



COUNCIL AGENDA STATEMENT

Meeting Date: December 8, 2020

To: Honorable Mayor and Council Members

From: George Garrett, Planning Director / City Manager

Agenda Item: **Resolution 2020-92**, Approval Of A Request By Boat Works Investments, LLC (Compass Pointe) For A Revision To The Approved Development Agreement (Resolution 2006-185 & Associated Extensions, Resolutions 2016-32, 2017-46, & 2018-64), Pursuant To Chapter 102, Article 8 Of The City Of Marathon Land Development Regulations (“The Code”) Entitled “Development Agreement”, In Consideration Of A Recently Approved Conditional Use Permit (Resolution 2018-88) Involving Boat Works Investments, LLC And Tri-Star Affordable Development, LLC On Properties Located At And Adjacent To 39th Street Gulf And 747 Through 999 41st Street Gulf And 3905 Louisa Street, Which Are Legally Described As Part Of Block 2 & All Of Block 5, Lots 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18 & 19 And Filled Bay Bottom North Of And Adjacent To Marathon Beach Subdivision, Block 1, Lot 1 Of Lincoln Manor Subdivision, Key Vacca, Monroe County, Florida, Having Real Estate Numbers As Stated in the Resolution. Nearest Mile Marker 49.

RECOMMENDATION: Staff recommends APPROVAL of the revised (replacement) Development Agreement with the following revisions to Sections III, G. 1. And 2.:

- Permitted Uses; Approval of Conceptual Site, including Densities and Intensities
 - Up to 20 Market Rate Units
 - 15,000 square feet of commercial floor area (68,374 square feet available for transfer)
 - 34 wet slips

The Applicant must obtain and transfer eight (8) market rate residential allocations in excess of the twelve (12) units that the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR’s), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED DEVELOPMENT AGREEMENT AMENDMENT DOES NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.

- Exempt Dwelling Units and Commercial Floor Area under this Agreement.
 - 12 Market Rate Development Rights
 - 83,374 square feet of commercial floor area
 - 32 boat slips
 - 22 Transient
 - 10 Permanent

APPLICANT/OWNER: Boat Works Investment, LLC (Compass Pointe)

AGENT: Amedeo D’Ascanio

Part Of Block 2 And All Of Block 5, Lots 1, 2, 3, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18 & 19, Marathon Beach.

Nearest Mile Marker 48.5-49.

(See Figure 1 – Location Map)

REQUEST: Amendment to the Boat Works Investment, LLC Development Agreement to allow for the development of:

- Up to Twenty (20) market rate dwelling units
 - Twelve (12) existing Market Rate entitlements
 - Transfer of eight (8) permanent boat slips to the upland as Market Rate units
- A clubhouse/community center, swimming pool(s), and other accessory uses
- Up to 15,000 square feet of commercial space
- Thirty-four (34) wet boat slips

This proposed Development Agreement severs the relationship between Boat Works Investments LLC and AGPM Acquisitions LLC established most recently pursuant to Resolution 2018-88 and creates an independent Development Agreement for Keys Boat Works Investments, LLC replacing Resolution 2006-185 and subsequent extensions to that Development Agreement. **See the Proposed Replacement Development Agreement**

FUTURE LAND USE MAP DESIGNATION:

Current –Mixed Use (MU) & Residential High (RH)

ZONING MAP DESIGNATION:

Current –Mixed Use (MU) & Residential High (RH)

PROJECT SIZE: Approximately 214,853 square feet (4.93 acres).
4.03 Acres Upland / 0.90 Acres Submerged Land.

**Figure 1
Location Map**



SURROUNDING FLUM, ZONING AND USES:

Table 1 – Surrounding FLUM / Zoning / Uses

	<i>Existing FLUM</i>	<i>Existing Zoning</i>	<i>Existing Uses</i>
North	NA	N/A	Gulf of Mexico
East	Mixed Use (MU) & Residential High (RH)	Mixed Use, Residential High, Residential Mobile Home	Outdoor storage, and residential homes and apartments
South	Residential High (RH)	Residential Mobile Home	Residential neighborhoods
West	Mixed Use (MU) & Residential High (RH)	Mixed Use, Residential High	Marlin Bay Yacht Club

FLUM / Zoning Maps

**Figure 2
FLUM / Zoning Maps**



EXISTING CONDITIONS / PROJECT PROPOSAL:

This proposed Development Agreement severs the relationship between Boat Works Investments LLC and AGPM Acquisitions LLC established most recently pursuant to Resolution 2018-88 and creates an independent Development Agreement for Keys Boat Works Investments, LLC replacing Resolution 2006-185 and subsequent extensions to that Development Agreement.

Boat Works Investments LLC, (Compass Point) is the owner of approximately 4.03 acres of contiguous uplands in the corporate limits of the City consisting of Parcel ID Numbers 00337390-000000, 00103480-000100, 00337290-000000, 00337300-000000, 00337310-000000 and 00337330-000000 more particularly described in the legal description, provided in the proposed Agreement as **Exhibit A** (herein, the “Property”). A copy of the Warranty Deeds are attached in the proposed Agreement as **Exhibit B**.

Boat Works was recently sold a portion of the property associated with the original Development Agreement to AGPM Acquisitions, LLC (“AGPM Parcel”) pursuant to the Special Warranty Deed recorded January 19, 2019 at Book 2943, Page 2230 of the Official Records of Monroe County, Florida, was subject to the Development Agreement recorded on December 21, 2006 at Book 2260 Page 1727 of the Official Records of Monroe County, Florida, pursuant to Resolution 2006-185, as extended by Resolutions 2016-32, 2017-46 and 2018-64 (collectively, the “Initial Development Agreement”).

