

CITY COUNCIL AGENDA STATEMENT



Meeting Date: January 9, 2024
To: Honorable Mayor and Council Members
From: Brian Shea, Planning Director
Through: George Garrett, City Manager

Agenda Item: Consideration Of The Request For A Third Amended And Restated Development Agreement Between The City Of Marathon And Marlin Bay Yacht Club, LLC, For The Redevelopment Of Property, Which Is Legally Described As Block 6 Lots 1 Thru 5 & The N 100' Of The S 430' Of Lot 6 And Adjacent Filled Bay Bottom, Marathon Beach Sub Pb2-16 And Block 2 Lots 1 Thru 6 Amended Plat Of Yacht Basin Tracts Real Estate Number 00337010-000000, Providing For Conditions And Requirements Of Development, Including But Not Limited To, Buffers, Building Heights, Setbacks, And Other Requirements, More Specifically Allowing For The Marina To Be Public Use; And Providing For An Effective Date.

RECOMMENDATION:

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

- APPROVE - Convert the marina from a private to a public marina;
- APPROVE – The removal of the location limiting language referencing the conceptual site plan, and remove the architectural standards.

APPLICANT/OWNER: Marlin Bay Yacht Club

AGENT: A.J. Davila / Smith Hawks

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

(See Figure 1 – Location Map)

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

- Convert the marina from a private marina to a public marina.

FUTURE LAND USE MAP DESIGNATION:

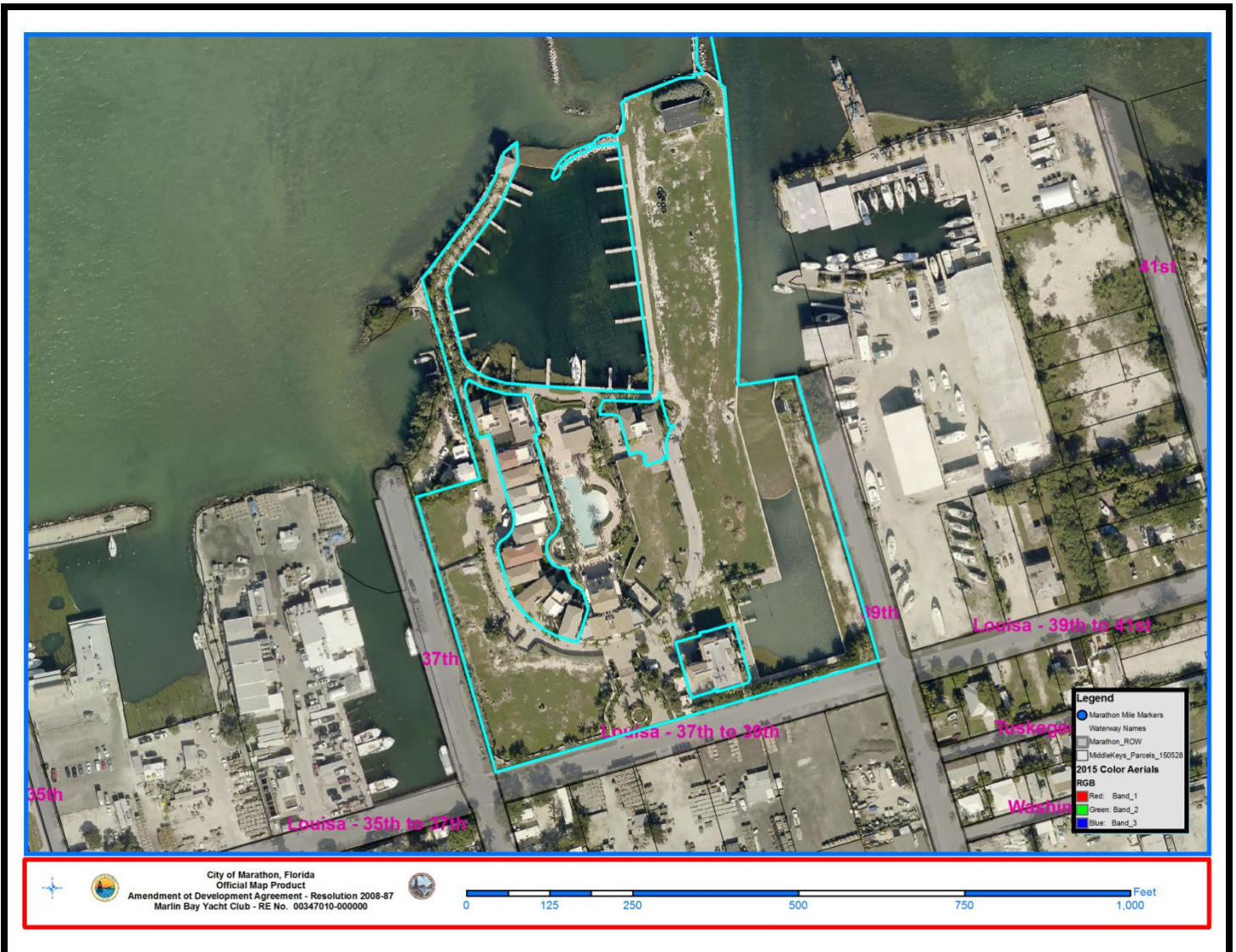
Current – Residential High (RH) / Mixed Use (MU)

