



CITY COUNCIL AGENDA STATEMENT

Meeting Date: April 8, 2025

From: Brian Shea, Planning Director

Through: George Garrett, City Manager

Agenda Item: **Resolution 2025-35**, Consideration Of A Request For A Development Agreement For Wharf Marina, Inc. Pursuant To Chapter 102, Article 8 Of The City Of Marathon Land Development Regulations (Code) Entitled “Development Agreement” For The Development Of A Restaurant, Marina, Retail Shop, And Eleven (11) Transient Housing Units At The Property Located At 1622 Overseas Highway, Which Is Legally Described As 9 66 32 Key Vaccas Part Lot 2 & Bay Bottom North Of & Adjacent To Part Government Lot 2 (Pt St Rd 4-A), Marathon, Monroe County, Florida, Having Real Estate Number 00102600-000000. Nearest Mile Marker 48.

RECOMMENDATION:

Staff recommends approval of the project with the recognized conditions and limitations.

APPLICANT/ OWNER: Steve Hurley/Wharf Marina, Inc.

AGENT: Steve Hurley

LOCATION: The project site is located at 1622 Overseas Highway at approximately mile marker 48. See Figure 1.

REQUEST: A Development Agreement and Conditional Use Approval for the development of a restaurant, marina, retail shop, and transient housing units.

LOT SIZE:

Total size: Approximately 159,141 square feet
1.10 acres of Environmentally Sensitive

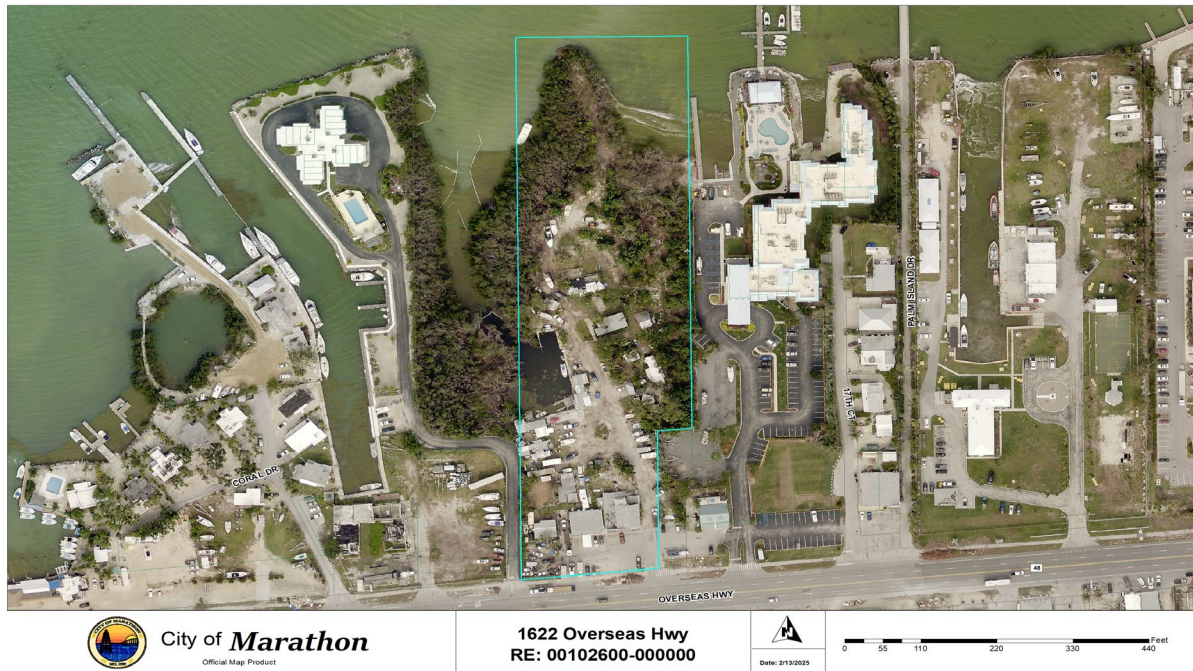
SURROUNDING ZONING AND USES:

| | <u>Zoning</u> | <u>Use</u> |
|--------------|--------------------------------|--------------------------------------|
| North | N/A | Gulf Of Mexico |
| East | Mixed Use (MU) | Bluegreen Resort and 7 Mile Fly Shop |
| South | Residential Medium High (R-MH) | Trailerama Park |
| West | Mixed Use (MU) | Starbucks & Captain Pips |

EXISTING CONDITIONS:

The project site consists of developed land that was recently cleared. The existing FLUM is Mixed Use Commercial (MU-C), and the Zoning is Mixed Use (MU). See Figures 2 & 3.

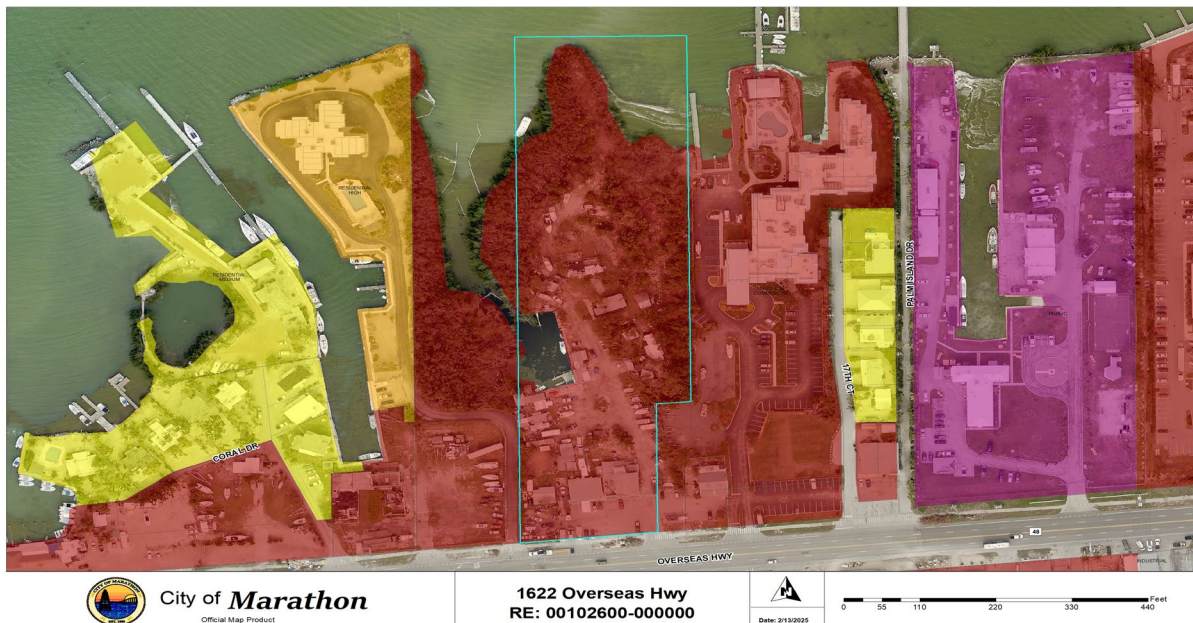
Figure 1 - Project Site



FUTURE LAND USE MAP DESIGNATION:

