

## CITY COUNCIL AGENDA STATEMENT



**Meeting Date:** June 8th, 2021

**To:** Honorable Mayor and Council Members

**From:** Brian Shea, Planning Director

**Through:** George Garrett, City Manager

**Agenda Item:** Consideration Of A Request A Conditional Use Permit And A Development Agreement, For Floridian Holdings, LLC, Pursuant To Chapter 102, Articles 8 And 13 Of The City Of Marathon Land Development Regulations ("The Code") Entitled "Development Agreement" And "Conditional Use Permits" Respectively For The Development Of A Hotel; Located At And Around 56243 Ocean Drive; Which Is Legally Described As Block 1 Lots 1-22, Block 2 Lots 1-20, Lot A, And Waterway Number 1, Block 3 Lots 1-3 And Lots 5-19, Lot A, And Part Of Waterway Number 2, Block 4 Lots 1-4, Block 5 Lots 1-7, Lot A, And Lot B Of Ecstasy Subdivision, As Well As The Entirety Of Valhalla Island Amended Plat Of Ecstasy Subdivision Block A, Bay Bottom Adjacent To Tract A, And Previously Abandoned Right Of Way Of Ocean Drive, Section 35, Township 65, Range 33, Crawl Key, Marathon, Monroe County, Florida; Having Real Estate Numbers 00099750-000000, 00099760-000000, 00099760-000100, 00099760-000200, 00099760-000300, 00099760-000400, 00099760-000500, 00358250-000000, 00358260-000000, 00358270-000000, 00358280-000000, 00358290-000000, 00358300-000000, 00358310-000000, 00358320-000000, 00358330-000000, 00358340-000000, 00358350-000000, 00358360-000000, 00358370-000000, 00358380-000000, 00358390-000000, 00358400-000000, 00358410-000000, 00358420-000000, 00358430-000000, 00358440-000000, 00358450-000000, 00358460-000000, 00358470-000000, 00358480-000000, 00358490-000000, 00358500-000000, 00358510-000000, 00358520-000000, 00358530-000000, 00358540-000000, 00358550-000000, 00358560-000000, 00358570-000000, 00358580-000000, 00358590-000000, 00358600-000000, 00358610-000000, 00358620-000000, 00358630-000000, 00358640-000000, 00358650-000000, 00358660-000000, 00358661-000000, 00358710-000000, 00358720-000000, 00358730-000000, 00358740-000000, 00358750-000000, 00358760-000000, 00358770-000000, 00358780-000000, 00358790-000000, 00358800-000000, 00358810-000000, 00358820-000000, 00358830-000000, 00358840-000000, 00358850-000000, 00358851-000000, 00358860-000000, 00358870-000000, 00358880-000000, 00358890-000000, 00358900-000000, 00358910-000000, 00358910-000100, 00358930-000000, 00358940-000000, 00358950-000000, 00358960-000000, 00358970-000000, 00358980-000000, 00358990-000000, 00358990-000200, 00359000-000000, 00359601-000000, 00359602-000000, 00359602-000100, 00360220-000200, 00360220-000400, 00360220-000500, 00360220-000700, 00360220-000800, 00360220-000900, 00360220-001000, 00360220-001100, 00360220-001200, 00360220-004400, 00360220-004500, 00360220-004600, 00360220-004700, 00360220-004800, 00360220-004900, 00360220-005000, 00360220-005200, 00360220-005300, 00360220-005400, 00360220-005500, 00360220-005600, 00360220-005700, 00360220-005800, 00360220-005900, And 00358670-000000, Nearest Mile Marker 57.

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**APPLICANT/OWNER:** Floridian Holdings LLC

**AGENT:** Bart Smith, Smith Hawks

**LOCATION:** The project site is located at and adjacent to US1 And Banana Boulevard nearest mile marker 57. See Figure 1.

**Figure 1**  
**Project Site**



**REQUEST:** A Conditional Use Approval and Development Agreement for redevelopment of the subject property having the real estate numbers 00099750-000000, 00099760-000000, 00099760-000100, 00099760-000200, 00099760-000300, 00099760-000400, 00099760-000500, 00358250-000000, 00358260-000000, 00358270-000000, 00358280-000000, 00358290-000000, 00358300-000000, 00358310-000000, 00358320-000000, 00358330-000000, 00358340-000000, 00358350-000000, 00358360-000000, 00358370-000000, 00358380-000000, 00358390-000000, 00358400-000000, 00358410-000000, 00358420-000000, 00358430-000000, 00358440-000000, 00358450-000000, 00358460-000000, 00358470-000000, 00358480-000000, 00358490-000000, 00358500-000000, 00358510-000000, 00358520-000000, 00358530-000000, 00358540-000000, 00358550-000000, 00358560-000000, 00358570-000000, 00358580-000000, 00358590-000000, 00358600-000000, 00358610-000000, 00358620-000000, 00358630-000000, 00358640-000000,



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## FUTURE LAND USE MAP DESIGNATION:

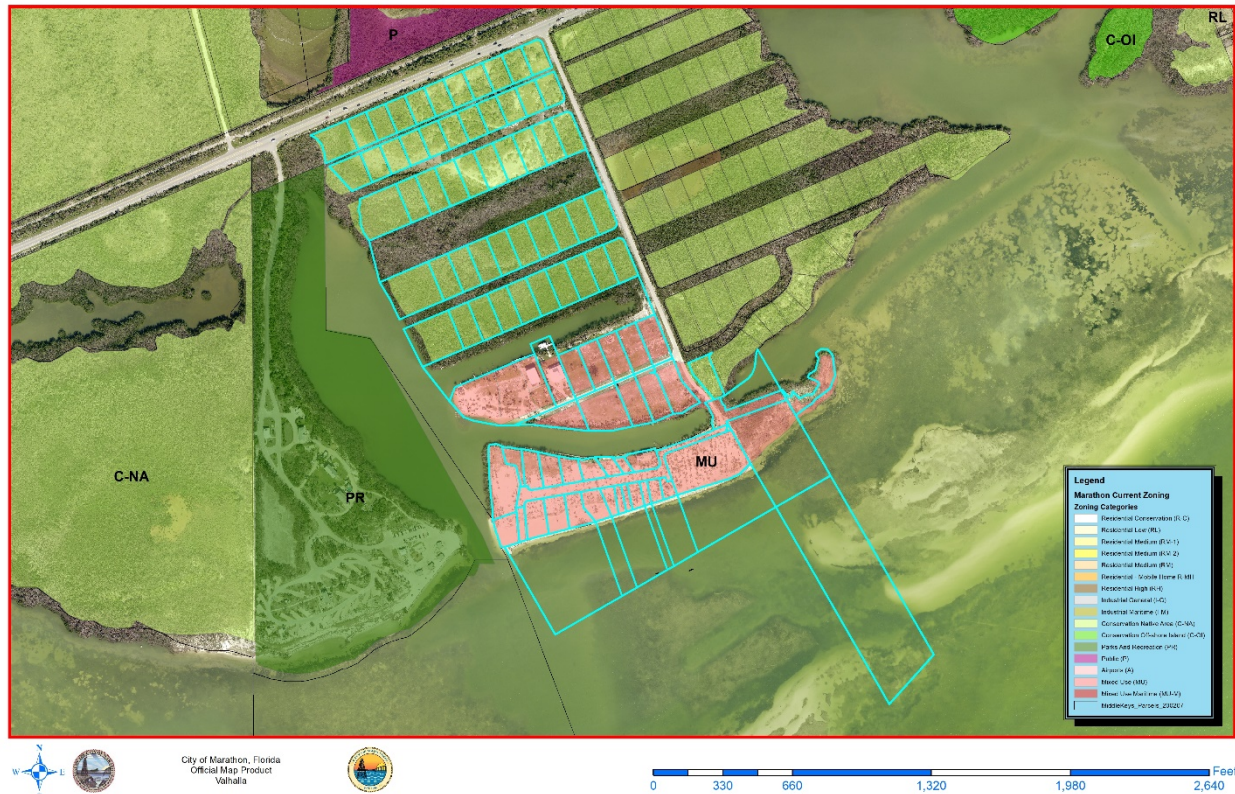
Mixed Use Commercial (MU-C) and Conservation (C). See Figure 2.

**Figure 2**  
**Future Land Use Map**



Mixed Use (MU) and Conservation Native Area (C-NA). See Figure 3.

### Figure 3 Zoning Map

**LOT SIZE:**

Total acreage: approximately 52 acres or 2,265,120 square feet, approximately 18.89 acres currently zoned MU or 823,026 square feet.

**SURROUNDING ZONING AND USES:**

	<u><b>Zoning</b></u>	<u><b>Use</b></u>
<b>North</b>	Public (P)	Fire Training Academy, Morgue, FKEC Relay Station
<b>East</b>	Conservation Native Area (CNA)	Vacant
<b>South</b>	Conservation Native Area (CNA) and Mixed Use (MU)	Single Family and previously developed MU parcels
<b>West</b>	Parks and Recreation (PR) Conservation Native Area (CNA)	Curry Hammock State Park



## EXISTING CONDITIONS:

Ecstasy subdivision was platted in 1948 and Valhalla Island was platted in 1959. The Valhalla subdivision had some development in 1959, and the Ecstasy subdivision was developed with transient uses in 1982 and with the out parcel as a single-family residence in 1993. The City previously abandoned Ocean Drive, and an easement was created for the parcels to access Banana Boulevard.