The development of the Boat Work Property and AGPM Parcel is currently subject to City Resolution 2018-88 and Conditional Use Development Order #2018-11, in which the Property and AGPM Parcel have been approved for the development of 52 affordable and 20 market rate dwelling units (“AGPM Development Approvals”).

The Initial Development Agreement recognized that the Property (which at that time included the AGPM Parcel) is entitled to 83,374 square feet of vested commercial floor area (including a marine docking and services facility known as Keys Boat Works), fifty-two (52) vested market rate residential dwelling units, thirty-four (34) wet boat slips, which contained twenty-two (22) transient and ten (10) permanent) live-aboard vessels, and associated 1,690 linear feet of boat dockage, vacant land, and miscellaneous equipment and storage structures located on or over the bay bottom.

As confirmed in the affidavit attached to the proposed Agreement as **Exhibit C**, the thirty-two (32) (twenty-two (22) transient and ten (10) permanent) live-aboard vessels were established prior to 1985 and the liveaboard vessels were in place on the Property until 2006 and served as residences for the people that stayed on such liveaboards.

Boat Works wishes to redevelop the Property with up to twenty (20) market rate dwelling units, thirty-four (34) wet boat slips, a clubhouse/community center, swimming pool(s), and other accessory uses and up to 15,000 square feet of commercial floor area (excess commercial floor area to be held or transferred). See Figure 3.

Figure 3
Conceptual Site plan



In connection with Boat Works' conveyance of the AGPM Parcel, Developer also conveyed forty (40) market rate residential dwelling units to the AGPM Parcel pursuant to the Warranty Deed for Development Rights recorded on January 9, 2019 at Book 2943 Page 2234 of the Official Records of Monroe County, Florida ("Development Rights Deed"), while retaining all other vested rights recognized in the Initial Development Agreement i.e. twelve (12) of the original fifty-two (52) vested market rate residential dwelling units, thirty-four (34) wet boat slips (with vested rights related to the thirty-two (32) [twenty-two (22) transient and ten (10) permanent] live-aboard vessels), and associated 1,690 linear feet of boat dockage and 83,374 square feet of vested commercial floor area. Therefore, there are twelve (12) market rate residential allocations remaining on the Boat Works Investments LLC property.

Pursuant to City Code, the twenty-two (22) transient boat slips and ten (10) permanent boat slips which were liveboards existing on the Property are exempt from the requirements of the City's Building Permit Allocations System (BPAS) process. They are also, not transferrable as either market rate or transient residential units. This is key to the proposed modification to the Development Agreement. The Applicant proposes to transfer transient and permanent marina slips upland. This is not allowed under the City's Land Development Regulations.

This determination is rather simple. Residential and/or transient allocations do not inure to existing liveboard vessels.

Chapter 1, Future Land Use Element does recognize and protect the continued existence of both floating structures and liveboard vessels in Policies 1-3.4.4 and 1-3.4.5, respectively. The first specifically prohibits the conveyance, allocation, and therefore, transfer of density or intensity for floating structures. On this subject, the Comprehensive Plan is silent on whether such holds true. for liveboards. However, it does not convey such rights either. Further, the Building Permit Allocation System does not provide for the conveyance of allocations for liveboards. It does provide for the allocation of residential units to single family, duplex, multi-family, dormitory, or group homes. See Chapter 107, Article 1 of the LDRs. Similarly, Chapter 107, Article 2 which provides for the transfer of Building Rights speaks only to established dwelling rights, commercial floor area, and transient units. The Article provides no discussion about the possible transfer of "liveboard" rights, nor does the Article provide any equivalency for such units.

Finally, in common practice, in over thirty years within the Growth Management agencies of both the County and the City of Marathon, I am aware of only two instances when residential units were conveyed upon a development. The first is Faro Blanco whose units originated from the land and the second is Sea Cove whose units were authorized by the state as transient units (DBPR) and recognized by the County prior to the City's Incorporation and therefore, by the City hence. Further, since the incorporation of the City, I am aware of one instance in which the Banana Bay development attempted through the City to transfer liveboard units to the upland as residential units. This effort failed in an appeal by the Florida Department of community Affairs.

As there has been the precedent mentioned above, Council has directed staff to provide for the ability for the applicant to move the liveboards upland. As such, the development agreement and staff report have been amended to allow for this to occur. However, prior to the actual transfers being able to occur, the Comprehensive Plan and Land Development Regulations must be amended to document and create the mechanisms for this upland transfer. The Comprehensive Plan and LDR amendments must go before

Planning Commission, City Council, and rendered to the State before they become effective. As mentioned in the staff report, the State has previously not been receptive to this idea. The applicant has already entered into discussions briefly with the State regarding this issue, and feels they are receptive to the change. Should the amendments to the Comprehensive Plan and LDRs not be approved by the State, then no substantive changes are required to the Development Agreement as it has been amended. As mentioned by the applicant, there are many other sites in the Marina Siting Plan that have documented the number of permanent and transient liveaboard rights. These will all be presented in the staff report to show the effect of the changes to the Comprehensive Plan and LDRs city wide.

The upland land area on the Property is more than sufficient under the City Code to accommodate the redevelopment requested in this proposed revision to the original Agreement.

Thus, Boat Works must obtain and transfer eight (8) market rate residential allocations in excess of the twelve (12) units that the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY AFFORDABLE UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.

EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:

CRITERIA

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

The revised (replacement) Development Agreement, specific to Keys Boat Works Investments LLC (Compass Pointe) only, is consistent with approved Condition Use Permit (Resolution 2018-88) approved for Boat Works Investments LLC and AGPM Acquisitions LLC as a combined project.

Staff finds the request is *in compliance* with the requirements of these sections.

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

The revised (replacement) Development Agreement, specific to Keys Boat Works Investments LLC (Compass Pointe) only, is consistent with approved Condition Use Permit (Resolution 2018-88) approved for Boat Works Investments LLC and AGPM Acquisitions LLC as a combined project.

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;

The revised (replacement) Development Agreement, specific to Keys Boat Works Investments LLC (Compass Pointe) only, is consistent with approved Condition Use Permit (Resolution 2018-88) approved

for Boat Works Investments LLC and AGPM Acquisitions LLC as a combined project.

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;

The revised (replacement) Development Agreement, specific to Keys Boat Works Investments LLC (Compass Pointe) only, is consistent with approved Condition Use Permit (Resolution 2018-88) approved for Boat Works Investments LLC and AGPM Acquisitions LLC as a combined project.

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;

The revised (replacement) Development Agreement, specific to Keys Boat Works Investments LLC (Compass Pointe) only, is consistent with approved Condition Use Permit (Resolution 2018-88) approved for Boat Works Investments LLC and AGPM Acquisitions LLC as a combined project.

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;

The revised (replacement) Development Agreement, specific to Keys Boat Works Investments LLC (Compass Pointe) only, is consistent with approved Condition Use Permit (Resolution 2018-88) approved for Boat Works Investments LLC and AGPM Acquisitions LLC as a combined project.

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;

The revised (replacement) Development Agreement, specific to Keys Boat Works Investments LLC (Compass Pointe) only, is consistent with approved Condition Use Permit (Resolution 2018-88) approved for Boat Works Investments LLC and AGPM Acquisitions LLC as a combined project.

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;

The revised (replacement) Development Agreement, specific to Keys Boat Works Investments LLC (Compass Pointe) only, is consistent with approved Condition Use Permit (Resolution 2018-88) approved for Boat Works Investments LLC and AGPM Acquisitions LLC as a combined project.

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

5. Utilities, with reference to location and availability;

The revised (replacement) Development Agreement, specific to Keys Boat Works Investments LLC (Compass Pointe) only, is consistent with approved Condition Use Permit (Resolution 2018-88) approved for Boat Works Investments LLC and AGPM Acquisitions LLC as a combined project.

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

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

The revised (replacement) Development Agreement, specific to Keys Boat Works Investments LLC (Compass Pointe) only, is consistent with approved Condition Use Permit (Resolution 2018-88) approved for Boat Works Investments LLC and AGPM Acquisitions LLC as a combined project.

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;

The revised (replacement) Development Agreement, specific to Keys Boat Works Investments LLC (Compass Pointe) only, is consistent with approved Condition Use Permit (Resolution 2018-88) approved for Boat Works Investments LLC and AGPM Acquisitions LLC as a combined project.

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

8. Required yards and other open space;

The revised (replacement) Development Agreement, specific to Keys Boat Works Investments LLC (Compass Pointe) only, is consistent with approved Condition Use Permit (Resolution 2018-88) approved for Boat Works Investments LLC and AGPM Acquisitions LLC as a combined project.

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

9. General compatibility with surrounding properties; and

The revised (replacement) Development Agreement, specific to Keys Boat Works Investments LLC (Compass Pointe) only, is consistent with approved Condition Use Permit (Resolution 2018-88) approved for Boat Works Investments LLC and AGPM Acquisitions LLC as a combined project.

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 revised (replacement) Development Agreement, specific to Keys Boat Works Investments LLC (Compass Pointe) only, is consistent with approved Condition Use Permit (Resolution 2018-88) approved for Boat Works Investments LLC and AGPM Acquisitions LLC as a combined project.

The Development Agreement will need to be modified for the second public hearing to recognize entitlements as documented in the Recommendations below.

The Applicant must obtain and transfer eight (8) market rate residential allocations in excess of the twelve (12) units that the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.

With identified changes, staff finds the request is *in compliance* with the requirements of this section.

CONCLUSION:

The proposed amendment to the project Development Agreement complies with all review criteria as established in the City's Comprehensive Plan and LDRs.

The Development Agreement will need to be modified for the second public hearing to recognize entitlements as documented in the Recommendations below.

RECOMMENDATION:

Staff recommends APPROVAL of the revised (replacement) Development Agreement with the following revisions to Sections III, G. 1. And 2.:

- Permitted Uses; Approval of Conceptual Site, including Densities and Intensities
 - Up to 20 Market Rate Units
 - 15,000 square feet of commercial floor area (68,374 square feet available for transfer)
 - 34 wet slips

The Applicant must obtain and transfer up to eight (8) market rate residential allocations in excess of the twelve (12) units that the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED DEVELOPMENT AGREEMENT AMENDMENT DOES NOT CONVEY OR GRANT A VESTED

RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.