ZONING MAP DESIGNATION:

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

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

Figure 1 Location Map



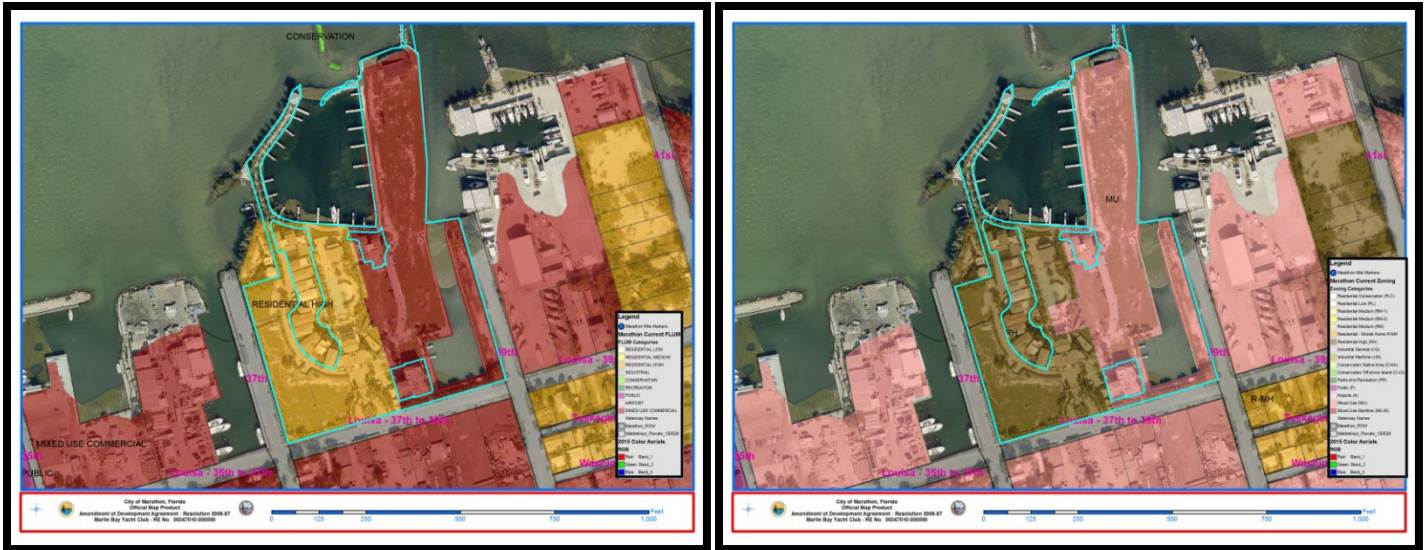
SURROUNDING FLUM, ZONING AND USES:

Table 1 – Surrounding FLUM / Zoning / Uses

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

FLUM / Zoning Maps

Figure 2
FLUM / Zoning Maps



EXISTING CONDITIONS / PROJECT PROPOSAL:

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

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

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

EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:

CRITERIA

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

The Applicant is seeking to convert the existing marina from a private marina to a public marina. The marina is already deemed to have received conditional use approval. By requiring the update of the Marina Operating Permit, the City will ensure compliance with all applicable LDRs and external agency regulations.

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

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

The Applicant is seeking to convert the existing marina from a private marina to a public marina. The marina is already deemed to have received conditional use approval. By requiring the update of the Marina Operating Permit Objective 4-1.12 and its subsequent policies are being met.

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

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

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

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

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

No significant change since approval of the original Agreement.

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

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

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

No significant change since approval of the original Agreement.

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

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

No significant change since approval of the original Agreement. All 92 units on site must have 2 parking spaces required per code. The marina was able to sell ownership of slip to “nonmembers”, by making it public, the ownership portion is removed, but the parking spaces are still required pursuant to the LDRs. This requirement is 1 parking space per 2 slips.

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

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

No significant change since approval of the original Agreement.

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

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

No significant change since approval of the original Agreement.

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

5. Utilities, with reference to location and availability;

No significant change since approval of the original Agreement.

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

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

No significant change since approval of the original Agreement.

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

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

No significant change since approval of the original Agreement.

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

8. Required yards and other open space;

No significant change since approval of the original Agreement.

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

9. General compatibility with surrounding properties; and

No significant change since approval of the original Agreement.