## PROPOSED REDEVELOPMENT:

Transient Units:	110 Units
Hotel/Amenity Commercial Floor Area which includes back of house support, food and beverage, arrival, housekeeping, etc.:	64,554 square feet

**Figure 4**  
**Proposed Redevelopment Site Plan (US1 Portion)**



City of Marathon, Florida  
Official Map Product  
Valhalla



0 60 120 240 360 480 Feet

**Figure 5**  
**Proposed Redevelopment Site Plan (Ecstasy Portion)**



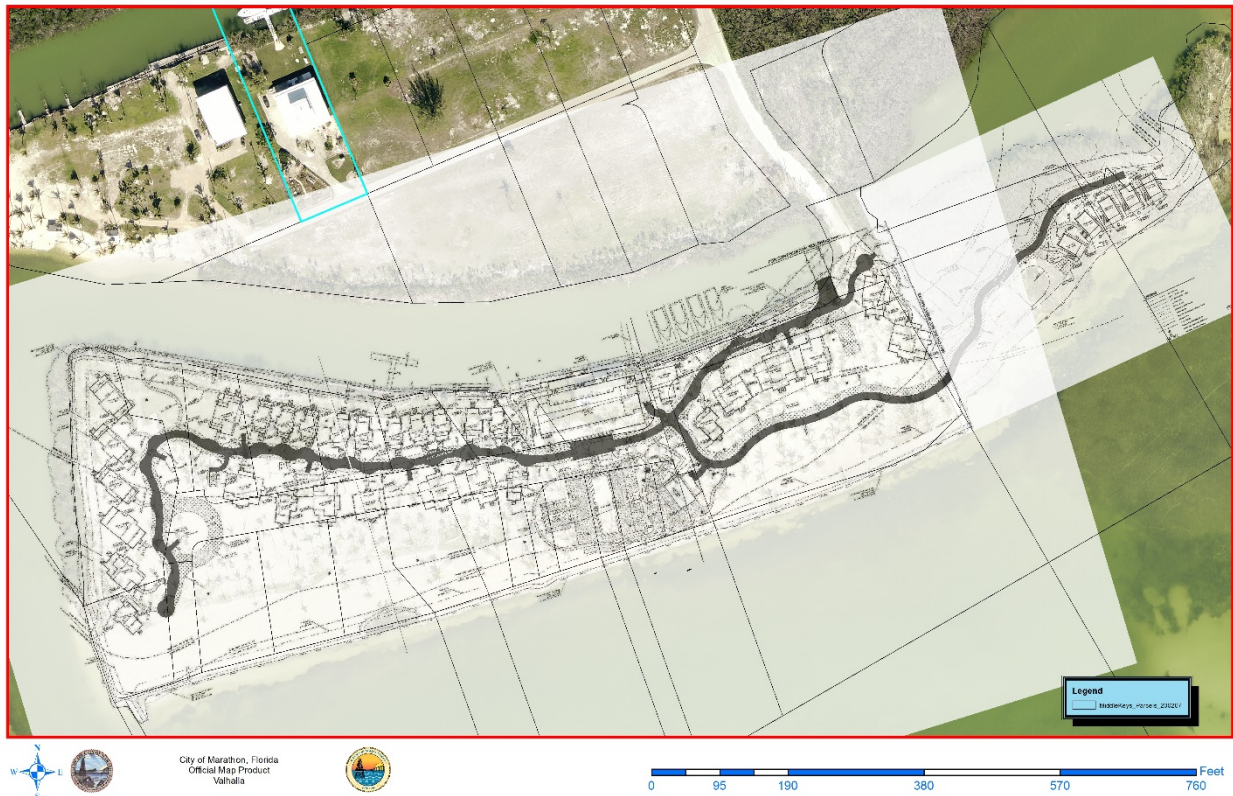
City of Marathon, Florida  
Official Map Product  
Valhalla



0 75 150 300 450 600 Feet



**Figure 6**  
**Proposed Redevelopment Site Plan (Valhalla Portion)**



## **BACKGROUND:**

The proposed project is a redevelopment of the subject property to include the construction of new transient units, restaurant, spa, tennis court, and ancillary structures in the Mixed-Use zoning classification. This report addresses the Conditional Use application, and review is provided and conditioned based upon the recommended changes to FLUM and zoning. **All conditions of the Conditional Use approval will have to be met before any building permit will be approved.**

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

The criteria for evaluating a Conditional Use Approval are outlined in Chapter 102, Article 13, Conditional Use Permits, in the City of Marathon Land Development Regulations.

## **CRITERIA**

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

The proposed redevelopment project is located within the Mixed Use (MU) Zoning District. Per Chapter 103, Article 2, Section 103.09 of the Land Development Regulations, the district is

designed to “accommodate a wide variety of commercial and retail activities that will result in the most efficient and attractive use of the City’s historic business district and the US1 Corridor, in an effort to recognize the role of US1 as the City of Marathon’s ‘Main Street.’ The MU district also provides for large-scale retail and commercial business opportunities in other areas, including larger shopping center, specialty shopping centers, individual multi-tenant commercial buildings, automotive services and sales, fast food restaurants, affordable housing uses, transient lodging and other retail establishments that serve the community at large”.

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

Table 103.15.2 in the Land Development Regulations establishes constraints on density and intensity allowed in the MU district based on the types of uses proposed. Using the property area, the proposed uses only require 54% of the site. Table 103.15.3 further qualifies the allowed range of intensities based on the intensity of retail use. For the purposes of review Commercial Recreation, the strictest FAR was used to assess the commercial square footage on the site as a whole. Even using this strictest criteria, the proposed project is compliant.

Development Type	Proposed
Transient Units	110
Commercial FAR	64,554 square feet

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

- Approval of Conditional Use is contingent upon rezoning approval of CNA area to be used for parking, registration, and support facilities for the proposed hotel development.

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

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



The existing land use pattern in the project vicinity consists of mangroves in conservation land to the east, Atlantic Ocean to the south, Fire Academy, Morgue, FKEC Relay Station and mangroves to the north, and Curry Hammock and conservation land to the west.

There exists a single out parcel within the proposed development area that consists of a single-family residence. The out parcel is zoned the same as the rest of the development, so a vegetative buffer is not required. However, the Applicant proposes a vegetative buffer along the side property lines of the out parcel.

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

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

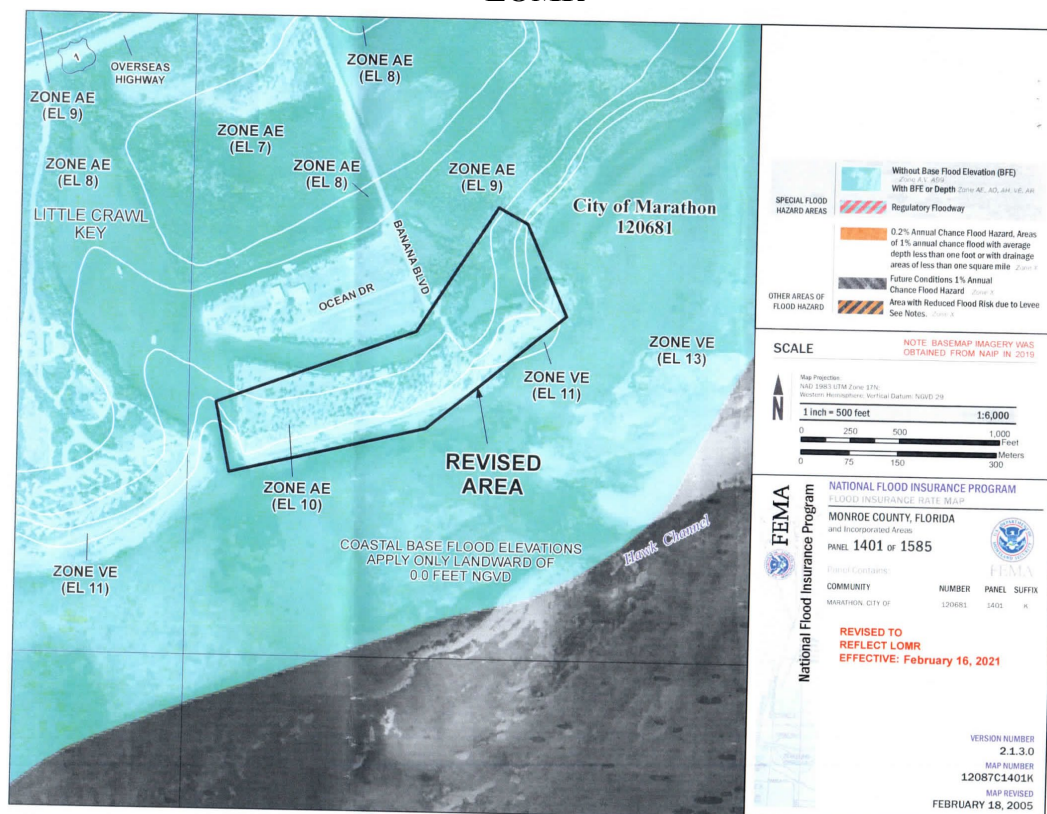
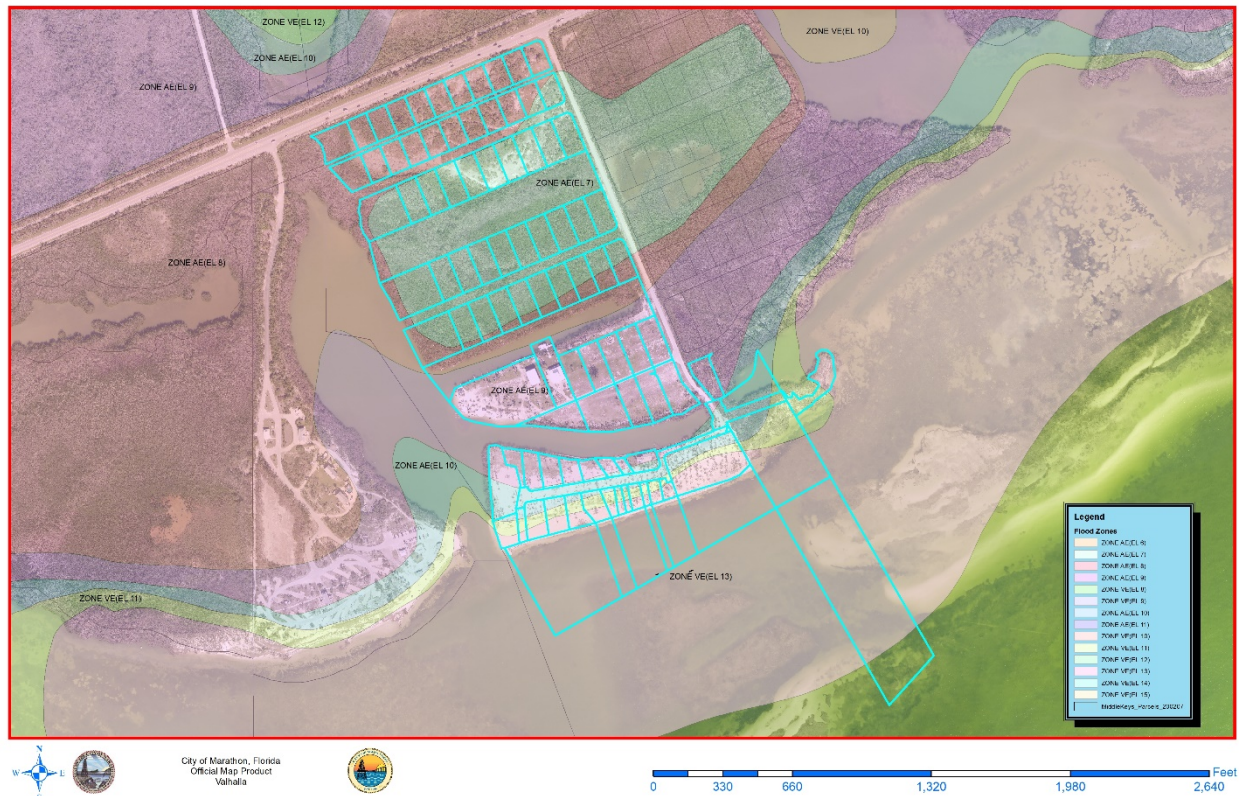
- Approval of Conditional Use is contingent upon change in FLUM designation of Conservation area to be used for parking, registration, and support facilities for the proposed hotel development