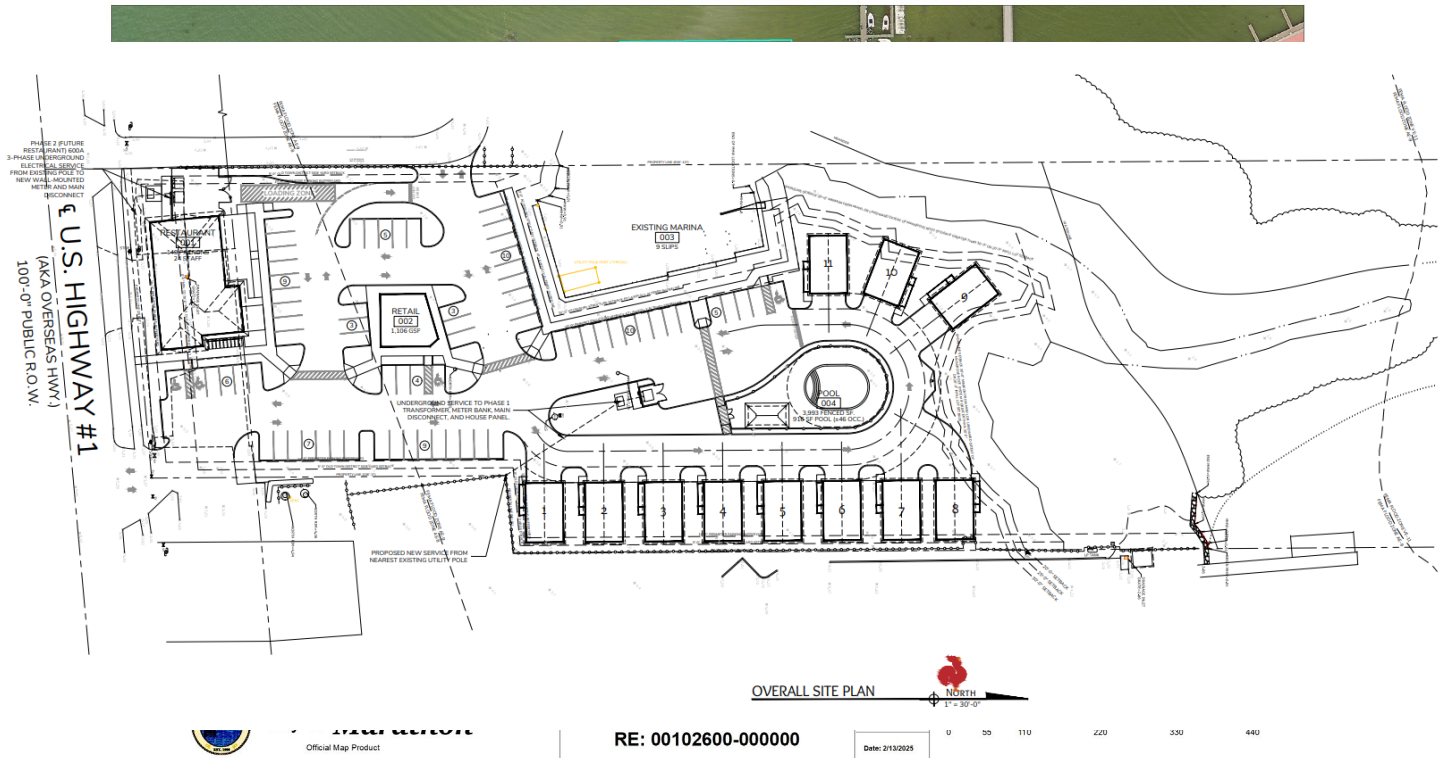
Mixed Use Commercial (MU-C). See Figure 2.

Figure 2 - Future Land Use Map



ZONING MAP DESIGNATION:
Mixed Use (MU). See Figure 3.

Figure 3 - Zoning Map



PROPOSED DEVELOPMENT:

The applicant requests the development of a Restaurant, Marina, Retail Space and Transient Housing Units.

| | |
|------------------|----------------------------------|
| Transient Units: | 11 Units (Hotel) |
| Marina: | 9 Slips |
| Commercial: | 5,509 square feet (Restaurant) |
| | 1,106 square feet (Retail Space) |

Figure 4 - Proposed Site Plan

BACKGROUND:

The proposed project is a redevelopment of recently cleared land to include a restaurant, marina, retail shop and transient housing units. Conditional Use Approval is required for project approval. This report addresses the Conditional Use application. **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 development of a restaurant, marina, retail shop and transient housing units 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 multifamily residential uses are allowed as Conditional Uses in the MU district. Marinas are also a Conditional Use in MU zoning. 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. Table 103.15.3 further qualifies the allowed range of intensities based on the intensity of retail use. In its review of this project, staff determined the overall development proposal to be consistent with a “restaurant/bar” use. As such, the following table reflects the proposed project intensity (shown as floor area (FA)) against the maximum intensity and floor area allowed under the constraints imposed on retail, high intensity development. The table also reflects the need for additional floor area that the applicant will have to acquire through the commercial building permit allocation system (CBPAS). The eleven (11)

transient units require 1,742 sq ft each for a total of 19,162 sq ft.

| Wharf Marina, Inc | | | |
|--|-----------------|---------------------------|---------------|
| Calculation of Intensity Limits & Requirements for CBPAS Application | | | |
| Use 1 | | Restaurant/Bar | |
| Intensity | | Low | |
| FAR (See Table 103.15.3) | | 0.60 | |
| Site Area | | 159,141 sq ft | |
| 11 Transient Units | | 19,162 | |
| Limits of FA Based on Intensity | | 83,987 sq ft | |
| Requested FA | FA Entitlements | FA Required Through CBPAS | % of FA Limit |
| 6,615 | 5,115 | 1,500 | 7% |

The project as proposed meets the basic definition of development in the MU zoning district and will not exceed any intensity constraints imposed on the type proposed.

Therefore, with conditions, 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 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.” This land use category is intended to provide for the commercial zoning districts where various types of commercial, retail, and office uses may be permitted at intensities which are consistent with the community character and the natural environment and to provide for various types of residential uses, including employee housing and commercial apartments. Whenever and wherever possible, the maintenance and enhancement of commercial fishing and related traditional uses such as retail, storage, and repair and maintenance which support the commercial fishing industry shall be encouraged within this land use category. Heavy industrial uses and similarly incompatible uses shall be prohibited. Lawfully established RV parks where the majority of the RVs spaces are maintained and rented as transient spaces are also allowed within the Mixed-Use Commercial future land use category.” The proposed project includes development of similar uses which is consistent with the Mixed-Use classification.

The existing land use pattern in the project vicinity consists of mixed use to the east and west, residential medium high to the south, and Gulf of Mexico to the north.

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

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

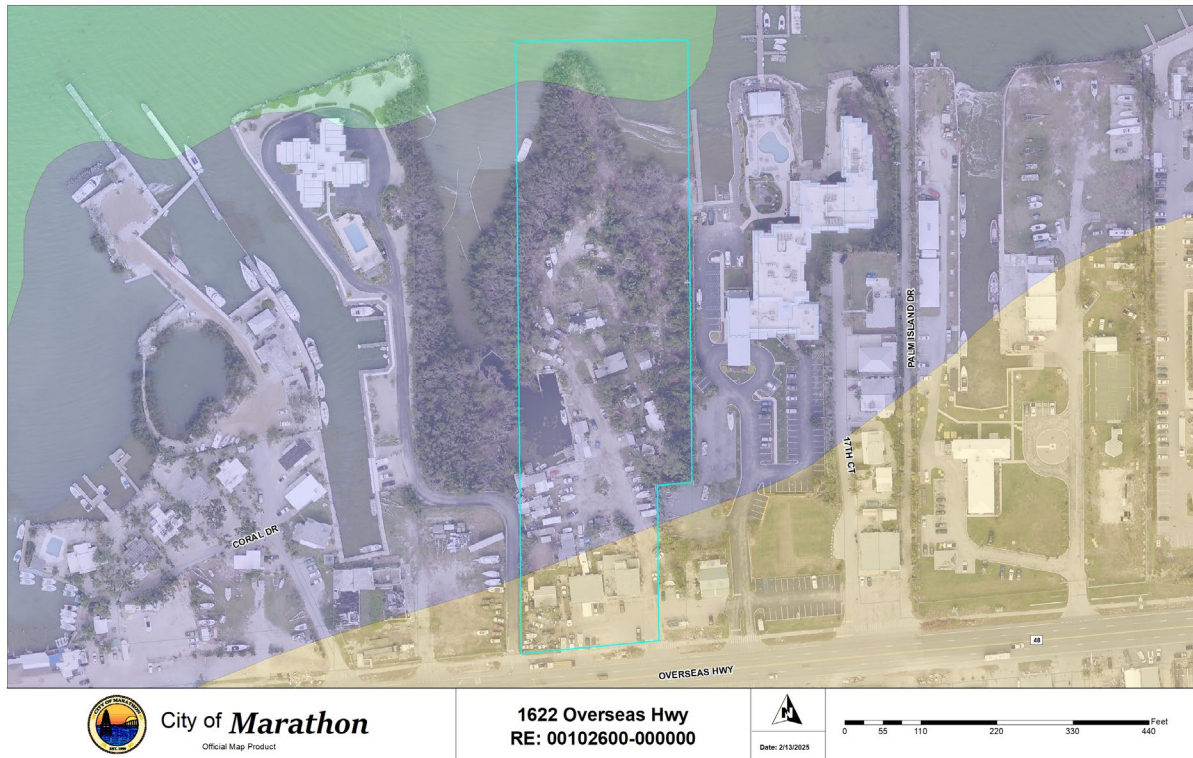
The proposed use is the creation of both commercial and transient use which has not had any known impact to the health, safety, and welfare of the public. Additionally, the creation of the retail and restaurant space are not expected to create any adverse impacts to the health, safety, and welfare of the public as well as the affordable housing units.

