

## CITY COUNCIL AGENDA STATEMENT



**Meeting Date:** November 10, 2020  
**To:** Honorable Mayor and Council Members  
**From:** George Garrett, Planning Director / Deputy City Manager  
**Through:** Chuck Lindsey, City Manager

**Agenda Item:** Consideration Of The Request For A Second Amended And Restated Development Agreement Between The City Of Marathon And Marlin Bay Yacht Club, LLC, For The Redevelopment Of Property, Which Is Legally Described As Block 6 Lots 1 Thru 5 & The N 100' Of The S 430' Of Lot 6 And Adjacent Filled Bay Bottom, Marathon Beach Sub PB2-16 And Block 2 Lots 1 Thru 6 Amended Plat Of Yacht Basin Tracts Real Estate Number 00337010-000000, Providing For Conditions And Requirements Of Development, Including But Not Limited To, Buffers, Building Heights, Setbacks, Up To One (1) Year Tenancies At Marina Wet Slips, And Other Requirements; Providing For The Potential, But Not As Yet Approved, Conversion Of Market Rate To Transient Residential Units; Considering The Possible Conversion Of Affordable Deed Restricted Units Through Payment Into The Affordable Housing Fund; And Providing For An Effective Date.

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### RECOMMENDATION:

Staff recommends the following for denial or approval pursuant to the Applicant's request:

- DENY - Convert the vested market-rate units on the portion of the Applicant's property zoned Mixed-Use to Transient Residential Units;
- APPROVE - Extend the maximum stays on wet slips on the property to six (6) months within any 12-month period. Marina Exists, however, ALL Parking must be provided for on-site.
- APPROVE - Expand allowed commercial uses to hotel, retail, and restaurant;
- APPROVE/ENTITLEMENTS ALREADY IN PLACE - A total nonresidential commercial floor area of up to 11,500 square feet; and
- DENY - Removal of up to eight (8) affordable deed restrictions for units already developed in exchange for payments into the City's affordable housing fund.

**APPLICANT/OWNER:** Marlin Bay Yacht Club

**AGENT:** A.J. Davila / Smith Hawks

**LOCATION:** Bk 6, Lots 1 Through 5 And The N 100 Feet Of The South 430 Feet Of Lot 6 And Adjacent Filled Bay Bottom, Marathon Beach Subdivision. Nearest Mile Marker 49.

(See Figure 1 – Location Map)

**REQUEST:** The Applicant is seeking the second Amendment to their Development Agreement (Resolution P2005-087) to:

- Convert the vested market-rate units on the portion of the Applicant's property zoned Mixed-Use to transient units, a conversion the State of Florida previously offered to the City to assist with compliance with hurricane evacuation mandates;
- Extend the maximum stays on wet slips on the property to six (6) months within any 12-month period;

- Expand allowed commercial uses to hotel, retail, and restaurant;
- A total nonresidential commercial floor area of up to 11,500 square feet; and
- Removal of up to eight (8) affordable deed restrictions for units already developed in exchange for payments into the City’s affordable housing fund.

**FUTURE LAND USE MAP DESIGNATION:**

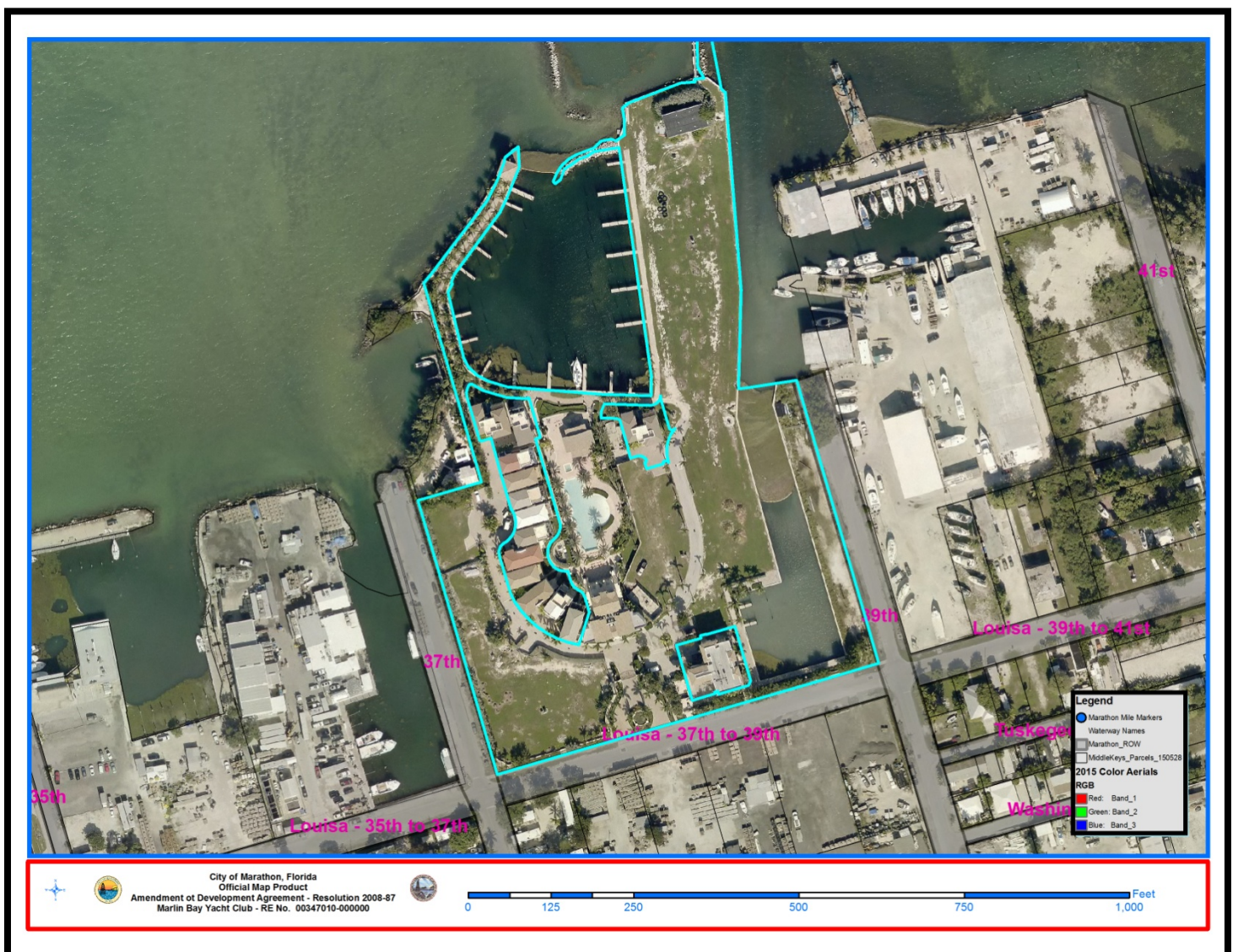
*Current – Residential High (RH) / Mixed Use (MU)*

**ZONING MAP DESIGNATION:**

*Current – Residential High (RH) / Mixed Use (MU)*

**PROJECT SIZE:** Approximately 344,069 square feet (7.90 acres) of upland / submerged land

**Figure 1  
Location Map**



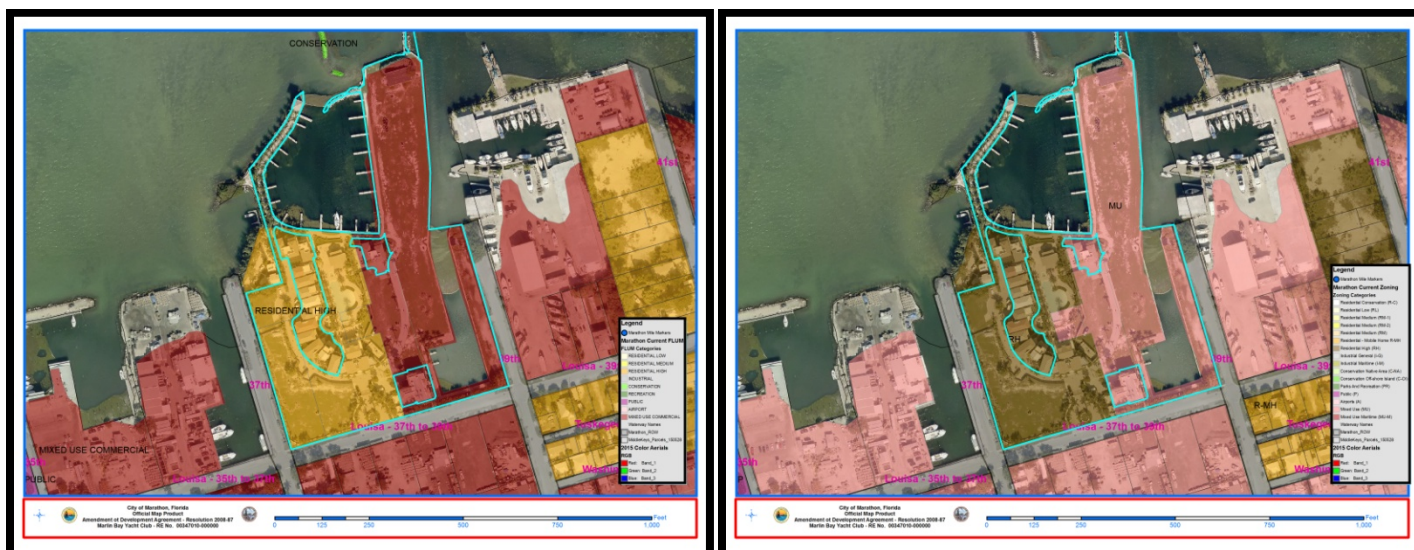
**SURROUNDING FLUM, ZONING AND USES:**

**Table 1 – Surrounding FLUM / Zoning / Uses**

|              | <u><i>Existing FLUM</i></u> | <u><i>Existing Zoning</i></u> | <u><i>Existing Uses</i></u>   |
|--------------|-----------------------------|-------------------------------|-------------------------------|
| <b>North</b> | NA                          | Open Water                    | Open Water                    |
| <b>West</b>  | Mixed Use (MU)              | Mixed Use (MU)                | Keys Fisheries                |
| <b>South</b> | Mixed Use (MU)              | Mixed Use (MU)                | Trap Yards                    |
| <b>East</b>  | Mixed Use (MU)              | Mixed Use (MU)                | Vacant / Commercial Boat Yard |

**FLUM / Zoning Maps**

**Figure 2  
FLUM / Zoning Maps**



**EXISTING CONDITIONS / PROJECT PROPOSAL:**

Marlin Bay Yacht Club Development Agreement was approved in Resolution 2005-87 to complete ninety-two (92) residential units on-site and an additional ten (10) affordable housing units off-site. Said Resolution and Development Agreement provided for the renewal of the Agreement after two (2) public hearings.

Marlin Bay Yacht Club requested a three-year extension to their Development Agreement in August of 2015. The City Council approved a one (1) year time extension with an option for two additional one (1) year extensions at the discretion of and with the approval of the City Council. This was documented and recorded in Resolution 2015-081. An additional condition of the Resolution was to acknowledge that Marlin Bay Yacht Club had met all of their workforce housing requirements as they provided the City with a check for \$750,000 in consideration of one of the options provided in Section C. 5. p. of the original Development Agreement.

The Applicant sought a further extension for five (5) years. This request was granted through Resolution 2016-65. In the interim between 2015 and 2016, Marlin Bay Yacht Club has continued to maintain the property in good condition, finished phase 1 of their marina project begun prior to the original owners entering foreclosure, and they have now completed phase 2 of the marina project.



As noted, above Marlin Bay is seeking the following, to:

- Convert the vested market-rate units on the portion of the Applicant's property zoned Mixed-Use to transient units, a conversion the State of Florida previously offered to the City to assist with compliance with hurricane evacuation mandates;
- Extend the maximum stays on wet slips on the property to six (6) months within any 12-month period;
- Expand allowed commercial uses to hotel, retail, and restaurant;
- A total nonresidential commercial floor area of up to 11,500 square feet; and
- Removal of up to eight (8) affordable deed restrictions for units already developed in exchange for payments into the City's affordable housing fund.

A quick analysis of Marlin Bay's request would indicate that items, 2, 3, and 4 are not an issue. The City worked with the State to allow maximum stays on leased sovereignty submerged land of up to one (1) year and the Applicant separately has approved such modifications to its Water Management District permit. The Applicants are vested for up to 11,500 square feet of floor area. Since the commercial space would lie largely within existing buildings, they would simply need to provide the City with permit applications to modify the interior spaces. If additional parking were required, this would need to be addressed as part of applications for the interior revisions. Through this proposed amendment, the Applicant is not making a modification to their approved site plan.

Items 1 and 5 above will be discussed desperately below.

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

### **CRITERIA**

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

The City adopted Ordinance 2012-07 which provided the following:

Section 107.02. - Numerical Limits of Allocation "The number of TRU allocations that may be issued shall be limited to 200 (100 TRUs authorized by the Governor and Cabinet on January 18, 2012 sitting as the Administration Commission, and 100 TRUs the City may choose to allocate at its discretion from the Administrative Relief and/or Residential BPAS pools.)"

The City has issued 100 Transient Residential Units (TRUs) to the Hyatt (now Faro Blanco Hotel), the Courtyard Marriott, Bonefish Motel, the Holiday Inn Express (now Fairfield Inn), and Coconut Cay. The option to issue any number of Market Rate BPAS allocations (up to 100) as TRUs exists.

In this instance, the Applicant has approximately seventy-one (71) Market Rate entitlements associated with the property through the original Development Agreement. The Applicant has requested the conversion of up to fifty-seven (57) of their Market Rate units to be utilized in the area zoned Mixed Use (MU).

However, Section 107.06G. establishes limitations to the allocation of TRUs through this process, particularly the project must have preexisting TRUs to qualify for allocation of those units from the City (See Section 107.06 G.6. highlighted below). The Applicant has no TRU entitlements (either built or unbuilt) associated with the site and the site has not previously been developed as a hotel and therefore does not qualify to receive TRUs from the City. Other highlighted components of Section 107.06G. apply.

"Section 107.06 – Limitations

In addition to the limitations herein, an allocation is subject to the specific provisions for each allocation pool as follows:

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G. Transient Unit Pool:

1. TRUs provided by the state to the City may only be used for the development of single-room hotel/motel units. TRUs which the City is able to borrow forward may be allocated for any type of transient residential unit allowed under the LDRs. No TRU allocated by the City may be converted from a transient use to a non-transient use.
2. TRUs may not be allocated to property on offshore islands, designated on the COBRA (Coastal Barrier Resources System) maps, or that lie exclusively (100 percent) in a Coastal High Hazard Area.
3. The property proposed for development/redevelopment using TRUs must be developed or scarified, and development of the TRUs shall not result in the elimination of environmentally sensitive habitats described in the LDRs (Table 106.16.1, Classes I or II).
4. The property proposed for development/redevelopment using TRUs must provide workforce housing in accordance with Section 104.25 of the LDRs for all TRUs awarded by the City.
5. The property proposed for development/redevelopment using TRUs shall not have outstanding code compliance cases, open fines, or liens at the time of application.
6. The property subject to development/redevelopment must have existing TRUs — existing, purchased, or vested on or before December 31, 2012 — at a ratio of four (4) TRUs (existing, purchased, or vested) for every one (1) TRUs allocated by the City. After January 1, 2013, if the 100 TRUs granted by the State are not allocated, the City may by Resolution issue up to one (1) City TRU to three (3) private TRUs in possession to provide greater stimulus for the development or redevelopment of hotel/motel projects.
7. The property proposed for development/redevelopment using TRUs must obtain Conditional Use approval or enter into a Development Agreement with the City for the proposed project prior to December 31, 2012 comply with Section 107.05 of the LDRs, and commence construction of the project in accordance with Section 107.07.I. of the LDRs.
8. Only one (1) allocation application per person per annual allocation period may be submitted.
9. No more than 25 TRUs, or 25 percent of the total proposed project TRUs, whichever is less, shall be allocated to any person.
10. The recipient of a TRU allocation shall spend a minimum of \$40,000.00 in construction costs on the development/redevelopment of the project per TRU awarded, and shall provide the City with an irrevocable bond or letter of credit in the amount of \$10,000.00 for each TRU allocated by the City. After January 1, 2013, if all of the TRUs granted by the state are not allocated, the City may by Resolution adjust these values within a range of \$25,000.00 to \$40,000.00 by a Resolution of the City Council in order to provide greater stimulus for the for the development or redevelopment of hotel/motel projects. The bond shall be released by the City upon completion of the project, the return of unused TRUs upon the completion of the project, or the loss of all allocations for failure to comply with the applicable provisions of Chapter 107 of the LDRs. The bond or letter of credit shall automatically be forfeited to the City upon the allocation recipient's failure to adhere to the construction and inspection timelines in Section 107.07.I. of the LDRs (Section 6-54 of the Code).
11. An applicant seeking an award of TRU allocations must demonstrate the financial capability to undertake and complete the development/redevelopment project using TRUs prior to issuance of a building permit. Such evidence may be in the form of an executed construction loan, construction contract, letter of credit, etc.
12. TRUs may not be used for any other purpose than the development/redevelopment of hotel or motel rooms.
13. Upon allocation TRUs may not be redistributed, sold or transferred from the approved project location, or converted into a permanent residential dwelling unit.
14. Any person developing/redeveloping property using TRUs shall first use non-City allocated TRUs towards completion of the approved project. Once a TRU has been assigned (if privately held) or allocated by the City to a particular project it may not be conveyed, sold, re-distributed, or transferred to another property.

15. All projects using City issued TRUs shall commence construction within 90 days of receipt of a building permit for the project, and be completed within 18 months of commencement of construction.

16. Failure to comply with any of the requirements of this section or applicable provisions of [Chapter 107](#) of the LDRs, or failure to use any City allocated TRU, shall result in the loss of the allocation and it shall revert automatically to the City without any further notice or hearing. Thereafter, the City may elect to re-allocate the TRU in its sole discretion in accordance with this chapter.”

The Applicant has requested that the City allow the conversion of its eight (8) existing Affordable Residential Units to Market Rate residential units. The request is in line with a provision allowed in the original Development Agreement providing that the Applicant would build ten (10) more affordable residential units or pay \$75,000 per unit into the City’s Affordable Housing Fund. It should be noted that there were no entitlements associated with the original Development Agreement to allow construction of the additional ten (10) units. Therefore, the Applicant would have had to apply to the City to obtain them. In 2015 pursuant to Resolution 2015-81, the Applicant opted to pay for all ten units at a total cost of \$750,000.

There was no provision in the original Development Agreement or subsequent amendments to the Agreement to allow a similar payout for the existing eight (8) units. There is no provision in the Land Development Regulations for such a payout. As a result, even if the City accepted the payout as requested in the current proposed amendment to the Development Agreement, the City would potentially provide Market Rate allocations in compensation or the Applicant would have to purchase Market Rate Units in the local Real Estate market in order to utilize the vacated affordable residential units.

Finally, if it were possible to allocate TRUs to the project, it would be required to provide workforce housing pursuant to Section 107.06G.4. shown above.

Staff finds the request is *not 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 Applicant is seeking to convert Market Rate entitlements to Transient Residential Units and seeking to convert their existing Affordable Residential Units to Market Rate Residential Units utilizing the footprint of the approved site plan. IF this were to occur, the resulting approved Development Agreement and resulting development would be compatible with surrounding development and would comport completely with the purposes of the Mixed Use FLUM and Zoning District. Thus, if the Applicant purchased TRUs in the Real Estate Market, they could be utilized on the project site and be compatible with the mixed nature of surrounding uses and be within the limits of the Mixed Use Zoning District.

Staff finds 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;**

There would be no significant change in the character of the project. The footprint of the development would remain unchanged. All aspects of life safety requirements would be handled in the permitting of the project and have been duly considered in the proposed and approved site plan.

Staff finds the request is *in compliance* with the requirements of this section.

**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;**

No significant change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

**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;**

No significant change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

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

No significant change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

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

No significant change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

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

No significant change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

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

No significant change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

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

No significant change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

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

No significant change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

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

No significant change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

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

No significant change since approval of the original Agreement.

Staff finds the request is *in compliance* with the requirements of this section.

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

The City adopted Ordinance 2012-07 which provided the following:

Section 107.02. - Numerical Limits of Allocation “The number of TRU allocations that may be issued shall be limited to 200 (100 TRUs authorized by the Governor and Cabinet on January 18, 2012 sitting as the Administration Commission, and 100 TRUs the City may choose to allocate at its discretion from the Administrative Relief and/or Residential BPAS pools.)”

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In this instance, the Applicant has approximately seventy-one (71) Market Rate entitlements associated with the property through the original Development Agreement. The Applicant has requested the conversion of up to fifty-seven (57) of their Market Rate units to be utilized in the area zoned Mixed Use (MU).

However, Section 107.06G. establishes limitations to the allocation of TRUs through this process, particularly the project must have preexisting TRUs to qualify for allocation of those units from the City (See Section 107.06 G.6. highlighted above). The Applicant has no TRU entitlements associated with the site and the site has not previously been developed as a hotel and therefore does not qualify to receive TRUs from the City. Other highlighted components of Section 107.06G. apply.

Staff finds the request is *not in compliance* with the requirements of these sections.

**CONCLUSION:**

Staff review of the proposed changes to the Development Agreement for Marlin Bay Yacht Club are:

- Potential conversion of Market Rate Residential Units to Transient Units to the project is not allowed pursuant to Section 107.06.G.6.
- The removal of up to eight (8) affordable deed restrictions for units already developed in exchange for payments into the City’s affordable housing fund is not possible
  - There is no provision in the original Development Agreement or subsequent amendments to the Agreement to allow a payout for the existing eight (8) units.
  - There is no provision in the Land Development Regulations for such a payout.



**RECOMMENDATION:**

Staff recommends the following for denial or approval of the Applicant's request pursuant to the City's Land Development Regulations:

- DENY - Convert the vested market-rate units on the portion of the Applicant's property zoned Mixed-Use to transient units;
- APPROVE - Extend the maximum stays on wet slips on the property to six (6) months within any 12-month period;
  - Condition - Applicant must provide parking for all tenants, upland or marine on site.
- APPROVE - Expand allowed commercial uses to hotel, retail, and restaurant;
  - Condition – Applicant is required to provide permit applications and plans for anticipated interior renovations to the existing commercial spaces and uses.
- APPROVE / ENTITLEMENTS ALREADY IN PLACE - A total nonresidential commercial floor area of up to 11,500 square feet; and
- DENY - Removal of up to eight (8) affordable deed restrictions for units already developed in exchange for payments into the City's affordable housing fund.

**SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT  
FOR THE MARLIN BAY YACHT CLUB**

**THIS SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR THE MARLIN BAY YACHT CLUB** (“Agreement”) is entered into by and between MARLIN BAY YACHT CLUB, LLC, a Florida limited liability company (“Owner”), and the CITY OF MARATHON, a Florida municipal corporation (“City”), pursuant to the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2019), and Sections 102.29, 102.30, 102.31, and 102.32 of the City Code of Ordinances (“City Code”), and is binding on the “Effective Date” set forth herein.