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

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

Plans submitted with the project are suitable for the Conditional Use Approval as they relate to Chapter 107, Article 12, 100 Year Floodplain. Two structures are shown to not be flood compliant, however this can be easily rectified during permitting. Final review of floodplain compliance will occur as part of building permit issuance. It should be noted that the property went through the Letter of Map Revision (LOMR) process, and the LOMR 20-04-4546P-120681 became effective as of February 16, 2021.

**Figure 7  
Flood Maps**





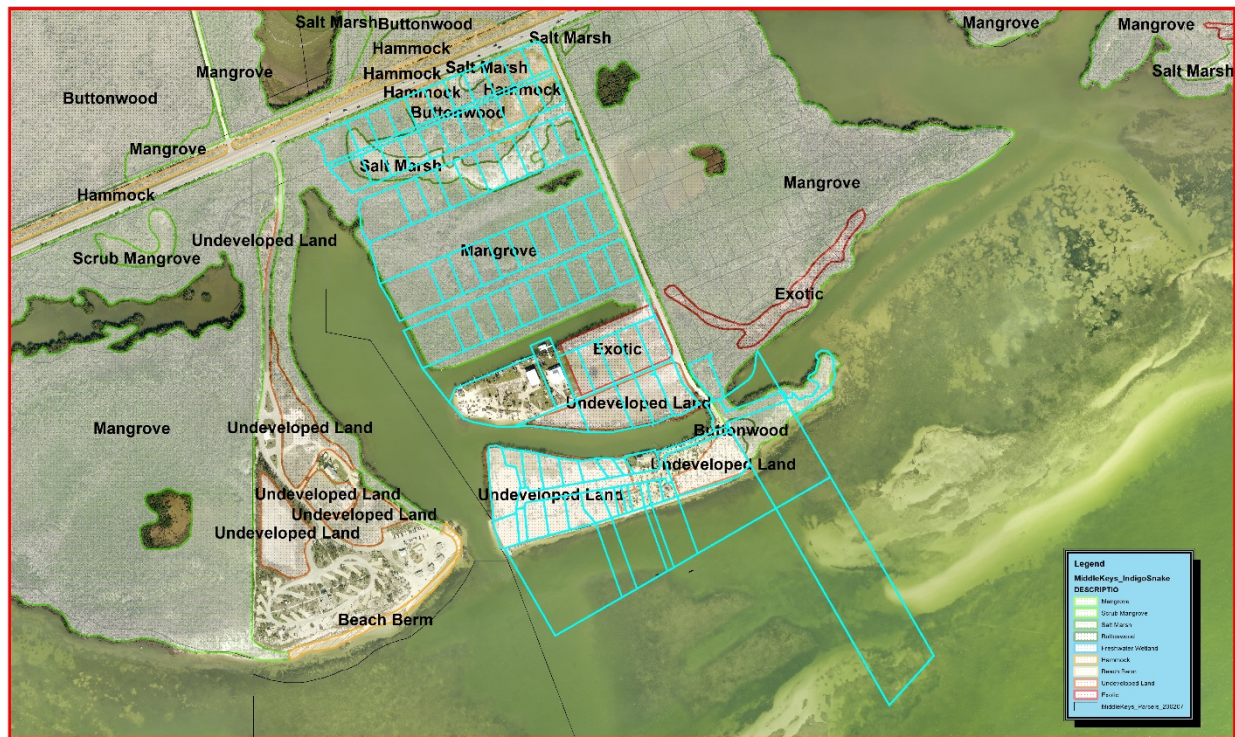
Therefore, the request is **in compliance** with the requirements of these sections.

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

The existing conditions maps indicate the subject area is designated as developed. A site inspection showed most of the site is scarified with existing buildings. A portion of the property is recognized as possible habitat for a state or federally listed animal species, Stock Island Tree Snail, Tree Cactus and Eastern Indigo Snake. Figure 9 shows all the habitat types that exist in relation to the listed species. The portion of the property closest to US1 and subject to the rezoning and FLUM changes contains uplands, disturbed wetlands, and wetlands. The site plan shows that the proposed parking and back of house facilities will be located out of the undisturbed wetlands. However, portions are shown within areas delineated as disturbed wetlands. Wetland mitigation will then be required for these areas, including outside agency approvals prior to permit issuance.

In addition, though found within a ‘Species Focus Area’ as defined in the settlement agreement for the FEMA-FWS lawsuit, “undeveloped land” falls out of the considerations in the species assessment guides thus having a “not likely to adversely affect” designation on the species of concern, the Eastern Indigo Snake.

**Figure 9  
Species Focus Area Habitat**



Further improvements to water quality are expected to arise from stormwater improvements to the

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

Site landscaping will be selected from Table 107.68.1, Appendix A, Article 8, Section 107 of the City of Marathon Code of Ordinances. The native vegetation will improve the environmental quality of the site and reduce irrigation needs. The applicant has submitted a detailed vegetation plan that is compliant with the landscaping requirements.

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

- Staff requires that upon planning review, if the redevelopment is found to have any effect on the Habitat of the Eastern Indigo Snake, Stock Island Tree Snail, or Tree Cactus, then the prescribed protection measures must be undertaken, and the information poster posted on site.
- Applications and approvals must be submitted prior to permit issuance for all external agencies, including but not limited to Army Corps of Engineers (ACOE), Department of Environmental Protection (DEP), South Florida Water Management District (SFWMD).

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

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

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

<b>Table 1</b> <b>Valhalla</b> <b>Trip Generation Analysis</b> <b>Marathon, Florida</b>											
Land Use	Size	Daily Trips	AM Peak Hour Trips			Mid-Day Peak Hour Trips			PM Peak Hour Trips		
			In	Out	Total	In	Out	Total	In	Out	Total
<b>Proposed</b> Resort Hotel <sup>1</sup>	110 Rooms	453	25	10	35	28	27	55	19	26	45

Compiled by: KBP Consulting, Inc. (March 2021).

Sources: Institute of Transportation Engineers (ITE) Trip Generation Manual (10th Edition).

<sup>1</sup> Trip generation based upon ITE Land Use #330 - Resort Hotel with exception of daily calculations. Due to absence of daily trip generation data for the resort hotel land use, the daily trip generation calculations are based upon ITE Land Use #311 - All Suites Hotel.

Ingress and egress to the property is being provided through Banana Boulevard onto US1 as well



as an access driveway onto US1. The trip generation analysis of the Valhalla development shows that the project is anticipated to generate 453 daily vehicle trips, 35 AM peak hour vehicle trips (25 inbound and 10 outbound), 55 midday peak hour vehicle trips (28 inbound and 27 outbound) and 45 vehicle trips during the PM peak hour (19 inbound and 26 outbound).

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

All NFPA codes will have to be met for all structures on site. This is including fire hydrant locations and proper flow requirements for buildings on the property including fire sprinkler systems, access to all buildings for fire apparatus and rescue vehicles. The land bridge is proposed for removal from the island, and as such the access will be provided by a free-standing bridge. The free-standing bridge will be required to support the weight of the City's fire apparatus for access to structures located on the island.

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

- Clear sight triangles must be shown on the site plan at time of building permit issuance.
- Any landscaping in the DOT ROW will require permits from FDOT.
- All conditions of the Fire Marshal must be met prior to permit issuance.

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

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

Uses	Minimum Parking Spaces Required
Spa, gym, or fitness center	3 per 1,000 sq ft GFA
Hotel or Motel	1 per every 3 employees, plus 1 per guest room, required parking for accessory uses
Restaurant	1 per 3 seats, plus required stacking spaces, plus 1 per every 2 employees on the largest shift

Section 107.50 allows for the reduction in the numbers of required parking spaces, which have different peak hour demands. As with previous projects of a similar nature, restaurant and spa guests are primarily guests of the hotel.

Section 107.52 includes a requirement that one handicapped space be provided for every 25 spaces required. Of the 163 proposed spaces, 7 handicapped spaces are required, and 5 are shown on the plans. The two additional ADA spaces must be shown on the plans prior to permit issuance. Parking space sizes are 9' x 18' for 90-degree parking, and handicapped spaces are 12' x 21' as required by Code. The proposed site plan is consistent with the code requirements for parking and

aisle width.

The Code also requires bicycle parking to be provided for educational facilities, multifamily dwellings, commercial, institutional, and industrial uses, as well as all developments adjacent to a bike path, at a rate of one space for every ten parking spaces, per Section 107.48. The final site plan must show a minimum of 16 bicycle parking spaces.

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

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

The proposed project consists of redevelopment of a previously existing commercial use. New lighting will be necessary for this project. The applicant has provided a typical lighting plan which conforms to the City of Marathon LDR's. A more detailed lighting plan must be submitted for permitting purposes. The applicant's detailed plans should achieve the net result of no detrimental noise, glare or odors being generated by any of the uses. The addition of the dense landscape buffering around the site will reduce the noise, odor, and glare.