The marina will also be required to meet the following criteria as additional protection for health, safety, and welfare:

- Will not have a detrimental effect on the use of such waters for navigation, transportation, recreational or other public purposes and public conveniences;
- Will not restrict the free use of the waterways and navigable waters;
- Will not have a material adverse effect upon the flow of water or tidal currents in the surrounding waters;
- Will not have a material adverse effect upon erosion, erosion control, extraordinary storm drainage, shoaling of channels, or would be likely to adversely affect the water quality presently existing in the area or limit progress that is being made toward improvement of water quality in the area;
- Will not have a material adverse effect upon the natural beauty and recreational advantages of the City;
- Will not have a material adverse effect upon the conservation of wildlife, marine life, and other natural resources, including shorelines, so as to be contrary to the public interest;
- Will not have a material adverse effect upon the uplands surrounding or necessarily affected by such plan or development;
- Will not have a material adverse effect on the community character or safety, health, and welfare of the general public; or
- Will not be inconsistent with adopted State plans (i.e., manatee protection plans), the City of Marathon Comprehensive Plan, other formally adopted natural resource management plans, or any other City ordinances or regulations.

Plans submitted with the project are suitable for the Conditional Use Approval as they relate to Chapter 107, Article 12, 100 Year Floodplain. Final review of floodplain compliance will occur as part of building permit issuance.

**Figure 5
Flood Zones**



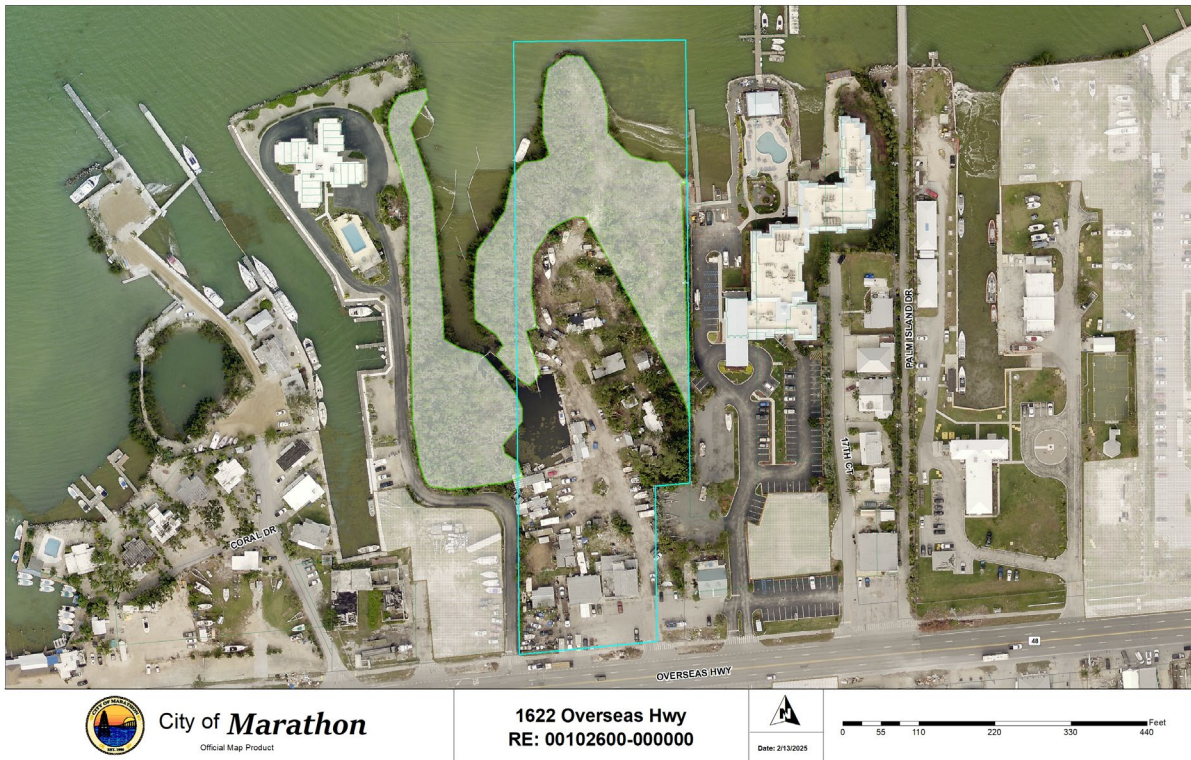
Therefore, with conditions, the request is **in compliance** with the requirements of these sections.

- Marina Operating Permit will be required.

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 previously developed. A site inspection showed the property is comprised of upland, shoreline wetland and submerged lands. Most of the parcel is scarified. Both native and exotic vegetation are scattered predominantly in the center of the parcel. A meandering rock wall generally separated the uplands from the fringing wetlands. Fringing wetlands, including a wide mangrove fringe, are present. A portion of the property is recognized as possible habitat for a state or federally listed animal species, the eastern indigo snake. Figure 6 shows that this portion falls under the category of mangroves. Should any development necessitate the removal of existing native vegetation within these areas an impact determination will be made using the Species Assessment Guides.

Figure 6
FEMA-FWS Species Focus Area Map



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.

Conservation easement for mangrove area will be required pursuant to Section 106.02

Pursuant to Article Two of Chapter 106 any native trees within footprints will have to be mitigated. These transplanted and mitigated trees will be monitored per Section 106.10.

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 Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information posted on site.
- A final Landscape/mitigation plan must be submitted prior to permit issuance.
- Conservation easement for mangrove area pursuant to Section 106.02.