**WITNESSETH:**

**WHEREAS**, Marlin Bay Yacht Club, LLC, a Florida limited liability company, is the Owner of approximately eight (8) contiguous acres of land (“Property”) in the corporate limits of the City of Marathon, Florida, more particularly described in the legal description attached hereto as Exhibit “A”; and

**WHEREAS**, the previous owner Sandler at Greater Marathon Bay, L.L.C. (“Sandler”) and City entered into the “Development Agreement for the Marlin Bay Yacht Club” (“Original Development Agreement”), approved by the City by Resolution 2005-087 attached hereto as Exhibit “B” and incorporated herein by reference, which became effective on or about August 23, 2005, and which approved and authorized the redevelopment of the Property; and

**WHEREAS**, by Resolution 2015-081, the City Council of the City approved the First Amended and Restated Development Agreement for The Marlin Bay Yacht Club (“First Amended Agreement”), attached hereto as Exhibit “C” and incorporated herein by reference; and

**WHEREAS**, this Agreement shall control over the Original Development Agreement and the First Amended Agreement should a conflict arise; and

**WHEREAS**, by Resolution 2016-65, the City Council of the City approved an amendment to the First Amended Agreement allowing a five (5) year extension to the First Amended Agreement, attached hereto as Exhibit “D” and incorporated herein by reference; and

**WHEREAS**, the Original Development Agreement and the First Amended Agreement authorized the Owner to redevelop the Property as ninety-two (92) residential dwelling units, and a clubhouse and other accessory uses including two thousand five hundred (2,500) square feet of commercial floor area and a marina; and

**WHEREAS**, subsequent to the approval of the First Amended Agreement, the Owner has requested certain amendments to the First Amended Agreement, set forth herein, and the City agrees that these amendments are desirable, are consistent with the City's Comprehensive Plan and applicable Land Development Regulations (“LDRs”), and will further the health, safety, welfare, and goals of the residents of the City, and that the First Amendment Agreement accordingly should be amended as specifically provided herein; and

**WHEREAS**, at the time Sandler and City entered into the Original Development Agreement, the Property was in a deteriorated condition, with numerous unlicensed cesspits and an unlicensed septic system for which the operating permit had been revoked by the Department of Health, lacking any stormwater management system or erosion control measures, and having unstable shoreline stabilization structures and nonconforming structures that were highly vulnerable to storm events; and

**WHEREAS**, the City desired, and continues to desire, the redevelopment of the Property in order to protect the environment and provide the residents of the City a clean, healthy

environment, through the removal of cesspits, the replacement of substandard on-site wastewater treatment, and the implementation of effective stormwater management and shoreline stabilization plans, as well as to allow redevelopment which would substantially enhance ad\_valorem taxes generated by the Property, thereby contributing to economic stability for the City and its citizens; and

**WHEREAS**, the Property now has structures in compliance with all applicable FEMA regulations, Florida Department of Health regulations, the Florida Department of Environmental Protection (“DEP”) regulations, South Florida Water Management District (“SFWMD”) regulations, applicable building codes and the City Code, including setback, open space, stormwater, shoreline stabilization, and landscape buffer yard criteria; and

**WHEREAS**, the Property has been connected to the City’s wastewater treatment system as required and as provided in Ordinance 02-07-12; and

**WHEREAS**, the Owner has obtained all required permits for and constructed a stormwater management system to serve the Property, thereby providing a substantial environmental benefit through retaining, detaining, treating, and managing stormwater runoff and eliminating the untreated discharge of stormwater under the historical and existing conditions on the Property; and

**WHEREAS**, as part of the Property redevelopment, the Owner will provide substantial public benefit by maintaining parallel parking and sidewalks constructed along Louisa, 37<sup>th</sup>, and 39<sup>th</sup> streets and provide landscaping and stormwater management facilities associated with these parking and sidewalk facilities; and

**WHEREAS**, the proposed redevelopment is permissible and appropriate for the City’s Comprehensive Plan Future Land Use Map designations of Residential High and Mixed Use

applicable to the Property, which allow high-density, single-family and mixed-use development along with various types of residential and non-residential uses; and

**WHEREAS**, the portion of the Property on which the Gulfstream Mobile Home Park was located previously was zoned Urban Residential Mobile Home (URM), the purpose of which is to recognize the existence of existing mobile home parks when the Transitional Comprehensive Plan and City Code were adopted, but due to the redevelopment of the Property, this portion of the Property was more appropriately rezoned to Urban Residential (UR), and therefore Sandler applied for a rezoning of the portion of the Property on which the Gulfstream Mobile Home Park was located from URM to UR and was granted approval by the City Council of said rezoning on May 25, 2005 in Ordinance 2005-11; and

**WHEREAS**, the portion of the Property on which the Gulfstream Mobile Home Park was previously located currently has a Residential High (RH) Land Use District (Zoning) designation and a corresponding Residential High Future Land Use Map Designation; and

**WHEREAS**, the balance of the Property currently has a Mixed-Use (MU) Land Use District (Zoning) designation and a corresponding Mixed-Use Commercial Future Land Use Map Designation; and

**WHEREAS**, the redevelopment as approved in this Agreement meets the RH and MU density and intensity standards of City Code Section 103.15.2; and

**WHEREAS**, pursuant to City Code Section 103.15.1, detached residential dwelling units and accessory uses are allowed as of right within the RH district; and pursuant to City Code Sections 103.15.1, 103.15.2, and 103.15.3, detached residential dwelling units, low- and medium-intensity commercial retail uses, and accessory uses are allowed as of right, and restaurants,



hotel/motel lodging, and sale of alcohol are allowed with conditional use approval from City Council within the Mixed-Use (MU) district; and

**WHEREAS**, pursuant to Section 103.15 and Table 103.15.1 of the LDRs, multi-family residential development consisting of four (4) or fewer dwelling units per residential building is permitted as of right in areas designated Residential High and permitted with conditional use approval in areas designated Mixed-Use Commercial under the City's Comprehensive Plan, subject to applicable density standards in Table 1-1 of the City's Comprehensive Plan and Table 103.15.2 of the LDRs; and

**WHEREAS**, pursuant to Section 103.15 and Table 103.15.1 of the LDRs, Hotel/Motel/Resort Lodging use is permitted in Mixed-Use (MU) Land Use Districts with conditional use approval from the City Council, subject to applicable density standards in Table 1-1 of the City's Comprehensive Plan and Table 103.15.2 of the LDRs; and

**WHEREAS**, the City has determined that ninety-two (92) residential dwelling units were existing on the Property at the time of the 1990 Census, which formed the basis of the City's Building Permit Allocation System ("BPAS") exemptions, and that the redevelopment of these 92 residential dwelling units will not increase the number of residential dwelling units on the Property above that existing as of the 1990 Census, and therefore these 92 residential dwelling units are exempt from BPAS requirements of City Code Chapter 107, Article 1 and will not require further allocations; and

**WHEREAS**, the City has determined in the Original Development Agreement that eleven thousand five hundred three (11,503) square feet of nonresidential development on the Property previously existed and is exempt from the City's BPAS requirements; and

**WHEREAS**, the City has determined that the redevelopment will not adversely affect hurricane evacuation clearance time because the number of residential dwelling units on the Property will not increase beyond the number of residential dwelling units previously existing on the Property; and

**WHEREAS**, thirteen (13) residential dwelling units developed on the Property currently have valid vacation rental licenses issued by the City of Marathon and are rented by the week; and

**WHEREAS**, Policy 1-3.2.6 of the City’s Comprehensive Plan and Section 107.02A.2 of the LDRs make one hundred (100) transient dwelling units available for allocation at the City’s discretion; and

**WHEREAS**, the Owner desires to convert BPAS-exempt residential units to transient dwelling units in order to rent daily and the State of Florida (“State”) is amenable to allowing this conversion because the conversion can assist the City in maintaining a Monroe County maximum hurricane evacuation clearance time of 24 hours required by the State; and

**WHEREAS**, the Property is a highly disturbed, fully developed upland site which does not contain wetlands, listed species habitat, or other environmentally sensitive habitat, and therefore is an appropriate and preferred site to support redevelopment; and

**WHEREAS**, the redevelopment promotes and furthers the following Principles for Guiding Development for the Florida Keys Area of Critical State Concern (the “Principles”) as set forth in Section 380.0552(7), Florida Statutes (2019):

(b) Protecting shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.

(c) Protecting upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, tropical hammocks and pinelands), dune ridges and beaches, wildlife and their habitat.

(d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.

(e) To limit adverse impacts of development on the quality of water throughout the Florida Keys.

...

(h) Protecting the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:

...

2. Sewage collection and disposal facilities; and

**WHEREAS**, this Agreement is consistent with the above-cited provisions of the Principles for Guiding Development for the Florida Keys Area of Critical State Concern; and

**WHEREAS**, the public has been provided notice of the parties' intent to consider entering into this Agreement by advertisement published in a newspaper of general circulation and readership in the City, posting the Property subject to this Agreement, and mailing notice to the persons and entities shown on the most recent Monroe County Tax Roll to be the Owner of property lying within 300 feet of the boundaries of the Property subject to this Agreement; and

**WHEREAS**, the City Council held advertised public hearings on November 10, 2020 and December 8, 2020 to consider this Agreement, the recommendations of the Planning Commission, and City staff, and to accept and encourage public input, and has considered such recommendations and any comments by members of the public; and

**WHEREAS**, the City Council has determined that this Agreement is consistent with the City's Comprehensive Plan, is in the public interest, and will further the health, safety, welfare, and goals of the residents of the City.

**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:

**A. RECITALS.** The recitals set forth in the preceding “Whereas” clauses are incorporated herein and form a material part of this Agreement.

**B. PURPOSES OF AGREEMENT.** The purposes of this Agreement are as follows:

1. To recognize and confirm that the 92 residential dwelling units on the Property determined by the City in the Original Development Agreement as BPAS-exempt and eleven thousand five hundred three (11,503) square feet of commercial floor area on the Property is vested and BPAS-exempt, and that the exemptions continue under this Agreement.

2. To authorize the development of Transient Units on the portion of the Property zoned Mixed Use and Residential Units on the portion of the Property zoned Residential High.

3. To authorize certain modifications to the redevelopment of the Property as expressly and specifically set forth herein, pursuant to certain standards and processes expressly and specifically identified herein.

**C. DEFINITIONS.** For the purposes of this Agreement, the following terms shall have the following meanings. Terms not defined in this Agreement shall be as defined in the City's Comprehensive Plan, City Code, LDRs, or Chapter 163, Part II, Florida Statutes, or, if not defined in these sources, shall be understood by their usual and customary meaning.

1. “**Agreement**” shall refer to this Development Agreement, as the same may be subsequently amended, modified or supplemented pursuant to its terms and provisions and pursuant to the provisions of Sections 163.3220-163.3243, inclusive, Florida Statutes.

2. “**City Code**” shall refer to the Code of Ordinances of the City of Marathon in existence on the effective date of this Agreement.

3. **“Comprehensive Plan”** shall refer to the City’s Comprehensive Plan, effective July 5, 2005.

4. **“Development” or “Redevelopment”** shall refer to the redevelopment of the Property as approved in this Agreement.

5. **“Dwelling Unit”** shall refer to a dwelling unit as defined in Chapter 110, Article 3 – Defined Terms of the Code: “A single unit providing complete and independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, cooking and sanitation. The term is applicable to both permanent and transient residential development.”

6. **“Effective Date”** shall refer to the date this Agreement becomes effective, as set forth herein

7. **“First Amended Agreement”** shall mean the “First Amended and Restated Development Agreement for the Marlin Bay Yacht Club” passed by City in Resolution 2015-081.

8. **“Florida Department of Economic Opportunity”, “DEO” and “state land planning agency”** shall mean and refer to the “state land planning agency” as defined in Chapter 163, Part II, Florida Statutes.

9. **“Land Development Regulations” or “LDRs”** shall mean the City of Marathon Land Development Regulations found in the City Code Appendix A.

10. **“Land Use Plan”** shall mean the Future Land Use Element and Future Land Use Map of the City’s Comprehensive Plan.

11. **“Owner”** shall refer to the Owner of the Property subject to this Agreement.

12. **“Original Development Agreement”** shall mean the "Development Agreement for the Marlin Bay Yacht Club" approved by the City in Resolution 2005-087.



12. **“Residential Unit”** shall mean a dwelling unit intended for permanent lodging for periods lasting more than thirty (30) days or rented as a vacation rental.

13. **“Property”** shall refer to one or more of the parcels of real property located in the City that are the subject of this Agreement as set forth in Section D.1.b. of this Agreement.

14. **“Public facilities”** means those facilities identified in Section 163.3221, Florida Statutes (2019), and as set forth herein.

15. **“Transient Unit”** shall mean a dwelling unit intended for transient lodging for periods not exceeding thirty (30) days.

16. **“Vacation Rental”** shall mean a dwelling unit rented for not less than seven (7) days and not more than twenty-eight (28) days.

**D. TERMS OF AGREEMENT.**

**1. Ownership, Legal Description, and Unity of Title.**

a. **Ownership.** The Owner of the Marlin Bay Yacht Club as of the date of execution of this Agreement is Marlin Bay Yacht Club, LLC, a Florida limited liability company whose address is 850 NW Federal Hwy, Stuart, Florida 34994.

b. **Legal Description.** The legal description of Marlin Bay Yacht Club subject to this Agreement is included in the Marlin Bay Yacht Club Site Data Sheet, attached hereto as Exhibit "A." The term “Property” as used in this Agreement shall mean and refer to the properties described in Exhibit "A."

**2. Duration of Agreement, Agreement Renewal.**

a. **Duration of Agreement.** This Agreement shall remain in effect for a period of ten (10) years commencing on the Effective Date set forth below.

**b. Agreement Renewal.** This Agreement may be renewed or extended as provided herein.

**3. Vested Development.** Prior to redevelopment of the Property, the following development existed and is vested on the Property, which said vested development rights shall not expire: one hundred fifteen (115) boat wet slips; eleven thousand five hundred and three (11,503) square feet of commercial floor area; ninety-two (92) upland residential dwelling units; and a swimming pool.

**4. Development Authorized; Approval of Conceptual Site, including Densities and Intensities; Permitted Uses.**

**a. Conceptual Site Plan; Minor Revisions; Final Site Plan.** This Agreement approves and authorizes specific development types, uses, density, intensity, schematics, and a Conceptual Site Plan for the development of the Marlin Bay Yacht Club. The development approved and authorized for the Property by this Agreement is vested under this Agreement. That development consists of the following:

**(i)** Twenty-one (21) Dwelling Units already developed as of the Effective Date, thirteen (13) of which are utilized as Vacation Rentals.

**(ii)** Thirty-five (35) total Dwelling Units utilized as Vacation Rentals to be developed on the portion of the Property zoned Residential High (RH) as depicted on the Conceptual Site Plan for the Marlin Bay Yacht Club attached hereto as Exhibit “E”, and accessory uses.

**(iii)** The eight (8) developed Dwelling Units in the Dockmaster Building previously maintained as affordable housing units may be converted to market rate Residential Units in accordance with D.5.p(ii) below.

(iv) The Upon approval of an amendment to the LDRs establishing a unit conversion rate and addressing the allocation of the One Hundred (100) available Transient Units described in policy 107.02A.2 of the City's Comprehensive Plan and Section 107.02A.2 of the LDRs, which may be allocated at the City's discretion, some or all of the Fifty-seven (57) BPAS-exempt Residential Units, including Unit 40 on the Conceptual Site Plan, zoned Mixed Use (MU) may be converted by Owner to BPAS-exempt Transient Units at a the conversion rate of 0.58 Residential Units to 1 Transient Unit provided by the amendment to the LDRs for a total of up to Ninety-eight (98) Transient Units. The unit conversion will be effectuated upon the LDR amendment clearing the DEO appeal period. Any Transient Unit developed on the Property may be one bedroom per Transient Unit or be two bedroom Transient Units at a conversion ratio of 1.1 Transient Units per two bedroom unit or 1.15 Transient Units per three bedroom room unit per City Code Section 104.25.

(v) Up to Ninety-eight (98) Transient Units to be developed on the portion of the Property zoned Mixed Use as depicted on the Conceptual Site Plan for the Marlin Bay Yacht Club attached hereto as Exhibit "E", and accessory uses to be developed on the portion of the Property in the Mixed-Use (MU) Land Development District.

(vi) The Owner may acquire Transient Units on the open market pursuant to City Code Chapter 107, Article 2, and add the Transient Units to the Property so long as the additions are in compliance with the Conceptual Site Plan and applicable density standards in Table 103.15.2 of the City Code.

(vii) Eleven thousand five hundred (11,500) square feet of commercial space, which is being redeveloped as the dockmaster store, a restaurant, and other accessory structures and facilities as described in this Agreement and depicted on the Conceptual Site Plan.

Any subsequent site plans, site plan approvals and building permits shall substantially comply with the Conceptual Site Plan; provided, however, that the final site plan may deviate from the Conceptual Site Plan to accommodate: (1) refinements to the development plan including minor shifts in location of thirty-five (35) feet or less in the structures, roadways, pathways, and swimming pool configurations; (2) changes to the building type or number of Dwelling Units, so long as the density set forth in this Agreement is not exceeded; or (3) modifications that are necessary to meet regulatory requirements imposed by any other governmental entity. The site plan meets all applicable setback, open space, landscape buffer, parking and building height requirements and such requirements shall not be varied unless the Owner obtains a variance pursuant to applicable provisions of the City Code or LDRs.

b. **Structures.** Attachment 1 depicts the Conceptual Site Plan for the Dwelling Units.

|   |
|---|
| Dock master facility  |
| In-ground fuel tanks and fuel station                               |
| Seawall, marginal docks, finger piers, mooring piles, 99 boat slips |
| 35 Residential Units  |
| Up to 98 Transient Units  |
| Clubhouse   |
| Pool and pool restrooms   |
| Paved pool deck and fountain  |
| Observation deck  |
| Pool pavilion   |
| Restaurant  |

|                                     |
|-------------------------------------|
| Sidewalks and retaining walls       |
| Storage                             |
| Gate house                          |
| Advanced Wastewater Treatment plant |
| Trash compactor                     |
| Mail kiosk                          |
| Roadways and parking                |
| Utilities infrastructure            |
| Stormwater management system        |

**c. Commercial Floor Area Approved Under This Agreement.**

Pursuant to the Original Development Agreement, the Owner is vested to reconstruct a total of eleven thousand five hundred and three (11,503) square feet of commercial floor area or non-residential development on the Property without being subject to BPAS requirements. Total commercial floor area redevelopment on the Property approved by this Agreement is eleven thousand five hundred (11,500) square feet, as depicted on the Conceptual Site Plan. This commercial development will be used as retail, low- and medium-intensity, restaurant and office uses, or a combination thereof. No subsequent commercial floor area development may be approved beyond the vested commercial floor area, except as may be allowed under the LDRs.

**d. Permitted Uses.** This Agreement authorizes non-accessory

commercial uses including low and medium-intensity retail, restaurant, hotel/motel/resort lodging, sale of alcoholic beverages, and office uses, upon Owner being granted conditional use approvals for each use necessary. Accessory uses, to be developed as amenities ancillary and subordinate to, and which will serve the redevelopment on the Property consist of the dockmaster office, clubhouse, activities room, and the pool and pool pavilion.

**e. Marina.**



(i) The marina will consist of ninety-nine (99) wet slips which all may be utilized by transient boaters that may reside on the vessel for up to twelve (12) months, and related facilities that will be owned and operated by the Marlin Bay Yacht Club.

(ii) Pursuant to Chapter 102, Article 13 of the LDRs, the marina is deemed to have obtained a conditional use permit as of May 23, 2007.

**5. Development Conditions.** The following conditions, terms, restrictions, and other requirements are determined by the City to be necessary for the public health, safety, and welfare of its citizens as specifically provided herein:

**a. Building Height.** Buildings may be constructed to a maximum height of Forty-two (42) feet.

**b. Setbacks.** There is no undisturbed or unaltered shoreline on the Property. The setback provisions of the City Code apply to the redevelopment of the Property, unless the Owner elects to apply the setbacks provided in the LDRs to the redevelopment of the Property. With the recordation of the 'Unity of Title', internal setbacks are not required other than for fire safety.

**c. Utilities, Lighting, and Signage.** Utilities, lighting, and signage shall comply with all applicable requirements of the City Code. The Owner shall install all utilities underground where practicable and shall screen all utility facilities. The Owner shall utilize shaded light sources to illuminate all signs, facades, buildings, parking and loading areas, and shall arrange such lighting to eliminate glare to parcels lying outside the Property. No intermittent or flashing lights or flashing signs shall be allowed.

**d. Landscaping.** Seventy percent (70%) of all required plants installed and maintained shall be Florida Keys native plants that are suitable for the site conditions and are a species typical of the Middle Keys. The Owner shall remove all Category I invasive exotic plants on the Property. The Owner shall provide landscaping for all parking areas in accordance with Section 107.66 of the City Code. The Owner shall maintain a landscape buffer where the RH district abuts the MU district on the west and south property lines in accordance with Section 107.70 of the City Code.

**e. Parking.** The redevelopment shall comply with the parking criteria as required by Section 107, Article 6 of the City Code.

**(i)** The Owner shall provide two (2) parking spaces per Residential Unit pursuant to City Code Table 107.46.1.

**(ii)** The Owner shall provide one (1) parking space per Transient Unit pursuant to City Code Table 107.46.1.

**(iii)** Pursuant to City Code Section 107.47, the Owner shall provide one (1) parking space for each 500 square feet of floor area used for commercial purposes.

**(iv)** Only twenty (20) vessel occupants at one time at the marina are permitted to have a vehicle. Notwithstanding the foregoing, a vessel occupant renting a Dwelling Unit may have a vehicle due to their renting of a Dwelling Unit. Based on the foregoing, twenty (20) parking spaces are required for vessels docking at the marina.

**f. Offsite Street Improvements.** Pursuant to the Original Development Agreement, Owner has provided the following offsite street improvements to the portion of Louisa Street between 37<sup>th</sup> and 39<sup>th</sup> streets: the construction and maintenance of

sidewalks; the installation and maintenance of traffic calming devices; landscaping on the side of Louisa Street bordering the Property; and other improvements.

**g. Internal Infrastructure.** The underground infrastructure, water and sewer serving the residential Dwelling Units shall be completed before a certificate of occupancy may be issued for the unit.

**h. Fire Safety.** The Owner shall provide fire wells and other such fire protection facilities as required by the Life Safety Code administered by the City Fire Department. Fire sprinklers will be installed in all Dwelling Units, the clubhouse, the restaurant and the dockmaster office.

**i. Open Space Ratio.** Pursuant to City Code Section 106.16, a minimum of 20% open space is required. The Owner will maintain a minimum of 20% open space on the Property.

**j. Wind Load.** Pursuant to the Original Development Agreement, the Owner shall construct all structures on the Property, including doors, windows, and cladding, to withstand the mile per hour peak winds as specified in the Building Code.

**k. Energy Efficiency.** Pursuant to the Original Development Agreement, the Owner shall construct all residential structures in conformance with the specifications of the State of Florida Energy Efficiency Code for Building Construction (State Energy Code).

**l. Schematics.** All redeveloped residential units constructed on the Property shall adhere to one of the architectural styles and one of the representative floor plans depicted in the schematics in Attachment 1 to this Agreement.

**m. Permits from Other Regulatory Entities.** Other agency permits may be required as provided by applicable law prior to the City's issuance of building permits for redevelopment of the Property. The Owner shall obtain all necessary permits from other local, regional, State and federal regulatory entities and provide copies of each to the City within a reasonable time after such permits are issued.

**n. Compliance with RH and MU District Requirements.** The proposed redevelopment on the Property consists of up to Ninety-eight (98) Transient Units on the portion of the Property zoned Mixed Use (MU) and Thirty-five (35) Residential Units in the portion of the Property zoned Residential High (RH), and accessory uses, and eleven thousand five hundred (11,500) square feet of commercial floor area, and a marina. Any redevelopment on the Property which is not a use that is permitted as of right as provided in the City Code provisions applicable to the RH and MU land use districts will obtain applicable development approvals as provided under the City Code and this Agreement. Pursuant to Chapter 102, Article 13 of the LDRs, the marina is deemed to have obtained a conditional use permit as of May 23, 2007.

**o. Stormwater Management.** The development shall comply with the stormwater management criteria in City Code Chapter 107, Article 11 and as approved by the SFWMD. The development will meet all applicable federal, state, regional, and local stormwater management requirements, including any applicable requirements pursuant to the National Pollutant Discharge Elimination System (NPDES) permit issued by the Florida Department of Environmental Protection for the City of Marathon in February 2005 prohibiting direct discharges into Outstanding Florida Waters.

**p. Affordable Housing.** Pursuant to the First Amended Agreement, the Owner has provided affordable housing as follows:

(i) Owner provided and maintained eight (8) affordable housing units on the Property. Four (4) of these units are deed-restricted to allow rental only by persons having an annual income of no greater than one hundred twenty percent (120%) of the median income of residents of Monroe County, Florida, and four (4) of these units are deed-restricted to only allow rental by or sale to persons having an annual income of no greater than one hundred sixty percent (160%) of the median income of residents of Monroe County, Florida. These deed restrictions were recorded in the public records of Monroe are effective for fifty (50) years from the date of recordation and shall automatically renew for two (2) 50-year periods. Owner has entered into an agreement with the Middle Keys Community Land Trust ("MKCLT") to perform income qualification evaluation for renters of units on an annual basis and for purchasers of the units at the time of sale of a unit. Such agreements were approved by the City Attorney and executed by the parties prior to issuance of certificates of occupancy for these units. The certificates of occupancy for these 8 affordable housing units were obtained prior to or contemporaneously with the certificates of occupancy for the first twenty-six (26) market rate residential dwelling units constructed on the Property.

(ii) Notwithstanding the above, Owner may elect to remove the affordable deed restrictions on the eight (8) units maintained as affordable units described in (i) above by paying to the City a sum of seventy-five thousand dollars (\$75,000) per unit that has affordable restriction removed, to be paid into the City's affordable housing fund within eighteen (18) months of the Effective Date as permitted by the Original Development Agreement. This portion

of the Agreement represents an “all or none” deal. The City shall cooperate in removing the affordable deed restrictions simultaneously with Owner’s payment into the City’s affordable housing fund.

**(iii)** In addition, Owner has exercised Option III from the First Amended Agreement for the provision of the ten (10) offsite affordable housing units in the City of Marathon. Pursuant to Option III, Owner paid the City a sum of seven hundred fifty thousand dollars (\$750,000) to be used for the provision of affordable/workforce housing within the City of Marathon.

**q. Additional Conditions by Mutual Agreement.** Nothing in this Agreement shall preclude the parties from applying additional conditions, by mutual written consent, during the final permitting approval process.

**6. Public Utilities; Concurrency, Impact Fees.** Pursuant to the Original Development Agreement, the following identifies the public facilities that are required and that will service the development authorized by this Agreement; who shall provide the facilities; what new facilities, if any, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of development.

**a. Potable Water.** Domestic potable water is provided by the Florida Keys Aqueduct Authority.

**b. Electric Service.** Electric service is provided by Florida Keys Electric Cooperative.

**c. Solid Waste.** Solid waste service is provided by Marathon Garbage Service or its successors and assigns, as determined by the City Council.

**d. Fire Service.** Fire service is provided by the Marathon Fire Department.

**e. Concurrency.** All public facilities identified above are available as of the date of this Agreement, and capacity for each is projected to be available concurrent with the impacts of development.

**f. Wastewater.** Wastewater treatment for the redevelopment of the Property is provided by the City's central wastewater treatment plant as required and provided in Ordinance 02-07-12.

**g. Public Recreational facilities.** Public recreational facilities shall be addressed through impact fees, if any.

**h. Impact Fees.** Any increased impacts on public facilities or public services attributable to each unit of the development, and the cost of capital improvements to meet the associated 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 applicable City impact fees required by ordinance then in effect, as well as by payment by the Owner of any applicable utility system development fees. Owner agrees to pay impact fees pursuant to any applicable impact fee ordinances adopted as of the date of execution of the Original Development Agreement. Any impact fees required to be paid by Owner pursuant to any such impact fee ordinances will be offset by the dollar amount paid by Owner toward the provision of any improvements which are the subject of said impact fee ordinances.

**i. Traffic Study.** As required by the Original Development Agreement, the Owner performed a Level III traffic study to assess the project's vehicle traffic impacts on U.S. 1. Because the traffic study demonstrated that redevelopment of the Marlin Bay

Yacht Club would not result in traffic impacts above those generated by the development previously existing on the Property, as previously documented, no traffic impact mitigation was or shall be required for the redevelopment of the Marlin Bay Yacht Club as contemplated by this Agreement.

**7. Reservations or Dedications of Land for Public Purposes.** The parties anticipate that the Owner may reserve or dedicate land for public purposes in connection with the development authorized by this Agreement but are currently unaware of the specifics of such reservation(s) or dedication(s). Such reservations or dedications may include, by way of example, easements necessary for the provision of stormwater, utility, and wastewater services to the Property.

**8. All Local Permits Approved or Needed.**

**a. Development Approvals.** The following City development approvals have been obtained or are needed for the development authorized by this Agreement:

**(i) Site Plan.** Final site plan approval by the City building official, fire marshal, and planning staff has been obtained for the redevelopment of the Property, confirming compliance with the applicable City Code requirements and this Agreement.

**(ii) Conditional Use Approvals.** Conditional use approvals by the City Council confirming compliance with this Agreement and applicable City Code requirements. Conditional use approvals are needed for live-aboard vessels, hotel/motel lodging, restaurants and the sale of alcoholic beverages in the MU zoning district.

**(iii) Building Permits.** As of right building permits will be issued, as provided pursuant to the City Code, for each Residential Unit as well as for the clubhouse, the pool facilities, the dockmaster facility, commercial floor area, and other individual



structures. The overall site permit approval addresses the landscaping, parking, paths, setback, open space and other associated items.

**b. Review.** Pursuant to the Original Development Agreement and except as otherwise provided in Section D.4.a. herein, no further review or discretionary review will be required by the City, it being agreed that the development, as depicted on the approved Conceptual Site Plan attached hereto, requires only the above development approvals, so long as the final site plan substantially complies with the Conceptual Site Plan approved under this Agreement. No development of commercial space exceeding eleven thousand five hundred and three (11,503) square feet is permitted.

**c. Compliance.** Nothing in this Agreement shall be deemed to obviate the Owner's compliance with terms and provisions of each such identified approval.