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

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

With the change in the marina from private ownership by the Yacht Club members and “nonmembers” to a public marina, the Development agreement needs to be updated and incorporated into the Marina Operating Permit.

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

CONCLUSION:

Staff review of the proposed changes to the Development Agreement for Marlin Bay Yacht Club has found it to be compliant with the Comprehensive Plan and LDRs.

RECOMMENDATION:

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

- APPROVE - Convert the marina from a private to a public marina;
- APPROVE – The removal of the location limiting language referencing the conceptual site plan, and remove the architectural standards.

Sponsored by: Garrett

**CITY OF MARATHON, FLORIDA
RESOLUTION 2024-XX**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MARATHON AND MARLIN BAY YACHT CLUB, LLC, FOR THE REDEVELOPMENT OF PROPERTY, WHICH IS LEGALLY DESCRIBED AS BLOCK 6 LOTS 1 THRU 5 & THE N 100' OF THE S 430' OF LOT 6 AND ADJACENT FILLED BAY BOTTOM, MARATHON BEACH SUB PB2-16 AND BLOCK 2 LOTS 1 THRU 6 AMENDED PLAT OF YACHT BASIN TRACTS REAL ESTATE NUMBER 00337010-000000, PROVIDING FOR CONDITIONS AND REQUIREMENTS OF DEVELOPMENT, INCLUDING BUT NOT LIMITED TO, BUFFERS, BUILDING HEIGHTS, SETBACKS, AND OTHER REQUIREMENTS, MORE SPECIFICALLY ALLOWING FOR THE MARINA TO BE PUBLIC USE; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

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

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

WHEREAS, the City Council approved the second Amendment to the Development Agreement documented in Resolution 2021-21.

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

Section 1. The foregoing recitals are true and correct and are incorporated herein by this reference.

Section 2. The Development Agreement is amended to allow the marina to be open to

the public.

Section 3. This resolution shall take effect immediately upon its review and approval by Florida Commerce.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13th DAY OF FEBRUARY 2024.

THE CITY OF MARATHON, FLORIDA

Robyn Still, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

Steve Williams, City Attorney

PREPARED BY AND RETURN TO:
BARTON W. SMITH
SMITH HAWKS, PL
138 SIMONTON STREET
KEY WEST, FL 33040
(305) 296-7227

SPACE ABOVE LINE BLANK FOR RECORDING PURPOSES

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

THIS THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR THE MARLIN BAY YACHT CLUB (“Agreement”) is entered into by and between MARLIN BAY YACHT CLUB, LLC, a Florida limited liability company (“Owner”), and the CITY OF MARATHON, a Florida municipal corporation (“City”), pursuant to the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2023), and Sections 102.29, 102.30, 102.31, and 102.32 of the City Code of Ordinances (“City Code”), and is binding on the “Effective Date” set forth herein.

WITNESSETH:

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

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

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

WHEREAS, by Resolution 2021-29, the City Council of the City approved the Second Amended and Restated Development Agreement for The Marlin Bay Yacht Club (“Second Amended Agreement”), attached hereto as Exhibit “D” and incorporated herein by reference; and

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

WHEREAS, the Original Development Agreement, the First Amended Agreement, and the Second Amended Agreement authorized the Owner to redevelop the Property as ninety-two (92) residential dwelling units, and a clubhouse and other accessory uses including commercial floor area and a marina; and

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

WHEREAS, at the time Sandler and City entered into the Original Development Agreement, the Property was in a deteriorated condition, with numerous unlicensed cesspits and an unlicensed septic system for which the operating permit had been revoked by the Department of Health, lacking any stormwater management system or erosion control measures, and having

unstable shoreline stabilization structures and nonconforming structures that were highly vulnerable to storm events; and

WHEREAS, the City desired, and continues to desire, the redevelopment of the Property in order to protect the environment and provide the residents of the City a clean, healthy environment, through the removal of cesspits, the replacement of substandard on-site wastewater treatment, and the implementation of effective stormwater management and shoreline stabilization plans, as well as to allow redevelopment which would substantially enhance ad_valorem taxes generated by the Property, thereby contributing to economic stability for the City and its citizens; and

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

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

WHEREAS, the Owner has received construction completion certification from SFWMD related to the stormwater management system serving the Property, thereby providing a substantial environmental benefit through retaining, detaining, treating, and managing stormwater runoff and eliminating the untreated discharge of stormwater under the historical and existing conditions on the Property; and

WHEREAS, as part of the Property redevelopment, the Owner will provide substantial public benefit by maintaining parallel parking and sidewalks constructed along Louisa and 37th,

streets and provide landscaping and stormwater management facilities associated with these parking and sidewalk facilities; and

WHEREAS, the proposed redevelopment is permissible and appropriate for the City's Comprehensive Plan Future Land Use Map designations of Residential High and Mixed Use applicable to the Property, which allow high-density, single-family and mixed-use development along with various types of residential and non-residential uses; and