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 by the traffic engineer shows that combined uses will create 51 net new daily trips. The submitted study finds that the proposed increase in units will not have an adverse impact on the operating characteristics of U.S. 1, nor will it inhibit the safe flow of traffic traveling through the City of Marathon.

| Table 1 Wharf Marina Trip Generation Summary Marathon, Florida | | | | | | | | |
|---|-----------|-------------|--------------------|-----|-------|--------------------|-----|-------|
| Land Use | Size | Daily Trips | AM Peak Hour Trips | | | PM Peak Hour Trips | | |
| | | | In | Out | Total | In | Out | Total |
| <i>Existing / Previous Uses</i> | | | | | | | | |
| High-Turnover Sit-Down Restaurant ¹ | 3,000 SF | 355 | 0 | 0 | 0 | 16 | 11 | 27 |
| Automobile Service Center | 2,000 SF | 33 | 3 | 1 | 4 | 2 | 2 | 4 |
| Mobile Homes | 11 DU | 77 | 1 | 3 | 4 | 4 | 2 | 6 |
| Marina (Wet Slips) | 9 Berths | 23 | 0 | 1 | 1 | 1 | 1 | 2 |
| Total | | 488 | 4 | 5 | 9 | 23 | 16 | 39 |
| <i>Existing / Proposed Uses</i> | | | | | | | | |
| Fine Dining Restaurant | 149 Seats | 375 | 2 | 1 | 3 | 28 | 14 | 42 |
| Retail | 1,020 SF | 56 | 1 | 1 | 2 | 4 | 3 | 7 |
| Transient Housing (Hotel) | 11 Units | 85 | 3 | 2 | 5 | 3 | 3 | 6 |
| Marina (Wet Slips) | 9 Berths | 23 | 0 | 1 | 1 | 1 | 1 | 2 |
| Total | | 539 | 6 | 5 | 11 | 36 | 21 | 57 |
| Difference (Proposed - Previous) | | 51 | 2 | 0 | 2 | 13 | 5 | 18 |

Ingress and egress to the properties is an existing two (2) driveways on Overseas Hwy. The trip generation analysis of the traffic study shows that with the analyzed units and commercial, the daily trips generated would be 539.

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

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:

| Use | Code Citation | Requirement | Spaces Required |
|------------------------------------|---------------|---|----------------------|
| Mixed Use Development (Restaurant) | 107.47 | 1 per 3 seats, plus required stacking spaces, plus 1 per every 2 employees on the largest shift | 62 |
| Retail Sales & Service | 107.47 | 3 per 1,000 sf of GFA, plus 1 per employee at largest shift | 4 |
| Marina | 107.47 | 1 per 2 wet slips | 5 |
| Hotel/Motel | 107.47 | 1 per every 3 employees, plus 1 per guest room, required parking for accessory use | 22 based on bedrooms |
| | | | |
| Total Required | | | 93 |
| Total Provided | | | 93 |

If additional employees are required, then parking will be reevaluated unless employees are shared or accounted for within existing commercial.

Section 107.52 includes a requirement that one handicapped space be provided for every 25 spaces required. For 93 required spaces, two handicapped spaces are required. Parking space sizes are 9' x 18' for 90-degree parking, and handicapped spaces are 12' x 21' as required by the Code.

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 developer has provided 11 proposed bicycle parking spaces.

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

- The final site plan must show the required parking spaces with prior to permit issuance.
- The final site plan must show the bicycle racks on site prior to permit issuance.

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

The proposed project consists of a new development of a restaurant/bar, marina, retail, and residential housing. New lighting will be constructed for this project. The applicant must provide detailed lighting plans which conform to the letter with the City of Marathon LDR's. The applicant's detailed plans should achieve the net result of no detrimental noise, glare or odors being generated by any of the uses.

Therefore, with the conditions above, 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;

Section 107.39 requires that all dumpsters and recycling bins be fully enclosed and screened. The final site plan must show the dumpster located on a pad and will have to be screened.

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

- The final site plan must show that the dumpsters are screened.

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 will provide engineering drawings to support force main connection along US 1.
- Water: The Florida Keys Aqueduct Authority will provide potable water for the facility.
- Solid Waste: Marathon Garbage Service will provide 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.
- Roadways: The applicant is developing the site with a higher intensity than was contained within the development; therefore, a traffic study is required to analyze the impact on transportation facilities. Furthermore, final site layout and traffic flow will be dependent on FDOT, City of Marathon Public Works, and City Fire Marshal analysis.
- Educational Facilities: This redevelopment will have a de minimis impact on educational facilities.

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 Conditional Use Development Order will constitute the Certificate of Concurrency for

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

- The Area 3 WWTP has only the capacity for the existing EDU's assigned to this property. No more capacity will be available until the plant is expanded.

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

Table 107.70.1 establishes project boundary buffer standards applicable to the project. The subject parcel is zoned MU and is bordered to the East and West by property zoned MU. 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 meets the minimum requirements. Access driveway to be located closer to the mixed used property but may vary to protect native vegetation.

Parking area landscaping is required by Section 107.66 of the Code. Proposed parking area landscaping meets the standards set forth in the code.

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

- A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.

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; however, signs for the project will be reviewed prior to issuance of a building permit according to Chapter 107, Article 7, Signs.

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.

8. Required yards and other open space;

Section 106.16 established required open space for the project. The site is disturbed with exotics; therefore, a twenty percent open space requirement applies. This results in 31,828 square feet of pervious area (including landscape area).

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

9. General compatibility with surrounding properties; and

The project is a development of property that is disturbed with exotics. Adjacent uses include a commercial establishment and other residential dwelling units. The development of the property into a mix of transient units and commercial with marina and restaurant is expected to be fully compatible with these uses. The proposed project represents improvement to the current state of 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 final site plan must show the buildings' height.

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

The following criteria are applicable to this redevelopment:

An existing hotel or motel may be redeveloped pursuant to Table 103.15.1, subject to the following standards:

A. General Provisions

1. Each hotel or motel shall comply with all mandatory hurricane evacuation requirements set forth by the City for hotel, motel, and other transient uses.
2. Each hotel or motel shall establish and maintain shuttle transport services to airports and tourist attractions individually or in conjunction with other hotel or motel operators.
3. 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 25 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.4. 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 pursuant to Section 104.15;
 - 2) Community Workforce Housing Unit pursuant to Section 104.13.
- 4. 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.
- 5. All hotels or motels must provide a lobby for guests to check in/out.

B. *Redevelopment Criteria.*

- 1) An existing hotel or motel room may be redeveloped to a unit not exceeding 1,500 square feet consisting of no more than two and one-half (2 1/2) bathrooms, three (3) bedrooms and one (1) other living area, subject to the following rates of redevelopment:
 - a. A one (1) bedroom unit may redevelop as a one (1) bedroom unit, without a reduction in the number of units; and
 - b. A one (1) bedroom unit may redevelop as a two (2) bedroom unit at the rate of 90 percent of the one (1) bedroom units being redeveloped as two (2) bedroom units; and
 - c. A one (1) bedroom unit may redevelop as a three (3) bedroom unit at the rate of 80 percent of the one (1) bedroom units being redeveloped as three (3) bedroom units.
- 2) The number of units reduced and not included in the redevelopment shall be tracked over time and registered with the City as Conditional Redevelopment Units and reflected in the data and analysis of the Comprehensive Plan as it is amended.
- 3) Existing hotel units, which exceed allocated densities, may redevelop provided: (1) the parcel has a stormwater management system which meets the requirements of Article 11, of Chapter 107; (2) the wastewater treatment system meets Best Available Treatment wastewater standards; and (3) the structures meet the shoreline setback criteria as established in Article 4 "Open Water, Surface Waters and Wetlands" of Chapter 106.
- 4) As a condition of redevelopment, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.
- 5) Redevelopment shall be clustered to the least environmentally sensitive portion of the property pursuant to Section 106.16 to protect existing habitat on site.
- 6) The City may consider, at a future time, proposed amendments to the LDRs to authorize the construction of Conditional Redevelopment Units. Prior to the consideration of such amendment, the City must demonstrate that: (1) a significant reduction in Hurricane Clearance Time has been achieved for the mandatory evacuation of permanent residents; (2) the Conditional Redevelopment Units have been tracked; and (3) other environmental and land use issues have been addressed.
- 7) Notwithstanding the foregoing, the developer of a hotel or motel containing less than 12 units may convert existing, lawfully established accessory floor area in the hotel or motel to a second bedroom or third bedroom, as the case may be, to an adjacent existing hotel or motel unit without triggering the requirements of Subsections B.1 or B.4 above;

provided, however, that the additional floor area hereunder shall not exceed 425 square feet per unit or 850 square feet in the aggregate per property.