**d. Completeness.** The parties acknowledge that the Owner has submitted all information necessary for review under the City Code.

**9. Mutual Cooperation.** The City agrees to cooperate with the Owner in a timely manner in providing and/or granting all permits, licenses, approvals, or consents necessary or appropriate to fully implement this Agreement. The City and the Owner agree to cooperate fully with and assist each other in the performance of the provisions of this Agreement.

**10. Development to Comply with Permits and City Comprehensive Code and Code Provisions.** The redevelopment of the Property described in and authorized by this Agreement shall be developed in accordance with all applicable provisions of the City's Comprehensive Plan and City Code in effect on the Effective Date of this Agreement. The redevelopment of the Property shall be constructed in accordance with all specified permit conditions. No certificate of occupancy for an individual building shall be issued until the City

approves all plans for that building and the Owner has complied with all conditions in the permit issued by the City and other regulatory entities for that building.

**11. Finding of Consistency.** The City of Marathon finds that the development authorized herein is consistent with the City Code, and with the City's Comprehensive Plan and LDRs as applicable.

**12. Compliance with Permits, Terms, Conditions, and Restrictions not Identified Herein.** The failure of this Agreement to address a particular permit requirement, condition, term, or restriction shall not relieve the Owner of the necessity of complying with the laws governing said permitting requirements, conditions, terms, or restrictions.

**13. Governing Laws.**

**a. Controlling Regulations.** For the duration of this Agreement, all approved development on the Property shall comply with and be controlled by this Agreement and by the provisions of the City Code or the City's Comprehensive Plan and LDRs as applicable. The parties do not anticipate the application of subsequently adopted laws and policies to the Property except as expressly provided in this Agreement.

**b. Subsequently Adopted Laws and Policies.** 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: (a) 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; (b) the new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they apply to the development that is subject to this Agreement; (c) the local government demonstrates that substantial changes have occurred in pertinent conditions existing at the time of

approval of this Agreement; or (d) the Agreement is based on substantially inaccurate information supplied by the Owner. Redevelopment of the Property shall not be subject to any moratoria or other restrictions on redevelopment, including the redevelopment of existing mobile home parks, which may be established or otherwise imposed in any manner or at any time by the City. Nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

**c. State or Federal Laws.** If State or federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this Agreement, this Agreement shall be modified as is 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 or statutory law.

**14. Amendments, Renewal, Revocation and Termination.** This Agreement may be amended, renewed, or terminated as follows:

**a. Amendments.** 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; an instrument in writing signed by the parties or their successors shall accomplish an amendment under this provision.

**b. Renewal.** As provided in Section 163.3229, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the following public hearing requirements in Section 163.3225, Florida Statutes: 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 seven (7) days before each public hearing in a newspaper of general circulation and readership in Monroe

County, Florida, 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.

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

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

**e. Termination by Mutual Consent.** This Agreement may be terminated by mutual consent of the parties.

**15. Breach of Agreement and Cure Provisions.**

**a. Written Notice on the Owner.** If the City concludes there has been a material breach of this Agreement, prior to revoking this Agreement the City shall serve written notice on the Owner, identifying the term or condition the City contends has been materially breached and providing the Owner ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to the Agreement. Each of the following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the Owner, shall be considered a material breach of this Agreement: (a) failure to comply with the provisions of this Agreement; or (b) failure to comply with terms and conditions of permits issued by the City of Marathon or other regulatory entity for the development authorized by this Agreement.

**b. Written Notice on the City.** If the Owner concludes that there has been a material breach in the terms and conditions of this Agreement, the Owner shall serve written notice on the City, identifying the term or condition the Owner contends has been materially breached and providing the City thirty (30) days from the date of receipt of the notice to cure the breach. The following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the City, shall be considered a material breach of this Agreement: (a) failure to comply with the provisions of this Agreement, or (b) failure to timely process any application for site plan approval or other development approval required to be issued by the City for the development authorized by this Agreement.

**c. Option to Terminate.** If a material breach of this Agreement occurs and is not cured within the time periods provided above, the party that provided notice of breach may elect to terminate this Agreement or may seek to enforce this Agreement as provided herein.

**d. Waiver of Breach.** If either party waives a material breach in this Agreement by the other party, such a waiver shall not be deemed a waiver of any subsequent breach.

**16. 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 any one of the following methods: (a) personal delivery; (b) deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; or (c) 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 THE OWNER:**

Palm Hill, Inc.  
c/o Alexander Brittian  
850 NW Federal Highway  
Stuart, Florida 34994

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

Barton W. Smith  
Smith Hawks, PL  
138 Simonton Street  
Key West, FL 33040  
Telephone: (305) 296-7227  
E-mail: bart@smithhawks.com

**TO THE CITY:**

Mike Puto, City Manager  
City of Marathon  
10045-55 Overseas Highway  
Marathon, Florida 33050  
Telephone: (305) 743-0033

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

\*\*

**17. Annual Report.** On the anniversary date of the Effective Date of this Agreement, the Owner shall provide to the City 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.

**18. 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 Sections 163.3220-163.3243, Florida Statutes.

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

**20. Assignment.** This Agreement shall constitute a covenant running with the land, which shall be binding upon the parties hereto, their successors and assigns.

**21. 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.

**22. 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 the validity of the remaining provisions of this Agreement.

**23. Applicable Law.** 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.

**24. Litigation; Attorney's Fees; Venue; Waiver of Right to Jury Trial.** In the event of any litigation arising out of this Agreement between the City and Owner, 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 such reasonable attorneys' 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 or initiated under this Agreement.

**25. Use of Singular and Plural.** Where the context requires, the singular includes the plural, and the plural includes the singular.

**26. Reservation of Rights.** This Agreement shall not affect any rights which may have accrued to any party of this Agreement under applicable law.

**27. Conflicting Resolutions.** All resolutions or parts thereof in conflict with the provisions of this Agreement and its resolutions are hereby repealed to the extent of such conflict.

**28. 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.

**29. 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 the Agreement.

**30. Entirety of Agreement.** This Agreement incorporates or supersedes the Original Development Agreement, the First Amended Agreement, 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.



**31. Recording; Effective Date.** The Owner shall record this Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date of execution of 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 by hand delivery, 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. The Owner shall also provide a copy of the recorded Agreement to the City within the same time period. This Agreement shall become effective thirty (30) days after the date it is received by the state land planning agency.

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

*[Signature Page to follow]*

**IN WITNESS WHEREOF**, the parties hereto, by their duly authorized representatives,  
have set their hands and seals on the dates below written.

Marlin Bay Yacht Club, LLC  
a Florida limited liability company

\_\_\_\_\_  
Date

By \_\_\_\_\_  
MANAGER

STATE OF FLORIDA  
COUNTY OF DADE

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_  
20 \_\_, by \_\_\_\_\_ as Manager of Marlin Bay Yacht Club, 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

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

CITY OF MARATHON

\_\_\_\_\_  
Date

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

ATTEST:

---

CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

---

CITY ATTORNEY

**EXHIBITS AND ATTACHMENTS TO**  
**FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT**  
**FOR THE MARLIN BAY YACHT CLUB**

EXHIBIT A            LEGAL DESCRIPTION OF MARLIN BAY YACHT CLUB  
PROPERTY AND MARLIN BAY YACHT CLUB SITE DATA SHEET

EXHIBIT B            DEVELOPMENT AGREEMENT FOR MARLIN BAY YACHT CLUB

EXHIBIT C            FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT  
FOR MARLIN BAY YACHT CLUB

EXHIBIT D            EXTENSION OF FIRST AMENDED AND RESTATED  
DEVELOPMENT AGREEMENT FOR MARLIN BAY YACHT CLUB

EXHIBIT E            CONCEPTUAL SIE PLAN FOR MARLIN BAY YACHT CLUB

**EXHIBIT A**

**LEGAL DESCRIPTION OF MARLIN BAY YACHT CLUB PROPERTY AND MARLIN  
BAY YACHT CLUB SITE DATA SHEET**

**NOT INCLUDED PENDING FINAL APPROVAL**

**EXHIBIT B**

**DEVELOPMENT AGREEMENT FOR MARLIN BAY YACHT CLUB**

**EXHIBIT C**

**FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR  
MARLIN BAY YACHT CLUB**

**EXHIBIT D**

**EXTENSION OF FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT  
FOR MARLIN BAY YACHT CLUB**

**NOT INCLUDED PENDING FINAL APPROVAL**



**EXHIBIT E**

**CONCEPTUAL SIE PLAN FOR MARLIN BAY YACHT CLUB**

Sponsored by: Puto

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2005-087**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A DEVELOPMENT AGREEMENT FOR SANDLER AT GREATER MARATHON BAY, LLC, FOR THE REDEVELOPMENT OF PROPERTY, WHICH IS LEGALLY DESCRIBED AS LOTS 1-5, OF BLOCK 6, OF MARATHON BEACH SUBDIVISION AND LOTS 1-6, OF BLOCK 2, OF THE AMENDED PLAT OF YACHT BASIN TRACTS, KEY VACA, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00336970-00000000, 00336980-000000, 00336990-000000, 00337000-000000, AND 337010-000000, PROVIDING FOR CONDITIONS AND REQUIREMENTS OF DEVELOPMENT, INCLUDING BUT NOT LIMITED TO, BUFFERS, BUILDING HEIGHTS, SETBACKS, AND OTHER REQUIREMENTS; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Sandler at Greater Marathon Bay, L.L.C., a Florida limited liability company (the "Owner"), owns approximately eight (8) contiguous acres of land (herein referred to as "Property") in the corporate limits of the City of Marathon, Florida; and

**WHEREAS**, the Property was a fully developed site with dwelling units, amenities, marina and commercial fishing facilities; and

**WHEREAS**, the City Comprehensive Plan encourages redevelopment that results in the removal of cesspits, the replacement of substandard on-site wastewater treatment, and the implementation of effective stormwater management and shoreline stabilization plans; and

**WHEREAS**, the City Comprehensive Plan encourages redevelopment that results in the economic stability of the City and its residents; and

**WHEREAS**, the City needs redevelopment to protect the environment, its residents, its infrastructure and economy by redeveloping structures that are highly vulnerable in storm events, are below the required base flood elevations and are uninsurable; and

**WHEREAS**, the redevelopment contemplated by the Owner will remove all existing structures and reconstruct structures in compliance with all applicable Federal Emergency Management Agency (FEMA) regulations, the Florida Department of Health (DOH) regulations, the Florida Department of Environmental Protection ("DEP") regulations, South Florida Water Management District ("SFWMD") regulations, applicable building codes and the City Code, including setback, open space, stormwater, shoreline stabilization, and landscape bufferyard criteria; and

**WHEREAS**, as part of the Property redevelopment, the Owner will replace decaying,

unstable shoreline structures with new stabilization structures which will provide substantial public health and safety, environmental, and aesthetic benefits; and

**WHEREAS**, the City's enhancement and redevelopment goals are to attract families, not only for 'family oriented' tourism, but also for residential community redevelopment; and

**WHEREAS**, the Property offers the attractions of swimming, boating, and fishing that families enjoy, and Property redevelopment provides an opportunity for the type of development that will provide facilities to serve, retain, and attract families to the City; and

**WHEREAS**, Property redevelopment will encourage owners of other properties to renovate or upgrade their sites, producing greater aesthetic and economic benefits to the City, providing enhanced environmental and storm hazard protection; and

**WHEREAS**, the City has determined that the redevelopment will not adversely affect hurricane evacuation clearance time because the number of residential dwelling units on the Property will not increase beyond the number of residential dwelling units previously existing on the Property; and

**WHEREAS**, the Property is a highly disturbed, fully developed upland site which does not contain wetlands, listed species habitat, or other environmentally sensitive habitat, and therefore is an appropriate and preferred site to support redevelopment; and

**WHEREAS**, this Agreement is consistent with the Principles for Guiding Development for the Florida Keys Area of Critical State Concern; and

**WHEREAS**, the City has held public hearings to accept and encourage public input with respect to the proposal by the Owner contained in this Agreement, and has considered such public input; and

**WHEREAS**, the Owner has provided public notice of the parties' intent to consider entering into this Agreement by publishing an advertisement in a newspaper of general circulation and readership in the City, posting the Property subject to this Agreement, and mailing notice to the persons and entities shown on the most recent Monroe County Tax Roll to be the Owner of property lying within 300 feet of the boundaries of the Property subject to this Agreement; and

**WHEREAS**, the City Planning Commission has held a public hearing on April 18, 2005, to consider this Agreement and recommended that the City Council conditionally approve the Development, and the City Council of the City has held a public hearing on June 14, 2005 to consider this Agreement; and

**WHEREAS**, the City has determined that this Agreement is consistent with the City's comprehensive plan and land development regulations, is in the public interest, and will further the health, safety, welfare, and goals of the residents of the City of Marathon.

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

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

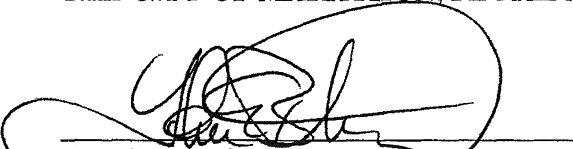
**Section 2.** The Development Agreement between the City and Sandler at Greater Marathon Bay, L.L.C., a Florida limited liability company, in substantially the form as the attached Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is approved.

**Section 3.** The City Manager is authorized to execute the Development Agreement on behalf of the City.

**Section 4.** This resolution shall become effective immediately upon its adoption.

**PASSED AND APPROVED** by the City Council of the City of Marathon, Florida, this 28<sup>th</sup> day of June 2005.

**THE CITY OF MARATHON, FLORIDA**



\_\_\_\_\_  
**John Bartus, Mayor**

AYES: Miller, Bull, Mearns, Bartus  
NOES: Pinkus  
ABSENT: None  
ABSTAIN: None


**ATTEST:**



\_\_\_\_\_  
Cindy L. Ecklund  
City Clerk

(City Seal)

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



\_\_\_\_\_  
City Attorney

**DEVELOPMENT AGREEMENT FOR  
THE MARLIN BAY YACHT CLUB**

**THIS AGREEMENT** is entered into by and between SANDLER AT GREATER MARATHON BAY, L.L.C., a Florida limited liability company, (hereinafter referred to as “Owner”), and the CITY OF MARATHON, a Florida municipal corporation (herein referred to as “City”), pursuant to Sections 9.5-101 and 9.5-102 of the City Code, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2004), and is binding on the “Effective Date” set forth herein.

**WITNESSETH:**

**WHEREAS**, Sandler at Greater Marathon Bay, L.L.C., a Florida limited liability company, is the Owner of approximately eight (8) contiguous acres of land (herein referred to as “Property”) in the corporate limits of the City of Marathon, Florida; and

**WHEREAS**, the Property is a fully developed site with dwelling units, amenities, marina and commercial fishing facilities that has been under prior ownership, and is deteriorated and in need of major renovation; and

**WHEREAS**, the Property is the site of numerous unlicensed cesspits and a previously licensed septic system which supported the dwelling units on the Property, and the Department of Health (“DOH”) has revoked Operating Permit No. 094400 for the septic system due to substandard wastewater treatment, and the mobile home park has been closed as a result of the revocation of the DOH Permit in Case No. 03-CA-264-M (16th Cir. Order Mar. 23, 2004); and

COPY  
COPY

**WHEREAS**, the Property presently has no erosion control or stormwater management system, and the docking facilities and shoreline stabilization structures are deteriorated and unstable; and

**WHEREAS**, the Property contains many aging structures that are non-conforming to required codes; are below the required Federal Emergency Management Agency ("FEMA") base flood elevation; are highly vulnerable in storm events, both structurally and due to elevation; and may be uninsurable; and

**WHEREAS**, the City desires the redevelopment of such properties to protect the environment and provide the residents of the City a clean, healthy environment, through the removal of cesspits, the replacement of substandard on-site wastewater treatment, and the implementation of effective stormwater management and shoreline stabilization plans; and

**WHEREAS**, the Property presently utilizes all the public facilities and services of the City of Marathon but historically has been a negligible contributor to the economic success of the City, providing a total of \$39,878 in ad valorem property taxes for the year 2003 and \$66,841 in 2004; and

**WHEREAS**, Property redevelopment as contemplated in this Agreement will result in the generation of substantially higher ad valorem tax payments to the City of Marathon, with projected ad valorem taxes of approximately \$1,019,647 for the redeveloped Property based on the 2004 millage rate and with higher assessed values and tax assessments anticipated in the future as a result of the redevelopment, and will thereby significantly contribute to the economic well-being of the City; and

**WHEREAS**, the City needs redevelopment to provide the economic recovery needed to insure economic stability for the City and its citizens; and

**WHEREAS**, the City needs redevelopment to protect the environment, its citizens, its infrastructure and economy by redeveloping structures that are highly vulnerable in storm events, are below the required baseflood elevations and are uninsurable; and

**WHEREAS**, the redevelopment contemplated by the Owner will remove all existing structures and reconstruct structures in compliance with all applicable FEMA regulations, DOH regulations, the Florida Department of Environmental Protection (“DEP”) regulations, South Florida Water Management District (“SFWMD”) regulations, applicable building codes and the City Code, including setback, open space, stormwater, shoreline stabilization, and landscape bufferyard criteria; and

**WHEREAS**, as part of the Property redevelopment, the Owner will obtain all required permits for and will construct an advanced wastewater treatment ("AWT") plant which will serve the Property and will have capacity to serve the adjacent Keys Fisheries development and will meet the requirements of the City’s Transitional Comprehensive Plan and New Comprehensive Plan adopted on March 8, 2005 (“New Comprehensive Plan”), and provide a substantial benefit to the public health and the environment; and

**WHEREAS**, as part of the Property redevelopment, the Owner will obtain all required permits for and construct a stormwater management system to serve the Property, providing a substantial environmental benefit through retaining, detaining, treating, and managing stormwater runoff and eliminating the untreated discharge of stormwater under the historical and existing conditions on the Property; and

**WHEREAS**, as part of the Property redevelopment, the Owner will replace decaying, unstable shoreline structures with new stabilization structures which will provide substantial public health and safety, environmental, and aesthetic benefits; and

**WHEREAS**, as part of the Property redevelopment, the Owner will provide substantial public benefit by constructing parallel parking and sidewalks along Louisa, 37<sup>th</sup>, and 39<sup>th</sup> streets and providing landscaping, streetlighting, and stormwater management facilities associated with these parking and sidewalk facilities; and

**WHEREAS**, the City's enhancement and redevelopment goals are to attract families, not only for 'family oriented' tourism, but also for residential community redevelopment; and

**WHEREAS**, the City has recognized that in order to attract families, development must be available that meets the spatial and specific residential community and recreational needs of families; and

**WHEREAS**, the Property offers the attractions of swimming, boating, and fishing that families enjoy, and Property redevelopment provides an opportunity for the type of development that will provide facilities to serve, retain, and attract families to the City; and

**WHEREAS**, Property redevelopment will encourage owners of other properties to renovate or upgrade their sites, producing greater aesthetic and economic benefits to the City, providing enhanced environmental and storm hazard protection and facilitating the retention and enticement of families to the City; and

**WHEREAS**, the proposed redevelopment is permissible and appropriate for the City's Transitional Comprehensive Plan Future Land Use designations of Residential High and Mixed Use applicable to the Property, which allow high-density, single-family and mixed-use



development along with various types of residential and non-residential uses, and for the Residential High and Mixed Use Future Land Use designations in the City's New Comprehensive Plan; and

**WHEREAS**, the portion of the Property on which the Gulfstream Mobile Home Park was located was zoned Urban Residential Mobile Home (URM), the purpose of which is to recognize the existence of existing mobile home parks when the Comprehensive Plan and Land Development Regulations were adopted, but due to the redevelopment of the Property as proposed, this portion of the Property is more appropriately rezoned to Urban Residential (UR), and therefore Owner applied for a rezoning of the portion of the Property on which the Gulfstream Mobile Home Park was located from URM to UR and was granted approval by the City Council of said rezoning on May 25, 2005; and

WHEREAS, pursuant to City Code Section 9.5-233, detached residential dwelling units and accessory uses are allowed as of right within the UR district; and pursuant to City Code Sections 9.5-248(a)(1), (2), (4), and (12), detached residential dwelling units, low- and medium-intensity commercial retail and office uses, or any combination thereof, of less than twenty-five hundred (2,500) square feet of floor area, and accessory uses are allowed as of right within the Mixed Use (MU) district; and City Code Section 9.5-4 (D-24) defines a *Dwelling, Apartment* to mean a multifamily building in which units share common entries or accesses to individual units; and therefore, pursuant to these provisions, the redevelopment and use of the Property as contemplated by the Owner falls within the as of right uses within the Property's designated MU and UR districts; and

**WHEREAS**, the City's Residential Rate of Growth Ordinance (ROGO) is codified in Sections 9.5-121 through 9.5-129 of the City Code; and

**WHEREAS**, pursuant to City Code Section 9.5-123(f)(1), "*redevelopment, rehabilitation or replacement of any residential dwelling unit which does not increase the number of residential dwelling units existing on the site either: a) During the 1990 Census of Population and Housing as demonstrated by official documentation, such as building permit, the property appraisers tax roll, a survey, or other similar conclusive document*" is exempt from the ROGO allocation system; and

**WHEREAS**, the City has determined that ninety-two (92) residential dwelling units were existing on the Property at the time of the 1990 census and Monroe County's analysis and census of existing residential dwelling units in April 1992, the results of which formed the basis of ROGO; and

**WHEREAS**, the City has determined that the redevelopment of these 92 residential dwelling units will not increase the number of residential dwelling units on the Property and therefore are exempt from ROGO and will not require residential ROGO allocations; and

**WHEREAS**, the City has determined that the redevelopment will not adversely affect hurricane evacuation clearance time because the number of residential dwelling units on the Property will not increase beyond the number of residential dwelling units previously existing on the Property; and

**WHEREAS**, the redevelopment will not increase, but will instead reconstruct, as accessory uses existing commercial floor area and existing marina facilities on the Property and therefore will not require non-residential NROGO allocations; and

**WHEREAS**, the City determined that redevelopment of the 92 residential dwelling units is exempt from residential ROGO and the redevelopment of commercial floor area and existing marina facilities is exempt from non-residential ROGO, and that the Property could be redeveloped to the existing density; and

**WHEREAS**, the Property is a highly disturbed, fully developed upland site which does not contain wetlands, listed species habitat, or other environmentally sensitive habitat, and therefore is an appropriate and preferred site to support redevelopment; and

**WHEREAS**, the proposed redevelopment will promote and further the following Principles for Guiding Development for the Florida Keys Area of Critical State Concern (the "Principles") as set forth in Section 380.0552(7), Florida Statutes (2004):

(b) To protect shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.

(c) To protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, tropical hammocks and pinelands), dune ridges and beaches, wildlife and their habitat.

(d) To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development.

(e) To limit adverse impacts of development on the quality of water throughout the Florida Keys.

...

(h) To protect the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:

...

2. Sewage collection and disposal facilities; and

**WHEREAS**, this Agreement is consistent with the above-cited provisions of the Principles for Guiding Development for the Florida Keys Area of Critical State Concern; and

**WHEREAS**, the City has held public hearings to accept and encourage public input with respect to the proposal by the Owner contained in this Agreement, and has considered such public input; and

**WHEREAS**, the Owner has provided public notice of the parties' intent to consider entering into this Agreement by publishing an advertisement in a newspaper of general circulation and readership in the City, posting the Property subject to this Agreement, and mailing notice to the persons and entities shown on the most recent Monroe County Tax Roll to be the Owner of property lying within 300 feet of the boundaries of the Property subject to this Agreement; and

**WHEREAS**, the City Planning Commission has held a public hearing on April 18, 2005, to consider this Agreement, and the City Council of the City has held a public hearing on June 14, 2005 to consider this Agreement; and

**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.

**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:

**A. RECITALS.** The recitals set forth in the preceding "Whereas" clauses are incorporated herein and form a material part of this Agreement.

**B. DEFINITIONS.** For the purposes of this Agreement, the following terms shall have the following meanings. Terms not defined in this Agreement shall be as defined in the

City Code, in Chapter 163, Florida Statutes, or, if not defined in the Code or statute, shall be understood by their usual and customary meaning.

1. **“Agreement”** shall refer to this Development Agreement, as the same may be subsequently amended, modified or supplemented pursuant to its terms and provisions and pursuant to the provisions of Sections 163.3220-163.3243, inclusive, Florida Statutes.

2. **“City Code”** shall refer to the Code of Ordinances of the City of Marathon in existence on the Effective Date of this Agreement.

3. **“Comprehensive Plan”** shall refer to the City’s Transitional Comprehensive Plan or the City’s New Comprehensive Plan, as expressly provided herein.

4. **“Development”** shall refer to the redevelopment of the Property for the uses permitted by the Land Use Plan and Land Development Regulations, subject to the conditions, obligations, restrictions and terms contained in this Agreement.

5. **“Dwelling, Apartment”** shall refer to the dwelling unit type defined in Section 9.5-4 (D-24) of the City Code.

6. **“Dwelling Unit”** shall refer to a dwelling unit as defined in Section 9.5-4 (D-31) of the City Code.

7. **“Effective Date”** shall refer to the date this Agreement becomes effective, as set forth in Section C.29. of this Agreement.

8. **“Florida Department of Community Affairs”** and **“state land planning agency”** shall mean and refer to the “state land planning agency” as defined in Chapter 163, Part II, Florida Statutes.

9. **“Home Owner Association”** means the association created pursuant to Chapter 718, Florida Statutes, for the operation and management of the common elements of the Marlin Bay Yacht Club.

10. **“Land Use Plan”** shall mean the Future Land Use Element and Future Land Use Map of the City’s Transitional Comprehensive Plan or the City’s New Comprehensive Plan, as provided herein.

11. **“Land Development Regulations”** shall mean Chapter 9.5 of the City Code in existence on the Effective Date of this Agreement.

12. **“Owner”** shall refer to the Owner of the Property subject to this Agreement.

13. **“Property”** shall refer to one or more of the parcels of real property located in the City that are the subject of this Agreement as set forth in Section C.1.b. of this Agreement.

14. **“Public facilities”** means those facilities identified in Section 163.3221, Florida Statutes (2004), and as set forth in Section C.6. of this Agreement.