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

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

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

Section 107.39 requires that all dumpsters and recycling bins be fully enclosed and screened. The site plan indicates that the dumpsters are screened.

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

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

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

- Wastewater: The applicant is currently working with the Utilities department to accommodate the wastewater needs and assess any additional impacts and wastewater fees.
- Water: The Florida Keys Aqueduct Authority currently provides potable water for the facility. Staff recommends a separate meter for irrigation, landscaping, and pool.
- Solid Waste: Marathon Garbage Service currently provides solid waste disposal.
- Surface Water: The applicant has provided stormwater design information suitable for the Conditional Use application review which demonstrates compliance with City standards. However, a final stormwater plan will be required for building permit issuance.



- Recreation and Open Space: This redevelopment will have a de minimis impact on recreation and open space as the applicant is planning to utilize open space areas for trails and recreation.
- Roadways: The applicant is redeveloping the site with a higher intensity than was contained within the prior development; therefore, a traffic study was completed to analyze the impact on transportation facilities.
- Educational Facilities: This redevelopment will have a de minimis impact on educational facilities as transient uses have little use of schools.

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

- City approval is required for the stormwater management system prior to Building Permit Approval.
- The City recommends a separate meter for irrigation, landscaping, and pool.
- There is no objection from the City to proposing a private vacuum sewer system to service the site.
- The applicant will finalize anticipated sewer flow based on site plan and proposed usage.
- City to provide pump specifications for lift stations upstream of the project.
- City to provide available capacity at the wastewater treatment plant.
- City to provide operating pressures at tie in location (typically 35-40 psi).
- Upsizing the forcemain from 2" to 4" will be required for approximately 5200LF from the site continuing north/east along Overseas Highway

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

Table 107.66.1 establishes project boundary buffer standards applicable to the project. The subject parcel is zoned MU and is bordered to the North by properties zoned C-NA. Therefore, a High buffer type is required. The preliminary landscape plans show that this buffer is maintained. The final landscape plans must be approved by the City Biologist.

Section 107.71 A. requires that parcels with a MU zoning designation provide a Type 1 Streetscape Treatment for all parcels along US 1. The proposed landscape plan exceeds the minimum requirements. According to the Code, four canopy trees shall be planted in and about access points. In addition, smaller accent trees shall be planted every 120 feet and staggered midway between the large canopy trees. Additionally, all parking not located to the rear of buildings shall be screened from the right-of-way by a landscaped buffer along US1, including a continuous hedge or combination hedge and earth berm providing a three-foot high visual screen within two (2) years of planting.

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

Table 106.28.1 outlines setbacks requirements for a principal structure on a manmade canal as 20' measured from the Mean High-Water Line, and that a principal structure on open water altered shoreline with a mangrove fringe is 30' measured from MHWL or the landward extent of the

mangrove fringe.

This plan shows an approximate 125' setback on the front yard, 10' setback on the western side, and 10' setback on the eastern side and 20' setback from the altered shoreline, measured from MHWL or mangrove fringe.

Setback	Required	Required Landscape	Proposed	Compliant
Front	30	10	125	Y
East Side	10	N/A	10	Y
West Side	10	N/A	10	Y
Shoreline	20	N/A	20*	Y

\*Some structures have stairs shown within the 20' setback, the stairs/structures will need to be shifted to meet the setback prior to permit issuance.

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

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

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

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

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

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

- All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
- A final lighting plan must be submitted prior to building permit issuance.
- A final landscaping plan must be submitted prior to building permit issuance.

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

Section 106.16 established required open space for the project. The majority of the site is scarified; therefore, a twenty percent open space requirement applies. According to calculations provided by the applicant, 497,890.8 square feet of pervious area (including landscape area), or 43.9% of the site, is provided as open space. This exceeds the open space requirement.

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

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

The project is a redevelopment of a previously existing use. Adjacent uses include a residential use, conservation lands, public uses, and a State Park. A redevelopment and expansion of the hotel use is expected to be fully compatible with these uses. The proposed project represents improvement to the current state of prior development and is expected to increase compatibility with surrounding properties.

Section 107.40 restricts the height of buildings to 42' as measured from the crown of the roadway or unimproved grade. The site plans show that the majority of buildings are under 42'; however, the lodge building is shown to be 54'4" tall. The building types A & B are 27'11", building type C is 31'4", building type D is 29'1", building type E is 33'4", building type F is 37'9", building type G is 36'3", building type H is 32'10", building type I is 54'4", building type J is 33'3", and building type K is 28'4". However, the portions of the structure that go above the 42' are uninhabitable decorative elements, which are an exception according to the code.

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

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

Section 104.25 Hotels or Motels contains special requirements.

### **A. General Provisions:**

1. Reserved.
2. Each hotel or motel shall comply with all mandatory hurricane evacuation requirements set forth by the City for hotel, motel, and other transient uses.
3. Each hotel or motel shall establish and maintain shuttle transport services to airports and tourist attraction individually or in conjunction with other hotel or motel operators.
4. Except as provided in Subsection (a), all hotel or motels shall provide on- or off-site employee housing living space in an amount equal to a minimum of 20 percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units; and such housing shall be of any of the following types as outlined in (b) below:

(a) An exception to the requirement for on- or off-site employee housing living space for hotel/motel redevelopment may be recommended by the Planning Director, the Planning Commission, and approved by the City Council as part of a conditional use and/or development agreement when the following criteria are met:

1. No increase in the number of hotel/motel transient units (unit as described in Subsection 104.25A.5. of the LDRs) if existing hotel/motel unit density is non-conforming as defined in Chapter 108, Article 3 of the LDRs and as specifically outlined in Section 108.12 of the LDRs;
2. No use of transferable building rights (TBRs) (as described specifically in Subsection 107.14B. of the LDRs);
3. No significant change (+ or – 10%) in the current project floor area (Floor area as defined in Chapter 110, Article 3 of the LDRs);
4. No significant difference between the current and proposed uses of floor



area;

5. No effort to move units off-site through TBRs as part of the proposed project, though they may be documented and preserved for future use; and

6. No significant change or increase in the size or type of project site amenities.

(b) Housing types:

1. Dormitory;

2. Studio; or

3. One (1) or two (2) bedroom units.

5. All entrances to a hotel or motel unit shall share the same key or means of controlling access so that the hotel or motel room as defined herein is not divisible into separately rentable units.

The applicant has submitted applications for TBRs of transient rights from three properties. Two of the said properties have existing structures that can be used for affordable housing upon receipt of the affordable allocations. These amount to 4,654 and 3,677 square feet, respectively. The applicant must provide housing totaling at least 13,630.6 square feet. Therefore, the applicant will have to construct an additional 5,299.6 square feet of affordable housing, which can be applied for on the third property mentioned above.

The following criteria are applicable to this redevelopment:

- There is no parking for boats/trailers on the property and it is not planned. Should that change, the applicant must provide boat trailer parking off site.
- The Applicant must obtain and transfer all needed transient and affordable housing units, 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 DOES NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.
- 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.
- Applicant shall comply with all mandatory hurricane evacuation requirements set forth by the City for hotel, motel, and other transient uses.
- Applicant shall establish and maintain shuttle transport services to airports and tourist attraction individually or in conjunction with other hotel or motel operators.
- Applicant shall provide on- or off-site employee housing living space in an amount equal to a minimum of 20 percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units.
- All entrances to a hotel or motel unit shall share the same key or means of controlling access so that the hotel or motel room as defined herein is not divisible into separately rentable units.
- The Conditional Use Development Order will constitute the Certificate of Concurrency

for the project. The determination will be valid for one year.

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

#### **CONCLUSION:**

The Conditional Use Approval is intended to allow for the integration of certain land uses and structures within the City of Marathon based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses. Conditional uses shall not be allowed where the conditional use would create a nuisance, traffic congestion, a threat to the public health, safety, or welfare of the community.

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

#### **RECOMMENDATION:**

Planning staff recommended that the Planning Commission forward a recommendation of conditional approval of the Motel/Hotel/Resort to the City Council. Planning Commission voted 4-1 to recommend Denial of the project to City Council. Planning staff is still recommending approval with conditions. The proposed conditions of approval are listed below.

#### **Conditions of Approval**

1. Approval of Conditional Use is contingent upon rezoning approval of CNA area to be used for parking, registration, and support facilities for the proposed hotel development.
2. Approval of Conditional Use is contingent upon change in FLUM designation of Conservation area to be used for parking, registration, and support facilities for the proposed hotel development.
3. Staff requires that upon planning review, if the redevelopment is found to have any effect on the Habitat of the Eastern Indigo Snake, Stock Island Tree Snail, or Tree Cactus, then the prescribed protection measures must be undertaken, and the information poster posted on site.
4. Applications and approvals must be submitted prior to permit issuance for all external agencies, including but not limited to Army Corps of Engineers (ACOE), Department of Environmental Protection (DEP), South Florida Water Management District (SFWMD).
5. Clear sight triangles must be shown on the site plan at time of building permit issuance.
6. Any landscaping in the DOT ROW will require permits from FDOT.
7. All conditions of the Fire Marshal must be met prior to permit issuance.
8. A detailed lighting plan must be submitted before the project is permitted.
9. City approval is required for the stormwater management system prior to Building Permit Approval.

10. The City recommends a separate meter for irrigation, landscaping, and pool.
11. There is no objection from the City to proposing a private vacuum sewer system to service the site.
12. The applicant will finalize anticipated sewer flow based on site plan and proposed usage.
13. City to provide pump specifications for lift stations upstream of the project.
14. City to provide available capacity at the wastewater treatment plant.
15. City to provide operating pressures at tie in location (typically 35-40 psi).
16. Upsizing the forcemain from 2" to 4" will be required for approximately 5200LF from the site continuing north/east along Overseas Highway
17. All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
18. A final lighting plan must be submitted prior to building permit issuance.
19. A final landscaping plan must be submitted prior to building permit issuance.
20. There is no parking for boats/trailers on the property and it is not planned. Should that change, the applicant must provide boat trailer parking off site.
21. The Applicant must obtain and transfer all needed transient and affordable housing units, 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 DOES NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.
22. 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.
23. Applicant shall comply with all mandatory hurricane evacuation requirements set forth by the City for hotel, motel, and other transient uses.
24. Applicant shall establish and maintain shuttle transport services to airports and tourist attraction individually or in conjunction with other hotel or motel operators.
25. Applicant shall provide on- or off-site employee housing living space in an amount equal to a minimum of 20 percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units.
26. All entrances to a hotel or motel unit shall share the same key or means of controlling access so that the hotel or motel room as defined herein is not divisible into separately rentable units.
27. The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.