Section 104.30 Marina contains special requirements.

The following criteria are applicable to this redevelopment:

- Prior to the issuance of any permit under this article, special conditions may be imposed for such a permit. These conditions should include any item which can be reasonably expected to enhance the probability that the proposed activity will be conducted in compliance with the intent of this article. Those conditions may include, but are not limited to, field inspections by City staff, reports, monitoring, bonding, easements, guaranteed survival of non-affected and/or replanted vegetation, protective barriers, setbacks, protective earthwork, replants, signage, restoration, and/or mitigation. Conditions may also be applied in order to ensure consistency with the Comprehensive Plan.
- Prior to the issuance of the Certificate of Occupancy, the marina shall obtain and maintain a Marina Operating Permit, in compliance with all standards of Article 24, Chapter 102.
- It shall be unlawful for any person to deviate from the specific conditions of the permit as set forth by this article without the prior approval of the City Manager.

The proposed development meets all applicable criteria set forth in this section.

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 development consists of the enhancement of property, as well as the development of new transient units and commercial uses on site. As such the development, including the overall upgrading and improvement of the sites, 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 at both project sites, and is not expected to create a nuisance, traffic congestion or threat to public, health, safety, or welfare.

RECOMMENDATION:

Planning staff recommended approval of the proposed Conditional Use Permit and Development Agreement allowing the development of the Restaurant/Bar, Marina, Retail Space and Transient housing units, provided all conditions are met prior to permit issuance. The proposed conditions of approval are listed below. Planning Commission recommends approval (4-1).

Conditions of Approval

- 1) The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal;
- 2) The final site plan must show the required parking spaces with prior to permit issuance.
- 3) The final site plan must show the bicycle racks on site prior to permit issuance.
- 4) The applicant will meet all floodplain related requirements as part of the Building Permit process;
- 5) The applicant will provide engineering drawings to support force main connections along US 1.
- 6) Permit site plan must meet 25yr-72hr storm event per storm water code Section 107.88.
- 7) The applicant will obtain the required permits to fully enclose and screen the dumpster in accordance with Section 107.39;
- 8) The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
- 9) The Conditional Use Development Order will constitute the Certificate of Concurrence for the project. The determination will be valid for one year.
- 10) The Applicant must obtain or transfer five (5) transient 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 AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY TRANSIENT UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.
- 11) Staff requires that upon planning review, if the redevelopment is found to have any effect on the Eastern Indigo Snake Habitat, Stock Island Tree Snail and Keys Tree Cactus, then the prescribed protection measures must be undertaken, and the information poster posted on site.
- 12) Conservation easement for mangrove area will be required pursuant to Section 106.02.
- 13) A final Landscape/mitigation plan must be submitted prior to permit issuance.
- 14) A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- 15) A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.
- 16) Prior to the issuance of the Certificate of Occupancy, the marina shall obtain and maintain a Marina Operating Permit, in compliance with all standards of Article 24, Chapter 102.
- 17) Prior to the issuance of any permit under this article, special conditions may be imposed for such permit. These conditions should include any item which can be reasonably expected to enhance the probability that the proposed activity will be conducted in compliance with the

intent of this article. Those conditions may include, but are not limited to, field inspections by City staff, reports, monitoring, bonding, easements, guaranteed survival of non-affected and/or replanted vegetation, protective barriers, setbacks, protective earthwork, replants, signage, restoration, and/or mitigation. Conditions may also be applied in order to ensure consistency with the Comprehensive Plan.

- 18) It shall be unlawful for any person to deviate from the specific conditions of the permit as set forth by this article without the prior approval of the City Manager.
- 19) Area 3 WWTP has only the capacity for the existing EDU's assigned to this property. No more capacity will be available until the plant is expanded.
- 20) The applicant must obtain Allocations for the proposed eleven (11) transient units.
- 21) Applicant will provide pedestrian sidewalk access and signage as shown on approved site plan.

22) *A. General Provisions*

- 1. Each hotel or motel shall comply with all mandatory hurricane evacuation requirements set forth by the City for hotel, motel, and other transient uses.
- 2. Each hotel or motel shall establish and maintain shuttle transport services to airports and tourist attractions individually or in conjunction with other hotel or motel operators.
- 3. 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 25 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.4. 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 pursuant to Section 104.15;
 - 2) Community Workforce Housing Unit pursuant to Section 104.13.
- 4. 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

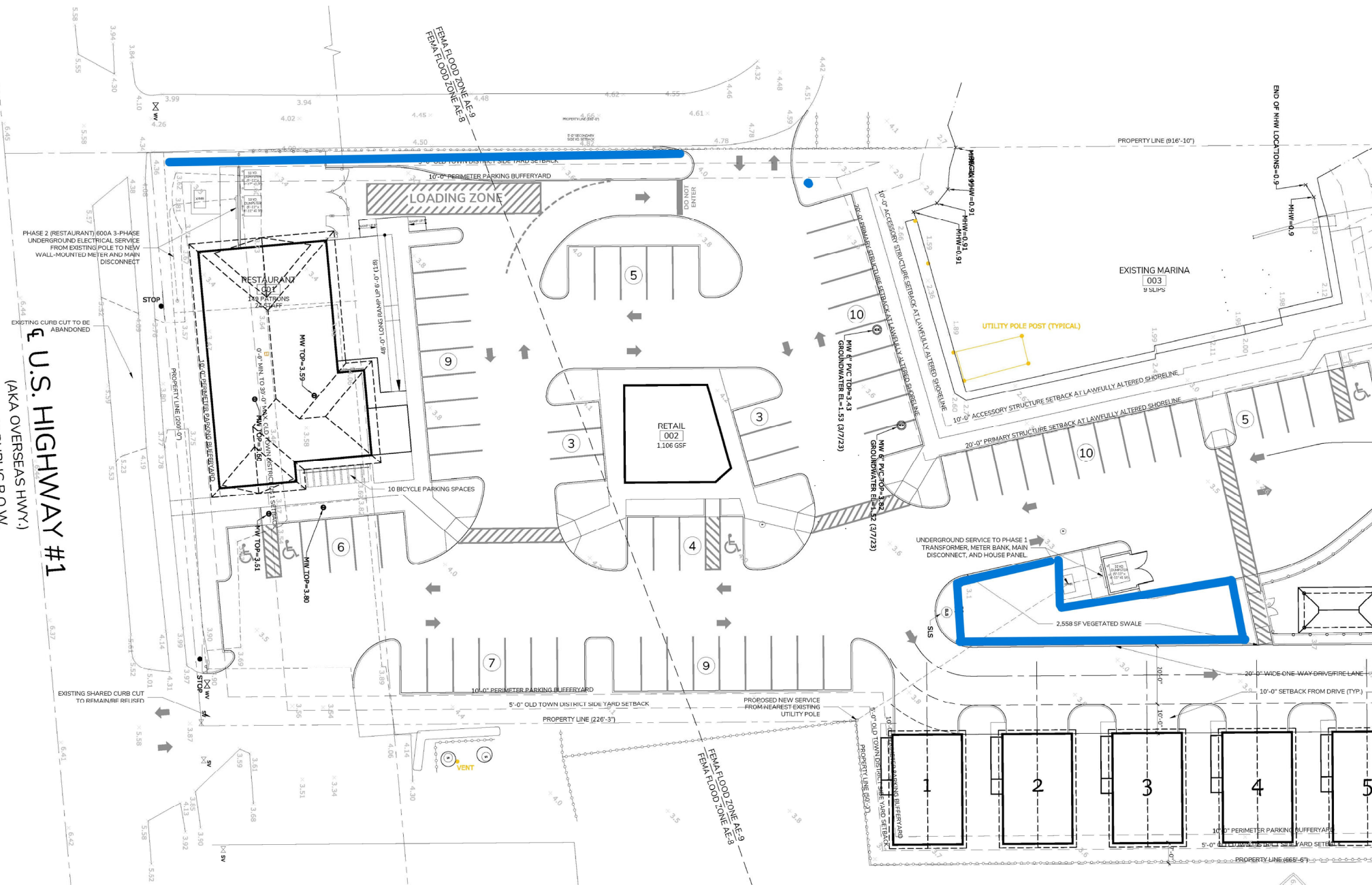
separately rentable units.