**C. TERMS OF AGREEMENT.**

**1. Ownership, Legal Description, and Unity of Title.**

a. **Ownership.** The Owner of Marlin Bay Yacht Club as of the date of execution of this Agreement is Sandler at Greater Marathon Bay, L.L.C., a Florida limited liability company whose address is 194 Minorca Avenue, Coral Gables, Florida 33134. There are no other legal or equitable owners of Marlin Bay Yacht Club known to the parties of this Agreement.

b. **Legal Description.** The legal description of Marlin Bay Yacht Club subject to this Agreement is included in the Marlin Bay Yacht Club Site Data Sheet, attached hereto as Exhibit A. The term “Property” as used in this Agreement shall mean and refer to the properties described in Exhibit A.

c. **Unity of Title.** The Owner shall execute a binding instrument combining the upland parcels described in Exhibit A for the purposes of the redevelopment authorized by this Agreement. The Owner shall provide the proposed binding instrument and shall record the instrument in the public records of Monroe County, Florida, at its sole expense, within twenty-eight (28) days after the date of execution of the Development Agreement by the parties. The Owner shall provide copies of the recorded instrument, showing the book and page where recorded, to the City and to the Florida Department of Community Affairs Florida Keys Field Office within a reasonable time after recordation.

**2. Duration of Agreement, Agreement Renewal.**

a. **Duration of Agreement.** This Agreement shall remain in effect for a period of ten (10) years, commencing on the Effective Date set forth below.

b. **Agreement Renewal.** This Agreement may be renewed or extended as provided herein.

**3. Existing Development; Preparation for Redevelopment.**

a. **Existing Development.** The following development exists on the Property: a commercial fishing operation and marina facilities; fuel tanks; one hundred fifteen (115) boat wetslips; eleven thousand five hundred and three (11,503) square feet of commercial

floor area; ninety-two (92) upland residential dwelling units; a swimming pool; a tiki hut; and a laundry facility.

**b. Redevelopment Preparation.** The Property will be prepared for redevelopment by permitted demolition and appropriate removal of all existing structures, including the existing cesspits and deteriorated shoreline structures on the Property.

**4. Plan Approval, including Densities and Intensities.**

**a. Approval of Conceptual Site Plan; Minor Revisions; Final Site Plan.** The redevelopment on the Property shall be limited to 92 residential dwelling units, together with 2,500 feet of commercial space which will be redeveloped as accessory structures and facilities as described in this Agreement and depicted on the Conceptual Site Plan for Marlin Bay Yacht Club, Sheets 1 - 2, dated December 9, 2004, which were prepared by Nichols, Brosch, Sandoval and Associates of Coral Gables, Florida, and are attached hereto as Exhibit B. The Conceptual Site Plan is hereby approved by the City, and any subsequent site plans, site plan approvals and building permits shall substantially comply with this Conceptual Site Plan; provided, however, that the final site plan may deviate from the Conceptual Site Plan to accommodate: (1) refinements to the development plan including minor shifts in location of thirty-five (35) feet or less in the structures, roadways, pathways, and swimming pool configurations; (2) changes to the building type or number of residential units, so long as the density set forth in this Agreement is not exceeded; or (3) modifications that are necessary to meet regulatory requirements imposed by any other governmental entity. The site plan meets all applicable setback, open space, landscape bufferyard, parking and building height requirements



established in City Code and such requirements shall not be varied unless Owner obtains a variance pursuant to applicable provisions of the City Code.

**b. Dwelling Units under this Agreement.** Pursuant to Section 9.5-123(f)(1) of the City Code, the 92 residential dwelling units on the Property are exempt from the requirements of the City's residential ROGO.

**c. Density under this Agreement.** Pursuant to Transitional Comprehensive Plan Policy 101.4.21 and Section 9.5-262 of the City Code applicable to the MU and UR districts, and applicable provisions in the City's New Comprehensive Plan, Owner is entitled to redevelop, and will redevelop, 92 residential dwelling units on the Property.

**d. Conceptual Site Plan.** The redevelopment of the 92 residential dwelling units, as depicted on the Conceptual Site Plan, is approved by this Agreement. Although not a requirement of the City Code, the Owner shall provide and maintain eight (8) residential dwelling units as affordable housing units. The Owner shall execute a binding instrument, in a form acceptable to the City, ensuring that the 8 affordable housing units are limited for use as affordable housing and comply with the affordable housing criteria set forth in Sections 9.5-4(A-5) and 9.5-266 of the City Code, and as more fully addressed in Section C.4.p. of this Agreement. The remaining eighty-four (84) residential dwelling units will be redeveloped as market-rate detached residential dwelling units. The Owner shall execute and record in the public records of Monroe County a Declaration of Covenants and Restrictions which shall be applicable to all residential dwelling units on the Property and which shall require the residents of all residential dwelling units on the Property to comply with the hurricane evacuation requirements of Section 9.5-534(e) of the City Code.

e. **Structures.** The redevelopment depicted on the Conceptual Site Plan, and listed below, is approved by this Agreement. Exhibit C, incorporated by reference herein, depicts the building schematics for the residential dwelling units.

|  |
|--|
| Dock master facility   |
| In-ground fuel tanks and fuel station                                |
| Seawall, marginal docks, finger piers, mooring piles, 115 boat slips |
| 92 residential dwelling units  |
| Club house   |
| Pool and pool restrooms  |
| Paved pool deck and fountain   |
| Observation deck   |
| Pool pavilion  |
| Sidewalks and retaining walls  |
| Storage  |
| Gate house   |
| Advanced Wastewater Treatment plant                                  |
| Trash compactor  |
| Mail kiosk   |
| Roadways and parking   |
| Utilities infrastructure   |
| Stormwater management system   |

**f. Commercial Floor Area Approved Under This Agreement.**

Pursuant to City Code 9.5-124.3, the Owner is vested to reconstruct a total of eleven thousand five hundred and three (11,503) square feet of commercial floor area or non-residential development on the Property without being subject to nonresidential ROGO requirements. Total commercial floor area redevelopment on the Property approved by this Agreement is two thousand five hundred (2,500) square feet, as depicted on the Conceptual Site Plan. This commercial redevelopment will be used as commercial retail, low- and medium-intensity and office uses, or any combination thereof, and will only be used as accessory uses to the residential redevelopment of the Property, pursuant to the restrictions set forth in Section C.4.g., below.

This leaves nine thousand three (9,003) square feet of vested commercial floor area remaining undeveloped. Any subsequently requested commercial floor area development approvals shall not exceed the remaining 9,003 square feet of floor area for which the Owner is vested, except as may be allowed by the City Code.

**g. Accessory Uses.** Accessory uses, to be developed as amenities ancillary and subordinate to, and will which serve the residential redevelopment on the Property, are for the exclusive use of Marlin Bay Yacht Club residents. Accessory uses to be developed or redeveloped on the Property consist of the dockmaster office, club house, activities room, pool and pool pavilion, and private multifamily residential docking facility. The Owner and its successors shall execute a binding instrument, in a form acceptable to the City, ensuring the exclusive use of the accessory structures as amenities to the resident members of the Marlin Bay Yacht Club Home Owner Association. Residents shall be required to show to the dockmaster proof of membership in the Home Owner Association in order to be able to use accessory uses. The Home Owner Association will maintain a list of residents which will be provided to the dockmaster to verify membership in the Homeowner Association for purposes of being able to use the accessory uses. Signage shall be erected to indicate that accessory uses are for the exclusive private use of Marlin Bay Yacht Club residents. The wet slips in the docking facility are accessory to the upland residential dwelling units and will not be open to the public, and also will not be rented separate from the upland residential dwelling units or sold separate from the upland residential dwelling units, but shall only serve the residents of Marlin Bay Yacht Club, and will not be operated as a commercial marina. No liveaboards will be permitted in the docking facility.

5. **Development Conditions.** The following conditions, terms, restrictions, and other requirements have been determined by the City of Marathon to be necessary for the public health, safety, and welfare of its citizens:

a. **Building Height.** Buildings may be constructed to the maximum height as provided in the Transitional Comprehensive Plan, or to the maximum height allowed under the City's New Comprehensive Plan, whichever may be applicable at the time of building permit application submittal.

b. **Setbacks.** The City acknowledges that there is no undisturbed or unaltered shoreline on the Property. Pursuant to City Code Section 9.5-286, a twenty (20) foot setback from the mean high water line ("MHWL") shall be required for all principal structures. City Code Section 9.5-289 establishes provisions for a limited amount of non-enclosed detached outdoor recreational accessory structures that may be developed within the shoreline setback. Pursuant to City Code Section 9.5-281, both the MU and UR districts require a minimum ten (10) foot side yard setback on one side property line with a combined total of fifteen (15) feet for both side yards. The UR district requires a ten (10) foot front yard setback. The MU district requires a twenty five (25) foot front yard setback. Pursuant to Section 9.5-523 of the City Code, Owner may seek a ten (10) foot variance to the front yard setback for the portion of the Property adjacent to 39th Street. Owner may also seek to vacate the right-of-way for 39th Street pursuant to the City Code. Owner shall obtain either a variance or a vacation of the 39th Street right-of-way as provided in the City Code, or shall comply with the applicable setbacks. With the recordation of the 'Unity of Title', internal setbacks are not required other than for fire safety.

c. **Utilities, Lighting, and Signage.** Utilities, lighting, and signage shall comply with all applicable requirements of the City Code, including the waterfront lighting criteria in City Code Section 9.5-395. The Owner shall install all utilities underground where practicable and shall screen all utility facilities. The Owner shall utilize shaded light sources to illuminate all signs, facades, buildings, parking and loading areas, and shall arrange such lighting to eliminate glare to parcels lying outside the Property. No intermittent or flashing lights or flashing signs shall be allowed. The existing fuel tanks shall be replaced with in-ground tanks meeting applicable DEP permitting criteria codified in Chapter 62-761, Florida Administrative Code.

d. **Landscaping.** The Owner shall utilize best installation and maintenance practices for landscaping throughout the Property, and shall guarantee one hundred percent (100%) survival of all owner-installed plants for one (1) year. Seventy percent (70%) of all required plants installed shall be Florida Keys native plants that are suitable for the site conditions and are a species typical of the Middle Keys. The Owner shall remove all Category I invasive exotic plants on the Property. The Owner shall provide, where applicable, Class "A" landscaping for all parking areas in accordance with Section 9.5-361 of the City Code. The Owner shall provide a Class "C" landscape bufferyard where the UR district abuts the MU district on the west and south property lines.

e. **Parking.** The redevelopment shall comply with the parking criteria as required by Section 9.5-351 of the City Code. The Owner shall provide two (2) parking spaces per market-rate residential dwelling unit, one and a half (1.5) parking spaces per each one-bedroom affordable housing unit and one and three quarters (1.75) parking spaces per

each two-bedroom affordable housing unit for a total of thirteen (13) parking spaces for the 8 affordable housing units, and ten (10) onsite guest parking spaces. No other parking spaces will be provided on the Property.

**f. Offsite Street Improvements.** Owner shall provide the following offsite street improvements:

(i) To the portion of Louisa Street between 37th and 39th streets: the construction and maintenance of sidewalks on both sides Louisa Street; the installation and maintenance of traffic calming devices; landscaping on the side of Louisa Street bordering the Property; and other improvements.

(ii) Provided Owner is granted the vacation of right-of-way for 39th Street as set forth in Section C.5.b. above, Owner agrees to reserve a utility easement and public sidewalk access to the waterfront in the area and shall provide adequate traffic circulation and other features as agreed by the City.

**g. Internal Infrastructure.** The underground infrastructure, water and sewer serving the residential dwelling units shall be completed before a certificate of occupancy may be issued for the unit.

**h. Fire Safety.** The Owner shall provide fire wells and other such fire protection facilities as required by the Life Safety Code administered by the City Fire Department. Fire sprinklers will be installed in all 92 residential dwelling units, the club house, and the dockmaster office.

i. **Open Space Ratio.** Pursuant to City Code Sections 9.5-343, 9.5-262, and 9.5-267, a minimum of 20% open space is required. The Owner will maintain a minimum of 20% open space on the Property.

j. **Wind Load.** The Owner shall construct all structures on the Property, including doors, windows, and cladding, to withstand the mile per hour peak winds as specified in the Building Code.

k. **Energy Efficiency.** The Owner shall construct all residential structures in conformance with the specifications of the State of Florida Energy Efficiency Code for Building Construction (State Energy Code).

l. **Schematics.** All redeveloped residential units constructed on the Property shall adhere to one of the architectural styles and one of the representative floor plans depicted in the schematics in Attachment 1, incorporated by reference herein.

m. **Permits from Other Regulatory Entities.** Other agency permits may be required as provided by applicable law prior to the City's issuance of building permits for redevelopment of the Property. The Owner shall obtain all necessary permits from other local, regional, State and federal regulatory entities and provide copies of each to the City within a reasonable time after such permits are issued. A log of the permits and approvals required for the Project and the status of each is incorporated herein as Exhibit C.

n. **Compliance with UR and MU District Requirements.** The proposed redevelopment on the Property consists of 84 detached market-rate residential dwelling units and 8 affordable housing units, 2,500 square feet of commercial space which will constitute an accessory use as provided in Section C.4.g. above, and a private residential multifamily

docking facility which will constitute an accessory use exclusively for Marlin Bay residents as provided in Section C.4.g above. Any redevelopment on the Property which is not a use that is permitted as of right as provided in the City Code provisions applicable to the UR and MU land use districts will obtain applicable development approvals as provided under the City Code.

**o. Stormwater Management.** The development shall comply with the stormwater management criteria in City Code Section 9.5-293 and as approved by the SFWMD. The development will meet all applicable federal, state, regional, and local stormwater management requirements, including any applicable requirements pursuant to the National Pollutant Discharge Elimination System (NPDES) permit issued by the Florida Department of Environmental Protection for the City of Marathon in February 2005 prohibiting direct discharges into Outstanding Florida Waters.

**p. Affordable Housing.**

(i) Owner shall provide eight (8) affordable housing units on the Property. Four (4) of these units shall be deed-restricted to allow rental only by persons having an annual income of no greater than one hundred twenty percent (120%) of the median income of residents of Monroe County, Florida, and four (4) of these units shall be deed-restricted to only allow rental by or sale to persons having an annual income of no greater than one hundred sixty percent (160%) of the median income of residents of Monroe County, Florida. These deed restrictions shall be recorded in the public records of Monroe County at the time of issuance of the certificates of occupancy for the affordable housing units and shall be effective for fifty (50) years from the date of recordation, and shall automatically renew for two (2) 50-year periods. Owner will enter into an agreement with the Middle Keys Community Land Trust ("MKCLT")



or similar entity to perform income qualification evaluation for renters of units on an annual basis and for purchasers of the units at the time of sale of a unit. Such agreement must be approved by the City Attorney and executed by the parties prior to issuance of certificates of occupancy for these units. The certificates of occupancy for these 8 affordable housing units shall be obtained prior to or contemporaneously with the certificates of occupancy for the first twenty-six (26) market rate residential dwelling units constructed on the Property. In addition, Owner shall provide one of the following options for the provision of the ten (10) offsite affordable housing units in the City of Marathon:

(ii) Option I: Within three (3) months of the date of execution of this Agreement, Owner shall enter into an agreement with Jigs Ltd. ("Jigs") to construct ten (10) affordable housing units on Lot 6 of the property located on the corner of 35th Street and Louisa Street in the City of Marathon ("Jigs Parcel"). These 10 affordable housing units shall be delivered by Owner according to the following delivery schedule: (i) Certificates of occupancy for six (6) units shall be obtained contemporaneously with the certificates of occupancy for the next thirty-one (31) market rate residential dwelling units constructed on the Property; and (ii) Certificates of occupancy for the remaining four (4) units shall be obtained contemporaneously with the certificates of occupancy for the next eighteen (18) market rate residential dwelling units constructed on the Property. These 10 affordable housing units shall be deed-restricted to allow rental only by persons having an annual income of no greater than one hundred twenty percent (120%) of the median income of residents of Monroe County, Florida. These deed restrictions shall be recorded in the public records of Monroe County at the time of issuance of the certificates of occupancy for the affordable housing units and shall be effective for fifty (50)

years from the date of recordation and shall automatically renew for two (2) 50-year periods. Owner will enter into an agreement with the MKCLT or similar entity to perform income qualification evaluation for renters of units on an annual basis and for purchasers of the units at the time of sale of a unit. Such agreement must be approved by the City Attorney and executed by the parties prior to issuance of certificates of occupancy for these units. Of the affordable housing units used, eight (8) are from the applicant, three (3) are from Jigs and the remainder of the allocations will be from the City. If, within three (3) months of the date of execution of this Agreement, if Owner is unable to reach such agreement with Jigs Ltd., then Owner shall immediately pursue Option II.

(iii) Option II: Owner shall work in cooperation with the City and the Middle Keys Community Land Trust or similar entity to locate and purchase within the City land comparable in size to the Jigs Parcel, on which to construct 10 affordable housing units, which shall be subject to the income restriction provisions and delivery schedule set forth in Option I above. The City shall provide the residential ROGO allocations for the construction of these 10 units.

(iv) Option III: If, within eighteen (18) months of the date of execution of this Agreement, Owner is unable to perform Option I or Option II, then Owner shall pay to the City a sum of seven hundred fifty thousand dollars (\$750,000) pursuant to the affordable housing units delivery schedule and deed restriction provisions set forth in Option I, to be used for the provision of affordable/workforce housing within the City of Marathon.

q. **Additional Conditions by Mutual Agreement.** Nothing in this Agreement shall preclude the parties from applying additional conditions, by mutual written consent, during the final permitting approval process.

6. **Public Utilities; Concurrency, Impact Fees.** The following identifies the public facilities that are required and that will service the development authorized by this Agreement; who shall provide the facilities; what new facilities, if any, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of development.

a. **Potable Water.** Domestic potable water is provided by the Florida Keys Aqueduct Authority.

b. **Electric Service.** Electric service is provided by Florida Keys Electric Cooperative.

c. **Solid Waste.** Solid waste service is provided by Marathon Garbage Service or its successors and assigns, as determined by the City Council.

d. **Fire Service.** Fire service is provided by the Marathon Fire Department.

e. **Concurrency.** All public facilities identified above are available as of the date of this Agreement, and capacity for each is projected to be available concurrent with the impacts of development.

f. **Wastewater.** Wastewater treatment shall be provided by the construction of a new advanced wastewater treatment (“AWT”) plant approved by DEP. The treatment plant shall meet the AWT nutrient removal standards as specified by DEP and shall be completed before a certificate of occupancy may be issued for any unit. The Marlin Bay Yacht

Club Neighborhood Plan attached as Exhibit D depicts the AWT plant. Owner agrees to cooperate with the City and the owner of the property on which the wastewater treatment plant will be located regarding expansion of the capacity of the plant to enable it to treat wastewater generated by development located in the area bounded by 35th Street to the south, 42nd Street to the north, the western side of U.S. 1 to the east, and Florida Bay to the west, in the City.

**g. Public Recreational facilities.** Public recreational facilities shall be addressed through impact fees, if any.

**h. Impact Fees.** Any increased impacts on public facilities or public services attributable to each unit of the development, and the cost of capital improvements to meet the associated 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 applicable City impact fees required by ordinance then in effect, as well as by payment by the Owner of any applicable utility system development fees. Owner agrees to pay impact fees pursuant to any applicable impact fee ordinances adopted within eighteen (18) months of the date of execution of this Agreement. Any impact fees required to be paid by Owner pursuant to any such impact fee ordinances will be offset by the dollar amount paid by Owner toward the provision of any improvements which are the subject of said impact fee ordinances.

**i. Traffic Study.** Prior to issuance of building permits for structures on the Property, Owner agrees to conduct a Level III traffic study to assess the project's vehicle traffic impacts on U.S. 1. If the Level III traffic study demonstrates that redevelopment of the Marlin Bay Yacht Club will result in traffic impacts above those generated by the development

previously existing on the Property, as previously documented, Owner will mitigate its fair share of the increased traffic impacts resulting from redevelopment of the Marlin Bay Yacht Club.

7. **Reservations or Dedications of Land for Public Purposes.** The parties anticipate that the Owner may reserve or dedicate land for public purposes in connection with the development authorized by this Agreement, but are currently unaware of the specifics of such reservation(s) or dedication(s). Such reservations or dedications may include, by way of example, easements necessary for the provision of stormwater, utility, and wastewater services to the Property.

8. **All Local Permits Approved or Needed.**

a. **Development Approvals.** The following City development approvals are needed for the development authorized by this Agreement:

1. **Site Plan.** Final site plan approval by the City building official, fire marshal, and planning staff confirming compliance with this Agreement and applicable City Code requirements.

2. **Building Permits.** As of right building permits will be issued, as provided pursuant to the City Code, for each residential dwelling unit as well as for the club house, the pool facilities, the dockmaster facility, pool pavilion, commercial floor area, and other individual structures. An overall site permit will address landscaping, parking, paths, setback, open space and other associated items.

b. **Review.** No further review or discretionary review will be required by the City, it being agreed that the development, as depicted on the approved Conceptual Site Plan attached hereto, requires only the above development approvals so long as

the final site plan substantially complies with the Conceptual Site Plan approved under this Agreement. However, any development of commercial space exceeding 2,500 square feet may require a conditional use permit as provided under the City Code. Any private multifamily residential docking facility redevelopment which does not meet the definition of accessory use in Section 9.5-4(A-2) of the City Code may be required to obtain a conditional use permit as provided under the City Code. If a conditional use permit is required under the City Code for the development of affordable housing units on the Property, the conditional use permit application and building permit application for such units may be concurrently submitted and reviewed.

c. **Compliance.** Nothing in this Agreement shall be deemed to obviate the Owner's compliance with terms and provisions of each such identified approval.

d. **Completeness.** The parties acknowledge that the Owner has submitted all information necessary for review under the City Code.

9. **Mutual Cooperation.** The City agrees to cooperate with the Owner in a timely manner in providing and/or granting all permits, licenses, approvals, or consents necessary or appropriate to fully implement this Agreement. The City and the Owner agree to cooperate fully with and assist each other in the performance of the provisions of this Agreement.

10. **Development to Comply with Permits and City Comprehensive Plan and Code Provisions.** The development described in and authorized by this Agreement shall be constructed in accordance with all specified permit conditions, and in accordance with all applicable provisions of the Transitional Comprehensive Plan and City Code, or the City's New Comprehensive Plan, as applicable. No certificate of occupancy for an individual building shall

be issued until the City approves all plans for that building and the Owner has complied with all conditions in the permit issued by the City and other regulatory entities for that building.

**11. Finding of Consistency.** The City of Marathon finds that the development authorized herein is consistent with the Transitional Comprehensive Plan and Land Development Regulations, and with the City's New Comprehensive Plan, as applicable.

**12. Compliance with Permits, Terms, Conditions, and Restrictions not Identified Herein.** The failure of this Agreement to address a particular permit requirement, condition, term, or restriction shall not relieve the Owner of the necessity of complying with the laws governing said permitting requirements, conditions, terms, or restrictions.

**13. Governing Laws.**

**a. Controlling Regulations.** For the duration of this Agreement, all approved development on the Property shall comply with and be controlled by this Agreement and by the provisions of the Comprehensive Plan and City Code or the City's New Comprehensive Plan, as applicable. The parties do not anticipate the application of subsequently adopted laws and policies to the Property except as expressly provided in this Agreement.

**b. Subsequently Adopted Laws and Policies.** Pursuant to Section 163.3233, Florida Statutes (2004), the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that: (a) 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; (b) the new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they apply to the development that is subject to this Agreement; (c) the local

government demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or (d) the Agreement is based on substantially inaccurate information supplied by the Owner. Redevelopment of the Property shall not be subject to any moratoria or other restrictions on redevelopment, including the redevelopment of existing mobile home parks, which may be established or otherwise imposed in any manner or at any time by the City. Nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

**c. State or Federal Laws.** If State or federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this Agreement, this Agreement shall be modified as is 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 or statutory law.

**14. Amendments, Renewal, Revocation and Termination.** This Agreement may be amended, renewed, or terminated as follows:

**a. Amendments.** As provided in Section 163.3237, Florida Statutes (2004), this Agreement may be amended by mutual consent of the parties to this Agreement or by their successors in interest; an instrument in writing signed by the parties or their successors shall accomplish an amendment under this provision.

**b. Renewal.** As provided in Section 163.3229, Florida Statutes (2004), this Agreement may be renewed by the mutual consent of the parties, subject to the following public hearing requirements in Section 163.3225, Florida Statutes (2004): 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 seven (7) days before each public hearing in a newspaper of general circulation and readership in Monroe County, Florida, 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.

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

**d. Revocation by City.** Pursuant to Section 163.3235, Florida Statutes (2004), this Agreement may be revoked by the City if the City finds, on the basis of competent substantial evidence, that there has been a failure to comply with the terms of this Agreement.

**e. Termination by Mutual Consent.** This Agreement may be terminated by mutual consent of the parties.

**15. Breach of Agreement and Cure Provisions.**

**a. Written Notice on the Owner.** If the City concludes there has been a material breach of this Agreement, prior to revoking this Agreement the City shall serve written notice on the Owner, identifying the term or condition the City contends has been materially breached and providing the Owner ninety (90) days from the date of receipt of the

notice to cure the breach or negotiate an amendment to the Agreement. Each of the following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the Owner, shall be considered a material breach of this Agreement: (a) failure to comply with the provisions of this Agreement; or (b) failure to comply with terms and conditions of permits issued by the City of Marathon or other regulatory entity for the development authorized by this Agreement.

**b. Written Notice on the City.** If the Owner concludes that there has been a material breach in the terms and conditions of this Agreement, the Owner shall serve written notice on the City, identifying the term or condition the Owner contends has been materially breached and providing the City thirty (30) days from the date of receipt of the notice to cure the breach. The following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the City, shall be considered a material breach of this Agreement: (a) failure to comply with the provisions of this Agreement, or (b) failure to timely process any application for site plan approval or other development approval required to be issued by the City for the development authorized by this Agreement.

**c. Option to Terminate.** If a material breach of this Agreement occurs and is not cured within the time periods provided above, the party that provided notice of breach may elect to terminate this Agreement or may seek to enforce this Agreement as provided herein.

**d. Waiver of Breach.** If either party waives a material breach in this Agreement by the other party, such a waiver shall not be deemed a waiver of any subsequent breach.

16. **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 any one of the following methods: (a) personal delivery; (b) deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; or (c) 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 THE OWNER:**

Nathan Benson,  
Managing Member  
c/o Eugene Spano  
194 Minorca Avenue  
Coral Gables, Florida 33134

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

Douglas J. Rillstone, P.A.  
Cathy M. Sellers  
Broad and Cassel  
215 South Monroe Street  
Tallahassee, FL 32301  
Telephone: (850) 681-6810

**TO THE CITY:**

Mike Puto, City Manager  
City of Marathon  
10045-55 Overseas Highway  
Marathon, Florida 33050  
Telephone: (305) 743-0033

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

John R. Herin, Jr., Esquire  
Stearns, Weaver, Miller, Weissler, Aldaheff, & Sitterson, P.A.

Museum Tower, 150 West Flagler Street  
Miami, Florida 33130  
Telephone: (305) 789-3200

17. **Annual Report.** On the anniversary date of the Effective Date of this Agreement, the Owner shall provide to the City 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.

