

CITY COUNCIL AGENDA STATEMENT



Meeting Date: January 12, 2021
To: Honorable Mayor and Council Members
From: Brian Shea, Planning Director
Through: George Garrett, 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.

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.
- DENY – conversion of the marina from one used by the residents of the Marlin Bay Yacht Club and/or members of the Marlin Bay Yacht Club Home Owners Association to an essentially public marina separate from the upland residential units.
- 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
- APPROVE – The ability to apply for Transfer of Building Rights to potentially transfer off the existing eight (8) affordable deed restrictions for units already developed pursuant to the transfer protocols and additional conditions laid forth in the agreement.

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;
- Conversion of the marina from one used by the residents of the Marlin Bay Yacht Club and/or members of the Marlin Bay Yacht Club Home Owners Association to an essentially public marina separate from the upland residential units.
- 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**



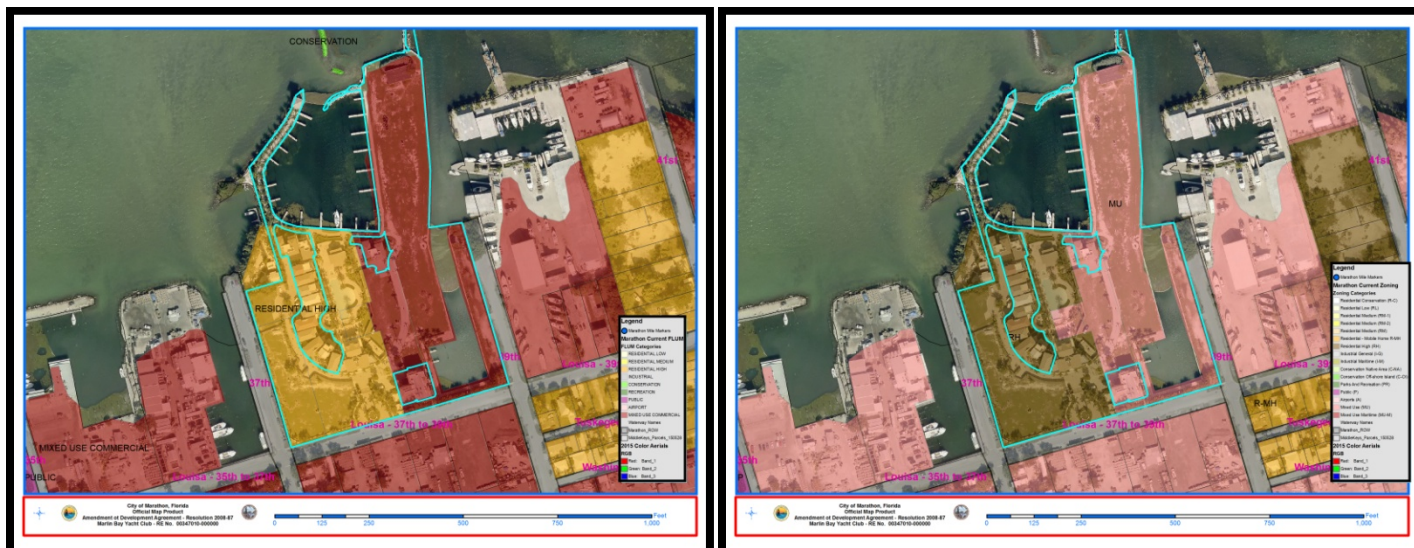
SURROUNDING FLUM, ZONING AND USES:

Table 1 – Surrounding FLUM / Zoning / Uses

	<u><i>Existing FLUM</i></u>	<u><i>Existing Zoning</i></u>	<u><i>Existing Uses</i></u>
North	NA	Open Water	Open Water
West	Mixed Use (MU)	Mixed Use (MU)	Keys Fisheries
South	Mixed Use (MU)	Mixed Use (MU)	Trap Yards
East	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:

1. 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;
2. Extend the maximum stays on wet slips on the property to six (6) months within any 12-month period;
3. Conversion of the marina from one used by the residents of the Marlin Bay Yacht Club and/or members of the Marlin Bay Yacht Club Home Owners Association to an essentially public marina separate from the upland residential units.
4. Expand allowed commercial uses to hotel, retail, and restaurant;
5. A total nonresidential commercial floor area of up to 11,500 square feet; and
6. Removal of up to eight (8) affordable deed restrictions for units already developed by applying for TBRs to relocate them to another site.