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

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

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

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

WHEREAS, pursuant to City Code Sections 103.15.1, 103.15.2, and 103.15.3, detached residential dwelling units, low- and medium-intensity commercial retail uses, and accessory uses are allowed as of right, and restaurants, duplex and multifamily dwelling units, resort lodging, and sale of alcohol are allowed with conditional use approval from City Council within the Mixed-Use (MU) district; and

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

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

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

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

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

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

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

WHEREAS, the redevelopment promotes and furthers the following Principles for Guiding Development for the Florida Keys Area of Critical State Concern (the “Principles”) as set forth in Section 380.0552(7), Florida Statutes (2020):

- (b) Protecting shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.
- (c) Protecting upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, tropical hammocks and pinelands), dune ridges and beaches, wildlife and their habitat.
- (d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.
- (e) To limit adverse impacts of development on the quality of water throughout the Florida Keys.
- ...
- (h) Protecting the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:
 - ...

2. Sewage collection and disposal facilities; and

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

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

WHEREAS, the City Council held advertised public hearings on _____ January 9th 2024 and _____ February 13th 2024 to consider this Agreement, the recommendations of the Planning Commission, and City staff, and to accept and encourage public input, and has considered such recommendations and any comments by members of the public; and

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

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

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

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

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

2. To authorize the development of Residential Units at the Property.

3. To allow the boat slips to be rented to the public without membership or ownership of a Residential Unit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. TERMS OF AGREEMENT.

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

a. **Ownership.** The Owner of the Marlin Bay Yacht Club as of the date of execution of this Agreement is Marlin Bay Yacht Club, LLC, a Florida limited liability company whose address is 9100 S. Dadeland Blvd., Suite 1500, Miami, FL 33156.

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

2. Duration of Agreement, Agreement Renewal.

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

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

3. **Vested Development.** Prior to redevelopment of the Property, the following development existed and is vested on the Property, which said vested development rights shall not expire: one hundred fifteen (115) boat wet slips; eleven thousand five hundred and three

(11,503) square feet of commercial floor area; ninety-two (92) residential dwelling units; and a swimming pool.

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

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

(i) Twenty-one (21) Dwelling Units already developed as of the Effective Date, thirteen (13) of which are utilized as Vacation Rentals and eight (8) of which are maintained as affordable housing units.

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

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

(iv) Up to Fifty seven (57) market rate Residential Units on ~~the portion of the Property zoned Mixed Use (MU)~~ as depicted on the Conceptual Site Plan for the Marlin Bay Yacht Club attached hereto as Exhibit “E”, and accessory uses.

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

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

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

Dock master facility
In-ground fuel tanks and fuel station
Seawall, marginal docks, finger piers, mooring piles, 99 boat slips
Up to 92 Dwelling Units
Clubhouse
Pool and pool restrooms
Paved pool deck and fountain
Observation deck
Pool pavilion
Restaurant
Sidewalks and retaining walls

Storage
Gate house
Advanced Wastewater Treatment plant
Trash compactor
Mail kiosk
Roadways and parking
Utilities infrastructure
Stormwater management system

c. Commercial Floor Area Approved Under This Agreement.

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

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

e. Marina.

(i) The marina ~~will~~ may consist of ninety-nine (99) wetslips ~~and related facilities and will be owned and operated by the Marlin Bay Yacht Club. Each upland Market Rate residential dwelling unit purchaser shall be considered a “resident” for purposes of this Agreement, and is required to purchase a membership in the Marlin Bay Yacht Club, which shall include a wetslip in the marina. In addition, as specifically provided herein, the Marlin Bay Yacht Club also may sell memberships, which shall include a wetslip in the marina, to person who are not residents (“nonresidents”) of the Marlin Bay Yacht Club community. Prior to execution of membership agreements by nonresidents, the Owner shall submit, for review by the City attorney and approval by the City Planning Director, language regarding use of the marina and related facilities, including parking, that will be included in such membership agreements~~ that are open to the public and may be rented to vessel owners that do not own or occupy a Dwelling Unit on the Property or have a membership. The ninety-nine (99) wetslips may be utilized by boaters that may reside on the vessel for up to six (6) months in a twelve (12) month period, and related facilities that will be owned and operated by the Marlin Bay Yacht Club.

(ii) The Owner shall provide one (1) parking space ~~for each marina wetslip that is used by a nonresident member of the Marlin Bay Yacht Club. Once the building permits have been issued for the final phase of residential development on the Property, memberships in the Marlin Bay Yacht Club will no longer be sold to nonresidents, unless the Owner provides off street parking~~ per two (2) wet slips at the marina as required under Table 107.46.1 of the ~~2007~~-LDRs

applicable to marinas ~~to accommodate nonresident parking~~ for use of the marina and related facilities.