18. **Enforcement.** In accordance with Section 163.3243, Florida Statutes (2004), any party to this Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes (2004), 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 Sections 163.3220-163.3243, Florida Statutes (2004).

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

20. **Assignment.** This Agreement may not be assigned without the written consent of the parties.

21. **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.

**22. 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 the validity of the remaining provisions of this Agreement.

**23. Applicable Law.** 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.

**24. Litigation; Attorney's Fees; Venue; Waiver of Right to Jury Trial.** In the event of any litigation arising out of this Agreement between the City and Owner, 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 such reasonable attorneys' 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 or initiated under this Agreement.

**25. Use of Singular and Plural.** Where the context requires, the singular includes the plural, and the plural includes the singular.

**26. 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.

**27. 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 the Agreement.

**28. 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.

**29. Recording; Effective Date.** The Owner shall record this Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date of execution of 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 by hand delivery, 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. The Owner shall also provide a copy of the recorded Agreement to the City within the same time period. This Agreement shall become effective thirty (30) days after the date it is received by the state land planning agency.

**30. 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, by their duly authorized representatives,  
have set their hands and seals on the dates below written.

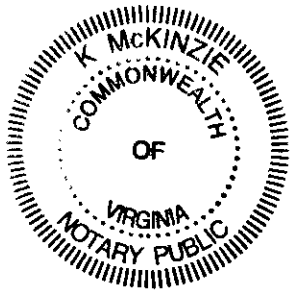
Sandler at Greater Marathon Bay, L.L.C.  
a Florida limited liability company

July 6, 2005  
Date

By [Signature]  
MANAGER

STATE OF ~~FLORIDA~~ VIRGINIA  
COUNTY OF ~~DADE~~ VIRGINIA BEACH

The foregoing instrument was acknowledged before me on this 6 day of July 2005, by Nathan Benson as Manager of Sandler at Greater Marathon Bay, L.L.C. who is personally known to me or who produced N/A as identification, and who did/did not take an oath.



K. McKinzie  
Notary Public, State of ~~Florida~~ At Large  
Virginia

My commission expires: 09-30-06

7/11/05  
Date

CITY OF MARATHON  
By [Signature]  
JOHN BARTUS, MAYOR

ATTEST:  
[Signature]  
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:  
[Signature]  
CITY ATTORNEY

EXHIBITS TO MARLIN BAY YACHT CLUB DEVELOPMENT AGREEMENT

- EXHIBIT A: MARLIN BAY YACHT CLUB SITE DATA SHEET  
EXHIBIT B: MARLIN BAY YACHT CLUB SITE PLAN  
EXHIBIT C: PERMITS AND APPROVALS LOG  
EXHIBIT D: MARLIN BAY YACHT CLUB NEIGHBORHOOD PLAN

  
JUL 06 2005



EXHIBIT A

MARLIN BAY YACHT CLUB SITE DATA SHEET

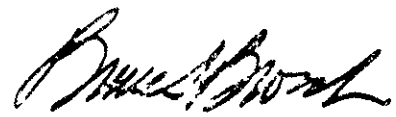

  
JUL 09 2015



EXHIBIT B  
MARLIN BAY YACHT CLUB SITE PLAN

  
JUL 06 2005

Doc# 1528084  
BK# 2132 P# 198

SITE PLAN



*Richard B. [Signature]*

JUL 06 2005

**EXHIBIT C**  
**MARLIN BAY YACHT CLUB PERMITS AND APPROVALS LOG**

Doc# 1528084  
Bk# 2132 Pg# 199

  
JUL 06 2005

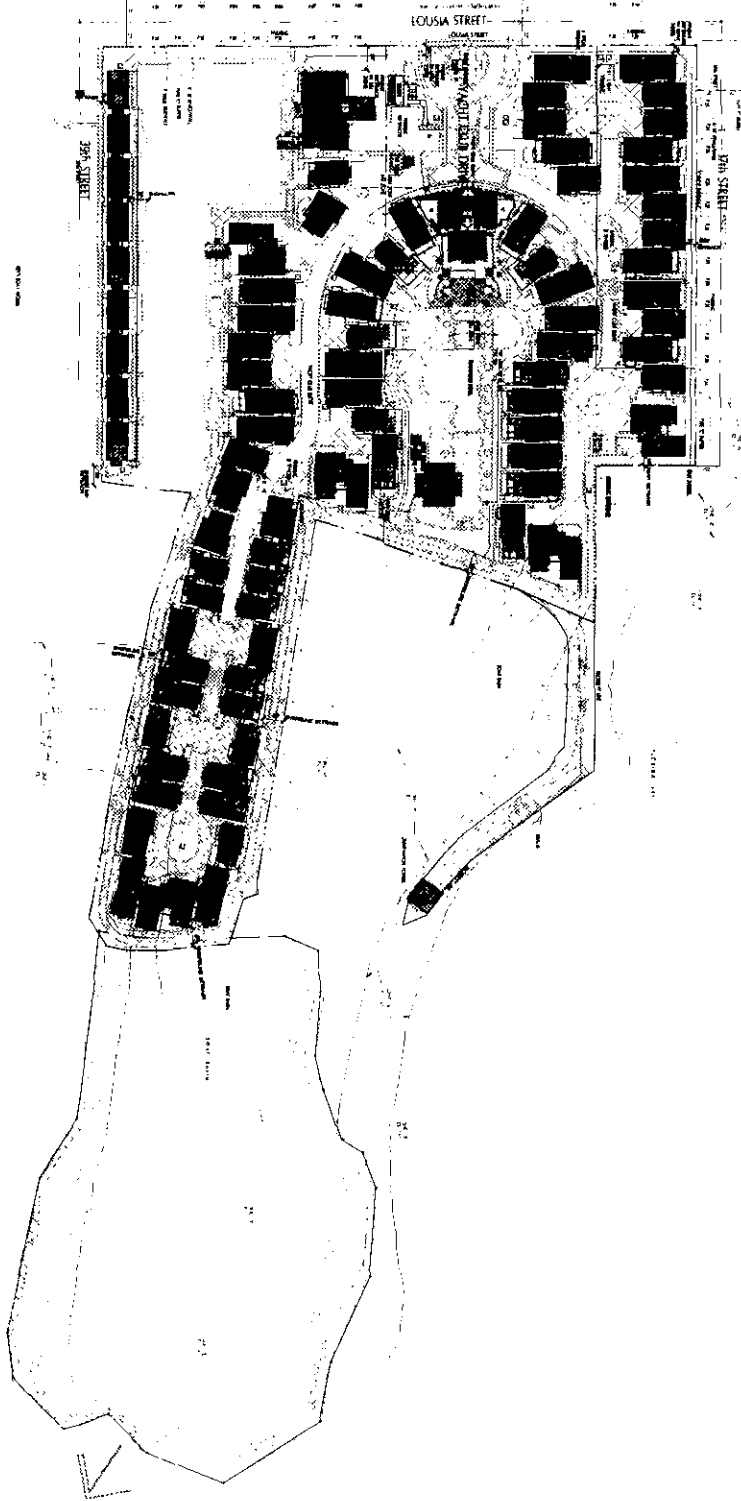
**MARLIN BAY YACHT CLUB**  
Permit Log

| Agency                                  | Permittee                            | Permit Type                   | Permit Received                    | Permit/File No. |
|---|--------------------------------------|-------------------------------|------------------------------------|-----------------|
| Department of Environmental Protection  | Sandler at Greater Marathon Bay, LLC | Dock Repair                   | Yes                                | 44-02323309-001 |
| Department of Environmental Protection  | Greater Marathon Bay Company, LLC    | Dock Repair                   | Yes                                | 44-02323313-001 |
| Army Corps of Engineers                 | Sandler/Greater Marathon Bay, LLC    | Dock Repair                   | Yes                                | 2004-6567       |
| South Florida Water Management District | Sandler/Greater Marathon Bay, LLC    | Paving and Drainage           | Yes                                | 040419-5        |
| Florida Keys Aquaduct Authority         | Sandler/Greater Marathon Bay, LLC    | Water and Sewer               | Yes                                | Tap Permit      |
| Department of Environmental Protection  | Sandler/Greater Marathon Bay, LLC    | Package Plant / Vacuum System | No - Pkg Plant Yes - Vacuum System |                 |
| City of Marathon                        | Sandler/Greater Marathon Bay, LLC    | Building Permits              | No - Submittal pending             |                 |

*Bruce Brock*  
JUL 06 2005

EXHIBIT D  
MARLIN BAY YACHT CLUB NEIGHBORHOOD PLAN

  
JUL 06 2005



Doc# 1528084  
 Bk# 2132 Pg# 202

*Paul Brock*  
 JUL 06 2005

NEIGHBORHOOD PLAN  
 SCALE: AS SHOWN

MARLIN BAY YACHT CLUB

|             |                       |
|-------------|-----------------------|
| DATE        | 2010                  |
| PROJECT     | MARLIN BAY YACHT CLUB |
| OWNER       | ...                   |
| DESIGNER    | ...                   |
| SCALE       | AS SHOWN              |
| PROJECT NO. | A-00.011              |

*Paul Brock*  
 ARCHITECT  
 1000 ...  
 PHOENIX, AZ 85001  
 PH: 602.955.1234  
 FAX: 602.955.1235  
 EMAIL: paul@paulbrock.com  
 WEBSITE: www.paulbrock.com

NICHOLS  
 BRISCH  
 SANDOVAL



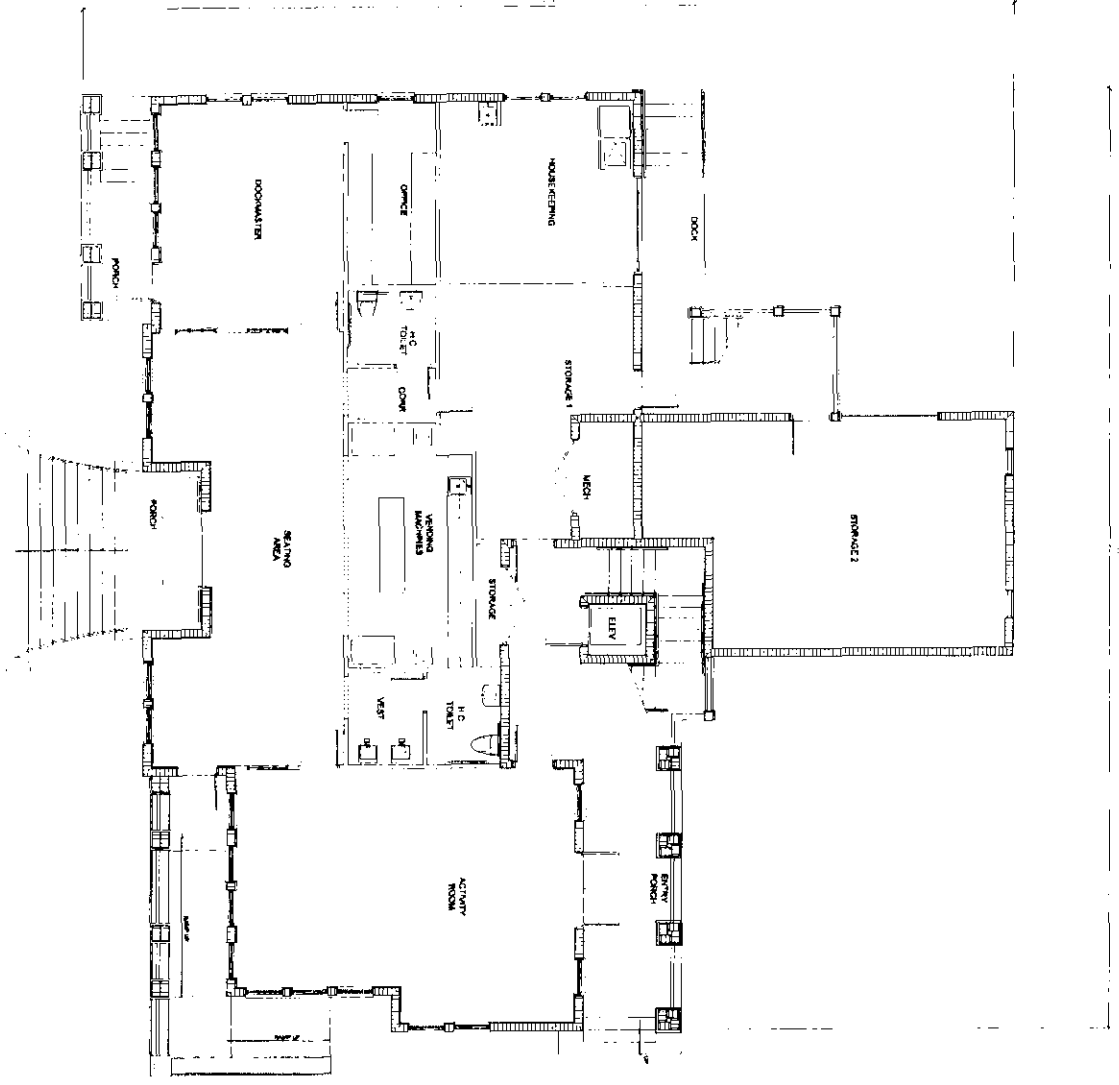
ATTACHMENTS INCORPORATED BY REFERENCE IN  
MARLIN BAY YACHT CLUB DEVELOPMENT AGREEMENT

ATTACHMENT 1

SCHEMATIC FOR RESIDENTIAL UNITS

A handwritten signature in black ink, appearing to read "Brent Brock", is located in the lower right quadrant of the page.

JUL 06 2005

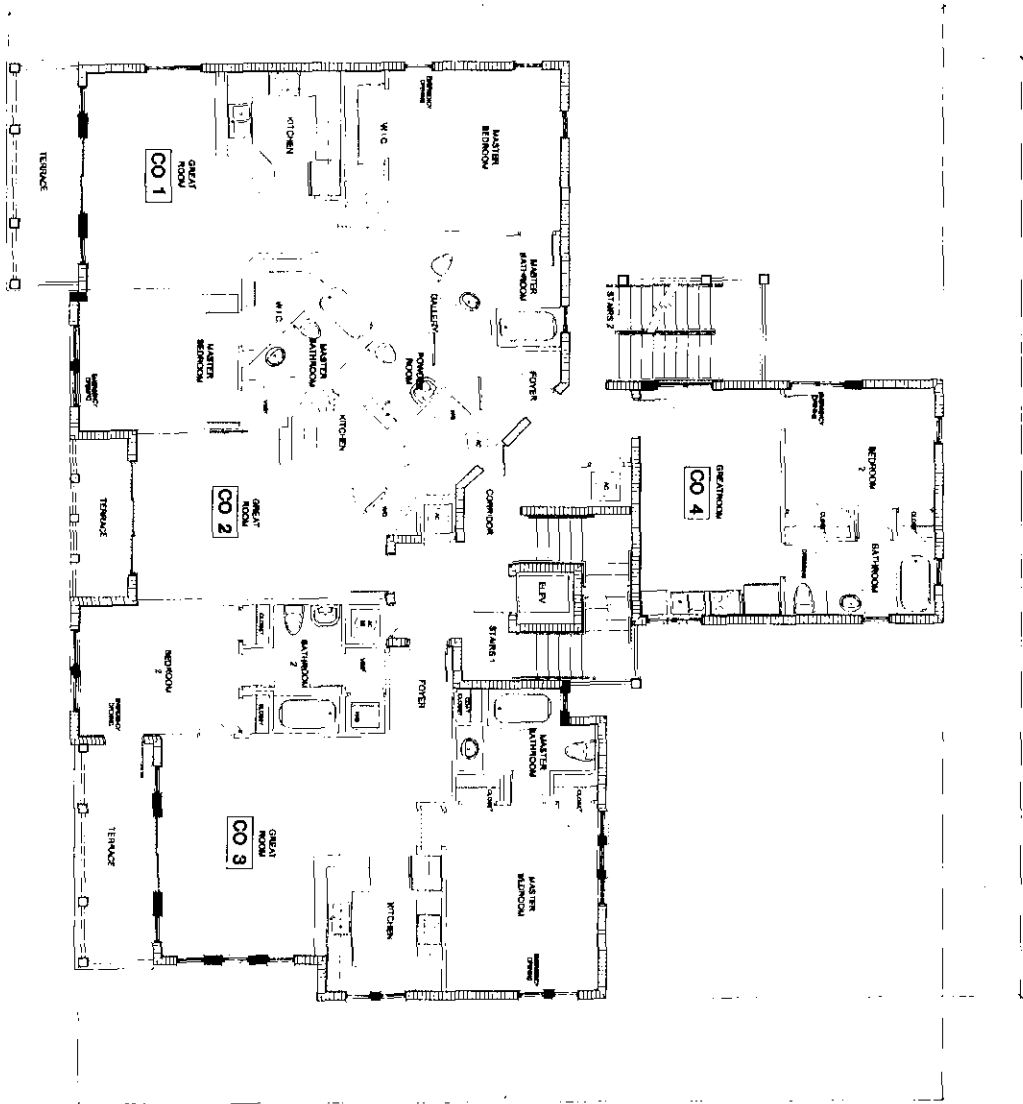


*David Brown*  
 JUL 06 2005

DOCKMASTER BUILDING  
 FIRST LEVEL FLOOR PLAN

| AREA BUILDINGS |                | TOTAL         |         |
|----------------|----------------|---------------|---------|
| NO.            | NAME           | AREA          | PERCENT |
| 1              | DOCKMASTER     | 1,150 SQ. FT. | 27.7%   |
| 2              | RECEPTION AREA | 1,150 SQ. FT. | 27.7%   |
| 3              | ACTIVITY ROOM  | 1,150 SQ. FT. | 27.7%   |
| 4              | STORAGE 1      | 1,150 SQ. FT. | 27.7%   |
| 5              | STORAGE 2      | 1,150 SQ. FT. | 27.7%   |
| TOTAL          |                | 4,150 SQ. FT. | 100.0%  |

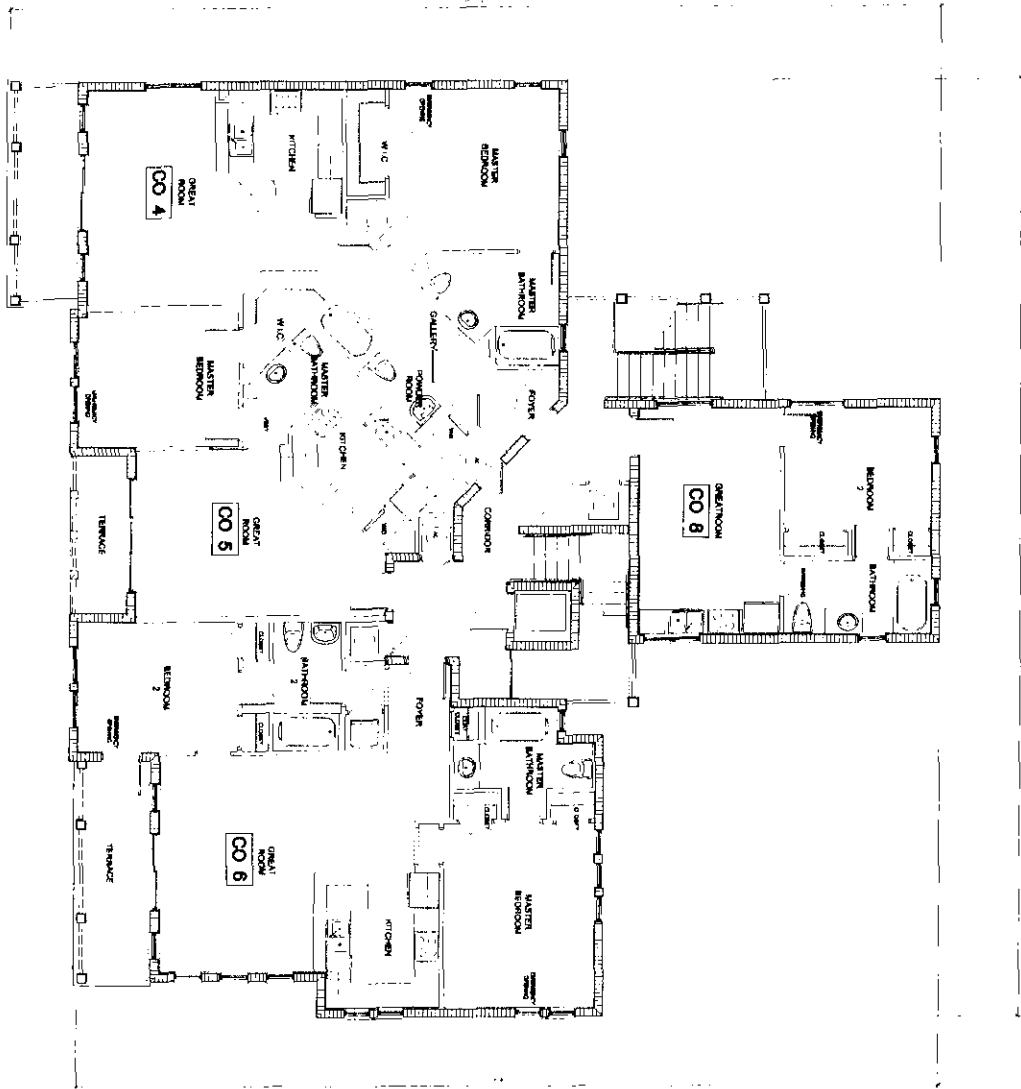




*Richard S. Sampson*  
 JUL 06 2005

DOCKMASTER BUILDING  
 SECOND LEVEL FLOOR PLAN  
 DATE: 7/6/05

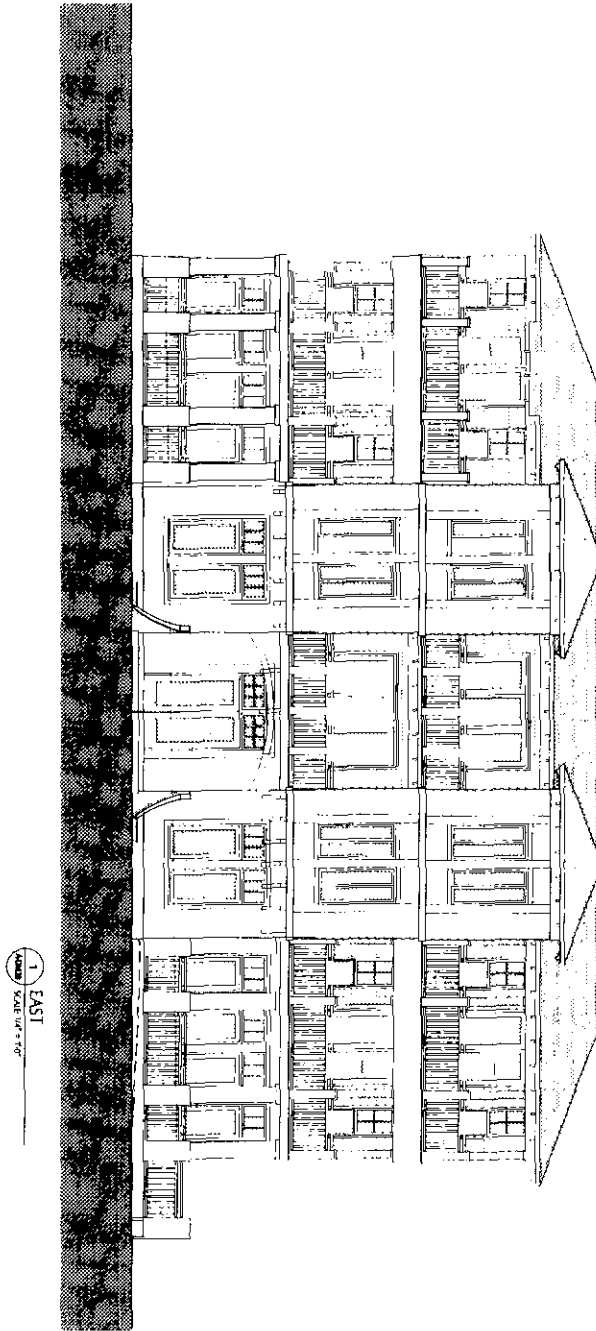




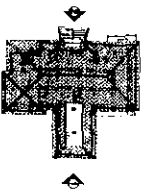
*James Brock*  
 JUL 06 2005

DOCKMASTER BUILDING  
 THIRD LEVEL FLOOR PLAN  
 DATE: 1/17/05

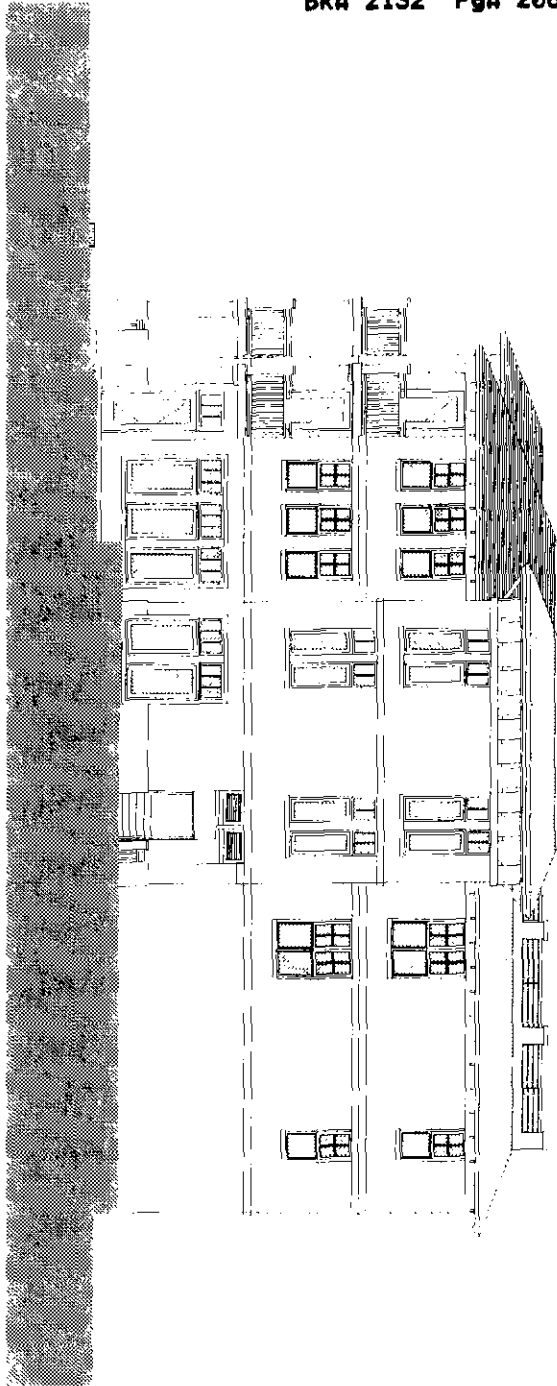




*Richard Brosch*  
JUL 10 2008



Doc# 1528084  
Bk# 2132 Pg# 208



↑ NORTH  
FOOT SCALE 1/4" = 1'-0"