5. All hotels or motels must provide a lobby for guests to check in/out. This will be located in the retail building.

B. Redevelopment Criteria.

- 1) An existing hotel or motel room may be redeveloped to a unit not exceeding 1,500 square feet consisting of no more than two and one-half (2 1/2) bathrooms, three (3) bedrooms and one (1) other living area, subject to the following rates of redevelopment:
 - a. A one (1) bedroom unit may redevelop as a one (1) bedroom unit, without a reduction in the number of units; and
 - b. A one (1) bedroom unit may redevelop as a two (2) bedroom unit at the rate of 90 percent of the one (1) bedroom units being redeveloped as two (2) bedroom units; and
 - c. A one (1) bedroom unit may redevelop as a three (3) bedroom unit at the rate of 80 percent of the one (1) bedroom units being redeveloped as three (3) bedroom units.
 - 2) The number of units reduced and not included in the redevelopment shall be tracked over time and registered with the City as Conditional Redevelopment Units and reflected in the data and analysis of the Comprehensive Plan as it is amended.
 - 3) Existing hotel units, which exceed allocated densities, may redevelop provided: (1) the parcel has a stormwater management system which meets the requirements of Article 11, of Chapter 107; (2) the wastewater treatment system meets Best Available Treatment wastewater standards; and (3) the structures meet the shoreline setback criteria as established in Article 4 "Open Water, Surface Waters and Wetlands" of Chapter 106.
 - 4) As a condition of redevelopment, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.
 - 5) Redevelopment shall be clustered to the least environmentally sensitive portion of the property pursuant to Section 106.16 to protect existing habitat on site.
 - 6) The City may consider, at a future time, proposed amendments to the LDRs to authorize the construction of Conditional Redevelopment Units. Prior to the consideration of such amendment, the City must demonstrate that: (1) a significant reduction in Hurricane Clearance Time has been achieved for the mandatory evacuation of permanent residents; (2) the Conditional Redevelopment Units have been tracked; and (3) other environmental and land use issues have been addressed.
 - 7) Notwithstanding the foregoing, the developer of a hotel or motel containing less than 12 units may convert existing, lawfully established accessory floor area in the hotel or motel to a second bedroom or third bedroom, as the case may be, to an adjacent existing hotel or motel unit without triggering the requirements of Subsections B.1 or B.4 above; provided, however, that the additional floor area hereunder shall not exceed 425 square feet per unit or 850 square feet in the aggregate per property.
- 23) Applicant will provide three (3) boat trailer parking spaces as shown on site plan.





ENLARGED SITE PLAN
SOUTH (REST./RETAIL)



**CITY OF MARATHON, FLORIDA
RESOLUTION 2025-35**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON REQUESTING A DEVELOPMENT AGREEMENT FOR WHARF MARINA, INC. PURSUANT TO CHAPTER 102, ARTICLE 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “DEVELOPMENT AGREEMENT” FOR THE DEVELOPMENT OF A RESTAURANT, MARINA, RETAIL SHOP, AND ELEVEN (11) TRANSIENT HOUSING UNITS AT THE PROPERTY LOCATED AT 1622 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS 9 66 32 KEY VACCAS PART LOT 2 & BAY BOTTOM NORTH OF & ADJACENT TO PART GOVERNMENT LOT 2 (PT ST RD 4-A), MARATHON, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00102600-000000. NEAREST MILE MARKER 48.

WHEREAS, Wharf Marina, Inc. (The “Applicant”) filed an Application on November 8th, 2024 for Development Agreement pursuant to Chapter 102, Article 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS, the Applicant has proposed the development of a restaurant, marina, retail space and eleven (11) transient housing units; and

WHEREAS, the City staff reviewed the Applicant’s request for a Development Agreement determining that the Applicant’s project proposal is 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 24th day of February 2025, the Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearing”) regarding the request submitted by the Applicant, for a Development Agreement pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS, on the 25th day of March 2025 and on the 8th day of April 2025, the City Council (the “Council”) conducted a properly advertised public hearing (the “Public Hearing”) regarding the request submitted by the Applicant, for a Development Agreement pursuant to Chapter 102, Article 13 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, is consistent with its policy to encourage the development of residential properties and redevelop commercial in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

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 2024-9, a copy of which is attached hereto as Exhibit “A”, granting a Conditional Use Permit and Development Agreement to Wharf Marina, Inc. subject to the Conditions imposed. 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 execution.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8th DAY OF APRIL 2025.

THE CITY OF MARATHON, FLORIDA

Lynn Landry, 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:

Steven Williams, City Attorney

This Instrument Prepared By:
Gregory S. Oropeza, Esq.
Oropeza, Stones & Cardenas, PLLC
211 Simonton Street
Key West, FL 33040

Return To:
City of Marathon
9805 Overseas Highway
Marathon, Florida 33050

Re Parcel No.: 00102600-000000

----- [SPACE ABOVE THIS LINE FOR RECORDING DATA] -----

**DEVELOPMENT AGREEMENT
PURSUANT TO
CHAPTER 163, FLORIDA STATUTES**

THIS DEVELOPMENT AGREEMENT, executed by the Parties as of the _____ day of _____ 2025, and having the Effective Date specified below, is entered into by and between:

CITY OF MARATHON, a Florida municipal
corporation ("CITY")

and

WHARF MARINA, INC., a Florida corporation
hereinafter referred to as ("Owner").

R E C I T A L S:

- A. WHEREAS, the Florida Local Government Development Agreement Act (the "Act"), Chapter 86-191, Laws of Florida, now codified at Sections 163.3220 through 163.3243, Florida Statutes, authorizes local governments to enter into development agreements with property owners subject to the procedures and requirements of the Act; and
- B. WHEREAS the lack of certainty in the approval of a development can result in a waste of economic land resources, discourage sound capital improvement planning and financing and escalate the cost of housing and development and discourage commitment to comprehensive planning; and
- C. WHEREAS, assurance to a developer that upon receipt of his or her development permit that he or she may proceed in accordance with existing laws and policies, subject to the conditions of a development and financing, assists in assuring that there are adequate capital facilities for the development, encourages private participation in comprehensive planning and reduces the economic costs of development; and

- D. WHEREAS, the Owner is the legal and equitable owner of real property located in Monroe County, Florida, with a principal address of 1622 Overseas Highway, Marathon, Florida 33050, also located within the jurisdictional boundaries of the City of Marathon (the "City"), as described on attached Exhibit "1" (the "Property"); and
- E. WHEREAS, the Owner intends to build eleven (11) transient units to be built as elevated one-story structures approximately 888 square feet in size, a 1,106 square foot retail store, a 5,509 square foot restaurant with 152 seats, a pool and a tiki hut, and to continue to operate a marina facility with nine (9) boat slips; and
- F. WHEREAS, the City determined that the Property is entitled to two (2) Transient Dwelling Units, six (6) Market Rate Units, and 3,400 square feet of commercial transferrable building right(s) by and through that certain April 23, 2021 Determination of Building Rights Letter recorded on October 18, 2023 in Official Records Book Number 3247, Page 1190 of the Public Records of Monroe County, Florida; and
- G. WHEREAS, the Owner transferred six (6) Transient Residential units to the Property by and through that certain Warranty Deed for Transfer of Building Rights recorded On July 12, 2024 in Official Records Book Number 3284, Page 958 of the Public Records of Monroe County, Florida, and that certain Deed of Transfer recorded on July 12, 2024 in Official Records Book Number 3284, Page 963 of the Public Records of Monroe County, Florida; and
- H. WHEREAS, Owner intends to transfer three (3) Transient Residential units from Parcel ID No. 00328520-000000 to the Property; and
- I. WHEREAS, the Owner has submitted permit applications to the City to enter into a development agreement to establish for the record existing and proposed uses for the Property; and
- J. WHEREAS, to encourage future development of the Property consistent with the City's Comprehensive Plan and Land Development Regulations, the Owner and the City desire to agree upon and reduce to contractual terms, the status of the current and proposed site development regarding the Property; and
- K. WHEREAS, City has determined that this Agreement is in the public interest, is consistent with its policy to encourage the development of property in the City, and will further the health, safety and welfare of the residents of the City; and
- L. WHEREAS, City has provided its Notice of Intent to consider entering into this Development Agreement by advertisements published in newspapers of general circulation and readership in Monroe County, Florida, on and, and by mailing a copy of the Notice of Intent to Owner, and by announcing the date, time, and place of the second hearing during the first hearing; and