- Exempt Dwelling Units and Commercial Floor Area under this Agreement.
 - 12 Market Rate Development Rights
 - 83,374 square feet of commercial floor area
 - 32 boat slips
 - 22 Transient
 - 10 Permanent

**CITY OF MARATHON, FLORIDA
RESOLUTION 2020-92**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVAL OF A REQUEST BY BOAT WORKS INVESTMENTS, LLC (COMPASS POINTE) FOR A REVISION TO THE APPROVED DEVELOPMENT AGREEMENT (RESOLUTION 2006-185 & ASSOCIATED EXTENSIONS, RESOLUTIONS 2016-32, 2017-46, & 2018-64), PURSUANT TO CHAPTER 102, ARTICLE 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (“THE CODE”) ENTITLED “DEVELOPMENT AGREEMENT”, IN CONSIDERATION OF A RECENTLY APPROVED CONDITIONAL USE PERMIT (RESOLUTION 2018-88) INVOLVING BOAT WORKS INVESTMENTS, LLC AND TRI-STAR AFFORDABLE DEVELOPMENT, LLC; THIS REVISION THEREBY CONSIDERING THE APPROVAL OF TWENTY (20) MARKET RATE DWELLING UNITS, 15,000 SQUARE FEET OF COMMERCIAL SQUARE FOOTAGE, AND THIRTY-FOUR (34) WET SLIPS; ON PROPERTIES LOCATED AT AND ADJACENT TO 39TH STREET GULF AND 747 THROUGH 999 41ST STREET GULF AND 3905 LOUISA STREET, WHICH ARE LEGALLY DESCRIBED AS PART OF BLOCK 2 & ALL OF BLOCK 5, LOTS 5, 6, 7, 8, 9, 10, 14,15, 16, 17, 18 & 19 AND FILLED BAY BOTTOM NORTH OF AND ADJACENT TO MARATHON BEACH SUBDIVISION, BLOCK 1, LOT 1 OF LINCOLN MANOR SUBDIVISION, KEY VACCA, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00337270-000000, 00337280-000000, 00337290-000000, 00337300-000000, 00337310-000000, 00337330-000000, 00103480-000100, 00337380-000000, 00337390-000000, AND 00337470-000000. NEAREST MILE MARKER 49.

WHEREAS, Developer is the owner of approximately 4.02 acres of contiguous uplands in the corporate limits of the City consisting of Parcel ID Numbers 00337390-000000, 00103480-000100, 00337290-000000, 00337300-000000, 00337310-000000 and 00337330-000000 more particularly described in the legal description, provided in the Agreement as **Exhibit A** (herein, the “Property”). A copy of the Warranty Deeds are attached in the Agreement hereto as **Exhibit B**; and

WHEREAS, the Property, along with contiguous real property parcels previously owned by Developer, which was recently sold to AGPM Acquisitions, LLC (“AGPM Parcel”) pursuant to the Special Warranty Deed recorded January 19, 2019 at Book 2943, Page 2230 of the Official Records of Monroe County, Florida, was subject to the Development Agreement recorded on December 21, 2006 at Book 2260 Page 1727 of the Official Records of Monroe County, Florida, pursuant to Resolution 2006-185, as extended by Resolutions 2016-32, 2017-46 and 2018-64 (collectively, the “Initial Development Agreement”); and

WHEREAS, the development of Property and AGPM Parcel is currently subject to City Resolution 2018-88 and Conditional Use Development Order #2018-11, in which the Property and AGPM Parcel have been approved for the development of 52 affordable and 20 market rate dwelling units (“AGPM Development Approvals”); and

WHEREAS, the Initial Development Agreement recognized that the Property (which at that time included the AGPM Parcel) is entitled to 83,374 square feet of vested commercial floor area (including a marine docking and services facility known as Keys Boat Works), fifty-two (52) vested market rate residential dwelling units, thirty-four (34) wet boat slips, which contained thirty-two (32) (twenty-two (22) transient and ten (10) permanent) live-aboard vessels, and associated 1,690 linear feet of boat

dockage, vacant land, and miscellaneous equipment and storage structures located on or over the bay bottom; and

WHEREAS, as confirmed in the affidavit attached to the Agreement as **Exhibit C**, the thirty-two (32) (twenty-two (22) transient and ten (10) permanent) live-aboard vessels were established prior to 1985 and the liveaboard vessels were in place on the Property until 2006 and served as residences for the people that stayed on such liveaboards; and

WHEREAS, in connection with Developer's conveyance of the AGPM Parcel, Developer also conveyed forty (40) market rate residential dwelling units to the AGPM Parcel pursuant to the Warranty Deed for Development Rights recorded on January 9, 2019 at Book 2943 Page 2234 of the Official Records of Monroe County, Florida ("Development Rights Deed"), while retaining all other vested rights recognized in the Initial Development Agreement i.e. twelve (12) of the original fifty-two (52) vested market rate residential dwelling units, thirty-four (34) wet boat slips (with vested rights related to the thirty-two (32) [twenty-two (22) transient and ten (10) permanent] live-aboard vessels), and associated 1,690 linear feet of boat dockage and 83,374 square feet of vested commercial floor area. Therefore, there are twelve (12) remaining market rate residential allocations on the Boat Works Investments LLC property; and

WHEREAS, the Applicant must obtain and transfer eight (8) market rate residential allocations in excess of the twelve (12) units that the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. **THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY AFFORDABLE UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT;** and

WHEREAS, the Developer wishes to redevelop the Property with up to twenty (20) market rate dwelling units, thirty-four (34) wet boat slips, a clubhouse/community center, swimming pool(s), and other accessory uses and up to 15,000 square feet of commercial floor area; and

WHEREAS, the Property's Land Use District (Zoning) is predominantly Mixed Use (MU), with a small portion being Residential High (RH) each of which permit the development of single family homes, duplexes or multifamily as of right or as a conditional use; and

WHEREAS, pursuant to City Code, the twenty-two (22) transient boat slips and ten (10) permanent boat slips which were liveaboards existing on the Property are exempt from the requirements of the City's Building Permit Allocations System (BPAS) process as boat slips; and

WHEREAS, the upland land area on the Property is sufficient under the City Code to accommodate the redevelopment approved in this Agreement; and

WHEREAS, the Developer has provided public 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 mailed notice to the persons and entities shown on the most recent Monroe County Tax Roll to be the owners of property lying within 300 feet of the boundaries of the Property subject to this Agreement; and

WHEREAS, the City Council held an advertised public hearing on November 10, 2020 and again on December 8, 2020 to consider the amendment to the Initial Development Agreement and to accept and encourage public input with respect to the proposal of the Developer contained in this Agreement, and has the considered the staff report and all public input; and

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

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 and replaced with the attached Agreement provided as Exhibit A.