*Bruce Brock*  
JUL 06 2005



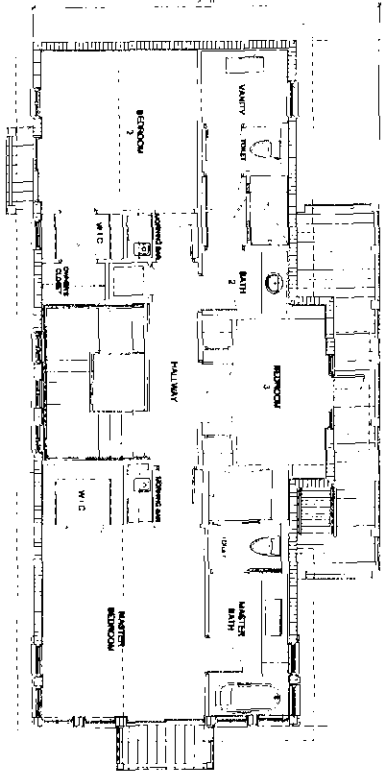
2010  
A-DMA/01

MARLIN BAY YACHT CLUB  
DOCKMASTER BUILDING

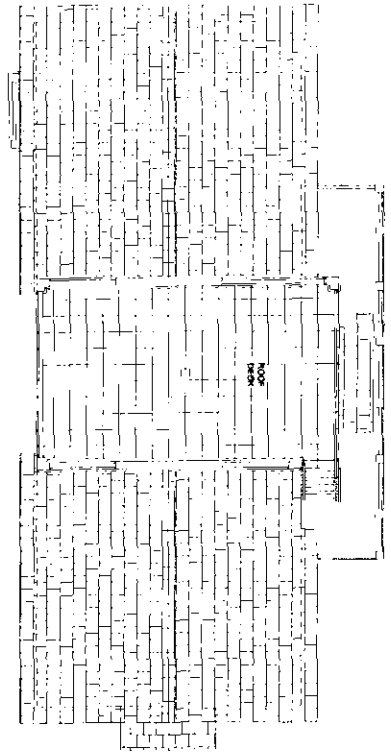
*Marlin Bay*  
NICHOLS  
BROSCH  
SANDOVAL  
70

*David Wood*  
JUL 05 2005

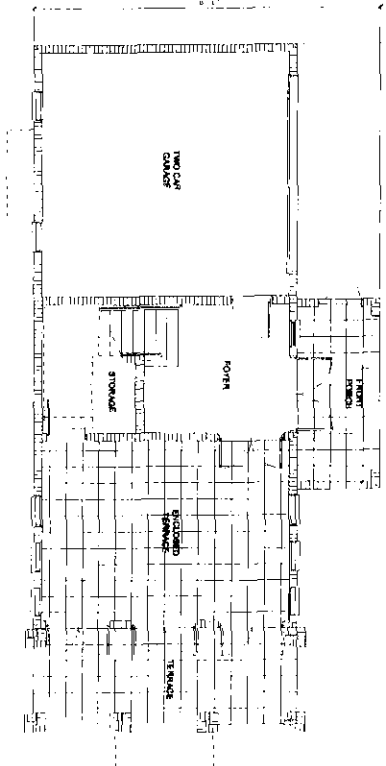
THIRD LEVEL  
FLOOR PLAN  
TAB 100-274



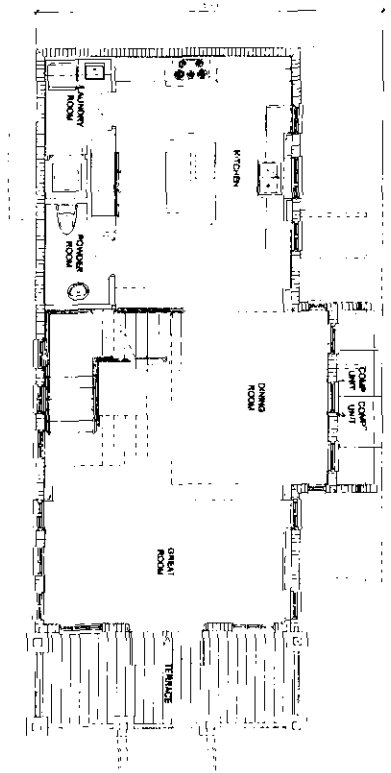
ROOF LEVEL  
FLOOR PLAN  
TAB 100-274



FIRST LEVEL  
FLOOR PLAN  
TAB 100-154



SECOND LEVEL  
FLOOR PLAN  
TAB 100-154



| ANALYSIS/NOTES |             |          |         |          |        |          |         |          |       |
|----------------|-------------|----------|---------|----------|--------|----------|---------|----------|-------|
| NO.            | DESCRIPTION | AREA     | PERCENT | OPEN     | NO. OF | GRADE    | STORAGE | DATE     | TOTAL |
| 1              | FLOOR PLAN  | 1,182 SF | 20.1%   | 217 SF   | 18.3%  | 448 SF   | 7.7%    | 1,847 SF | 35.8% |
| 2              | ROOF LEVEL  | 1,182 SF | 20.1%   | 217 SF   | 18.3%  | 448 SF   | 7.7%    | 1,847 SF | 35.8% |
| TOTAL          |             | 5,849 SF | 100%    | 1,182 SF | 20.1%  | 1,182 SF | 20.1%   | 5,849 SF | 100%  |

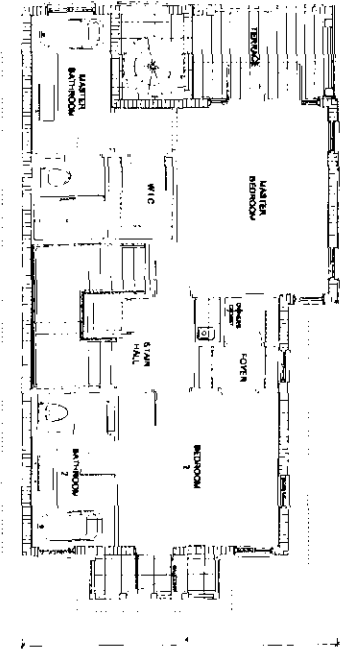
FLOOR PLANS / ROOF PLAN

MARLIN BAY YACHT CLUB  
UNIT A

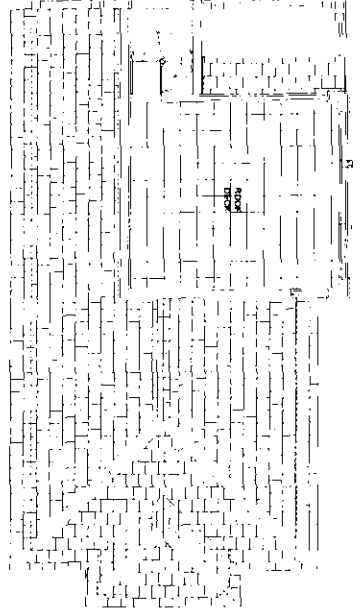
*Marlin Bay*  
NICHOLS  
BROSCH  
SANDOVAL  
ARCHITECTS & ENGINEERS  
2710  
A-A-10

*Handwritten Signature*  
 JUL 08 2005

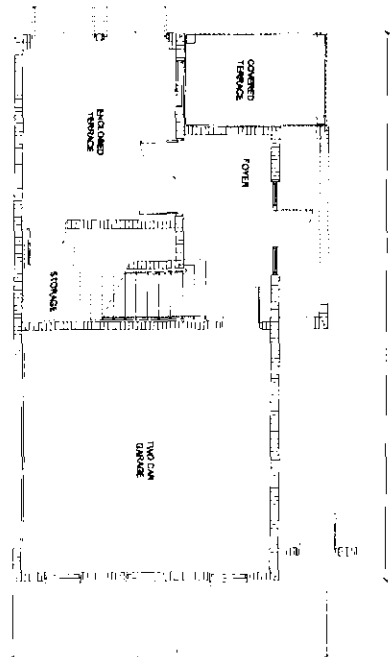
THIRD LEVEL  
 FLOOR PLAN  
 A-C2-3



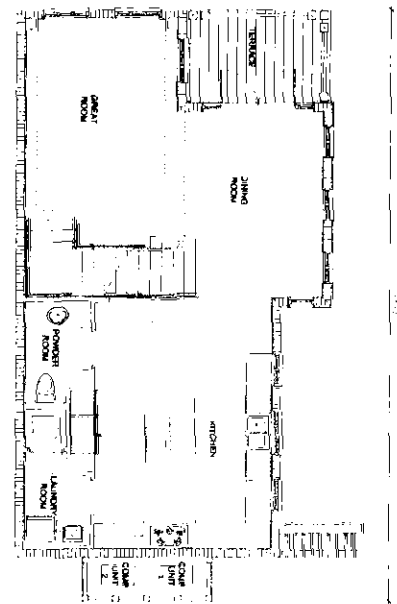
ROOF LEVEL  
 FLOOR PLAN  
 A-C2-4



FIRST LEVEL  
 FLOOR PLAN  
 A-C2-1



SECOND LEVEL  
 FLOOR PLAN  
 A-C2-2



| AREA DESCRIPTION |     | NO. | AREA | FINISHED | OPEN | ROOF | COVERED | STORAGE | NET | TOTAL |
|------------------|-----|-----|------|----------|------|------|---------|---------|-----|-------|
| W/ LEVEL         | 111 | 211 | 132  | 144      | 72   | 28   |         |         | 186 | 186   |
| 2nd LEVEL        | 98  | 171 | 144  | 72       | 28   |      |         |         | 144 | 144   |
| ROOF LEVEL       | 98  | 171 | 144  | 72       | 28   |      |         |         | 144 | 144   |
| TOTALS           | 208 | 211 | 414  | 222      | 144  | 56   |         |         | 830 | 1430  |

ZONE: 16, 20

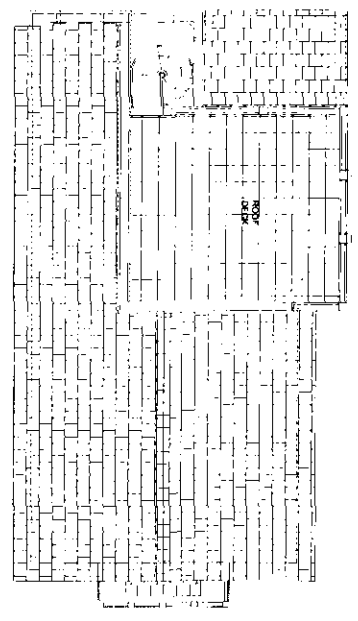
FLOOR PLANS / ROOF PLAN



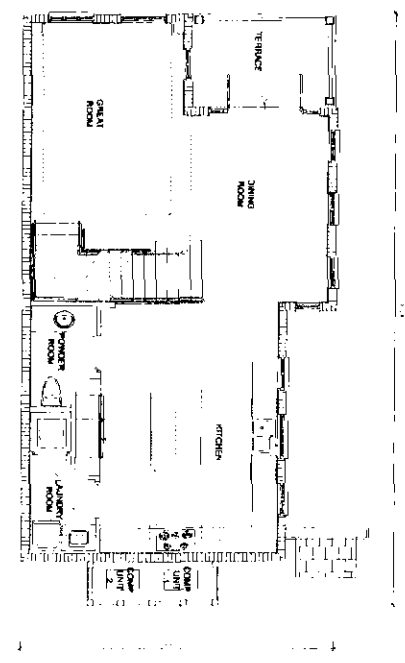
JUL 01 1985

*Bruce Brook*

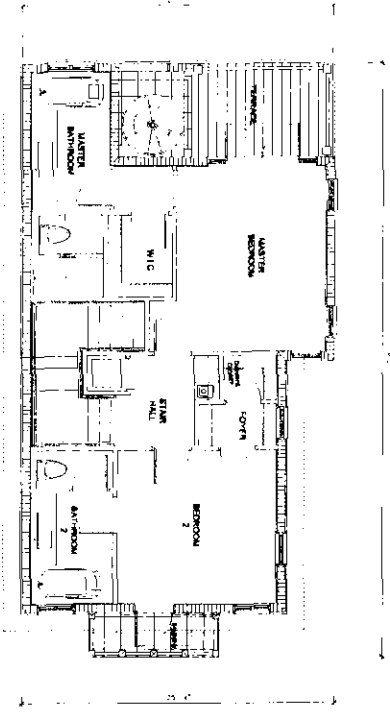
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BK# 2132 P# 211



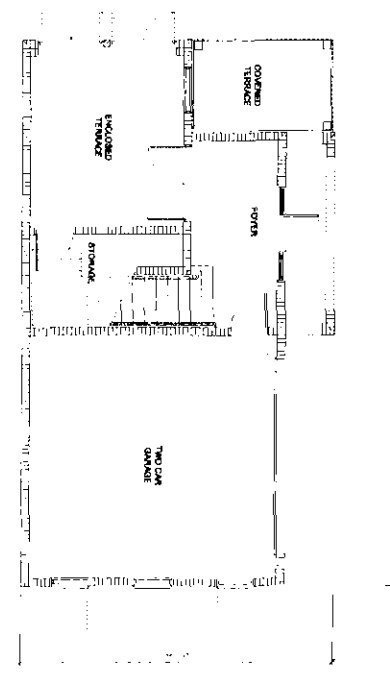
ROOF LEVEL  
FLOOR PLAN  
ASB 101-137



SECOND LEVEL  
FLOOR PLAN  
ASB 101-137



THIRD LEVEL  
FLOOR PLAN  
ASB 101-137



FIRST LEVEL  
FLOOR PLAN  
ASB 101-137

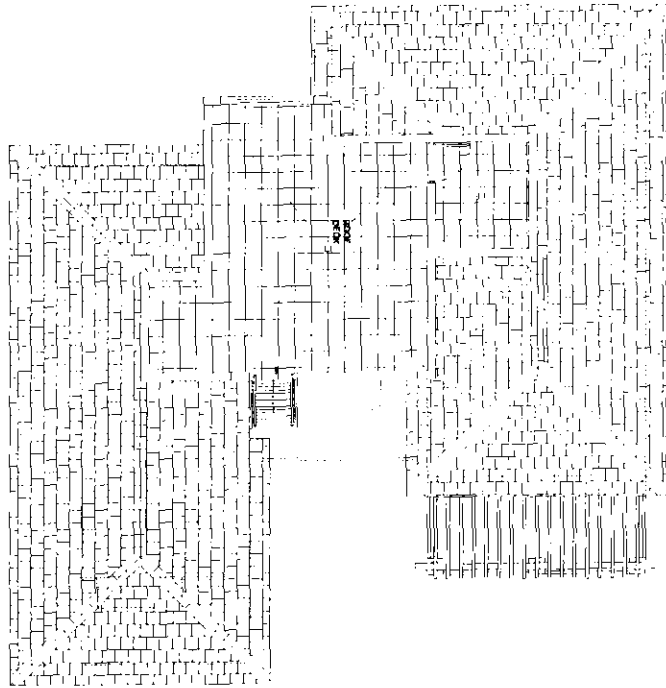
| AREAS/ROOMS |        |     |        |     |       |     |       |     |      |     |      |
|-------------|--------|-----|--------|-----|-------|-----|-------|-----|------|-----|------|
| NO.         | AREA   | NO. | AREA   | NO. | AREA  | NO. | AREA  | NO. | AREA | NO. | AREA |
| 1           | 111.52 | 2   | 211.47 | 3   | 15.00 | 4   | 14.88 | 5   | 7.70 | 6   | 1.00 |
| 7           | 84.88  | 8   | 11.00  | 9   | 11.00 | 10  | 28.00 | 11  | 7.70 | 12  | 1.00 |
| 13          | 84.88  | 14  | 11.00  | 15  | 11.00 | 16  | 28.00 | 17  | 7.70 | 18  | 1.00 |
| 19          | 84.88  | 20  | 11.00  | 21  | 11.00 | 22  | 28.00 | 23  | 7.70 | 24  | 1.00 |
| 25          | 84.88  | 26  | 11.00  | 27  | 11.00 | 28  | 28.00 | 29  | 7.70 | 30  | 1.00 |
| 31          | 84.88  | 32  | 11.00  | 33  | 11.00 | 34  | 28.00 | 35  | 7.70 | 36  | 1.00 |
| 37          | 84.88  | 38  | 11.00  | 39  | 11.00 | 40  | 28.00 | 41  | 7.70 | 42  | 1.00 |
| 43          | 84.88  | 44  | 11.00  | 45  | 11.00 | 46  | 28.00 | 47  | 7.70 | 48  | 1.00 |
| 49          | 84.88  | 50  | 11.00  | 51  | 11.00 | 52  | 28.00 | 53  | 7.70 | 54  | 1.00 |
| 55          | 84.88  | 56  | 11.00  | 57  | 11.00 | 58  | 28.00 | 59  | 7.70 | 60  | 1.00 |
| 61          | 84.88  | 62  | 11.00  | 63  | 11.00 | 64  | 28.00 | 65  | 7.70 | 66  | 1.00 |
| 67          | 84.88  | 68  | 11.00  | 69  | 11.00 | 70  | 28.00 | 71  | 7.70 | 72  | 1.00 |
| 73          | 84.88  | 74  | 11.00  | 75  | 11.00 | 76  | 28.00 | 77  | 7.70 | 78  | 1.00 |
| 79          | 84.88  | 80  | 11.00  | 81  | 11.00 | 82  | 28.00 | 83  | 7.70 | 84  | 1.00 |
| 85          | 84.88  | 86  | 11.00  | 87  | 11.00 | 88  | 28.00 | 89  | 7.70 | 90  | 1.00 |
| 91          | 84.88  | 92  | 11.00  | 93  | 11.00 | 94  | 28.00 | 95  | 7.70 | 96  | 1.00 |
| 97          | 84.88  | 98  | 11.00  | 99  | 11.00 | 100 | 28.00 | 101 | 7.70 | 102 | 1.00 |
| 103         | 84.88  | 104 | 11.00  | 105 | 11.00 | 106 | 28.00 | 107 | 7.70 | 108 | 1.00 |
| 109         | 84.88  | 110 | 11.00  | 111 | 11.00 | 112 | 28.00 | 113 | 7.70 | 114 | 1.00 |
| 115         | 84.88  | 116 | 11.00  | 117 | 11.00 | 118 | 28.00 | 119 | 7.70 | 120 | 1.00 |
| 121         | 84.88  | 122 | 11.00  | 123 | 11.00 | 124 | 28.00 | 125 | 7.70 | 126 | 1.00 |
| 127         | 84.88  | 128 | 11.00  | 129 | 11.00 | 130 | 28.00 | 131 | 7.70 | 132 | 1.00 |
| 133         | 84.88  | 134 | 11.00  | 135 | 11.00 | 136 | 28.00 | 137 | 7.70 | 138 | 1.00 |
| 139         | 84.88  | 140 | 11.00  | 141 | 11.00 | 142 | 28.00 | 143 | 7.70 | 144 | 1.00 |
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| 157         | 84.88  | 158 | 11.00  | 159 | 11.00 | 160 | 28.00 | 161 | 7.70 | 162 | 1.00 |
| 163         | 84.88  | 164 | 11.00  | 165 | 11.00 | 166 | 28.00 | 167 | 7.70 | 168 | 1.00 |
| 169         | 84.88  | 170 | 11.00  | 171 | 11.00 | 172 | 28.00 | 173 | 7.70 | 174 | 1.00 |
| 175         | 84.88  | 176 | 11.00  | 177 | 11.00 | 178 | 28.00 | 179 | 7.70 | 180 | 1.00 |
| 181         | 84.88  | 182 | 11.00  | 183 | 11.00 | 184 | 28.00 | 185 | 7.70 | 186 | 1.00 |
| 187         | 84.88  | 188 | 11.00  | 189 | 11.00 | 190 | 28.00 | 191 | 7.70 | 192 | 1.00 |
| 193         | 84.88  | 194 | 11.00  | 195 | 11.00 | 196 | 28.00 | 197 | 7.70 | 198 | 1.00 |
| 199         | 84.88  | 200 | 11.00  | 201 | 11.00 | 202 | 28.00 | 203 | 7.70 | 204 | 1.00 |
| 205         | 84.88  | 206 | 11.00  | 207 | 11.00 | 208 | 28.00 | 209 | 7.70 | 210 | 1.00 |
| 211         | 84.88  | 212 | 11.00  | 213 | 11.00 | 214 | 28.00 | 215 | 7.70 | 216 | 1.00 |
| 217         | 84.88  | 218 | 11.00  | 219 | 11.00 | 220 | 28.00 | 221 | 7.70 | 222 | 1.00 |
| 223         | 84.88  | 224 | 11.00  | 225 | 11.00 | 226 | 28.00 | 227 | 7.70 | 228 | 1.00 |
| 229         | 84.88  | 230 | 11.00  | 231 | 11.00 | 232 | 28.00 | 233 | 7.70 | 234 | 1.00 |
| 235         | 84.88  | 236 | 11.00  | 237 | 11.00 | 238 | 28.00 | 239 | 7.70 | 240 | 1.00 |
| 241         | 84.88  | 242 | 11.00  | 243 | 11.00 | 244 | 28.00 | 245 | 7.70 | 246 | 1.00 |
| 247         | 84.88  | 248 | 11.00  | 249 | 11.00 | 250 | 28.00 | 251 | 7.70 | 252 | 1.00 |
| 253         | 84.88  | 254 | 11.00  | 255 | 11.00 | 256 | 28.00 | 257 | 7.70 | 258 | 1.00 |
| 259         | 84.88  | 260 | 11.00  | 261 | 11.00 | 262 | 28.00 | 263 | 7.70 | 264 | 1.00 |
| 265         | 84.88  | 266 | 11.00  | 267 | 11.00 | 268 | 28.00 | 269 | 7.70 | 270 | 1.00 |
| 271         | 84.88  | 272 | 11.00  | 273 | 11.00 | 274 | 28.00 | 275 | 7.70 | 276 | 1.00 |
| 277         | 84.88  | 278 | 11.00  | 279 | 11.00 | 280 | 28.00 | 281 | 7.70 | 282 | 1.00 |
| 283         | 84.88  | 284 | 11.00  | 285 | 11.00 | 286 | 28.00 | 287 | 7.70 | 288 | 1.00 |
| 289         | 84.88  | 290 | 11.00  | 291 | 11.00 | 292 | 28.00 | 293 | 7.70 | 294 | 1.00 |
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| 325         | 84.88  | 326 | 11.00  | 327 | 11.00 | 328 | 28.00 | 329 | 7.70 | 330 | 1.00 |
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| 403         | 84.88  | 404 | 11.00  | 405 | 11.00 | 406 | 28.00 | 407 | 7.70 | 408 | 1.00 |
| 409         | 84.88  | 410 | 11.00  | 411 | 11.00 | 412 | 28.00 | 413 | 7.70 | 414 | 1.00 |
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| 529         | 84.88  | 530 | 11.00  | 531 | 11.00 | 532 | 28.00 | 533 | 7.70 | 534 | 1.00 |
| 535         | 84.88  | 536 | 11.00  | 537 | 11.00 | 538 | 28.00 | 539 | 7.70 | 540 | 1.00 |
| 541         | 84.88  | 542 | 11.00  | 543 | 11.00 | 544 | 28.00 | 545 | 7.70 | 546 | 1.00 |
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| 559         | 84.88  | 560 | 11.00  | 561 | 11.00 | 562 | 28.00 | 563 | 7.70 | 564 | 1.00 |
|             |        |     |        |     |       |     |       |     |      |     |      |



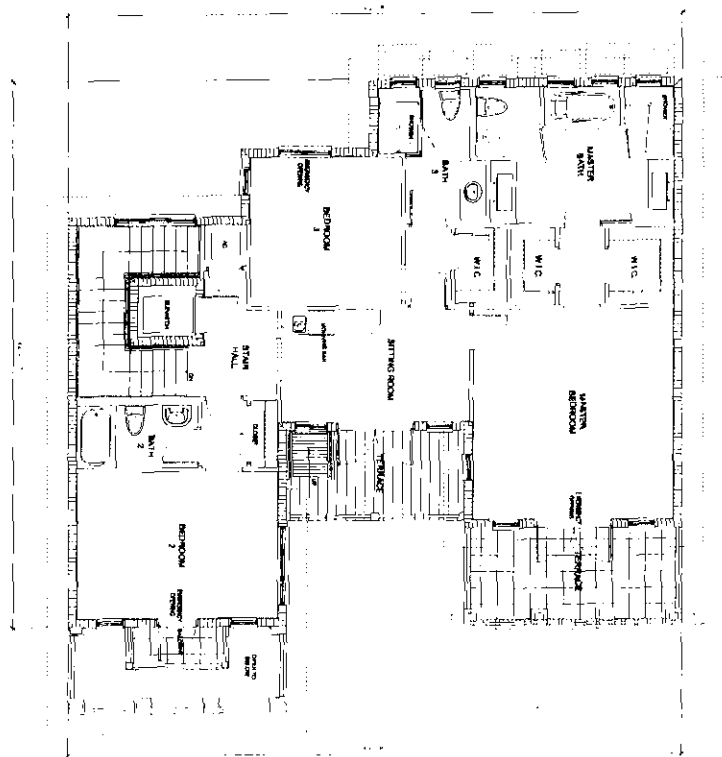
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JUL 06 2005

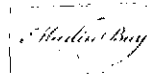
ROOF LEVEL  
 FLOOR PLAN  
 ADP 10/10/04



THIRD LEVEL  
 FLOOR PLAN  
 ADP 10/10/04



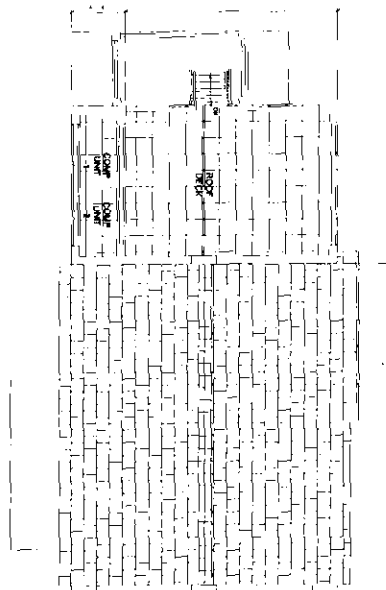
MARLIN BAY YACHT CLUB  
 UNIT D



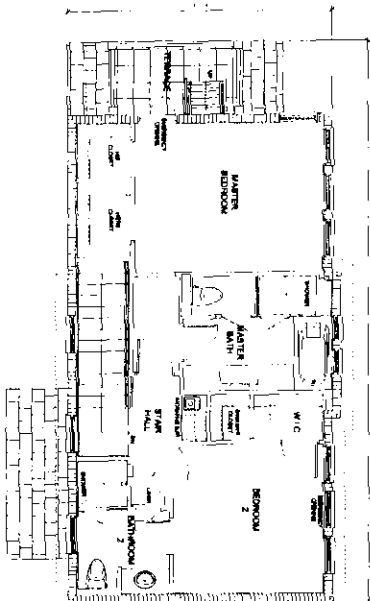
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JUL 06 2005