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

(iv) Pursuant to Chapter 102, Article 24 of the LDRs, the marina is required to update and maintain a Marina Operating Permit, which will incorporate this Development Agreement pursuant to Section 102.147.

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

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

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

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

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

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

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

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

f. Offsite Street Improvements. Pursuant to the Original Development Agreement, Owner has provided the following offsite street improvements to the portion of Louisa Street between 37th and 39th streets: the construction and maintenance of sidewalks; the installation and maintenance of traffic calming devices; landscaping on the side of Louisa Street bordering the Property; and other improvements.

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

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

Department. Fire sprinklers will be installed in all Dwelling Units, the clubhouse, the restaurant and the dockmaster office.

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

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

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

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

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

m. Compliance with RH and MU District Requirements. The proposed redevelopment on the Property consists of up to Ninety-two (92) Dwelling Units and accessory uses, and eleven thousand five hundred (11,500) square feet of commercial floor area,

and a marina. Any redevelopment on the Property which is not a use that is permitted as of right as provided in the City Code provisions applicable to the RH and MU land use districts will obtain applicable development approvals as provided under the City Code and this Agreement. Pursuant to Chapter 102, Article 13 of the LDRs, the marina is deemed to have obtained a conditional use permit as of May 23, 2007.

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

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

(i) Owner provided and maintained eight (8) affordable housing units on the Property. Four (4) of these units are deed-restricted to allow rental only by persons having an annual income of no greater than one hundred twenty percent (120%) of the median income of residents of Monroe County, Florida, and four (4) of these units are deed-restricted to only allow rental by or sale to persons having an annual income of no greater than one hundred sixty percent (160%) of the median income of residents of Monroe County, Florida. These deed restrictions were recorded in the public records of Monroe are effective for fifty (50) years from the date of recordation and shall automatically renew for two (2)

50-year periods. Owner has entered into an agreement with the Middle Keys Community Land Trust ("MKCLT") to perform income qualification evaluation for renters of units on an annual basis and for purchasers of the units at the time of sale of a unit. Such agreements were approved by the City Attorney and executed by the parties prior to issuance of certificates of occupancy for these units. The certificates of occupancy for these 8 affordable housing units were obtained prior to or contemporaneously with the certificates of occupancy for the first twenty-six (26) market rate residential dwelling units constructed on the Property.

(ii) Notwithstanding the above, Owner may elect to remove the affordable deed restrictions on the eight (8) units maintained as affordable units described in (i) above by:

- 1) Developing at least eight (8) deed-restricted affordable housing units off-site of the Property within the City of Marathon. The City shall cooperate in removing the affordable deed restrictions simultaneously with recording of the deed restriction(s) for the off-site affordable housing units;
 - a. The Owner must first obtain eight (8) market rate units through the BPAS process, or find them on the open market and complete the TBR process.
 - i. As the existing affordable housing units already exist, these cannot be used to meet the criteria set forth in Section 107.18.

- b. The off-site affordable housing units must be constructed to meet or exceed the scoring criteria as set forth in Section 107.09 of the LDRs.
- c. The off-site affordable housing units must be constructed to meet or exceed the square footage, number of bedrooms, and number of bathrooms in the existing affordable units.
- d. The deed restrictions for the relocated affordable units must then have a term of 99 years, with two automatic renewals, rather than the fifty (50) year periods as set forth in 5(p)(i) above.

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

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

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

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

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

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

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

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

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

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

h. **Impact Fees.** Any increased impacts on public facilities or public services attributable to each unit of the development, and the cost of capital improvements to meet the associated demand on such facilities or services, shall be assured by payment to the City, concurrent with the issuance of the building permits for each unit, of any applicable City impact fees required by ordinance then in effect, as well as by payment by the Owner of any applicable utility system development fees. Owner agrees to pay impact fees pursuant to any applicable impact fee ordinances adopted as of the date of execution of the Original Development Agreement.

Any impact fees required to be paid by Owner pursuant to any such impact fee ordinances will be offset by the dollar amount paid by Owner toward the provision of any improvements which are the subject of said impact fee ordinances.

i. Traffic Study. As required by the Original Development Agreement, the Owner performed a Level III traffic study to assess the project's vehicle traffic impacts on U.S. 1. Because the traffic study demonstrated that redevelopment of the Marlin Bay Yacht Club would not result in traffic impacts above those generated by the development previously existing on the Property, as previously documented, no traffic impact mitigation was or shall be required for the redevelopment of the Marlin Bay Yacht Club as contemplated by this Agreement.

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

8. All Local Permits Approved or Needed.

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

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

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

(iii) Building Permits. As of right building permits will be issued, as provided pursuant to the City Code, for each Residential Unit as well as for the clubhouse, the pool facilities, the dockmaster facility, commercial floor area, and other individual structures. The overall site permit approval addresses the landscaping, parking, paths, setback, open space and other associated items.