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8th DAY OF DECEMBER 2020.

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

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:

Steve Williams, City Attorney

EXHIBIT A

DEVELOPMENT AGREEMENT FOR (BOAT WORKS INVESTMENTS LLC)

(Boat Works)

Incorporated by reference here

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and between the City of Marathon (the “City”), a Florida municipal corporation, and Boat Works Investments LLC, a Florida limited liability company (“Boat Works Investments” or the “Developer”), pursuant to Sections 102.29, 102.30, 102.31 and 102.32 of the Code of Ordinances for the City of Marathon (“City Code”), and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2018), and is binding on the “Effective Date” set forth herein as binding on the Effective Date set forth therein.

WITNESSETH:

WHEREAS, Developer is the owner of approximately 4.02 acres of contiguous uplands in the corporate limits of the City consisting of Parcel ID Numbers 00337390-000000, 00103480-000100, 00337290-000000, 00337300-000000, 00337310-000000 and 00337330-000000 more particularly described in the legal description attached hereto as **Exhibit A**, (herein, the “Property”). A copy of the Warranty Deeds are attached hereto as **Exhibit B**;

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WHEREAS, the development of Property and AGPM Parcel is currently subject to City Resolution 2018-88 and Conditional Use Development Order #2018-11, in which the Property and

AGPM Parcel have been approved for the development of 52 affordable and 20 market rate dwelling units (“AGPM Development Approvals”);

WHEREAS, the Initial Development Agreement recognized that the Property (which at that time included the AGPM Parcel) is entitled to 83,374 square feet of vested commercial floor area (including a marine docking and services facility known as Keys Boat Works), fifty-two (52) vested market rate residential dwelling units, thirty-four (34) wet boat slips, which contained thirty-two (32) (twenty-two (22) transient and ten (10) permanent) live-aboard vessels, and associated 1,690 linear feet of boat dockage, vacant land, and miscellaneous equipment and storage structures located on or over the bay bottom;

WHEREAS, as confirmed in the affidavit attached as **Exhibit C**, the thirty-two (32) (twenty-two (22) transient and ten (10) permanent) live-aboard vessels were established prior to 1985 and the liveaboard vessels were in place on the Property until 2006 and served as residences for the people that stayed on such liveaboards;

WHEREAS, in connection with Developer’s conveyance of the AGPM Parcel, Developer also conveyed forty (40) market rate residential dwelling units to the AGPM Parcel pursuant to the Warranty Deed for Development Rights recorded on January 9, 2019 at Book 2943 Page 2234 of the Official Records of Monroe County, Florida (“Development Rights Deed”), while retaining all other vested rights recognized in the Initial Development Agreement i.e. twelve (12) the original fifty-two (52) vested market rate residential dwelling units, thirty-four (34) wet boat slips (with vested rights related to the thirty-two (32) [twenty-two (22) transient and ten (10) permanent] live-aboard vessels), and associated 1,690 linear feet of boat dockage and 83,374 square feet of vested commercial floor area;

WHEREAS, the Developer wishes to redevelop the Property with up to twenty (20) market

rate dwelling units, thirty-four (34) wet boat slips, a clubhouse/community center, swimming pool(s), and other accessory uses and up to 15,000 square feet of commercial floor area; and

WHEREAS, the Property's Land Use District (Zoning) is predominantly Mixed Use (MU), with a small portion being Residential High (RH) each of which permit the development of single family homes, duplexes or multifamily as of right or as a conditional use;

WHEREAS, pursuant to City Code, the twenty-two (22) transient Live-A-Board units and ten (10) permanent Live-A-Board units which were liveboards existing on the Property are recognized in the Marina Siting Plan;

WHEREAS, the City shall amend the Comprehensive Plan and LDRs to establish procedures for the BPAS exemption and transfer of Live-A-Board units, upland or to another site respectively;

WHEREAS, the upland land area on the Property is sufficient under the City Code to accommodate the redevelopment approved in this Agreement;

WHEREAS, the Developer has provided public 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 mailed notice to the persons and entities shown on the most recent Monroe County Tax Roll to be the owners of property lying within 300 feet of the boundaries of the Property subject to this Agreement;

WHEREAS, the City Council held an advertised public hearing on November 10, 2020 and again on December 8, 2020 to consider this Agreement and the recommendation of the Planning Commission, and to accept and encourage public input with respect to the proposal of the Developer contained in this Agreement, and has considered the Planning Commission recommendation, staff report, and public input; and

WHEREAS, the City has determined that this Agreement is in the public interest, is consistent with the City's Comprehensive Plan and LDRs, and will further the health, safety and welfare 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:

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

II. 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.:

A. *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.

B. *Building Permit Allocation System* or *BPAS Allocation* shall refer to those terms defined in Chapter 107, Article 1 of the City Code.