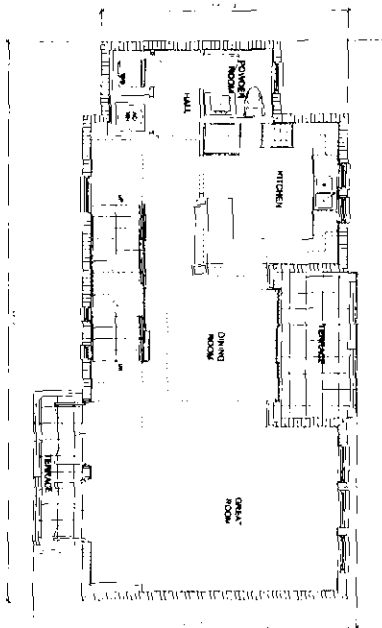
Doc# 1528084  
BKH 2132 Pgh 214



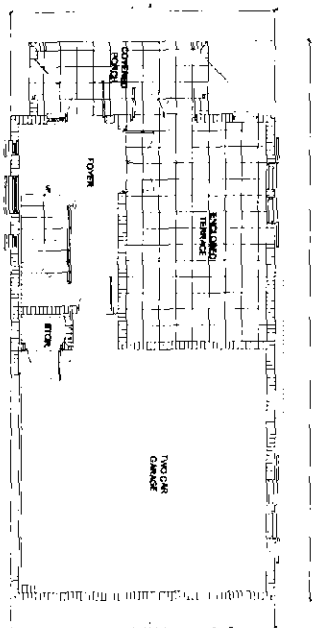
ROOF LEVEL  
FLOOR PLAN  
A-E10 SCALE 1/8" = 1'-0"



THIRD LEVEL  
FLOOR PLAN  
A-E10 SCALE 1/8" = 1'-0"



SECOND LEVEL  
FLOOR PLAN  
A-E10 SCALE 1/8" = 1'-0"



FIRST LEVEL  
FLOOR PLAN  
A-E10 SCALE 1/8" = 1'-0"

| AREA DESCRIPTION | NO. | NO. OF | AREA | NO. OF | NO. OF | NO. OF | NO. OF | NO. OF | NO. OF | NO. OF |
|------------------|-----|--------|------|--------|--------|--------|--------|--------|--------|--------|
|                  |     |        |      |        |        |        |        |        |        |        |
| 6.100            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.101            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.102            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.103            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.104            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.105            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.106            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.107            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.108            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.109            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.110            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.111            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.112            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.113            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.114            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.115            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.116            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.117            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.118            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.119            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.120            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.121            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.122            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.123            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.124            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.125            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.126            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.127            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.128            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.129            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.130            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.131            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.132            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.133            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.134            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.135            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.136            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.137            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.138            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.139            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.140            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.141            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.142            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.143            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.144            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.145            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.146            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.147            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.148            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.149            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.150            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.151            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.152            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.153            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.154            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.155            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.156            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.157            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.158            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.159            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.160            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.161            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.162            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.163            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.164            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.165            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.166            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.167            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.168            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.169            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.170            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.171            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.172            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.173            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.174            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.175            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.176            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.177            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.178            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.179            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.180            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.181            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.182            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.183            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.184            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.185            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.186            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.187            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.188            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.189            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.190            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.191            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.192            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.193            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.194            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.195            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.196            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.197            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.198            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.199            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |
| 6.200            | 11  | 21     | 11   | 11     | 11     | 11     | 11     | 11     | 11     | 11     |

FLOOR PLANS / ROOF PLAN

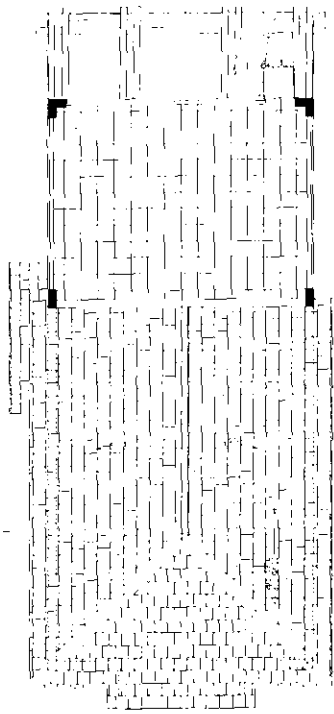
MARLIN BAY YACHT CLUB  
UNIT E



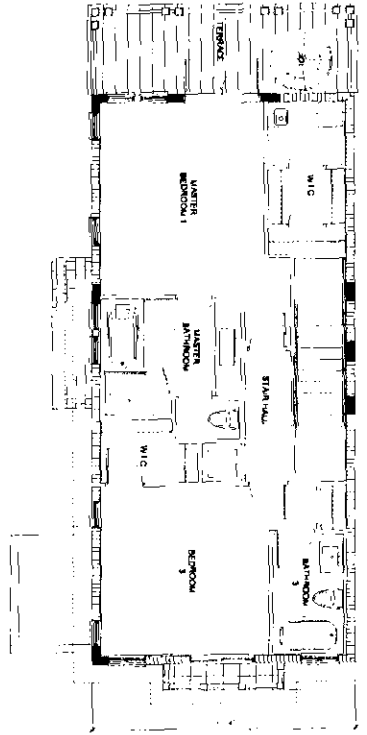
A-E10

210

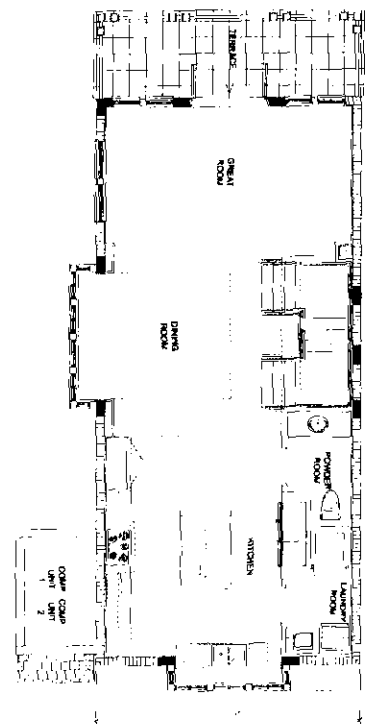
*Bruce Brock*  
 JUL 06 2003



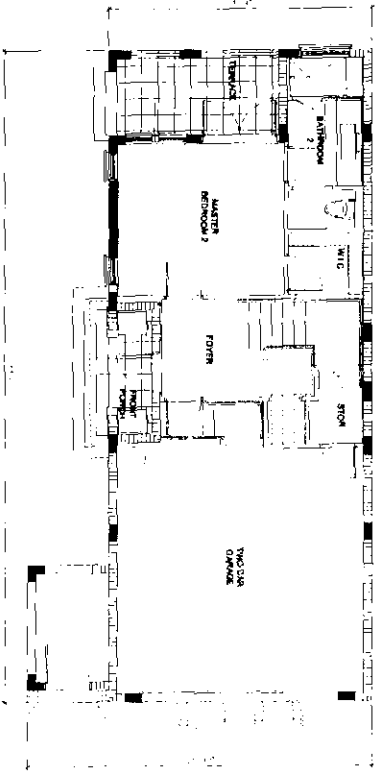
ROOF LEVEL  
 FLOOR PLAN  
 A-120



THIRD LEVEL  
 FLOOR PLAN  
 A-121



SECOND LEVEL  
 FLOOR PLAN  
 A-122



FIRST LEVEL  
 FLOOR PLAN  
 A-123

| AREA DESCRIPTION | NO. | AREA  | AREA  | NO. | AREA  | AREA  | TOTAL |
|------------------|-----|-------|-------|-----|-------|-------|-------|
| 1st FLOOR        | 1   | 1,100 | 1,100 | 1   | 1,100 | 1,100 | 1,100 |
| 2nd FLOOR        | 2   | 1,100 | 1,100 | 2   | 2,200 | 2,200 | 2,200 |
| 3rd FLOOR        | 3   | 1,100 | 1,100 | 3   | 3,300 | 3,300 | 3,300 |
| TOTAL            |     | 3,300 | 3,300 | 6   | 6,600 | 6,600 | 6,600 |

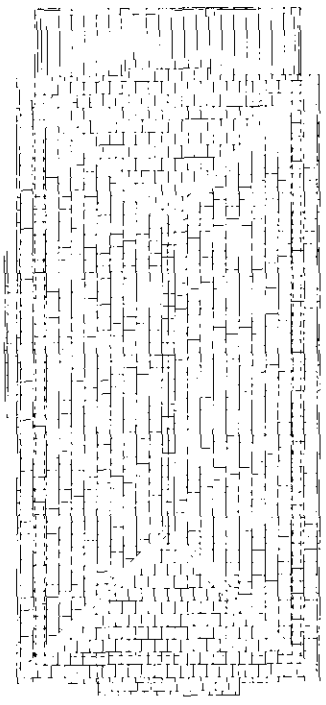
FLOOR PLANS / ROOF PLAN

MARLIN BAY YACHT CLUB  
 UNIT F-1a

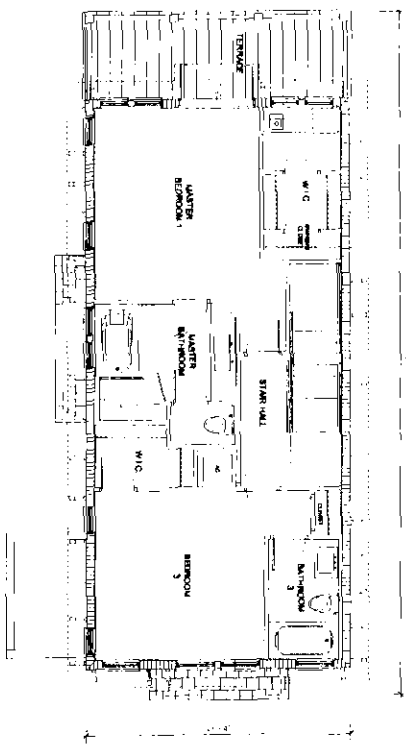


A-Fla.10  
 2310

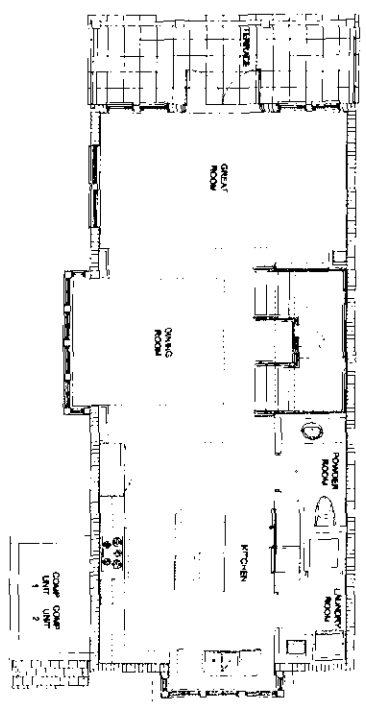
*Handwritten Signature*  
 JUL 06 2005



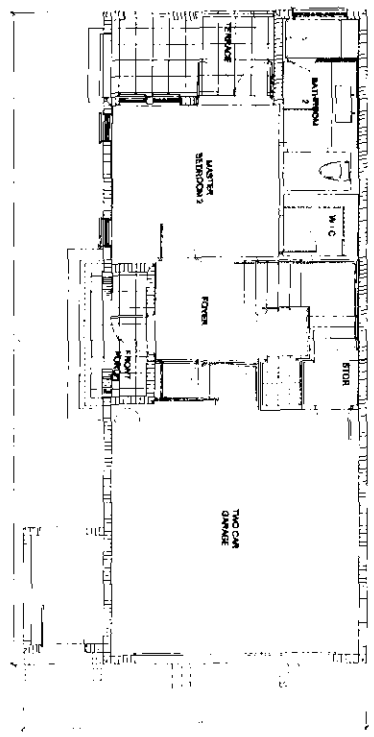
1  
 ROOF LEVEL  
 FLOOR PLAN  
 A-F1b3



3  
 THIRD LEVEL  
 FLOOR PLAN  
 A-F1b3



2  
 SECOND LEVEL  
 FLOOR PLAN  
 A-F1b3



1  
 FIRST LEVEL  
 FLOOR PLAN  
 A-F1b3

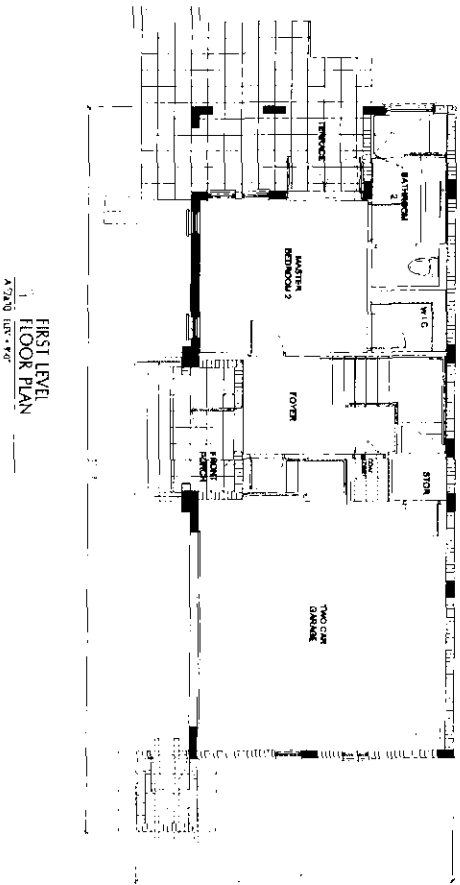
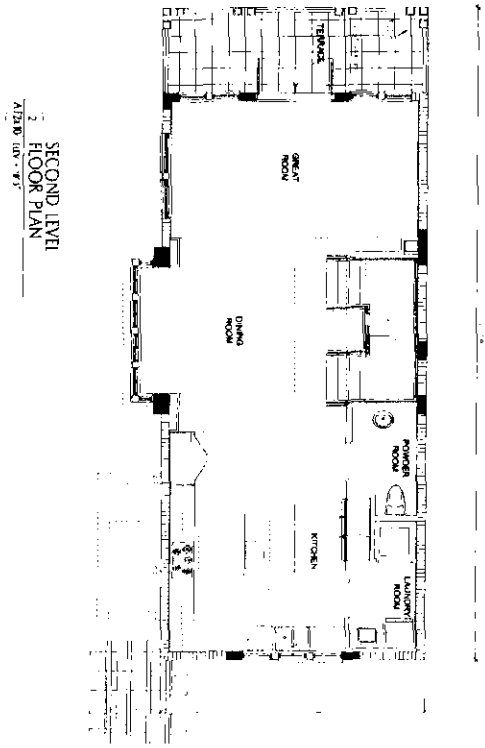
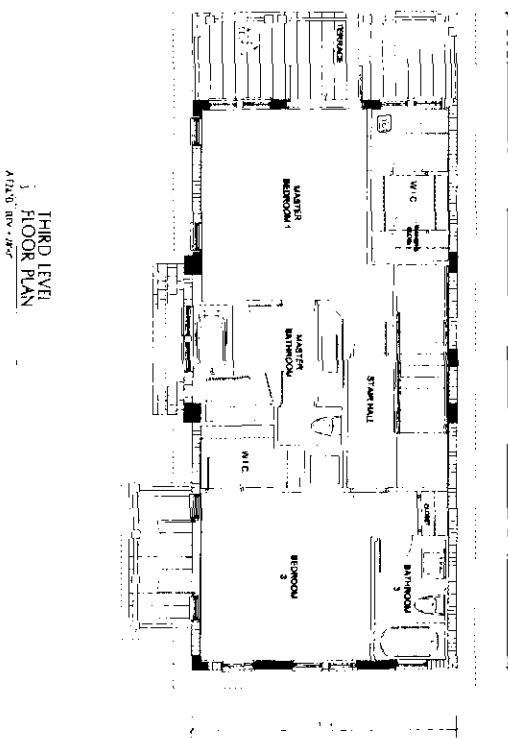
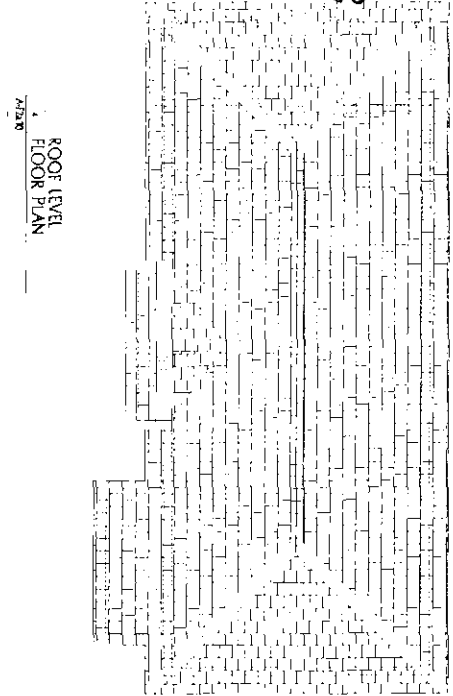
| DESCRIPTION | NO.  | AREA   | AREA  | AREA | AREA | AREA   | TOTAL    |
|-------------|------|--------|-------|------|------|--------|----------|
|             |      | NO.    | NO.   | NO.  | NO.  | NO.    |          |
| 1ST LEVEL   | 2018 | 141.35 | 48.9  | 27.4 |      | 217.65 | 1,785.51 |
| 2ND LEVEL   | 1418 | 141.35 | 48.9  | 27.4 |      | 217.65 | 1,785.51 |
| 3RD LEVEL   | 2185 | 48.9   | 48.9  | 27.4 |      | 125.2  | 1,138.51 |
| TOTAL       |      | 298.6  | 146.7 | 54.8 |      | 500.1  | 4,713.53 |

ZONE AE 80

FLOOR PLANS / ROOF PLAN

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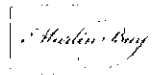
JUL 06 2005



| AREA DESCRIPTION |          | NO.    | AREA   | OPEN TERRACE | COVERED TERRACE | SPRINKLER | WATER    | TOTAL |
|------------------|----------|--------|--------|--------------|-----------------|-----------|----------|-------|
| 1st LEVEL        | 501 SF   | 142 SF | 481 SF | 22 SF        |                 |           | 1054 SF  |       |
| 2nd LEVEL        | 1,042 SF | 183 SF |        |              |                 |           | 1,225 SF |       |
| 3rd LEVEL        | 471 SF   | 177 SF |        |              |                 |           | 648 SF   |       |
| TOTALS           | 2,014 SF | 402 SF | 481 SF | 22 SF        |                 |           | 2,929 SF |       |

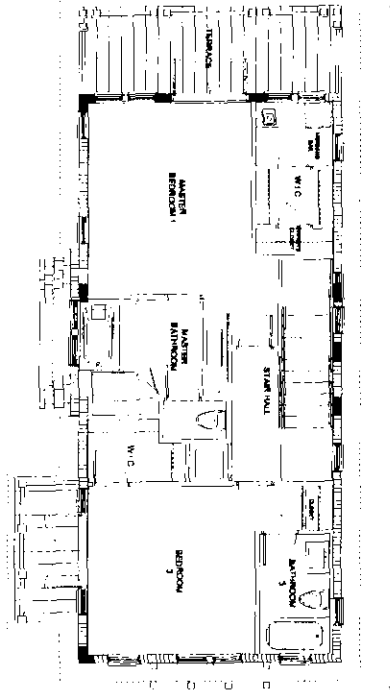
ZONE: AE S10

FLOOR PLANS / ROOF PLAN

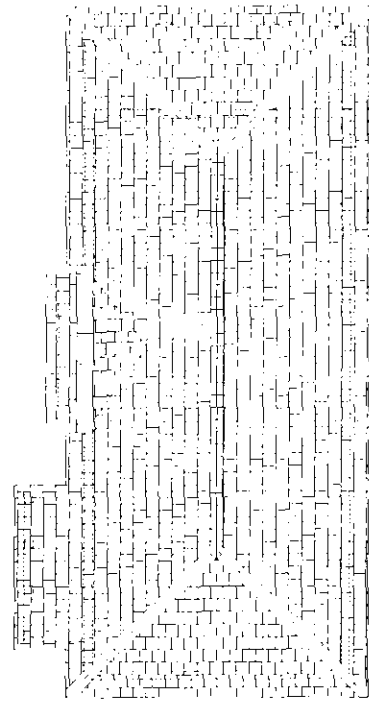


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 JUL 06 2005

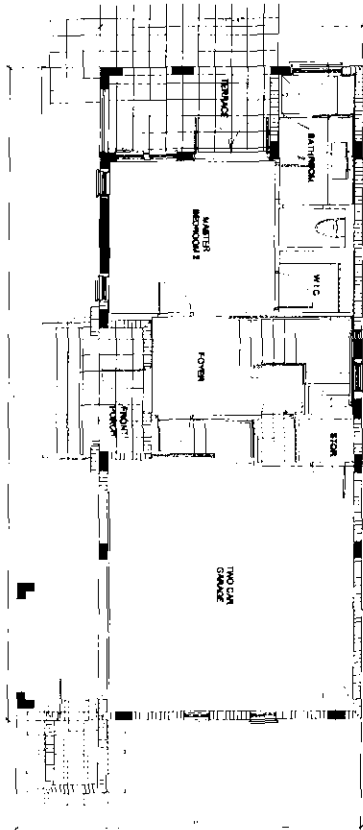
1  
 THIRD LEVEL  
 FLOOR PLAN  
 A718B DWG. 1-05



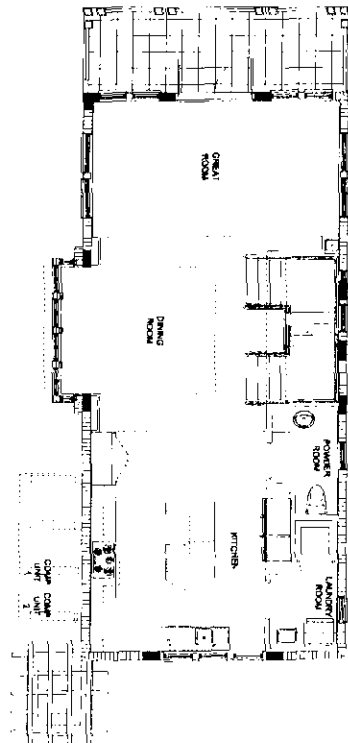
2  
 ROOF LEVEL  
 FLOOR PLAN  
 A718B DWG. 1-05



1  
 FIRST LEVEL  
 FLOOR PLAN  
 A718B DWG. 1-05



2  
 SECOND LEVEL  
 FLOOR PLAN  
 A718B DWG. 1-05



UNIT F-2B  
 FLOOR PLANS

| NET FINISHED AREA |              | TOTAL AREA |              | TOTAL AREA |              |
|-------------------|--------------|------------|--------------|------------|--------------|
| NO. LEVEL         | AREA SQ. FT. | NO. LEVEL  | AREA SQ. FT. | NO. LEVEL  | AREA SQ. FT. |
| 1ST LEVEL         | 2,873.28     | 1ST FL.    | 1,131.20     | 1ST FL.    | 1,131.20     |
| 2ND LEVEL         | 1,871.28     | 2ND FL.    | 1,871.28     | 2ND FL.    | 1,871.28     |
| 3RD LEVEL         | 817.40       | 3RD FL.    | 1,739.84     | 3RD FL.    | 1,739.84     |
| ROOF LEVEL        | 1,739.84     | ROOF       | 1,739.84     | ROOF       | 1,739.84     |
| TOTAL             | 7,301.80     | TOTAL      | 6,482.16     | TOTAL      | 6,482.16     |

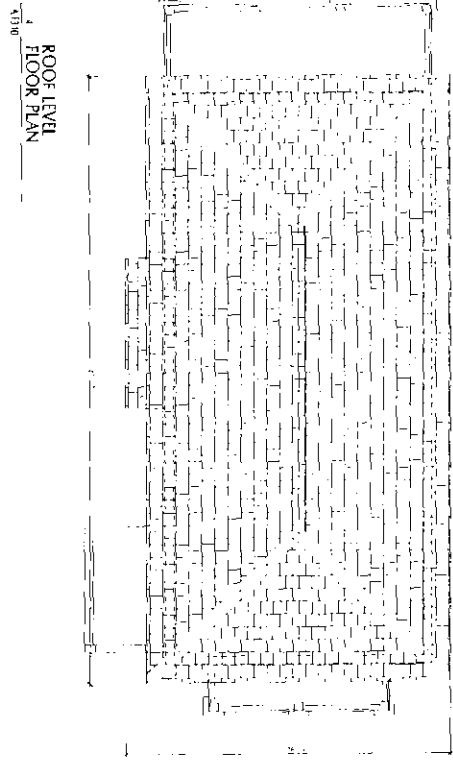
ZONE AF 80

MARLIN BAY YACHT CLUB  
 UNIT F-2B

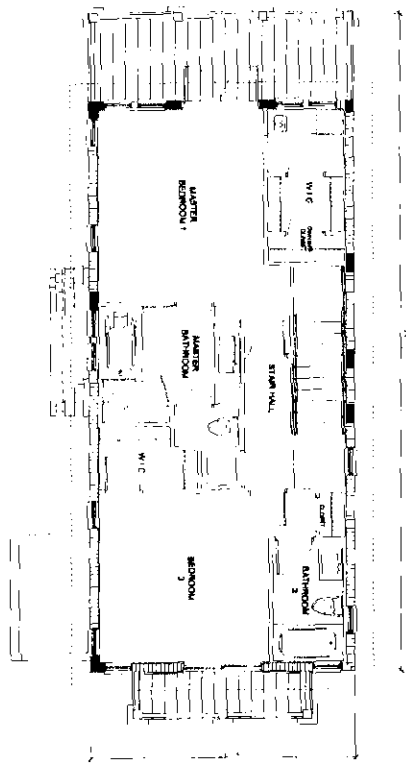
*Marlin Bay*  
 NICHOLS  
 BRODSKI  
 SANDOVAL  
 ARCHITECTS & ENGINEERS  
 70