**Attachments:**

Attachment A: Proposed Site Plan

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2021-XX**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST FOR A CONDITIONAL USE PERMIT AND A DEVELOPMENT AGREEMENT, FOR FLORIDIAN HOLDINGS, LLC, PURSUANT TO CHAPTER 102, ARTICLES 8 AND 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (“THE CODE”) ENTITLED “DEVELOPMENT AGREEMENT” AND “CONDITIONAL USE PERMITS” RESPECTIVELY FOR THE DEVELOPMENT OF A HOTEL; LOCATED AT AND AROUND 56243 OCEAN DRIVE; WHICH IS LEGALLY DESCRIBED AS BLOCK 1 LOTS 1-22, BLOCK 2 LOTS 1-20, LOT A, AND WATERWAY NUMBER 1, BLOCK 3 LOTS 1-3 AND LOTS 5-19, LOT A, AND PART OF WATERWAY NUMBER 2, BLOCK 4 LOTS 1-4, BLOCK 5 LOTS 1-7, LOT A, AND LOT B OF ECSTASY SUBDIVISION, AS WELL AS THE ENTIRETY OF VALHALLA ISLAND AMENDED PLAT OF ECSTASY SUBDIVISION BLOCK A, BAY BOTTOM ADJACENT TO TRACT A, AND PREVIOUSLY ABANDONED RIGHT OF WAY OF OCEAN DRIVE, SECTION 35, TOWNSHIP 65, RANGE 33, CRAWL KEY, MARATHON, MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBERS 00099750-000000, 00099760-000000, 00099760-000100, 00099760-000200, 00099760-000300, 00099760-000400, 00099760-000500, 00358250-000000, 00358260-000000, 00358270-000000, 00358280-000000, 00358290-000000, 00358300-000000, 00358310-000000, 00358320-000000, 00358330-000000, 00358340-000000, 00358350-000000, 00358360-000000, 00358370-000000, 00358380-000000, 00358390-000000, 00358400-000000, 00358410-000000, 00358420-000000, 00358430-000000, 00358440-000000, 00358450-000000, 00358460-000000, 00358470-000000, 00358480-000000, 00358490-000000, 00358500-000000, 00358510-000000, 00358520-000000, 00358530-000000, 00358540-000000, 00358550-000000, 00358560-000000, 00358570-000000, 00358580-000000, 00358590-000000, 00358600-000000, 00358610-000000, 00358620-000000, 00358630-000000, 00358640-000000, 00358650-000000, 00358660-000000, 00358661-000000, 00358710-000000, 00358720-000000, 00358730-000000, 00358740-000000, 00358750-000000, 00358760-000000, 00358770-000000, 00358780-000000, 00358790-000000, 00358800-000000, 00358810-000000, 00358820-000000, 00358830-000000, 00358840-000000, 00358850-000000, 00358851-000000, 00358860-000000, 00358870-000000, 00358880-000000, 00358890-000000, 00358900-000000, 00358910-000000, 00358910-000100, 00358930-000000, 00358940-000000, 00358950-000000, 00358960-000000, 00358970-000000, 00358980-000000, 00358990-000000, 00358990-000200, 00359000-000000, 00359601-000000, 00359602-000000, 00359602-000100,**

**00360220-000200, 00360220-000400, 00360220-000500, 00360220-000700,  
00360220-000800, 00360220-000900, 00360220-001000, 00360220-001100,  
00360220-001200, 00360220-004400, 00360220-004500, 00360220-004600,  
00360220-004700, 00360220-004800, 00360220-004900, 00360220-005000,  
00360220-005200, 00360220-005300, 00360220-005400, 00360220-005500,  
00360220-005600, 00360220-005700, 00360220-005800, 00360220-005900,  
AND 00358670-000000, NEAREST MILE MARKER 57.**

**WHEREAS**, Floridian Holdings, LLC, (The “Applicant”) filed an Application on February 09, 2021 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 13 and 8 respectively of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant proposes to redevelop/expand the existing motel into up to 110 hotel/resort units, adding 64,554 square feet of commercial space which includes back of house support, food and beverage, arrival, housekeeping, etc.; and

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

**WHEREAS**, on the 19th day of April, 2021, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, and on the 8th day of June, 2021, the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**; the City Council made a determination that the Applicant’s request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs and further, that the approval is in the public interest, is consistent with its policy to encourage the redevelopment of hotels and motels in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS**, the purpose of the Conditional Use Permit is to allow for the integration of certain land uses and structures within the City of Marathon, based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

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



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

**Section 2.** The City Council hereby approves Development Order 2021-03, a copy of which is attached hereto as Exhibit “A”, granting a Conditional Use Permit to Floridian Holdings LLC for the development of 110 hotel/resort units, adding 64,554 square feet of commercial space which includes back of house support, food and beverage, arrival, housekeeping, etc. The Director of Planning is authorized to sign the development order on behalf of the City.

**Section 3.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8<sup>th</sup> DAY OF JUNE, 2021.**

**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:**

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Steven, T. Williams, City Attorney



**CITY OF MARATHON, FLORIDA  
CONDITIONAL USE  
DEVELOPMENT ORDER # 2021-03**

**A DEVELOPMENT ORDER APPROVING THE REQUEST FOR A  
CONDITIONAL USE PERMIT AND A DEVELOPMENT AGREEMENT,  
FOR FLORIDIAN HOLDINGS, LLC, PURSUANT TO CHAPTER 102,  
ARTICLES 8 AND 13 OF THE CITY OF MARATHON LAND  
DEVELOPMENT REGULATIONS (“THE CODE”) ENTITLED  
“DEVELOPMENT AGREEMENT” AND “CONDITIONAL USE  
PERMITS” RESPECTIVELY FOR THE DEVELOPMENT OF A HOTEL;  
LOCATED AT AND AROUND 56243 OCEAN DRIVE; WHICH IS  
LEGALLY DESCRIBED AS BLOCK 1 LOTS 1-22, BLOCK 2 LOTS 1-20,  
LOT A, AND WATERWAY NUMBER 1, BLOCK 3 LOTS 1-3 AND LOTS  
5-19, LOT A, AND PART OF WATERWAY NUMBER 2, BLOCK 4 LOTS  
1-4, BLOCK 5 LOTS 1-7, LOT A, AND LOT B OF ECSTASY  
SUBDIVISION, AS WELL AS THE ENTIRETY OF VALHALLA ISLAND  
AMENDED PLAT OF ECSTASY SUBDIVISION BLOCK A, BAY  
BOTTOM ADJACENT TO TRACT A, AND PREVIOUSLY ABANDONED  
RIGHT OF WAY OF OCEAN DRIVE, SECTION 35, TOWNSHIP 65,  
RANGE 33, CRAWL KEY, MARATHON, MONROE COUNTY,  
FLORIDA; HAVING REAL ESTATE NUMBERS 00099750-000000,  
00099760-000000, 00099760-000100, 00099760-000200, 00099760-000300,  
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00358270-000000, 00358280-000000, 00358290-000000, 00358300-000000,  
00358310-000000, 00358320-000000, 00358330-000000, 00358340-000000,  
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00358890-000000, 00358900-000000, 00358910-000000, 00358910-000100,  
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00358970-000000, 00358980-000000, 00358990-000000, 00358990-000200,  
00359000-000000, 00359601-000000, 00359602-000000, 00359602-000100,  
00360220-000200, 00360220-000400, 00360220-000500, 00360220-000700,  
00360220-000800, 00360220-000900, 00360220-001000, 00360220-001100,  
00360220-001200, 00360220-004400, 00360220-004500, 00360220-004600,**

**00360220-004700, 00360220-004800, 00360220-004900, 00360220-005000,  
00360220-005200, 00360220-005300, 00360220-005400, 00360220-005500,  
00360220-005600, 00360220-005700, 00360220-005800, 00360220-005900,  
AND 00358670-000000, NEAREST MILE MARKER 57.**

**WHEREAS**, Floridian Holdings, LLC, (The “Applicant”) filed an Application on February 09, 2021 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 13 and 8 respectively of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant proposes to redevelop/expand the existing motel into up to 110 hotel/resort units, adding 64,554 square feet of commercial space which includes back of house support, food and beverage, arrival, housekeeping, etc.; and

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

**WHEREAS**, on the 19th day of April, 2021, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, and on the 8th day of June, 2021, the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**; the City Council made a determination that the Applicant’s request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs and further, that the approval is in the public interest, is consistent with its policy to encourage the redevelopment of hotels and motels in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS**, the purpose of the Conditional Use Permit is to allow for the integration of certain land uses and structures within the City of Marathon, based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

**FINDINGS OF FACT:**

1. The OWNER is proposing to redevelop the existing motel into up to 110 hotel/resort units, adding 64,554 square feet of commercial space which includes back of house support, food and beverage, arrival, housekeeping, etc.



2. In accordance with Section 102.77 of the LDRs, the Commission and Council considered and determined that the OWNER met the following criteria:
  - a. The Proposed Use is consistent with the Comprehensive Plan and LDRs;
  - b. The Proposed Use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;
  - c. The Proposed Use shall not adversely affect the health, safety, and welfare of the public; and
  - d. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and
  - e. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:
    1. Ingress and egress to the Property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
    2. Off-street parking and loading areas where required, with particular attention to item 1 above;
    3. The noise, glare or odor effects of the conditional use on surrounding properties;
    4. Refuse and service areas, with particular reference to location, screening and Items 1 and 2 above;
    5. Utilities, with reference to location and availability;
    6. Screening and buffering with reference to type, dimensions and character;
    7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
    8. Required yards and other open space;
    9. General compatibility with surrounding properties; and
    10. The allocation and transfer of transient residential units (TRUs).
    11. Obligations to provide adequate workforce housing.
    12. Any special requirements set forth in the LDRs for the Proposed Use involved.