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

D. *Comprehensive Plan* shall refer to the City's Comprehensive Plan, effective July 5, 2005, as amended to the submittal date of this Agreement to the City

E. *Development* shall refer to the development of the Property for uses permitted by the Comprehensive Plan and the City Code, subject to the conditions, obligations, restrictions and terms contained in this Agreement.

F. *Dwelling Unit* shall refer to a dwelling unit as defined in Chapter 110, Article 3. - Defined Terms of the City Code: “A single unit providing complete and independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, cooking (meaning a food preparation area larger than a one (1) bin wet bar, that was intended or designed to be used for cooking or the preparation of food and a range, oven or utility connections for such) and sanitation. The term is applicable to both permanent and transient residential development.

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

H. *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.

I. *Land Development Regulations (LDRs)* shall mean Appendix A of Part II of the City Code in existence on the Effective Date of this Agreement

J. *Property* shall refer to one or more of the parcels of real property located in the City that are subject to this Agreement (collectively one development parcel), including additional parcels that may be acquired and subjected by the Developer to the terms and conditions of this Agreement through a subsequent amendment to this Agreement.

K. *Public Facilities* shall refer to those facilities that are specifically described in Section 163.3221, Florida Statutes, and as set forth in this Agreement.

III. Terms of Agreement.

A. Legal Description; Ownership and Equitable Interests in the Properties.

Developer is the owner of that portion of the Property referenced by RE Nos. 00337390-000000, 00103480-000100, 00337290-000000, 00337300-000000, 00337310-000000 and 00337330-000000, also known or described as 999 41st Street, 783 41st Street, 784 41st Street, City of Marathon, Florida. The Property is collectively described in the legal description attached as composite **Exhibit A** and incorporated herein.

B. Development Agreement Governing Property. This Agreement supersedes and replaces the AGPM Development Approvals and Initial Development Agreements in regard to the Property.

C. Unity of Title; Form of Ownership.

1. Unity of Title. The Developer shall execute instruments in a form acceptable to the City uniting one or more of the upland parcels described in **Exhibit A** for the purposes of the development authorized in this Agreement. The Developer shall record same in the public records of Monroe County, Florida. Prior to redevelopment of unified portions of the property. If requested by the Developer, the Developer shall be released from this Unity of Title requirement if the City subsequently adopts an ordinance authorizing a transfer of development or building rights that obviates the need for this requirement.

2. Form of Ownership of Property. Condominium, cooperative, homeowners association or similar form of ownership of all or a portion of the Property, and the submission of the Property to the condominium, cooperative, homeowners association or similar form of

ownership (and recordation of a corresponding declaration of condominium, homeowners association or similar instrument), or the sale of individual residential dwelling units or boat slips therein shall not be prohibited or violative of the terms and provisions of this Agreement.

D. Duration of Agreement; Renewal.

This Development Agreement shall remain in effect for a period of ten (10) years, commencing on the Effective Date set forth below. This Development Agreement may be renewed or extended as provided herein.

E. Statutory and Code Requirements.

The parties recognize the binding effect of the Florida Local Government Development Agreement Act, Sections 163.3221, *et seq.*, Florida Statutes, and the City Code as to the form and content of this Agreement and in accordance therewith set forth and agree to the terms of this Agreement.

F. Vested Development. The following residential and non-residential development exists and is vested on the Properties, which said vested development rights shall not expire:

Existing Development	# of Slips	# of Units	Square Feet
Non-residential (Keys Boat Works)			80,755
Non-residential (store)			2,619
Residential permanent dwelling units (apartments and mobile homes)		12 ¹	
Wet Slips (which contained the twenty-two (22))	34		

¹ Twelve (12) of the original fifty-two (52) vested market rate residential dwelling units remaining after the conveyance contained in the Development Rights Deed

transient units and ten (10) permanent units per liveaboard vessels)			
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The majority of the previously existing development on the Property was largely dilapidated or substandard and has been demolished. All of the Property is completely scarified.

G. Permitted Uses; Approval of Conceptual Site, including Densities and Intensities.

1. Development Authorized. The residential and commercial development authorized by this Agreement is summarized in the following table and more fully described below:

Development Authorized	# of Slips	# of Units	Square Feet
Residential dwelling units (market rate)		20	
Non-residential/commercial floor area			15,000
Wet slips	34		

2. Exempt Dwelling Units and Commercial Floor Area under this Agreement.

Pursuant to City Code, the (i) twenty-two (22) transient Live-A-Boards units, ten (10) permanent Live-A-Board units, and twelve (12) market rate dwelling units vested on the Property are exempt from the requirements of the City’s Building Permit Allocations System (BPAS) as Live-A-Boards and market rate dwelling units, respectively and the 83,374 square feet of vested commercial floor area is exempt from the requirements of the City’s Building Permit Allocations System (BPAS). The twenty-two (22) transient Live-A-Board units, two (2) permanent Live-A-Board units and 83,374 square feet of vested commercial floor area not being redeveloped on-site and any of the

twenty (20) remaining market rate dwelling units which Developer elects not to develop on the Property are capable of transference pursuant to City Code Section 107.13 as amended, *et seq.*

a. Declaration Restricting Wet Slips to No Liveboards. Owner shall record the Declaration of Restriction attached as **Exhibit D** to this Development Agreement restricting the use of any wet slips developed on the property's privately owned submerged land or adjacent State of Florida sovereign submerged lands to No Liveboards in perpetuity.