- M. WHEREAS, the City Counsel of the City of Marathon has held public hearings to consider this Agreement, and has found and determined that its execution of this Agreement will further the objectives of the Local Government Comprehensive Planning and Land Development Regulation Act, and that the development contemplated and permitted by this Agreement is consistent with the City's Comprehensive Plan and Land Development Regulations.

NOW THEREFORE, in consideration of the matters set forth above (which are incorporated herein by reference), the exchange of the mutual promises set forth herein, and other good and valuable consideration, the parties hereto agree as follows:

1. **INCORPORATION OF RECITALS & EXHIBITS.** The parties confirm and agree that the above recitals are true and correct and incorporate the terms and provisions herein for all purposes. All terms and provisions of all Exhibits which are attached to this Agreement and referenced in this Agreement are, by this reference, incorporated into this Agreement for all purposes.
2. **Purposes of Agreement.**
 - A. To encourage Redevelopment of the Property consistent with Objective 1-3.1 of the City's Comprehensive Plan;
 - B. To secure the ability to redevelop the site to include eleven (11) transient one-story units, a 5,509 square foot restaurant with 152 seats, a 1,106 square foot retail store, and a pool and tiki hut.
3. **DEFINITIONS.** For the purposes of this Agreement, in addition to those terms which are specifically defined elsewhere in this Agreement the following terms shall have the following definitions:
 - 3.1 ***"Agreement"*** – 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 163.3161 through 163.3215, inclusive, of the Florida Statutes.
 - 3.2 ***"City"*** – City of Marathon, a Florida municipal corporation.
 - 3.3 ***"City Code"*** – The City's Code of Ordinances, as the same may be subsequently amended, modified, or supplemented.
 - 3.4 ***"City Laws and Policies"*** – The laws and policies of City concerning development of real property arising under City's Comprehensive Plan, the City Code, policies approved by City Council, and Resolutions approved by City Council.

3.5 ***“County”*** – Monroe County, Florida, a political subdivision of the State of Florida.

3.6 ***“Effective Date”*** – The date the terms of this Agreement become effective, as set forth in paragraph 8.16.

3.7 ***“Entitlements”*** – All heretofore established and future rights with respect to the Property, or any portion thereof, existing as of the Effective Date of this Agreement to develop the Property or any portion thereof for, under, or in accordance with a particular use, development intensity, requirements (or non-requirements) for site plan review, site and building design specifications and criteria, and requirements (or non-requirements) for public hearings concerning approvals of development plans, existing as of the Effective Date of this Agreement under the provisions of the City Laws and Policies.

3.8 ***“Florida Department of Commerce (FDC)”*** and ***“state land agency”*** - Refers to the administrative agency designated for the purposes of each federal workforce development grant as defined in Title IV, Chapter 20, Section 60, Florida Statutes.

3.9 ***“Land Development Regulations”*** – Chapter 101. *et seq.*, of the City Code in existence on the Effective Date of this Agreement.

3.10 ***“Parcel” or “Parcels”*** – One or more of the parcels of real property located in Monroe County, Florida, specifically described or referenced in this Agreement, including the Property (as defined below).

3.11 ***“Party” or “Parties”*** – As applicable, either Owner or City, or both Owner and City.

3.12 ***“Property”*** – The real properties owned by Owner located within the jurisdictional boundaries of City also located in Monroe County, Florida, as described on attached Exhibit **“1.”**

3.13 ***“Public Facilities”*** – Those facilities that are specifically described in Section 163.3221, Florida Statutes, and as set forth in this Agreement.

4. **REPRESENTATIONS AND WARRANTIES.** As a material inducement to the other Party to enter into this Agreement, each Party makes the following representations and warranties regarding this Agreement:

4.1 **Owner Representations and Warranties.** Owner represents and warrants to City that:

4.1.1 Owner is the legal and equitable owner of the Property.

4.1.2 Owner has taken all corporate actions prerequisite necessary for the execution and delivery of this Agreement, and upon the execution and delivery of this Agreement by Owner the obligations of Owner hereunder shall be valid and binding obligations of Owner. The entities or individuals executing this Agreement on behalf of Owner are duly authorized representatives of Owner, authorized to execute this Agreement in their respective capacities as set forth below.

4.1.3 The execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of any agreement, covenant, Court Order, Judgment, or the Articles of Organization or Operating Agreement of Owner.

4.2 **City Representations and Warranties.** City represents and warrants to Owner that:

4.2.1 The actions by City hereunder are consistent with the terms and provisions of the City's Comprehensive Plan and City Code.

4.2.2 City has taken all necessary actions prerequisite to the execution and delivery of this Agreement, including but not limited to the necessary public hearings, providing proper notice of the public hearings, and conducting public hearings related thereto.

4.2.3 Upon the execution and delivery of this Agreement by the City, the obligations of City shall be valid and binding obligations of City.

4.2.4 Execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of the City's Charter, Code of Ordinances, Land Development Regulations, or by the terms and provisions of any agreement, covenant, Court Order or Judgment to which City is a party.

5. **TERM AND DURATION OF THE AGREEMENT.** The Owner shall have two (2) years from the Effective Date of this Agreement to submit a permit application to obtain the building permits for the proposed development, and shall have sixty (60) months from the Effective Date of this Agreement to obtain Certificates of Occupancy for the proposed development under this Agreement.

This Agreement may be renewed or extended as provided herein. If the Owner has not complied with the terms of this section, this Agreement may be subject to termination as provided herein; provided, however, that delays in the adherence to the schedule of construction that are occasioned by Acts of God or circumstances outside the control of the City or Owner shall not be grounds for termination so long as the Owner demonstrates reasonable progress in the schedule of construction as shown in the Annual report(s) due hereunder.

6. **PERMITTED USES.**

1. The Development permitted on the Property shall consist of those uses set forth herein, as identified on the site plan attached hereto as Exhibit "3," and incorporated herein by reference. The permitted uses are as follows:
 - a. Transient Uses: 11 Transient units (11 single story elevated buildings,
A 5,509 square foot 152 seat restaurant,
1,106 square foot retail store,
Pool, and
Tiki Hut
 - b. Existing Development to Remain: 9 boat slips
2. For the duration of this Agreement, the Parties agree that any and all of the approved redevelopment shall adhere to, conform to, and be controlled by this Agreement, the Exhibits attached hereto and incorporated by reference, notwithstanding minor modifications to the Site Plan, the LDRs and the Comprehensive Plan governing the redevelopment of the Property on the Effective Date of this Agreement. In the event that all or a portion of the existing or authorized development subject to this Agreement should be destroyed by storm, fire or other disaster, the Owner, it's grantees, successors, or assigns shall have the right to rebuild or repair the affected structure(s) and reinitiate the prior approved use so long as such development is in compliance with this Agreement.
3. The following documents are attached hereto and incorporated by reference, showing the Property Boundary and Existing and Proposed Uses:
 - Exhibit 1: Legal Description
 - Exhibit 2: Survey
 - Exhibit 3: Existing Site Plan
 - Exhibit 4: Project Site Plan
4. Maximum Building Height shall be forty-two (42) feet, as provided in Section 107.40 of the LDRs, with the exception of any architectural features depicted on the site plan, which will require approval by the Director.