A quick analysis of Marlin Bay's request would indicate that items, 2, 4, and 5 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 exiting 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 separately 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:

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.

With the development agreement as amended, the applicant has the option to avail themselves of the TBR process to transfer affordable units to another site. However, as stated above the applicant must first obtain the market rate rights. Per the amended development agreement, the deed restrictions will remain in place until the affordable units have been rebuilt off site. These new units must meet or exceed the scoring criteria as set forth in Section 107.09 of the LDRs. Additionally, they must meet or exceed the square footage, number of bedrooms, and number of bathrooms in the existing affordable units. Once the new affordable units are ready for Certificates of Occupancy, the warranty deed, transfer deeds, and affordable deed restrictions can be recorded. The new affordable housing deed restrictions must then have a term of 99 years, with two automatic renewals.

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. In addition, in the proposed conversion of market rate units, the City (as a government) would see no net change in the number of residential allocations in its BPAS pool. However, in the City within its jurisdictional boundaries would see a net increase in transient units and a net decrease in residential units.

Finally, in the requested conversion of the private marina to a public marina, the potential impacts to the site and neighborhood in light of additional parking and facility requirements including solid waste and sewer would be significant.

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 essentially 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.

However, in the requested conversion of the private marina to a public marina, the potential impacts to the site and neighborhood in light of additional parking and facility requirements including solid waste and sewer would be significant.

Staff finds the request is *not 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;

In the requested conversion of the private marina to a public marina, the potential impacts to the site and neighborhood in light of additional parking and facility requirements including solid waste and sewer would be significant.

Staff finds the request is *not 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;

In the requested conversion of the private marina to a public marina, the potential impacts to the site and neighborhood in light of additional parking and facility requirements including solid waste and sewer would be significant.

Staff finds the request is *not 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

In the requested conversion of the private marina to a public marina, the potential impacts to the site and neighborhood in light of additional parking and facility requirements including solid waste and sewer would be significant.

Staff finds the request is *not 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.)”

The City has issued 100 Transient Residential Units (TRUs) to the Hyatt (now Faro Blanco Hotel), the Courtyard Marriott, Bonfish 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 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.

The applicant has subsequently applied for an LDR amendment to alter the code to allow for such a conversion. Application LDR-20-4 proposes the creation of Section 107.06 H entitled Transient Unit Pool By Conversion of BPAS exempt Market Rate Dwelling Units. The development/redevelopment of transient units would trigger a conditional use per Table 103.15.1.

ZONING DISTRICT	C-NA	C-OI	RL-C	RL	RM	RM-1	RM-2	R-MH	RH	MU	MU-M*	I-G	I-M*	A	P	PR

Hotel/Motel/Resort lodging										C						C

Recreational Vehicle (RV) Park								C		C						C

As mentioned above the development of TRUs triggers the provision for affordable housing requirements for onsite or offsite workforce housing per Section 104.25A.4. and Section 107.06G.4. Additional requirements for workforce housing can be found in Section 104.13 of the code. These workforce units must be deed restricted permanently. As mentioned above in Part A of the report, the existing affordable units do not meet this requirement, and would have to subsequently amended to be in compliance.

As shown above the development or redevelopment into transient uses will require conditional use approval. As the applicant is not proposing an RV park, the TRUs would have to redevelop as Hotel/Motel/Resort lodging. Per Section 104.25B.4. as a condition of redevelopment, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code. Amending the Development Agreement to include an as yet applied for and approved Conditional Use, based upon code sections that have not been adopted is a prime example of hysteron proteron. In lay terms, the cart is being put before the horse, and the Development Agreement should be amended to add these sections only after the adoption of the LDR change and subsequent application and approval for the Conditional Use to develop TRUs on site.

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.
 - There is the ability to transfer, but additional conditions should be added.
- The requested conversion of the private marina to a public marina, the potential impacts to the site and neighborhood in light of additional parking and facility requirements including solid waste and sewer would be significant.