3. Approval of Conceptual Site Plan; Minor Revisions; Final Site Plan. The development authorized by this Agreement is depicted on the Conceptual Site Plan prepared by D'Asign Source of Marathon, Florida (the "Conceptual Site Plan"), attached hereto as **Exhibit E**. 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 Site Plan; provided, however, that the Final Site plan submitted for building permits may deviate from the Site Plan to accommodate: (1) to accommodate refinements to the development plan made by the Developer, including configuration of structures, roadways, pathways, and swimming pool(s); (2) to change the type and number of residential dwelling units, so long as the maximum density set forth in this Agreement is not exceeded; (3) changes to the proposed clubhouse, pool, recreation and accessory uses so long as the density and intensity set forth in the Agreement is not exceeded or (4) to accommodate modifications that are necessary to meet regulatory requirements. The Conceptual 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 Developer obtains a variance pursuant to applicable provisions of the City Code.

4. Market Rate Residential. The following market rate residential development/redevelopment is authorized on the Property, as shown on the Conceptual Site Plan:

a. Twenty (20) market rate single family residential dwelling units. Provided, however, that the Developer may elect to develop fewer than twenty market rate residential dwelling units on the property. The difference between the twenty-two (22) vested residential dwelling units on site on the date of this Agreement, and the actual number of residential dwelling units constructed and ultimately certified for occupancy on site, are recognized as vested residential dwelling units and BPAS-exempt dwelling unit allocations attributed to the Property for density and allocation purposes. Vested dwelling units may be developed on site at any time during the effectiveness of this Agreement, or may be transferred off-site in accordance with any existing or subsequently adopted City ordinance authorizing a transfer of dwelling units or dwelling unit allocations. These transfers may also be permitted administratively wherever this is lawful, suitable, and in furtherance of this Agreement.

b. Accessory uses including swimming pools, detached storage and parking structures appurtenant to designated residential units.

5. Commercial Floor Area Approved Under This Agreement. Developer is permitted to redevelop a total of fifteen thousand (15,000) square feet of commercial floor area without being subject to nonresidential BPAS requirements as depicted on the Conceptual Site Plan. The remaining 68,374 square feet of the vested 83,374 square feet of vested commercial floor area not being redeveloped on-site and any of the fifteen thousand (15,000) above which Developer elects not to develop on the Property can be transferred off-site in accordance with any existing or subsequently adopted City ordinance authorizing a transfer of commercial floor area.

6. Additional Nonresidential Development Authorized by Agreement. The following non-residential development is authorized on the Property, as shown on the Conceptual Site Plan:

- a. 34 wet slips restricted to NO LIVEBOARDS.
- b. Club house/community center and other accessory structures.
- c. Ancillary and accessory facilities and structures (including, but not limited to, garbage and pool equipment).

7. 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 Developer 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.

8. Development Controlled by Agreement, Comprehensive Plan and Code. For the duration of this Agreement, the parties agree that any and all of the approved development shall adhere to, conform to, and be controlled by this Agreement, the exhibits attached hereto and incorporated by reference, the City LDRs and the Comprehensive Plan governing the development of the Property on the effective date of this Agreement. In the event that all or a portion of the existing or authorized development subject to this Agreement should be destroyed by storm, fire, or other common disaster, the Developer, its grantees, successors, or assigns shall have the absolute right to rebuild or repair the affected structure(s) and reinstate the prior approved use so long as such development is in compliance with this Agreement. The Developer may, at its

discretion, elect to apply subsequently-adopted ordinances in lieu of current regulations with respect to particular aspects of the redevelopment authorized by this Agreement.

9. Applicable Density, Intensity and Building Heights. Density and intensity shall be as provided in this Agreement. The height of any new structure associated with the redevelopment of the Property shall not exceed 37 feet, except as provided by City Code, as amended. For purposes of determination of grade of the Property, grade for all structures shall be ____ feet NGVD identified as the crown of the road on _____ at the entrance to the Property, resulting in a maximum building height of ____ feet NGVD, except those exceptions provided for in Section 107.41 of the City Code.

H. Additional Development Conditions.

The following additional 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.

1. Setbacks and Buffers:

- a. Buffers. None required.
- b. Setbacks. The City acknowledges that there is no undisturbed or unaltered shoreline on the Property. Pursuant to the City Code, setbacks shall be as follows:
 - c. Shoreline: twenty (20) feet.
 - d. From side lines adjoining neighboring properties: ten (10) feet (except that one side may be five (5) feet).
 - e. Front: twenty-five (25) feet.

f. Rear: twenty (20) feet.

g. Between on-site structures: with the recordation of any Unity of Title instrument as set forth herein, internal setbacks shall not be required for such unified portions of the property, other than a minimum of ten (10) feet between the exterior walls of each building for fire safety, as determined by the City's Fire Marshall.

2. Variances. The parties acknowledge that it may be necessary for the Developer to seek a variance from the front, side, and rear yard setbacks in order to develop the housing in the location depicted on the Conceptual Site Plan. Nothing in this Agreement shall be deemed to discourage or prohibit such a variance.

3. Utilities, Lighting and Signage. Utilities, lighting, and signage shall comply with all applicable requirements of the City Code, including the waterfront lighting criteria in the City Code.

4. Landscaping. The Developer shall utilize the best practices of landscaping throughout the development.

5. Internal Infrastructure. The roads, landscaping, and other internal Developer-provided infrastructure serving residential dwelling units shall be completed before a certificate of occupancy may be issued for the dwelling unit(s) served.

6. Fire Safety. The Developer shall provide such fire wells and other fire protection facilities as required by the Life Safety Code administered by the City Fire Department.

7. Open Space Ratio. Pursuant to Section 106.16 of the City Code, the Developer shall maintain a minimum twenty percent (20%) open space ratio on the Property.