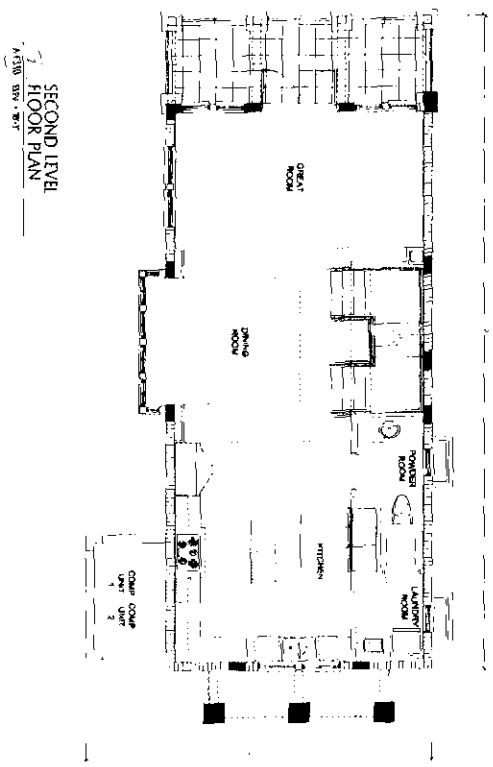
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 JUL 06 2005



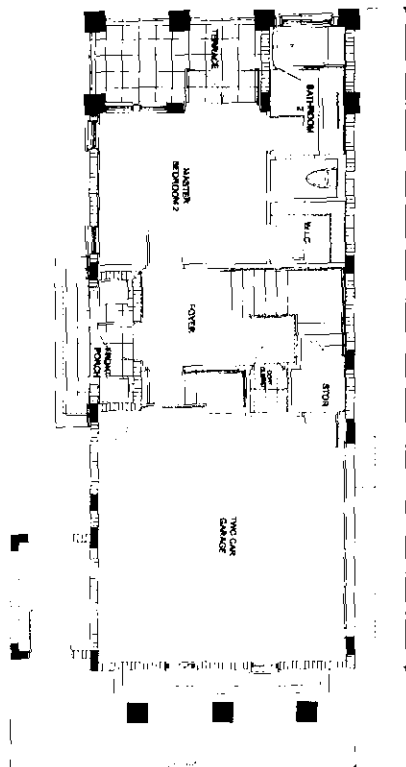
ROOF LEVEL  
 FLOOR PLAN  
 VIEW SW - 1/4"



THIRD LEVEL  
 FLOOR PLAN  
 VIEW SW - 1/4"



SECOND LEVEL  
 FLOOR PLAN  
 VIEW SW - 1/4"



FIRST LEVEL  
 FLOOR PLAN  
 VIEW SW - 1/4"

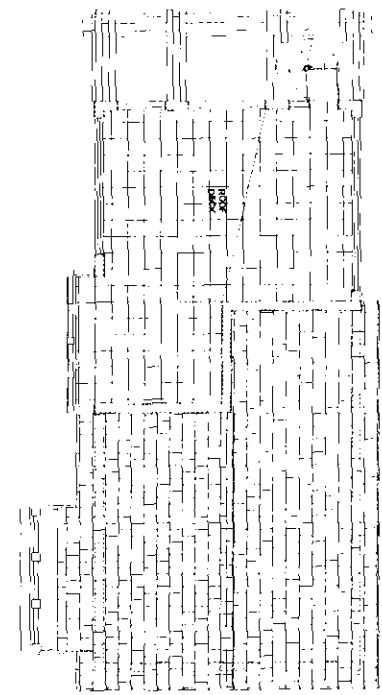
| AREA DESCRIPTION |         | AREA     | PERCENT | STANDARD | SCALE  | TOTALS   |
|------------------|---------|----------|---------|----------|--------|----------|
| 1                | 1st FLR | 1,124.00 | 100.00  | 100.00   | 100.00 | 1,124.00 |
| 2                | 2nd FLR | 1,124.00 | 100.00  | 100.00   | 100.00 | 1,124.00 |
| 3                | 3rd FLR | 1,124.00 | 100.00  | 100.00   | 100.00 | 1,124.00 |
| 4                | ROOF    | 1,124.00 | 100.00  | 100.00   | 100.00 | 1,124.00 |
| TOTAL            |         | 4,500.00 | 400.00  | 40.00    | 8.89   | 5,300.00 |

FLOOR PLANS / ROOF PLAN

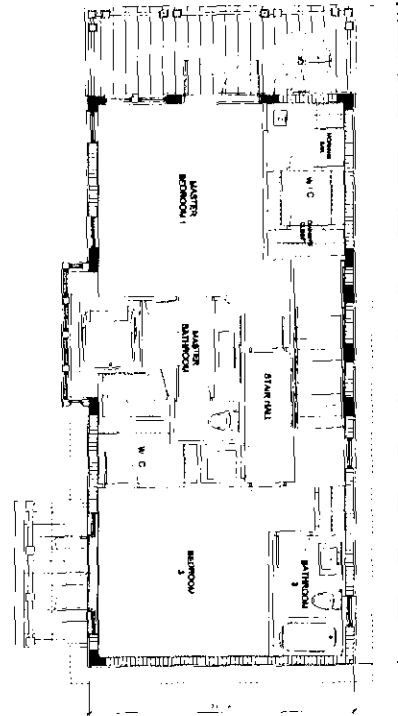
MARLIN BAY YACHT CLUB  
 UNIT F-3



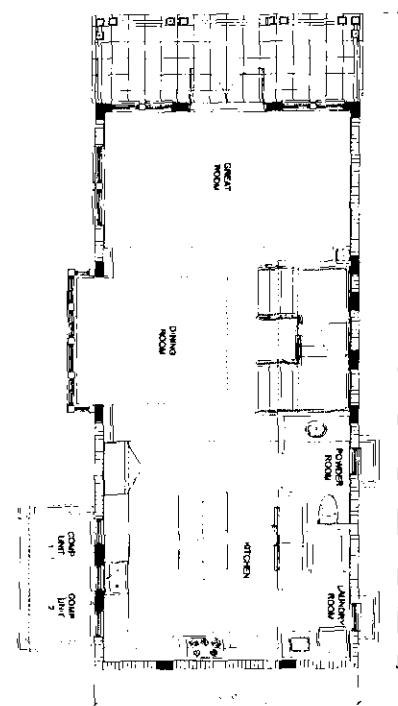
*Handwritten Signature*  
 JUL 06 2000



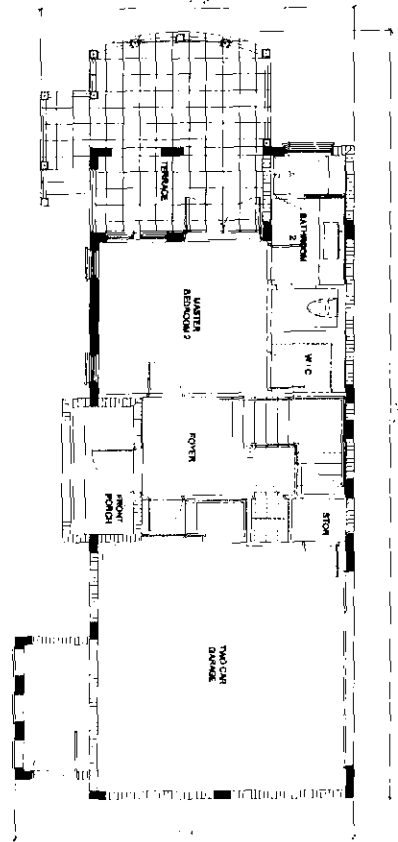
ROOF LEVEL  
 1 FLOOR PLAN  
 4/2/00



THIRD LEVEL  
 1 FLOOR PLAN  
 4/2/00



SECOND LEVEL  
 2 FLOOR PLAN  
 4/2/00



FIRST LEVEL  
 1 FLOOR PLAN  
 4/2/00

| NET BUILDING |         | AC    |         | SQ FT  |         | TOTAL  |         |
|--------------|---------|-------|---------|--------|---------|--------|---------|
| AREA         | PERCENT | AREA  | PERCENT | AREA   | PERCENT | AREA   | PERCENT |
| 1ST LEVEL    | 66.5%   | 14.5% | 3.2%    | 81.0%  | 17.7%   | 115.5% | 25.9%   |
| 2ND LEVEL    | 12.5%   | 2.8%  | 0.6%    | 15.3%  | 3.4%    | 27.8%  | 6.2%    |
| 3RD LEVEL    | 17.5%   | 3.9%  | 0.9%    | 21.4%  | 4.7%    | 179.5% | 40.1%   |
| TOTAL        | 96.5%   | 21.2% | 4.7%    | 211.2% | 47.0%   | 444.8% | 100.0%  |

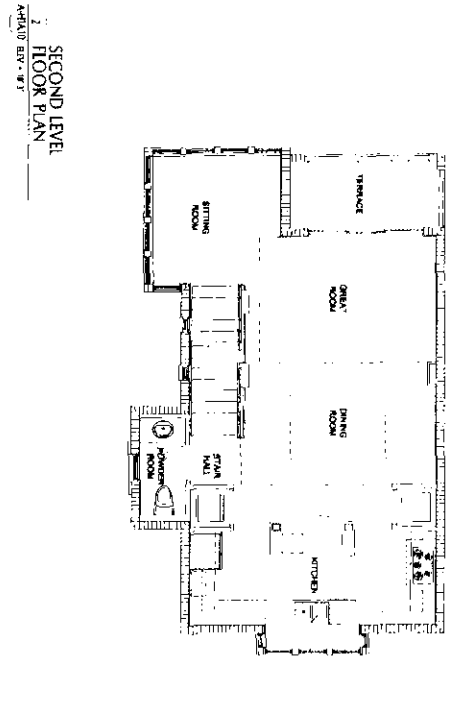
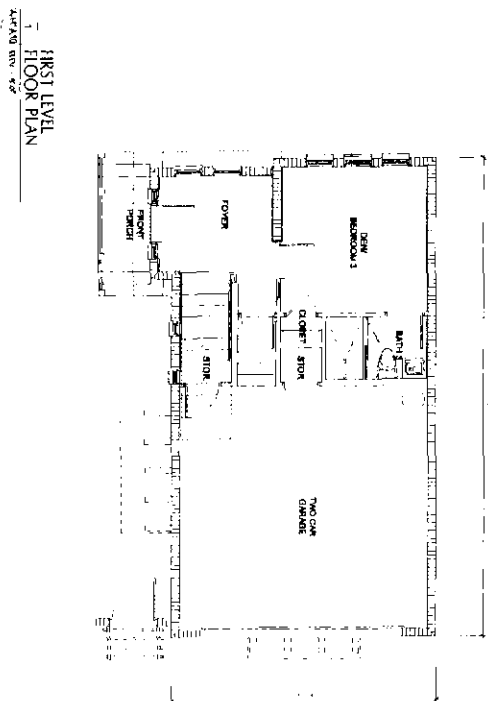
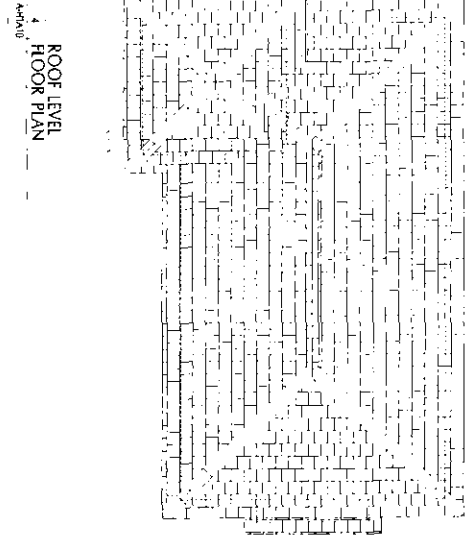
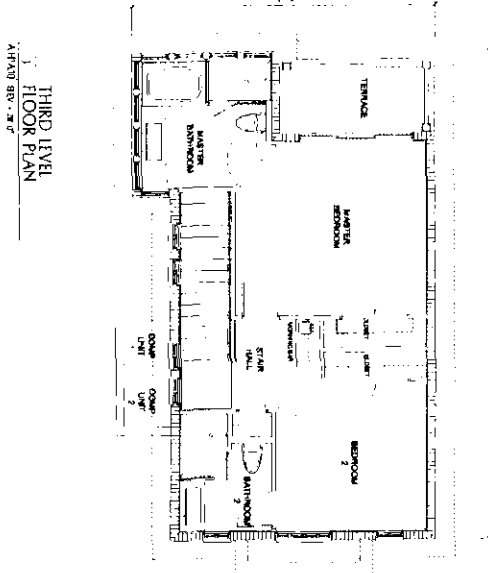
FLOOR PLANS / ROOF PLAN

MARLIN BAY YACHT CLUB  
 UNIT F-4



*Bruce Brook*

JUL 06 2005

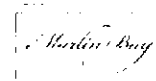


| AREA DESCRIPTION | NO.    | ONE   | GRADE  | ROOMS | SQ. FT. | TOTAL   |
|------------------|--------|-------|--------|-------|---------|---------|
| 1st FLR          | 272 SF | 34 SF | 448 SF | 11 SF | 765 SF  | 765 SF  |
| 2nd FLR          | 181 SF | 73 SF | 73 SF  | 73 SF | 427 SF  | 427 SF  |
| 3rd FLR          | 188 SF | 11 SF | 44 SF  | 11 SF | 254 SF  | 254 SF  |
| TOTAL            |        |       |        |       | 1446 SF | 1446 SF |

UNIT "H-1A" - FLOOR PLANS

ZONE AE S10

MARLIN BAY YACHT CLUB  
 UNIT "H-1A"

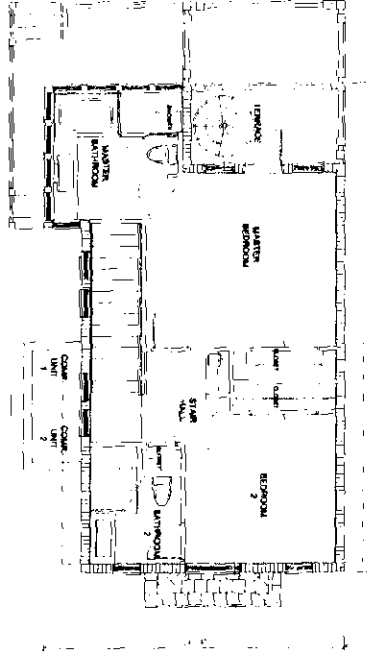


A-H-1A.10

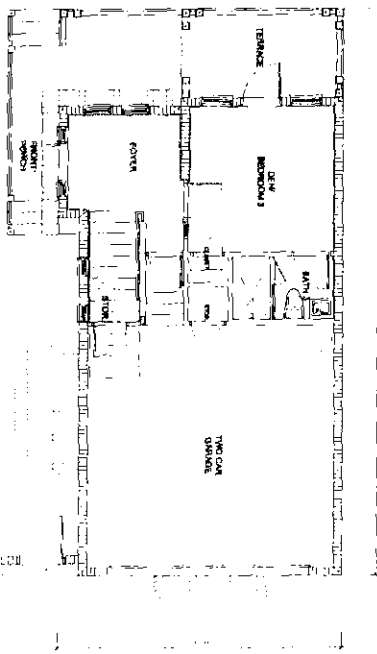
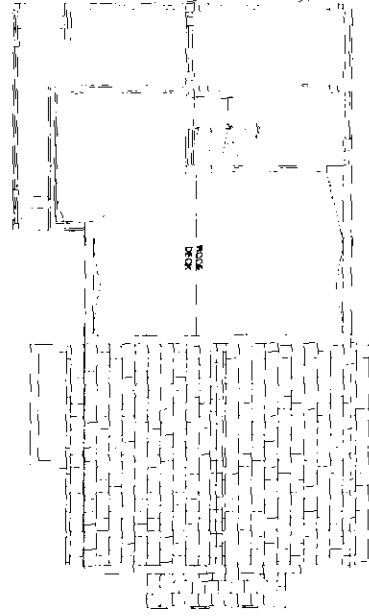


*Paul Brock*

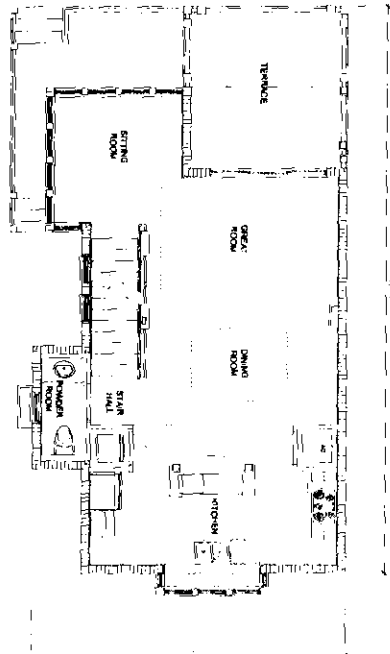
JUL 06 2000



ROOF LEVEL FLOOR PLAN  
 AREA: 1,000.00 SQ. FT.



SECOND LEVEL FLOOR PLAN  
 AREA: 817.00 SQ. FT.



| AREA         | NO. | AREA     | NO. | AREA     | NO. | TOTAL    |
|--------------|-----|----------|-----|----------|-----|----------|
| FIRST LEVEL  | 1   | 1,120.00 | 2   | 817.00   | 3   | 1,937.00 |
| SECOND LEVEL | 4   | 817.00   | 5   | 817.00   | 6   | 1,634.00 |
| THIRD LEVEL  | 7   | 817.00   | 8   | 817.00   | 9   | 1,634.00 |
| ROOF LEVEL   | 10  | 1,000.00 | 11  | 1,000.00 | 12  | 2,000.00 |
| TOTALS       |     | 3,774.00 |     | 3,774.00 |     | 7,548.00 |

FLOOR PLANS / ROOF PLAN

MARLIN BAY YACHT CLUB  
 UNIT H-2

*Marlin Bay*

NICHOLS  
 BRISCH  
 SANDOVAL  
 ARCHITECTS, P.C.



Sponsored by: Puto

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2015-81**

**Doc# 2044167  
Bk# 2759 Pg# 102**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AMENDING AN EXISTING DEVELOPMENT AGREEMENT DOCUMENTED AND RECORDED IN CITY OF MARATHON RESOLUTION 2005-87 FOR MARLIN BAY YACHT CLUB, PURSUANT TO CHAPTER 102, ARTICLE 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED "DEVELOPMENT AGREEMENT" IN ORDER TO AMEND THE DURATION OF THE AGREEMENT SET FORTH IN SECTION C. 2. A. & b. OF THE AGREEMENT; FOR PROPERTY WHICH IS LEGALLY DESCRIBED AS BK 6, LOTS 1 THROUGH 5 AND THE N 100 FEET OF THE SOUT 430 FEET OF LOT 6 AND ADJACENT FILLED BAY BOTTOM, MARATHON BEACH SUBDIVISION, HAVING REAL ESTATE NUMBER 0000337010-000000. NEAREST MILE MARKER 49.**

**WHEREAS**, by Resolution 2008-087, the City Council of the City of Marathon, Florida (the "City") approved a Development Agreement (the "Agreement"), for Marlin Bay Yacht Club ("Owner"), a copy of which is attached as Exhibit "A", and

**WHEREAS**, Section C. 2. A. & b. of the Agreement provides that the Agreement shall remain in effect for ten (10) years from its effective date with an option to extend the Agreement; and

**WHEREAS**, Section C. 14. B. provides for renewal of the Agreement after legal public notice and two (2) public hearings;

**WHEREAS**, the Owner is requesting an amendment to said section to allow an option for one (1) year,

**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 Development Agreement is amended to allow for a one (1) year extension with the option for two (2) additional one (1) year extensions at the discretion of the City Council pursuant to the Terms of the Agreement.

Section 3. The renewal of this Agreement is further met as the applicant has provided the City with a check in the amount of \$750,000 fulfilling requirements of the original Development Agreement pursuant to provision iii of Section C. 5. p.

Section 4. This resolution shall take effect immediately upon its review and approval by the Department of Economic Opportunity (DEO).

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 11<sup>th</sup> DAY OF AUGUST, 2015.


THE CITY OF MARATHON, FLORIDA

  
Chris Bull, Mayor

Doc# 2044167  
Bk# 2759 Pg# 103

AYES: Zieg, Keating, Senmartin, Bull  
NOES: None  
ABSENT: Kelly  
ABSTAIN: None

ATTEST:

  
Diane Clavier  
City Clerk

(City Seal)

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

  
Dirk M. Smits, City Attorney

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2016-65**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A SECOND TIME EXTENSION OF FIVE YEARS FOR MARLIN BAY YACHT CLUB AS PROVIDED IN AN EXISTING DEVELOPMENT AGREEMENT DOCUMENTED AND RECORDED IN CITY OF MARATHON RESOLUTION 2005-87; AS FURTHER PROVIDED IN THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT RECORDED IN RESOLUTION 2015-081; AS ALLOWED PURSUANT TO CHAPTER 102, ARTICLE 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED "DEVELOPMENT AGREEMENT;" AND AS SET FORTH IN SECTION C. 2. A. & B. OF THE AGREEMENT; FOR PROPERTY WHICH IS LEGALLY DESCRIBED AS BK 6, LOTS 1 THROUGH 5 AND THE N 100 FEET OF THE SOUTH 430 FEET OF LOT 6 AND ADJACENT FILLED BAY BOTTOM, MARATHON BEACH SUBDIVISION, HAVING REAL ESTATE NUMBER 0000337010-000000. NEAREST MILE MARKER 49.**

**WHEREAS**, by Resolution 2005-87, the City Council of the City of Marathon, Florida (the "City") approved a Development Agreement (the "Agreement"), for Marlin Bay Yacht Club ("Marlin Bay"), a copy of which is attached as Exhibit "A", and

**WHEREAS**, Section C. 2. A. & b. of the Agreement provides that the Agreement shall remain in effect for ten (10) years from its effective date with an option to extend the Agreement; and

**WHEREAS**, Section C. 14. B. provides for renewal of the Agreement after legal public notice and two (2) public hearings;

**WHEREAS**, the City Council approved the first Amendment to the Development Agreement documented in Resolution 2015-081, allowing a one (1) year time extension and the option for two (2) additional one (1) year time extensions; and

**WHEREAS**, the Owner is requesting an amendment to the Development Agreement in consideration of Resolution 2015-081, to allow an option for a five (5) year extension,

**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 Development Agreement is amended to allow for a five (5) year extension pursuant to the Terms of the Agreement pursuant to Resolution 2015-081. The owner shall annually report to Council for review of the Development Agreement.

**Section 3.** This resolution shall take effect immediately upon its review and approval by the Department of Economic Opportunity (DEO).



PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON,  
FLORIDA, THIS 23<sup>rd</sup> DAY OF AUGUST, 2016.

THE CITY OF MARATHON, FLORIDA

  
\_\_\_\_\_  
Mark Senmartin, Mayor


AYES: Zieg, Coldiron, Bartus, Kelly, Senmartin  
NOES: None  
ABSENT: None  
ABSTAIN: None

ATTEST:

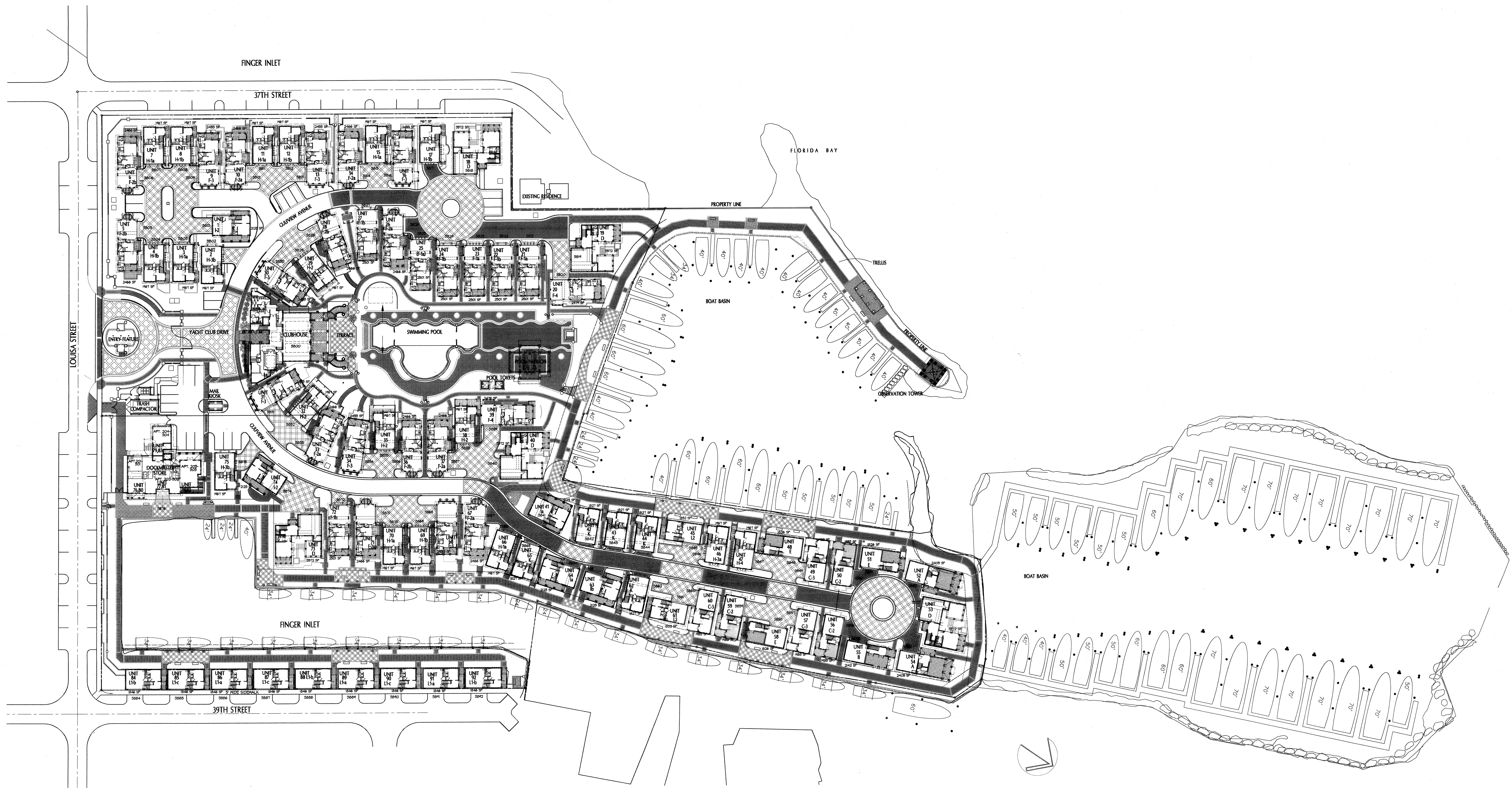
  
\_\_\_\_\_  
Diane Clavier  
City Clerk

(City Seal)

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

  
\_\_\_\_\_  
David Migut, City Attorney





OVERALL SITE PLAN

OVERALL SITE PLAN  
SCALE: 1"=30'