### **CONDITIONS IMPOSED:**

Granting approval of the Conditional Use Permit is subject to the following conditions:

1. Approval of Conditional Use is contingent upon rezoning approval of CNA area to be used for parking, registration, and support facilities for the proposed hotel development.
2. Approval of Conditional Use is contingent upon change in FLUM designation of Conservation area to be used for parking, registration, and support facilities for the proposed hotel development.
3. Staff requires that upon planning review, if the redevelopment is found to have any effect on the Habitat of the Eastern Indigo Snake, Stock Island Tree Snail, or Tree Cactus, then the prescribed protection measures must be undertaken, and the information poster posted on site.
4. Applications and approvals must be submitted prior to permit issuance for all external

- agencies, including but not limited to Army Corps of Engineers (ACOE), Department of Environmental Protection (DEP), South Florida Water Management District (SFWMD).
5. Clear sight triangles must be shown on the site plan at time of building permit issuance.
  6. Any landscaping in the DOT ROW will require permits from FDOT.
  7. All conditions of the Fire Marshal must be met prior to permit issuance.
  8. A detailed lighting plan must be submitted before the project is permitted.
  9. City approval is required for the stormwater management system prior to Building Permit Approval.
  10. The City recommends a separate meter for irrigation, landscaping, and pool.
  11. There is no objection from the City to proposing a private vacuum sewer system to service the site.
  12. The applicant will finalize anticipated sewer flow based on site plan and proposed usage.
  13. City to provide pump specifications for lift stations upstream of the project.
  14. City to provide available capacity at the wastewater treatment plant.
  15. City to provide operating pressures at tie in location (typically 35-40 psi).
  16. Upsizing the forcemain from 2" to 4" will be required for approximately 5200LF from the site continuing north/east along Overseas Highway
  17. All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
  18. A final lighting plan must be submitted prior to building permit issuance.
  19. A final landscaping plan must be submitted prior to building permit issuance.
  20. There is no parking for boats/trailers on the property and it is not planned. Should that change, the applicant must provide boat trailer parking off site.
  21. The Applicant must obtain and transfer all needed transient and affordable housing units, 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 DOES NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.
  22. 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.
  23. Applicant shall comply with all mandatory hurricane evacuation requirements set forth by the City for hotel, motel, and other transient uses.
  24. Applicant shall establish and maintain shuttle transport services to airports and tourist attraction individually or in conjunction with other hotel or motel operators.
  25. Applicant shall provide on- or off-site employee housing living space in an amount equal to a minimum of 20 percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units.
  26. All entrances to a hotel or motel unit shall share the same key or means of controlling access so that the hotel or motel room as defined herein is not divisible into separately rentable units.
  27. The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.

**VIOLATION OF CONDITIONS:**

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

**CONCLUSIONS OF LAW:**

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

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

**EFFECTIVE DATE:**

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Brian Shea  
Director of Planning

This Development Order was filed in the Office of the City Clerk of this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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



## **NOTICE**

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

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

## **CERTIFICATE OF SERVICE**

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2021.

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

ATTACHMENT A  
Project Plans

Sponsored by: Garrett

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2021-XX**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST FOR A CONDITIONAL USE PERMIT AND A DEVELOPMENT AGREEMENT, FOR FLORIDIAN HOLDINGS, LLC, PURSUANT TO CHAPTER 102, ARTICLES 8 AND 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (“THE CODE”) ENTITLED “DEVELOPMENT AGREEMENT” AND “CONDITIONAL USE PERMITS” RESPECTIVELY FOR THE DEVELOPMENT OF A HOTEL; LOCATED AT AND AROUND 56243 OCEAN DRIVE; WHICH IS LEGALLY DESCRIBED AS BLOCK 1 LOTS 1-22, BLOCK 2 LOTS 1-20, LOT A, AND WATERWAY NUMBER 1, BLOCK 3 LOTS 1-3 AND LOTS 5-19, LOT A, AND PART OF WATERWAY NUMBER 2, BLOCK 4 LOTS 1-4, BLOCK 5 LOTS 1-7, LOT A, AND LOT B OF ECSTASY SUBDIVISION, AS WELL AS THE ENTIRETY OF VALHALLA ISLAND AMENDED PLAT OF ECSTASY SUBDIVISION BLOCK A, BAY BOTTOM ADJACENT TO TRACT A, AND PREVIOUSLY ABANDONED RIGHT OF WAY OF OCEAN DRIVE, SECTION 35, TOWNSHIP 65, RANGE 33, CRAWL KEY, MARATHON, MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBERS 00099750-000000, 00099760-000000, 00099760-000100, 00099760-000200, 00099760-000300, 00099760-000400, 00099760-000500, 00358250-000000, 00358260-000000, 00358270-000000, 00358280-000000, 00358290-000000, 00358300-000000, 00358310-000000, 00358320-000000, 00358330-000000, 00358340-000000, 00358350-000000, 00358360-000000, 00358370-000000, 00358380-000000, 00358390-000000, 00358400-000000, 00358410-000000, 00358420-000000, 00358430-000000, 00358440-000000, 00358450-000000, 00358460-000000, 00358470-000000, 00358480-000000, 00358490-000000, 00358500-000000, 00358510-000000, 00358520-000000, 00358530-000000, 00358540-000000, 00358550-000000, 00358560-000000, 00358570-000000, 00358580-000000, 00358590-000000, 00358600-000000, 00358610-000000, 00358620-000000, 00358630-000000, 00358640-000000, 00358650-000000, 00358660-000000, 00358661-000000, 00358710-000000, 00358720-000000, 00358730-000000, 00358740-000000, 00358750-000000, 00358760-000000, 00358770-000000, 00358780-000000, 00358790-000000, 00358800-000000, 00358810-000000, 00358820-000000, 00358830-000000, 00358840-000000, 00358850-000000, 00358851-000000, 00358860-000000, 00358870-000000, 00358880-000000, 00358890-000000, 00358900-000000, 00358910-000000, 00358910-000100, 00358930-000000, 00358940-**

000000, 00358950-000000, 00358960-000000, 00358970-000000, 00358980-000000, 00358990-000000, 00358990-000200, 00359000-000000, 00359601-000000, 00359602-000000, 00359602-000100, 00360220-000200, 00360220-000400, 00360220-000500, 00360220-000700, 00360220-000800, 00360220-000900, 00360220-001000, 00360220-001100, 00360220-001200, 00360220-004400, 00360220-004500, 00360220-004600, 00360220-004700, 00360220-004800, 00360220-004900, 00360220-005000, 00360220-005200, 00360220-005300, 00360220-005400, 00360220-005500, 00360220-005600, 00360220-005700, 00360220-005800, 00360220-005900, AND 00358670-000000, NEAREST MILE MARKER 57.

**WHEREAS**, Floridian Holdings, LLC, (The “Applicant”) filed an Application on February 09, 2021 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 13 and 8 respectively of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant proposes to redevelop/expand the existing motel into up to 110 hotel/resort units, adding 64,554 square feet of commercial space which includes back of house support, food and beverage, arrival, housekeeping, etc.; and

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

**WHEREAS**, on the 19<sup>th</sup> day of April, 2021, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Development Agreement pursuant to Chapter 102, Article 8 of the LDRs; and

**WHEREAS**, and on the 8<sup>th</sup> day of June, 2021 and the 13<sup>th</sup> day of July, 2021, the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Development Agreement pursuant to Chapter 102, Article 8 of the LDRs; and

**WHEREAS**; the City Council made a determination that the Applicant’s request for a Development Agreement, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs and further, that the approval is in the public interest, is consistent with its policy to encourage the redevelopment of hotels and motels in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS**, the purpose of the Development Agreement is to security in his/her long term development plans and to insure the integration of certain land uses and structures within



the City of Marathon, based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

**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 between the City and Floridian Holdings LLC, a copy of which is attached hereto as Exhibit "A," is hereby approved. The Mayor is authorized to execute this Development Agreement on behalf of the City.

**Section 3.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13<sup>TH</sup> DAY OF JULY, 2021.**

**THE CITY OF MARATHON, FLORIDA**

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**Luis Gonzalez, Mayor**

AYES:

NOES:

ABSENT:

ABSTAIN:

**ATTEST:**

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Diane Clavier  
City Clerk

(City Seal)

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

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Steven T. Williams, City Attorney

*This instrument prepared by:*

Barton W. Smith, Esq.  
SMITH HAWKS  
138 Simonton Street  
Key West, Florida 33040

*(Space reserved for recording)*

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## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into this \_\_\_\_\_ day of 2021, by and between the CITY OF MARATHON, FLORIDA (“Marathon”), a political subdivision of the State of Florida, and FLORIDIAN HOLDINGS, LLC (“Floridian Holdings” or the “Developer”), a foreign limited liability company authorized to do business in the State of Florida, 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 (2020), and is binding on the “Effective Date” set forth herein:

### **WITNESSETH:**

The parties hereby agree as follows:

#### **I. RECITALS**

- A. Floridian Holdings is the owner of approximately 66 acres of land in the corporate limits of the City, located approximately at Mile Marker 56.7 on the South side of U.S. Highway No. 1, more particularly described in the legal description attached hereto as **Exhibit A** (the “Property”).
- B. Floridian Holdings wishes to redevelop the Property as a nature-based resort with up to 115 tourist housing dwelling units with up to 250 rooms and amenities ancillary to the resort, including restaurants and bars, commercial retail, marina, spas, conservation boardwalk, and swimming pools.
- C. As of the date of execution, Floridian Holdings has acquired 100 transient residential unit rights and 14 market-rate residential dwelling unit rights transferred to or recognized on the Property, as documented by the records summarized in **Exhibit B** (the “Development Rights”).
- D. All parties have the authority to enter into this Agreement pursuant to Florida Statutes, Chapter 163, and Floridian Holdings has sole and undivided ownership of the property.
- E. Section 163.3220, Florida Statutes, authorizes Marathon to enter into development agreements with land owners and/or governmental agencies to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision

of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.

