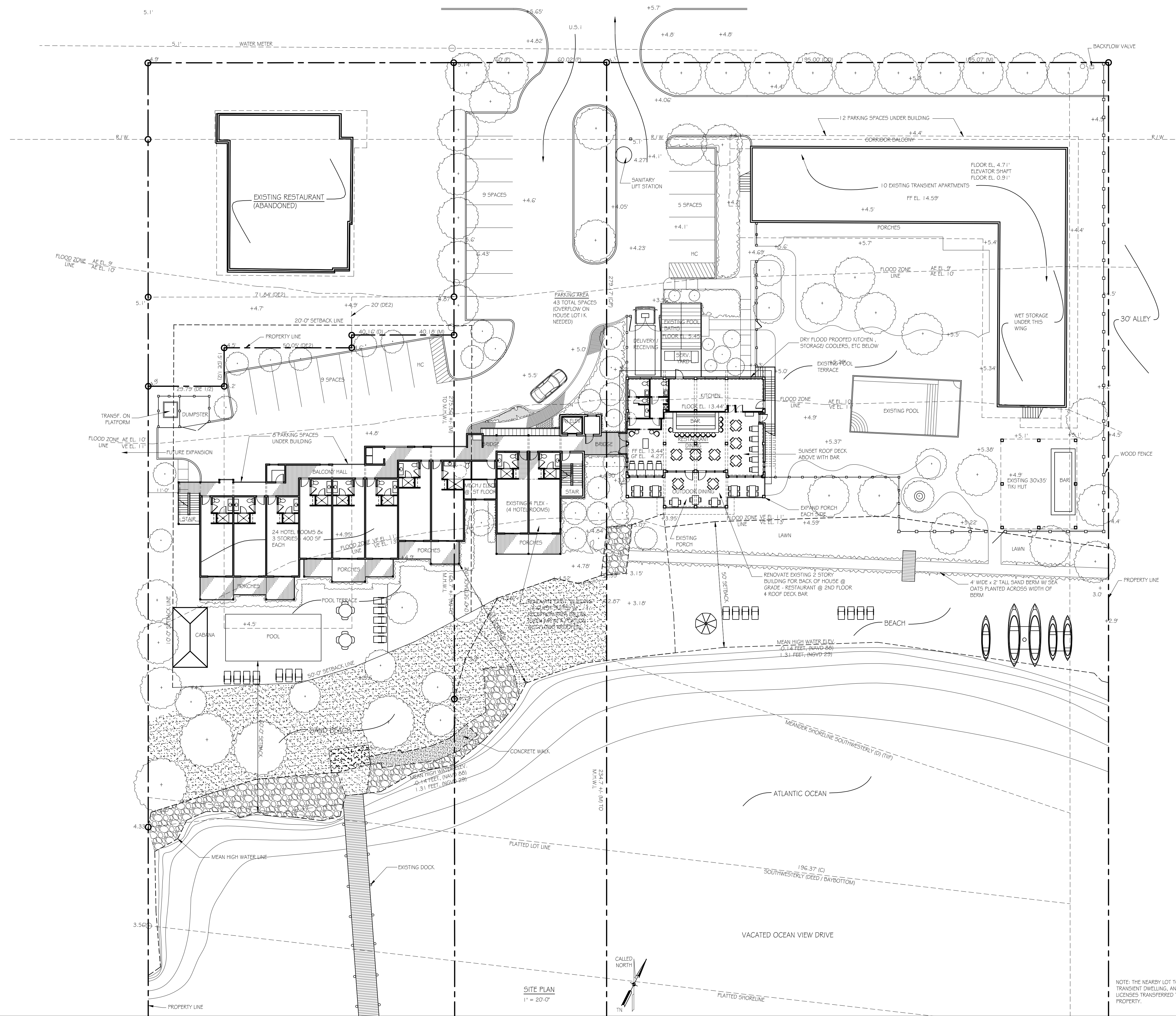
\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
MAYOR

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND RELIANCE OF THE  
CITY OF MARATHON, FLORIDA ONLY.