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

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

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

9. Mutual Cooperation. The City agrees to cooperate with the Owner in a timely manner in providing and/or granting all permits, licenses, approvals, or consents necessary

or appropriate to fully implement this Agreement. The City and the Owner agree to cooperate fully with and assist each other in the performance of the provisions of this Agreement.

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

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

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

13. Governing Laws.

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

b. Subsequently Adopted Laws and Policies. Pursuant to Section 163.3233, Florida Statutes, the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that: (a) the new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent development of the land uses, intensities, or densities set forth in this Agreement; (b) the new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they apply to the development that is subject to this Agreement; (c) the local government demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or (d) the Agreement is based on substantially inaccurate information supplied by the Owner. Redevelopment of the Property shall not be subject to any moratoria or other restrictions on redevelopment, including the redevelopment of existing mobile home parks, which may be established or otherwise imposed in any manner or at any time by the City. Nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

c. State or Federal Laws. If State or federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this Agreement, this Agreement shall be modified as is necessary to comply with the relevant state or federal laws. However, this Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common or statutory law.

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

a. Amendments. As provided in Section 163.3237, Florida Statutes, this Agreement may be amended by mutual consent of the parties to this Agreement or by their

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

b. Renewal. As provided in Section 163.3229, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the following public hearing requirements in Section 163.3225, Florida Statutes: the City shall conduct at least two (2) public hearings, one of which may be held by the local planning agency at the option of the City. Notice of intent to consider renewal of the Agreement shall be advertised approximately seven (7) days before each public hearing in a newspaper of general circulation and readership in Monroe County, Florida, and shall be mailed to all affected property owners before the first public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing. The notice shall specify the location of the land subject to the Agreement, the development uses on the Property, the population densities, and the building intensities and height and shall specify a place where a copy of the Agreement can be obtained.

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

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

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

15. Breach of Agreement and Cure Provisions.

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

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

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

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

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

TO THE OWNER:

Marlin Bay Yacht Club, LLC
c/o Robert Dorfman
9100 S. Dadeland Blvd., Suite 1500
Miami, FL 33156

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

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

TO THE CITY:

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

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

18. Enforcement. In accordance with Section 163.3243, Florida Statutes, any party to this Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes, or the state land planning agency may file an action for injunctive relief in the circuit court of Monroe County, Florida, to enforce the terms of this Agreement or to challenge the compliance of this Agreement with the provisions of Sections 163.3220-163.3243, Florida Statutes.

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

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

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

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

23. Litigation; Attorney's Fees; Venue; Waiver of Right to Jury Trial. In the event of any litigation arising out of this Agreement between the City and Owner, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorney's fees. This includes, but is not limited to, reimbursement for such reasonable attorneys' fees and costs incurred with respect to any appellate, bankruptcy, post-judgment, or trial proceedings related to this Agreement. Venue for any legal proceeding arising out of this Agreement shall be in Monroe County, Florida. The parties to this Agreement waive the right to a jury trial in any litigation arising out of or initiated under this Agreement.

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

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

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

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

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

39. Entirety of Agreement. This Agreement incorporates or supersedes the Original Development Agreement, the First Amended Agreement, Second Amended Agreement, all prior negotiations, correspondence, conversations, agreements, or understandings regarding the

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

30. Recording; Effective Date. The Owner shall record this Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date of execution of this Agreement. A copy of the recorded Agreement showing the date, page and book where recorded shall be submitted to the state land planning agency by hand delivery, registered or certified United States mail, or by a delivery service that provides a signed receipt showing the date of delivery, within fourteen (14) days after the Agreement is recorded. The Owner shall also provide a copy of the recorded Agreement to the City within the same time period. This Agreement shall become effective thirty (30) days after the date it is received by the state land planning agency.

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

[Signature Page to follow]

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

Marlin Bay Yacht Club, LLC,
a Florida limited liability company

By: Marlin Bay Property Investments, Inc.,
a Florida corporation
Manager

By: _____
Name, Title

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence on this _____ day of _____ 20__, by _____ as Manager of Marlin Bay Yacht Club, LLC who is personally known to me or who produced _____ as identification, and who did/did not take an oath.

Notary Public, State of Florida At Large

On the ____ day of _____, 202__, the City Council of the City of Marathon approved this Agreement by Resolution No. _____.