- F. This Agreement, among other things, is intended to and shall constitute a Development Agreement between the parties, pursuant to the *Florida Local Government Development Agreement Act*, Section 163.3223, *et seq.*, Florida Statutes (the “Act”).
- G. The parties recognize that the public noticing and hearing procedure shall follow the requirements of Section 163.3225, Florida Statutes.
- H. Marathon finds that entering into this Agreement furthers the purposes, goals, objectives and policies of Marathon’s Comprehensive Plan, which contains goals and objectives that seek to direct development to areas with sufficient land area and traffic capacity, is compatible with surrounding uses, and has access to capital resources. The project is also consistent with the assigned land use designations and permitted density and intensity of use, as well as, bulk improvements are clustered in the least environmentally sensitive areas.
- I. Floridian Holdings and Marathon have provided public notice of the parties’ intent to consider entering into this Agreement by publishing an advertisement in a newspaper of general circulation and readership in Marathon, posting the Property subject to this Agreement, and mailing notices to the property owners lying within 300 feet of the boundaries of the Property subject to this Agreement.
- J. The City of Marathon Planning Commission has held a public hearing on April 19, 2021, to consider this Agreement, and the City Council held two public hearings on June 8, 2021 and \_\_\_\_\_, 2021 to consider this Agreement

## **II. PURPOSE**

The purpose of this Agreement is to allow Floridian Holdings to construct a low- impact, environmentally sensitive resort project. The resort will incorporate an environmental education and stewardship program for guests. This Agreement will allow for a reasonable use of the Property with an immersive natural and environmental experience for guests.

## **III. TERMS OF THE AGREEMENT**

- A. Recitals. The recitals are part of this Agreement on which the parties have relied and are incorporated herein by reference. The parties recognize the binding effect of Florida Statutes, Section 163.3220 – 163.3243, as to the form and content of this Agreement.
- B. Legal Description and Ownership. The legal description for the Property owned by Floridian Holdings and subject to this Agreement is set forth in **Exhibit A** to the Agreement.

- C. **Duration of Agreement.** This Agreement shall remain in effect for ten (10) years from the “Effective Date” as defined herein, and may be extended by mutual consent of the parties and approval at a public hearing, in accordance with Section 163.3229, Florida Statutes. For the duration of this Agreement, the parties agree that any development shall comply with and be controlled by this Agreement, applicable Marathon Ordinances, and Comprehensive Plan governing the development of land in effect on the date of execution of this Agreement, in accordance with Section 163.3220, Florida Statutes.
- D. **Exempt Development Rights.** The Development Rights owned by Floridian Holdings, described particularly in **Exhibit B** are vested and shall not expire. The Development Rights are exempt from Marathon’s Building Permit Allocation System (“BPAS”). Floridian Holdings additionally may transfer properly documented and acquired BPAS-exempt development rights off-site within the City of Marathon in accordance and compliance with any existing or subsequently adopted provision of the City Code.
- E. **Additional Development Rights.** Floridian Holdings may acquire additional building rights to transfer onto the Property pursuant to City Code Chapter 107, Article 2 so long as the additions comply with this Agreement, as may be amended, and the applicable density standards in the City Code.
- F. **Approval of Conceptual Site Plan and Revisions.** The development authorized by this Agreement is depicted on the Conceptual Site Plan (the “Conceptual Site Plan”), attached hereto as **Exhibit C**. The Conceptual Site Plan is hereby approved by Marathon, 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 lodge, pool, recreation area, marina, commercial retail, spa and other ancillary resort 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.
- G. **Permitted Uses.**
1. In accordance with this Agreement, the applicable Future Land Use Map categories, and permitted uses in Marathon’s Future Land Use Map



categories include commercial retail, offices, commercial fishing, attached residential dwelling units, hotels, resorts, marinas and accessory uses.

2. In accordance with this Agreement and the MU Land Use (Zoning) District, as set forth in Marathon's Code and in compliance with other provisions of the Code, the permitted uses in the MU Land Use (Zoning) District include commercial retail, offices, commercial fishing, attached residential dwelling units, hotels, resorts, marinas, and accessory uses.
3. The height of any new structure associated with the redevelopment of the Property shall not exceed 42 feet as measured from the crown of the roadway (U.S. 1) pursuant to Section 107.40.A of the City of Marathon Code. The Lodge and other new structures may have minor decorative architectural features as determined by the Director, mechanical equipment, skylights, flagpoles, air conditioner units, plumbing stacks, church steeples, ham radio antennas, and antenna supporting structures. Except for architectural features, all such structures shall be screened from view; screening is allowed only to the minimum height necessary. In no event shall any structure exceed 50' as measured from the crown of the road.
4. The Property currently has Mixed Use ("MU") and Conservation-Native Area ("C-NA") Land Use (Zoning) District designations and Mixed Use - Commercial ("MU-C") and Conservation Future Land Use Map designations.
5. In accordance with this Agreement and with the MU Land Use (Zoning) District, and in compliance with other provisions of the City Code, the permitted uses in the MU Land Use (Zoning) District include hotel rooms, resort with amenities, restaurants, pool and related accessory uses.
6. The Property shall be developed with up to 115 tourist housing dwelling units with up to 250 rooms and amenities ancillary to the resort, including restaurants and bars, marina, commercial retail, spas, conservation boardwalk, and swimming pools utilizing the Development Rights and additional development rights, which may be acquired.

H. Public Facilities. There are no impacts on public facilities since the number of hotel rooms are derived from pre-existing, lawfully established development rights transient rental transferable development rights.

1. The Florida Keys Aqueduct Authority provides domestic potable water to the Property.
2. The Florida Keys Electric Cooperative provides power to the Property.

3. Solid waste services are provided to the Property by a solid waste collection system franchise through Marathon.
  4. The Property is connected to central sewer maintained by Marathon.
  5. Fire service shall be provided by the Marathon Fire Department.
  6. Any increased impacts on public facilities or public services attributable to each unit of development, and the cost of capital improvements to meet the associated demand on such facilities or services, shall be assured by payment to Marathon, 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.
- I. Reservation or Dedication of Land. There is no reservation or dedication of land for public purposes contemplated by this Agreement.
- J. Development Allowed. The following specific criteria are those which will guide development of the Property, and are standards by which any further approvals shall be measured;
1. Provided such development can be designed and approved by all applicable codes, including but not limited to Marathon's Code and the Florida Building Code, Floridian Holdings is permitted to develop the following buildings, facilities and structures on the Property, pursuant to this Agreement:
    - a. **Density.** The maximum density is 115 tourist housing dwelling units with up to 250 rooms utilizing the Development Rights and any additional development rights acquired. Allowed resort accommodations may include a lodge, cottage or cabin units, and boats or tents.
    - b. **Intensity.** The maximum floor area for non-residential structures is 100,000 square feet.
    - c. Additional amenities ancillary and accessory to the hotel use include a gatehouse, lobby, offices, fitness center, spa, restaurants and bars, marina, dockmaster, commercial retail, maintenance and housekeeping facilities, gift shop, and water sports, as depicted on the Conceptual Plan submitted with and made a part of this Agreement.

- d. Onsite valet parking. The number of parking spaces accounts for shared use of guest parking spaces. Parking may also be accommodated in offsite valet or employee lots.
  - e. A copy of the preliminary design data, parking calculations and density/intensity table is attached as **Exhibit D**.
- K. Employee Housing. Floridian Holdings will provide off-site employee housing equal to 20% of the approved floor area in guest units consistent with applicable City of Marathon's Land Development Regulations.
- L. Employee Housing Definitions. *Employee housing* means residential dwelling units that meet the following requirements:
  - 1. All applicable requirements of the United States Department of Housing and Urban Development minimum property standards as to room sizes, fixtures, landscaping and building materials, when not in conflict with applicable laws of Marathon; and
  - 2. A dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of that amount which represents either 50 percent (very low income) or 80 percent (low income) or 100 percent (median income) or 120 percent (moderate income) of the monthly median adjusted household income for Marathon.
  - 3. *Affordable housing owner occupied, low income*, means a dwelling unit occupied only by a household whose total household income does not exceed 80 percent of the median monthly household income for Marathon.
  - 4. *Affordable housing owner occupied, median income*, means a dwelling unit occupied only by a household whose total household income does not exceed 100 percent of the median monthly household income for Marathon.
  - 5. *Affordable housing owner occupied, moderate income*, means a dwelling unit occupied only by a household whose total household income does not exceed 120 percent of the median monthly household income for Marathon.
  - 6. *Affordable rental housing, low income*, means a dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of the amount that represents 80 percent of the monthly median adjusted household income for Marathon.
  - 7. *Affordable rental housing, median income*, means a dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of the

amount that represents 100 percent of the monthly adjusted median household income for Marathon.

8. *Affordable renting housing, moderate income*, means a dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of the amount that represents 120 percent of the monthly median adjusted household income for Marathon.
  9. *Median income, rental rates and qualifying incomes table*, means eligibility requirements compiled each year by the Planning Department based upon the median annual household income published for Marathon on an annual basis by the U.S. Department of Housing and Urban Development and similar information for median and moderate income levels from the Florida Housing Finance Corporation. Affordable housing eligibility requirements for each household will be based upon median annual household income adjusted by family size, as set forth by the U.S. Department of Housing and Urban Development and the Florida Housing Finance Corporation. Marathon shall rely upon this information to determine maximum rental rates and maximum household income eligible for affordable housing rental or purchase.
  10. *Monthly median household income* means the median annual household income for Marathon, divided by 12.
- M. Abandonment of Banana Boulevard. Floridian Holdings has submitted an application to abandon the Banana Boulevard right-of-way. Thereafter, Marathon shall transfer its ownership of Banana Boulevard to the centerline of said right-of-way to Floridian Holdings.
- N. Abandonment of Rights-of-Way. Floridian Holdings has submitted an application to abandon all rights-of-way in Ecstasy Section "A" subdivision including First Street South, Second Street South and unnamed alleyways.
- O. Conceptual Plan Approval. Marathon does hereby accept the Conceptual Site Plan, a copy of which is attached as **Exhibit C**. The development shall be consistent with all applicable codes, including but not limited to, Marathon's Comprehensive Plan and Code.
- P. Findings of Consistency. By entering into this Agreement, Marathon finds that the development permitted or proposed herein is consistent with its Comprehensive Plan and Code.

#### **IV. BREACH, AMENDMENT, ENFORCEMENT AND TERMINATION**

- A. Material Breach: A material breach by the parties is the failure of any party to comply with the terms of this Agreement after notice as provided herein.