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.
- DENY – conversion of the marina from one used by the residents of the Marlin Bay Yacht Club and/or members of the Marlin Bay Yacht Club Home Owners Association to an essentially public marina separate from the upland residential units.
- 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
- APPROVE – The ability to apply for Transfer of Building Rights to potentially transfer off the existing eight (8) affordable deed restrictions for units already developed pursuant to the transfer protocols and additional conditions laid forth in the agreement.

**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, 37th, and 39th 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 Planning Commission held a public hearing on _____, 20__ to consider this Agreement, and recommended approval of this Agreement to the City Council; and~~

WHEREAS, the City Council held advertised public hearings on _____, 20__ and _____, 20__ 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 Residential Units ~~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) 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 and eight (8) of which are maintained as affordable housing units.

(ii) Thirty-five (35) total Dwelling Units utilized as Vacation Rentals 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 maintained as affordable housing units may be converted to market rate Residential Units in accordance with D.5.p(ii) below.

(iv) Up to Fifty-seven (57) market rate Residential Units on the portion of the Property zoned Mixed Uxe (MU) as depicted on the Conceptual Site Plan for the Marlin Bay Yacht Club attached hereto as Exhibit “E”, and accessory uses; ~~OR, alternatively, up to Ninety-eight (98) Transient Units on the portion of the Property zoned Mixed Use (MU) as depicted on the Conceptual Site Plan for the Marlin Bay Yacht Club attached hereto as Exhibit “E”, and accessory uses, such~~ Transient Units may be development pursuant to the following:

- ~~a. The Owner may acquire off-site BPAS exempt Transient Units and transfer the BPAS exempt Transient Units pursuant to City Code Chapter 107, Article 2; or~~
- ~~b. Upon City approval of an amendment to the LDRs establishing a process for the exchange of BPAS exempt Residential Units for the allocation of the One Hundred (100) available Transient Units described in Policy 1-3.2.6 of the City’s Comprehensive Plan and Section 107.02A.2 of the LDRs, some or all of the Fifty-seven (57) BPAS exempt Residential Units, including Unit 40 on the Conceptual Site Plan, on the Property zoned Mixed Use (MU) may be exchanged by Owner to BPAS exempt Transient Units at the conversion rate provided by the~~

~~amendment to the LDRs for a total of up to Ninety-eight (98)
Transient Units on the Property~~

~~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 or more bedroom room unit per City Code Section 104.25.~~

(v) 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
Up to 92 Dwelling 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.

(iii) Pursuant to the previously recorded development agreement, the marina acts as a private multifamily residential docking facility, and not as a commercial marina.

(iv) Pursuant to the original agreement 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 resident which will be provided to the docmaster to verify membership in the Homeowner Association for purposes of being able to use the accessory uses. The wetslips 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 residential dwelling units, but shall only serve the residents of Marlin Bay Yacht Club, and will not be operated as a commercial marina.

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 37th and 39th 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 fifty-seven (57) Market Rate Units ~~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:

- 1)** Developing at least eight (8) deed-restricted affordable housing units off-site of the Property within the City of Marathon. The City shall cooperate in removing the affordable deed restrictions simultaneously with recording of the deed restriction(s) for the off-site affordable housing units;

- a. The Owner must first obtain eight (8) market rate units through the BPAS process, or find them on the open market and complete the TBR process.
 - i. As the existing affordable housing units already exist, these cannot be used to meet the criteria set forth in Section 107.18.
- b. The off-site affordable housing units must be constructed to meet or exceed the scoring criteria as set forth in Section 107.09 of the LDRs.
- c. The off-site affordable housing units must be constructed to meet or exceed the square footage, number of bedrooms, and number of bathrooms in the existing affordable units.
- d. The deed restrictions for the relocated affordable units must then have a term of 99 years, with two automatic renewals, rather than the fifty (50) year periods as set forth in 5(p)(i) above.

~~2) Linking the development on the Property to eight (8) deed restricted affordable housing units developed off site of the Property within the City of Marathon. The City shall cooperate on removing the affordable deed restrictions simultaneously with with recording of the deed restriction(s) for the linked off site affordable housing units.~~

(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~~ may not be 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~~ George Garrett, City Manager
City of Marathon
~~10045-55~~ 9805 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.~~

212. 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.

223. 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.

234. 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.

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

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

267. 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.

278. 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.

289. 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.

2930. 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.

301. 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.

312. 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

By _____
MANAGER

Date

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 _____, 2021, 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**

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