8. Stormwater Management. The development shall comply with the stormwater management criteria in City Code Article 11, and shall meet all applicable federal, state, and regional stormwater management requirements.

9. Additional Conditions by Mutual Consent. Nothing in this Agreement shall preclude the parties from applying additional conditions by mutual agreement during final site plan review or permitting.

I. Public facilities; 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.

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

2. Electric Service. Electric service is provided by Florida Keys Electric Cooperative.

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

4. Fire Service. Fire service is provided by the Marathon Fire Department

5. Wastewater. Wastewater mains collection and treatment is provided by the City of Marathon.

6. Recreational Facilities. The Property includes recreational facilities for residents and guests, including swimming and boating opportunities. Therefore, redevelopment of the Property will have no impact on public recreation facilities.

7. 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.

8. 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 Developer of any applicable utility system development fees.

J. All Local Development Permits Approved or Needed.

1. Development Approvals. The following is a list of all development permits approved or needed to be approved for the development of the Property as specified and requested in this Agreement:

a. Conditional Use Approval. Conditional Use approval by the City Council confirming compliance with this Agreement and applicable City Code requirements.

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

c. Building Permits. As of right building permits will be issued, as provided pursuant to the City Code.

d. Development Agreement. This Development Agreement.

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

L. Reservations or Dedications of Land for Public Purposes.

There is no reservation or dedication of land for public purposes contemplated by this Agreement.

M. Mutual Cooperation. The City and the Developer agree to cooperate fully with and assist each other in the performance of the provisions of this Agreement.

N. Development to Comply with Permits and City Comprehensive Plan and Code Provisions. The development described in and authorized by this Agreement shall be developed in accordance with all required permits, and in accordance with all applicable provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Agreement. No certificate of occupancy for an individual building shall be issued until all plans for that building are approved by the City and the Developer has complied with all conditions in permits issued by the City and other regulatory entities for that building.

O. Compliance With Permits, Terms, Conditions, and Restrictions Not Identified Herein. The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

P. Governing Laws.

1. 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, 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.

2. 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.

Q. Amendment, Renewal, and Termination. This Agreement may be amended, renewed, or terminated as follows:

1. 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.

2. 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 within 300 feet of the Property before the first public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing. The notice shall specify the location of the land subject to the Agreement, the development uses on the Property, the population densities, and the building intensities and height and shall specify a place where a copy of the Agreement can be obtained.

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

4. 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.

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

R. Breach of Agreement and Cure Provisions.

1. Written Notice on the Developer. If the City concludes that there has been a material breach in this Agreement by the Developer, prior to revoking this Agreement, the City shall serve written notice on the Developer identifying the term or condition the City contends has been materially breached and providing the Developer with ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Agreement. Each of the following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the Developer, shall be considered a material breach of this Agreement: (1) failure to comply with the provisions of this Agreement; and (2) failure to comply with terms and conditions of permits issued by the City or other regulatory entity for the development authorized by this Agreement.

2. Written Notice on the City. If the Developer concludes that there has been a material breach in the terms and conditions of this Agreement by the City, the Developer shall serve written notice on the City identifying the term or condition the Developer contends has been materially breached and providing the City with 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: failure to comply with the provisions of this Agreement; failure to timely process any application for site plan approval or other development approval required to be issued by the City for the development/redevelopment authorized by this Agreement.

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

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

S. 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) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; or (c) by deposit with an overnight express delivery service with a signed receipt required. Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

To the Developer:

Mr. Amedeo D'Ascanio
Boat Works Investments LLC
11500 Overseas Highway
Marathon, Florida 33050
Telephone: (305) 743-7130

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

Smith Hawks, PL
138 Simonton Street
Key West, FL 33040
Telephone: (305) 296-7227

TO THE CITY:

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

T. 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.

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

V. 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.

W. 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.

X. 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.

Y. Litigation; Attorney's Fees; Venue; Waiver of Right to Jury Trial. As between the City and the Developer, in the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorney's fees. This includes, but is not limited to, reimbursement for 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.

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

AA. 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.

BB. 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.

CC. 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.

DD. Recording; Effective Date. The Developer shall record this Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date of this Agreement. A copy of the recorded Agreement showing the date, page and book where recorded shall be submitted to the Florida Department of Economic Opportunity (DEO) 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 Developer 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 recorded in the public records of Monroe County, Florida, and received by the State Land Planning Agency.

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

FF. Redevelopment Timelines. Any redevelopment timelines related to the property as provided for in any prior conditional use approval or the like are hereby terminated and are of no further form and effect.

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

Boat Works Investments LLC, a Florida limited liability company

By _____

Name: Amedeo D'Ascanio

Title: Manager

Date: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me on this _____ day of _____ 2020, by Amedeo D'Ascanio as Manager of Boat Works Investments LLC, a Florida limited liability company, who is personally known to me or who produced _____ as identification, and who did/did not take an oath.

Notary Public, State of Florida At Large

My commission expires: _____

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

CITY OF MARATHON

By _____,
_____, MAYOR

ATTEST:

_____, City Clerk

APPROVED AS TO FORM AND LEGAL

SUFFICIENCY:

Steven Williams, City Attorney

EXHIBIT A

Legal Description

To Be Provided With Final Approval

EXHIBIT B

Warranty Deeds

To Be Provided With Final Approval

EXHIBIT C

Affidavit

To Be Provided With Final Approval

EXHIBIT D

Declaration of Restrictions on Live-Aboard Vessels

To Be Provided With Final Approval

EXHIBIT E

Conceptual Site Plan

See Staff Report

To Be Provided With Final Approval



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