- B. Notice: Upon any party's material breach of the terms and conditions of this Agreement, the non-breaching party shall serve written notice of the breach upon the breaching party pursuant to the procedure established in this Agreement and shall provide the opportunity, within ninety (90) days of the date such notice is served, to propose a method of fulfilling the Agreement's terms and conditions or curing the breach. The breaching party shall be provided an additional ninety (90) days to cure the material breach or to negotiate an amendment to this Agreement within a reasonable time, as mutually agreed to by the parties. This Agreement is not subject to arbitration and must be amended in accordance with the statutory requirements.
- C. Amendment or Termination: The parties hereto shall at all times adhere to the terms and conditions of this Agreement. Amendment, termination, extension, or revocation of this Agreement shall be made in accordance with the notification and procedural requirements set forth herein.
1. Amendments to this Agreement shall subject parties to the laws and policies in effect at the time of the amendment only if the conditions of Section 163.3233(2), Florida Statutes, are met.
  2. No modifications, extensions, amendments, or alterations of the terms or conditions contained herein shall be effective unless contained in a written document approved and executed by the parties.
  3. Amendment, extension or termination shall require at least two (2) public hearings. Hearings shall be held pursuant to an application filed with Marathon by the party seeking to amend and terminate this Agreement, along with the requisite filing fee. Notice of public hearings shall be in accordance with Marathon's Land Development Ordinances and Florida Statutes.
- D. Enforcement:
1. Marathon may utilize appropriate code compliance remedies to cure any breach after notice and an opportunity to cure as provided herein.
  2. Nothing contained herein shall limit any other powers, rights, or remedies that either party has, or may have in the future, to enforce the terms of this Agreement.

## **V. GENERAL TERMS**

- A. Binding Effect of Agreement. The covenants, agreements, and obligations herein contained, except as herein otherwise specifically provided, shall extend to, bind



and inure to the benefit of the parties hereto and their respective personal representatives, successors and assigns.

- B. State and Federal Law. If the State or Federal laws enacted after the effective date of this Agreement preclude either 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.
- C. Compliance with other Laws. The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the parties of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restrictions.
- D. Reservation of Rights. This Agreement shall not affect any rights, which may have accrued to any party to this Agreement under applicable law. The parties reserve any and all such rights. All approvals referenced in this Agreement are subordinate to compliance with all applicable laws, codes, and land development regulations and permits, except to the extent otherwise provided for in this Agreement.
- E. No Permit. This Agreement is not and shall not be construed as a Development Permit, Development Approval or authorization to commence development, nor shall it relieve the parties other than Marathon of the obligations to obtain necessary Development Approvals that are required under applicable law and under and pursuant to the terms of this Agreement and Marathon's Ordinance.
- F. Good Faith; Further Assurances, No Cost. The parties to this Agreement have negotiated in good faith. It is the intent and agreement of the parties that they shall cooperate with each other in good faith to effectuate the purposes and intent of, and to satisfy their obligations under, this Agreement in order to secure themselves the mutual benefits created under this Agreement. The parties agree to execute such further documents as may be reasonably necessary to effectuate the provisions of this Agreement, provided that the foregoing shall in no way be deemed to inhibit, restrict or require the exercise of Marathon's police power or actions of Marathon when acting in a quasi-judicial capacity. Wherever in this Agreement a provision requires cooperation, good faith or similar effort to be undertaken at no cost to a party, the party cooperating, reviewing or undertaking the effort shall, nonetheless, attend meetings, hearings, or proceedings and execute documents, and shall incur the costs, inclusive of the expense of its counsel.
- G. Successors and Assigns. This Agreement shall constitute a covenant remaining with the land, which shall be binding upon the parties hereto, their successors-in-interest, heirs, assigns, and personal representatives.
- H. 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 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 deemed effective upon receipt. For purposes of notice, demand, request, or replies:

The address of the City of Marathon shall be:

City of Marathon Manager  
9805 Overseas Highway  
Marathon, FL 33050

with copy to:

City Attorney  
9805 Overseas Highway  
Marathon, FL 33050

The address of Floridian Holdings shall be:

Floridian Holdings, LLC  
2500 East Kearney St  
Springfield, MO 65898  
Attn: Tim Mahoney

with copy to

Barton Smith, Esq.  
SMITH HAWKS, PL  
138 Simonton Street  
Key West, FL 33040

It is the responsibility of the parties to promptly notify all other parties of any changes in name or address for receipt of notice, demand, request, or replies.

- I. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, riot, civil commotion, fire or other casualty and other causes beyond the reasonable control of the party obligated to perform, excluding the financial inability of such party to perform and excluding delays resulting from appeals or rehearing, shall excuse the performance by such party for a period equal to any such period of prevention, delay or stoppage. In order to avail itself of this force majeure provision, the party invoking the same shall provide the other party with written notice that shall consist of recitation of all events that constitute force majeure events under this section, together with the beginning and ending dates of such events.
- J. Construction. This Agreement shall be construed in accordance with the laws of the State of Florida. The parties of this Agreement have participated fully in the negotiation and preparation hereof; and, accordingly, this Agreement shall not be

more strictly construed against any one of the parties hereto. In construing this Agreement, the use of any gender shall include every other and all genders, and captions and section and paragraph headings shall be disregarded. All of the exhibits attached to this Agreement are incorporated in, and made part, this Agreement.

- K. Omission. The parties hereto recognize and agree that the failure of this Agreement to address a particular permit, condition, terms or restriction shall not relieve either party of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction notwithstanding any such omission.
- L. Jurisdiction and Governing Law. The parties hereto agree that any and all suits or actions at law shall be brought in Monroe County, Florida and no other jurisdiction. This Agreement shall be construed and interpreted under the laws of the State of Florida.
- M. Attorney's Fees and Costs. The parties agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, as an award against the non-prevailing party, and shall include attorney's fees, court costs, in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and unusual and customary procedures required by the Circuit Court of Monroe County.
- N. Time is of the Essence. Time shall be of the essence for each and every provision of this Agreement.
- O. Entire Agreement. This Agreement, together with the documents referenced herein, constitute the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements, representations, or warranties other than as set forth herein. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought and subject to the requirements for the amendment of development agreements in the Act.
- P. Counterparts. This Agreement may be executed in one or more counterparts, and by different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all which taken together constitute one and the same Agreement.
- Q. Recording. The City of Marathon shall record this Agreement with the Clerk of Court of Monroe County within fourteen (14) days following signature by all parties. Floridian Holdings agrees that it shall be responsible for all recording fees and other related fees and costs related to the recording and delivery of this Agreement as described in this section. The provisions hereof shall remain in full

force and effect during the term provided herein and shall be binding upon all successors-in-interest of the parties to this Agreement.

- R. Conflicting Resolutions. All resolutions or parts thereof in conflict with the provisions of this Agreement and its resolution are hereby repealed to the extent of such conflict.
- S. Severability. If any part of this Agreement is contrary to, prohibited by, or deemed invalid under any applicable law or regulation, such provisions shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid; however, the remainder of the Agreement shall not be invalidated thereby and shall be given full force and effect as if the contrary, prohibited, or invalid provisions were never a part hereof.
- T. Effective Date. The “Effective Date” of this Agreement shall be forty-five (45) days after it is rendered to the Department of Economic Opportunity or upon the conclusion of any appeal, whichever is later.

[Signature Pages to Follow]

signed, sealed and delivered in the presence of:  
WITNESSES:

**FLORIDIAN HOLDINGS, LLC**  
a foreign limited liability company

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Name of Witness (printed/typed)

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Witness (printed/typed)

STATE OF \_\_\_\_\_ )  
: ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by means of ☐ physical presence OR ☐ online notarization on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of FLORIDIAN HOLDINGS, LLC, a foreign limited liability company who is ☐ personally known to me OR ☐ who produced \_\_\_\_\_ as identification, and ☐ who did OR ☐ did not take an oath.

(Seal)

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_



**THE CITY OF MARATHON, FLORIDA**

By: \_\_\_\_\_  
LUIS GONZALEZ, MAYOR

**ATTEST**

By: \_\_\_\_\_  
DIANE CLAVIER, CITY CLERK

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

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STEVE WILLIAMS, CITY ATTORNEY

**Exhibit A**

**Legal Description**

## **Exhibit B**

### **Development Rights**

<b>VALHALLA DEVELOPMENT RIGHTS</b>						
	<b>Sender</b>	<b>Receiver</b>	<b>No. of TBR</b>		<b>Documentation</b>	<b>Sender Site Identifier</b>
			Transient	Market		
1	Grassy Key Holdings	Grassy Key Holdings	18		Determination of Building Rights dated October 23, 2013	VBR 2013-0037 (Valhalla)
2	Floridian	Floridian Holdings	9		Resolution 2009-100	MRBPAS 1 - 9
3	James Edmunds	Floridian Holdings	4		Resolution 2009-101	70098
4	Key RV/Mobile Home Association	Grassy Key Holdings	9		Deed of Transfer	130031
5	Michael Adkins	Grassy Key Holdings	2		Deed of Transfer	130030 and 130032
6	Gregory Coldiron	Grassy Key Holdings	1		Deed of Transfer	130037
7	Michael Adkins	Grassy Key Holdings	2		Deed of Transfer	170023 and 170024
8	Keys RV Rentals	Grassy Key Holdings	1		Deed of Transfer	170025
9	Ginger Lot	Grassy Key Holdings	6		Deed of Transfer	170017 - 170022
10	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130015
11	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130017
12	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130018
13	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130019
14	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130020
15	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130021
16	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130022
17	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130023
18	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130024

19	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130025	
20	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130026	
21	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130027	
22	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130028	
23	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130029	
24	IPGP Food & Services	Grassy Key Holdings	9		Deed of Transfer	120033	
25	Hidden Harbor Marina Environmental Project	Grassy Key Holdings	10		Warranty Deed of Transfer	120036	
26	Lightfoot Real Estate Holdings	Grassy Key Holdings	12		Deed of Transfer	DP 2018-0176	
27	Thunderbolt Real Estate Holdings	Grassy Key Holdings	8	1	Affidavit	TBR 2019-0141	
28	Thunderbolt Real Estate Holdings	Grassy Key Holdings	8		Affidavit	160048	
		<b>Total</b>	<b>100</b>	<b>14</b>			