CITY OF MARATHON

Date

By: _____
ROBYN STILL, MAYOR

ATTEST:

DIANE CLAVIER, CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

STEVE WILLIAMS, CITY ATTORNEY

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

- | | |
|-----------|--|
| EXHIBIT A | LEGAL DESCRIPTION OF MARLIN BAY YACHT CLUB
PROPERTY |
| EXHIBIT B | DEVELOPMENT AGREEMENT FOR MARLIN BAY YACHT CLUB |
| EXHIBIT C | FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT
FOR MARLIN BAY YACHT CLUB |
| EXHIBIT D | SECOND AMENDED AND RESTATED DEVELOPMENT
AGREEMENT FOR MARLIN BAY YACHT CLUB |
| EXHIBIT E | CONCEPTUAL SIE PLAN FOR MARLIN BAY YACHT CLUB |

EXHIBIT A

LEGAL DESCRIPTION OF MARLIN BAY YACHT CLUB PROPERTY

LEGAL DESCRIPTION:

PARCEL 1

Lot 5, Block 6, of MARATHON BEACH, a subdivision of Part of Government Lot 3, of Section 10, Township 66 South, Range 32 East, Monroe County, Florida, according to the plat thereof, as recorded in Plat Book 2, Page 16, of the public records of Monroe County, Florida.

ALSO

A part of Lot 3 and a part of Lot 4, Block 6, MARATHON BEACH, a subdivision of Part of Government Lot 3, of Section 10, Township 66 South, Range 32 East, Monroe County, Florida, according to the plat thereof, as recorded in Plat Book 2, Page 16, of the public records of Monroe County, Florida, and being more particularly described by metes and bounds as follows:

COMMENCING at the Southwest corner of Lot 4, said corner also to be known as the POINT OF BEGINNING of that part of Lots 3 and 4 hereinafter described; bear Northerly and at right angles to Louisa Street of said Plat for a distance of 550 feet, more or less, to a point on the shoreline of an existing Boat Basin; thence meander the shoreline of said Boat Basin in an Easterly direction for the distance of 120 feet, more or less, to a point which is 114.00 feet, measured at right angles to the preceding course; thence bear Southerly and at right angles to said Louisa Street for a distance of 200 feet, more or less, to a point, said point being 310.00 feet Northerly and at right angles to Louisa Street; thence at right angles and in a Westerly direction for a distance of 89.00 feet to a point; thence at right angles and in a Southerly direction for a distance of 80.00 feet to a point; thence at right angles and in an Easterly direction for a distance of 89.00 feet to a point; thence at right angles and in a Southerly direction for a distance of 230.00 feet to a point on the Northerly right-of-way line of Louisa Street; thence at right angles and in a Westerly direction along the Northerly right-of-way line of Louisa Street for a distance of 114.00 feet, back to the POINT OF BEGINNING.

ALSO

Lots 1, 2, 3, 4, 5, and 6, of Block 2, YACHT BASIN TRACTS, according to an Amended plat thereof recorded in Plat Book 2, Page 116, of the public records of Monroe County, Florida.

ALSO

RESIDENTIAL PARCEL

The Northerly 100 feet of the Southerly 430 feet of Lot 6, Block 6, MARATHON BEACH, a subdivision of Part of Government Lot 3, of Section 10, Township 66 South, Range 32 East, Monroe County, Florida, according to the Plat thereof, as recorded in Plat Book 2, Page 16 of the public records of Monroe County, Florida, more particularly described as follows:

COMMENCE at the Southwest corner of Lot 6, of Block 6 of the aforesaid plat of MARATHON BEACH; thence Northerly along the Westerly boundary of said Lot 6, a distance of 330 feet to the POINT OF BEGINNING of the tract of land hereinafter described; thence continue Northerly along the Westerly line of the aforesaid Lot 6, a distance of 100 feet; thence Easterly parallel to the Southerly line of the aforesaid Lot 6, a distance of 100 feet to the Easterly line of the aforesaid Lot 6; thence Southerly along the Easterly line of the aforesaid Lot 6, a distance of 100 feet; thence Westerly parallel to the Southerly line of the aforesaid Lot 6, a distance of 100 feet to the POINT OF BEGINNING.

PARCEL 2

Lots 1 and 2, Block 6, of MARATHON BEACH, a subdivision of Part of Government Lot 3, of Section 10, Township 66 South, Range 32 East, Monroe County, Florida, according to the plat thereof, as recorded in Plat Book 2, Page 16, of the public records of Monroe County, Florida.

ALSO

A part of Lot 3 and part of Lot 4, Block 6 of MARATHON BEACH, a subdivision of Part of Government Lot 3, of Section 10, Township 66 South, Range 32 East, Monroe County, Florida, according to the plat thereof, as recorded in Plat Book 2, Page 16, of the public records of Monroe County, Florida, and being more particularly described by metes and bounds as follows:

COMMENCING at the Southeast corner of Lot 3, said corner also to be known as the POINT OF BEGINNING of the part of Lots 3 and 4 hereinafter described, bear Westerly along the Northerly right-of-way line of Louisa Street of said Plat for a distance of 86.00 feet to a point; thence at right angles and Northerly for a distance of 230.00 feet to a point; thence at right angles and Westerly for a distance of 89.00 feet to a point; thence at right angles and Northerly for a distance of 80.00 feet to a point; thence at right angles and Easterly for a distance of 89.00 feet to a point; thence at right angles and Northerly for a distance of 200.00 feet, more or less, to a point on the shoreline of an existing Boat Basin; thence meander the shoreline of said existing Boat Basin in an Easterly, Northerly, Northwesterly and Northerly direction for a distance 260.00 feet, more or less, to a point where said shoreline intersects the East line of Lot 3; thence bear Southerly and at right angles to Louisa Street for a distance of 680.00 feet, more or less, back to the POINT OF BEGINNING.