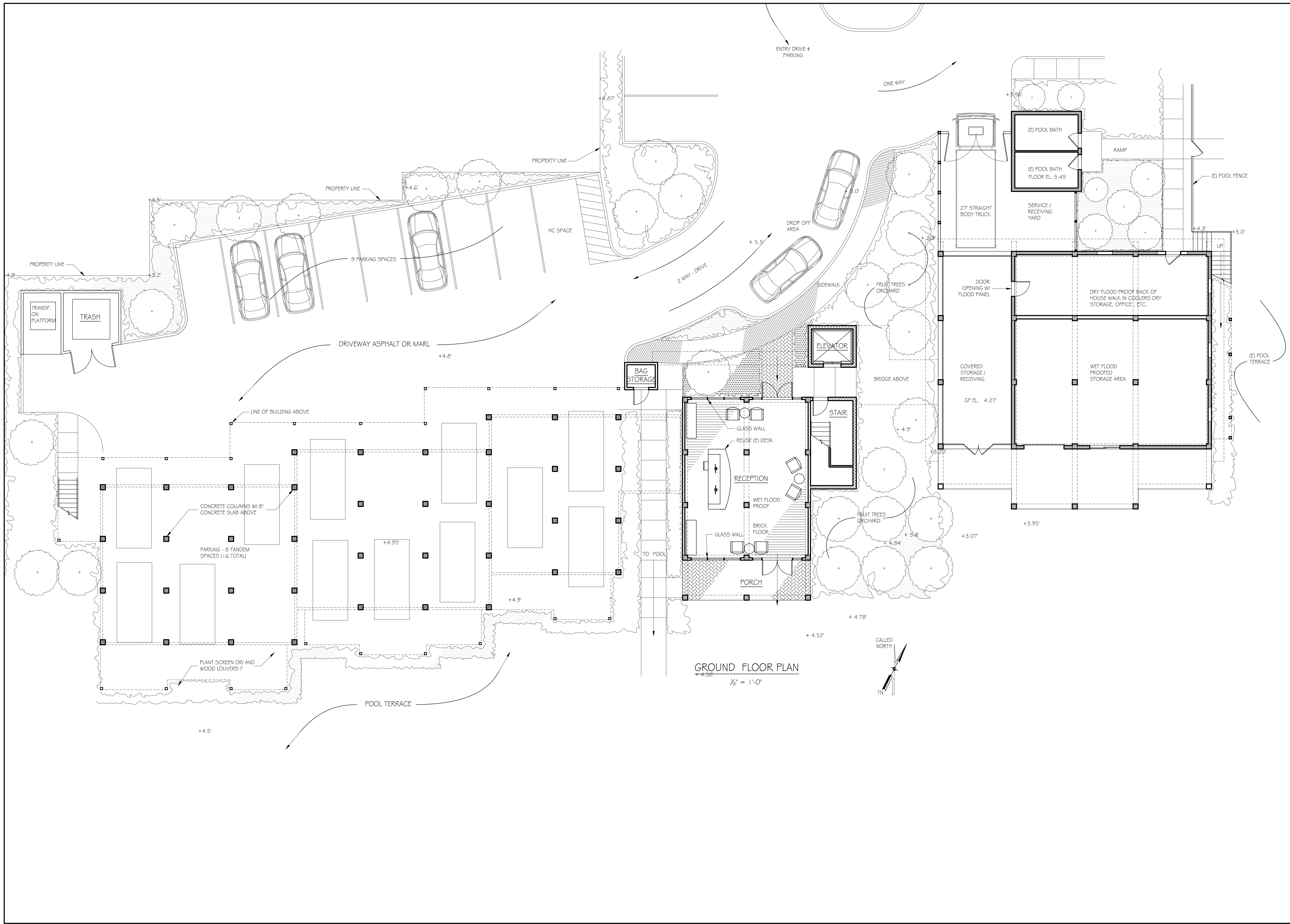


SITE PLAN  
1" = 20'-0"

**DESIGN DATA**  
**ADDITION:** 10,600 SF NEW INTERIOR SPACE 24 HOTEL ROOMS + STAIRS / ELEV. ETC 2,400 SF PORCH 2,800 SF OPEN AIR COVERED CORRIDOR 6 PARKING SPACES UNDER (OPEN AIR)  
**4 FLEX:** REHAB EXISTING 1,550 SF ON 2 FLOORS - 4 HOTEL ROOMS - REHAB GRADE LEVEL 775 SF OPEN AIR / ENCLOSED RECEPTION  
**RESTAURANT:** REHAB 2ND FLOOR 2,120 SF FOR DINING ROOM / KITCHEN - REHAB GROUND FLOOR 2,120 SF FOR STORAGE - DELIVERY - COOLERS, ETC 1,800 SF PORCHES & PORCHES ROOF DECK

NOTE: THE NEARBY LOT TO BE USED AS TRANSIENT DWELLING, AND ITS 4 OTHER LICENSES TRANSFERRED TO THIS PROPERTY.





46 Waltham Street, Suite 3A  
 Boston, MA 02118  
 Phone 617-956-9992  
 Fax 917-956-9993

GRASSI DESIGN GROUP  
 GRASSI INTERIORS

GD BG

JOB NO: 1916	SCALE: 1/8" = 1'-0"
DATE: 07.01.20	REVISED

GRASSY FLATS RESORT  
 58182 OVERSEAS HIGHWAY, MARATHON, FLORIDA

GROUND FLOOR PLAN

A100