Said Lands lying in the City of Marathon, Monroe County, Florida.

TOGETHER WITH SOVEREIGNTY SUBMERGED LANDS LEASE 1(a)

That certain parcel of land conveyed by Quit Claim Deed from Board of Trustees of the Internal Improvement Trust Fund of the State of Florida recorded in Official Records Book 1127, Page 1122 and subsequently conveyed by Quit Claim Deed to Sandler At greater Marathon bay, LLC, a Florida limited liability company recorded in Official Records book 1927, Page 1427, described as:

A parcel of filled, formerly submerged land lying and being: in Section 10, township 66 South, Range 32 East, Monroe County, Florida and being more particularly described as follows:

COMMENCE at the intersection of the Northeasterly Right of Way line of Third Street and the Northwesterly Right of Way line of Louisa Street, said intersection also being the Southwest corner of Lot 6, Block 6, MARATHON BEACH, according to the plat thereof, as recorded in Plat Book 2, Page 16 of the Public Records of Monroe County, Florida; thence North 74°20' East along the said Northwesterly right of way line of Louisa Street for 314.00 feet; thence North 15°40'00" West for 509.16 feet to the face of a concrete seawall and the Mean High Water Line (elevation 0.75 N.G.V.D.); thence North 86°34'24" West for 144.11 feet to the POINT OF BEGINNING; thence meander the said seawall and boulder rip-rap for the following twenty-two (22) metes and bounds:

1. North 73°04'54" West for 30.92 feet;
2. Thence North 60°00'00" West for 19.00 feet;
3. Thence North 48°00'00" West for 18.00 feet;
4. Thence North 26°29'47" West for 14.78 feet;
5. Thence North 12°50'25" West for 102.21 feet;
6. Thence North 28°05'09" East for 14.55 feet;
7. Thence North 42°06'54" West for 2.31 feet;
8. Thence North 19°27'46" East for 13.27 feet;
9. Thence North 36°56'49" East for 116.74 feet;
10. Thence North 26°06'15" East for 24.78 feet;
11. Thence North 22°32'30" East for 49.07 feet;
12. Thence North 03°16'47" West for 30.96 feet;
13. Thence South 50°48'43" West for 25.73 feet;
14. Thence South 12°07'14" West for 8.34 feet;
15. Thence South 20°52'10" West for 27.98 feet;
16. Thence South 27°47'47" West for 34.96 feet;
17. Thence South 37°24'16" West for 22.64 feet;
18. Thence South 37°55'33" West for 86.65 feet;
19. Thence South 37°55'40" West for 29.73 feet;
20. Thence South 39°42'53" West for 17.15 feet to the extension of the Westerly property line;
21. Thence South 15°40'00" East along the said extended property line for 152.43 feet to the Platted Shoreline;
22. Thence South 82°30' East along the said Platted Shoreline for 84.65 feet to the POINT OF BEGINNING.

LESS AND EXCEPT any of the above described lands which are or may hereafter become located waterward of the line of the mean high water of the Bay of Florida, it being the express intent of the grantor (Board of Trustees of the Internal Improvement Trust Fund of the State of Florida) to retain and reserve such lands within sovereign ownership of the State of Florida.

TOGETHER WITH a Leasehold Interest as to sovereignty submerged lands described by metes and bounds and known by "Area 1", "Area 2", and "Area 3" contained in that certain Sovereignty Submerged Lands Lease Modification to Increase Square Footage, Re-Configure, and Change Description of Use under Land Lease Number 440345585 between Sandler at Greater Marathon bay, LLC, and Board of Trustees of the Internal Improvement Trust Fund of the state of Florida October 10, 2007 recorded in Official Records book 2325, Page 439 wherein Paragraph 25 states: "This lease is the entire and only agreement between the parties".

EXHIBIT B

DEVELOPMENT AGREEMENT FOR MARLIN BAY YACHT CLUB

**City of Marathon Resolution 2005-87 incorporated by reference
Recorded in Monroe County Public Records Book 2354, Page 1262**

EXHIBIT C

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

**City of Marathon Resolution 2015-081 incorporated herein by reference
Recorded in Monroe County Public Records Book 2354, Page 1221**

EXHIBIT D

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

**City of Marathon Resolution 2021-21 incorporated herein by reference
Recorded in Monroe County Public Records Book 3099, Page 1170**

EXHIBIT E

CONCEPTUAL SIE PLAN FOR MARLIN BAY YACHT CLUB