5. The Owner shall execute and record in the public records of Monroe County a Declaration of Covenants and Restrictions in a form acceptable to the City ensuring that it shall not seek and has no legal right to file for homestead exemption for the Transient Units constructed on the Property and which shall require the occupants for the Transient Units constructed on the Property to comply with Hurricane Evacuation Requirements set forth in Policy 1-2.2.1 of the Future Land Use Element of the City's Comprehensive Plan, in effect or as amended.
7. **PUBLIC FACILITIES.** 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 is provided by Marathon Garbage Services or its successors and assigns, as determined by the City Council.
 - (d) Fire Service. Fire service is provided by the Marathon Fire Department.
 - (e) Wastewater. Wastewater collection and treatment is provided by the City of Marathon.
- 7.1 Concurrency. All public facilities identified are available as of the date of this Agreement, and capacity for each is projected to be available concurrent with the impacts of development.
- 7.2 Impact Fees. Any increased impacts on public facilities or public services attributable to development of the Property and the cost of capital improvements to meet the associated demand on such facilities or services shall be paid by Owner to the City, concurrent with the issuance of the building permits. Owner shall be responsible for any applicable City impact fees required by the City code, as well as by payment of any applicable utility system development fees.
- 7.3 Modifications to the Site Plan. The proposed development is depicted on the Site Plan attached hereto as Exhibit 3. The Site Plan is hereby approved by the City Counsel, and all subsequent site plans, site plan approvals, and building permits will substantially comply with the Site Plan, provided, however, that the final site plan may deviate from the Site Plan to accommodate refinements to the development plan made by the Owner, including minor shifts in the locations of structures, roadways, pathways, and parking, and for minor increases or decreases in the projected square footage of each proposed structure. For purposes of modifications, a minor increase or decrease in

square footage of a proposed structure shall constitute +/-200 square feet for each structure.

7.4 Final Approval of pending permitting application(s) shall be obtained by Owner in accordance with the City Code of Ordinances, which shall not be unreasonably withheld by the City.

7.5 Additional Development Conditions. The following additional conditions, terms, restrictions and other requirements have been determined by the City to be necessary for the approval of this Agreement and shall be incorporated into the formal Site Plan approval process.

7.5.1 Setbacks. Setbacks shall comply with all applicable requirements of the City Code.

7.5.2 Utilities, Lighting and Signage. Utilities, lighting and signage shall comply with all applicable requirements of the City Code, including the waterfront lighting criteria set forth therein.

7.5.3 Landscaping. Owner shall submit a plan to utilize best practices of landscaping throughout the Property, in accordance with the provisions of the City Code and Land Development Regulations.

7.5.4 Fire Safety. Owner shall provide fire protection facilities as required by the City Code, Florida Fire Prevention Code and Life Safety Code.

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

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

7.6 Cost Recovery by City. Owner shall provide a cost recovery deposit to City and reimburse all fees and expenses of outside attorneys and third-party consultants that the City engages in connection with this Agreement and the implementation thereof.

8. LOCAL DEVELOPMENT PERMITS.

The following is a list of all Development Permits approved or needed to be obtained for the redevelopment of the Property as specified and requested in this Agreement:

1. This Development Agreement.

2. Conditional Use Approval.
3. The Final Site Plan, Landscape Plan, Drainage Plan, Building Elevations and Floor Plan approvals.
4. Building and related construction permits for all structures utilized for principal use or accessory use, land clearing and landscaping. At any time any building permit is applied for, Owner shall demonstrate compliance with all applicable Federal, State and Municipal Disabled-access Regulations in effect at the time of application.
5. Federal, State, Regional, and Local Permits for Stormwater runoff, if applicable.

Nothing in this Agreement shall preclude the parties from applying additional conditions by mutual agreement, during Final Site Plan review or permitting.

8.1 The City Laws and Policies governing the development of the Property on the Effective Date of this Agreement shall govern the future development of the Property for the duration of this Agreement. The Property shall retain, without modification or limitation, all development currently existing and options currently available under the City Laws and Policies, notwithstanding any future amendment of the City Laws and Policies.

8.2 Notwithstanding any recitals above, in the event that the City, subsequent to the Effective Date, modifies City Laws and Policies and includes the Property within such modifications, in a manner that provides the Property with additional options that are reasonably expected to enhance the development of the Property, or decrease the time or expense associated with such development, such modified laws and policies shall apply to the Property.

8.3 Development Permits. Certain provisions of this Agreement will require that the City and/or its boards, departments, or agencies take certain governmental actions, acting in their governmental capacity, and issue Development Permits in order to accomplish and satisfy the authorization and construction of the Owner's Project.

8.4 Applications for Development Approvals. Promptly after the Effective Date hereof, the Owner initiate and diligently pursue any necessary Development Approval applications. The City shall process all Development Permit applications in a timely fashion and the City shall cooperate with the Owner (at no cost to the City) in processing all necessary Development Approvals from federal, State and County agencies, as needed.

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

8.6 Development to Comply with City Code, Comprehensive Plan and Permit Conditions. The development described in and authorized by this Agreement shall be developed in accordance with all required permits, and in accordance will applicably provisions of the City's Comprehensive Plan, City Code and Land Development Regulations in effect on the date of execution of this Agreement. No certificate of occupancy for any building on the Property shall be issued until all plans for that building are approved by the City and the Owner has complied with all conditions in permits issued by the City and other regulatory authorities for that building.

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

9. **REDEVELOPMENT.**

City acknowledges that, by the covenants and terms of this Agreement, the Owner may develop eleven (11) transient units to be built as eleven (11) elevated single-story structures, a 5,509 square foot 152 seat restaurant, a 1,106 square foot retail store, pool, and tiki hut. All other residential or commercial space will remain in place as it currently exists.

10. **RIGHT OF AMENDMENT, RENEWAL, AND TERMINATION.**

This Agreement may be amended, renewed, or terminated as follows:

- A. 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 interest. Amendment under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.
- B. As provided in Section 163.3237, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirement in section 163.3225, Florida Statutes, and applicable LDRs. 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 fifteen (15) days before each public hearing in a newspaper of general circulation and readership in Marathon, 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. This Agreement may be terminated by Owner or its successor(s) in interest following a breach of this Agreement by the City upon written notice to the City as provided in this Agreement.
- D. Pursuant to Section 163.3235, Florida Statutes, this Agreement may be revoked or modified by the City if, on the basis of substantial competent evidence, the City finds there has been a failure by Owner to comply with the terms of this Agreement.
- E. This Agreement may be terminated by mutual consent of the parties.

11. **GENERAL PROVISIONS.**

11.1 **Notices.**

11.1.1 All notices, requests, consents and other communications required or under this Agreement shall be in writing (including faxed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, faxed, or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed to the following or to such other addresses as any party may designate by notice complying with the terms of this paragraph:

a. AS TO THE CITY:

Attn: City Mayor
City of Marathon
9805 Overseas Highway
Marathon, Florida 33050

1) With Copy To:
Attn: City Attorney

b. AS TO OWNER:

Attn: James Figuerado, Jr.
Wharf Marina, Inc.
489 Maddison Court
5628 Shaddelee Lane W
Fort Myers, Florida 33919

1) With Copy To:
Gregory S. Oropeza, Esq.
Oropeza, Stones & Cardenas, PLLC
221 Simonton Street
Key West, Florida 33040

11.1.2 Each such notice shall be deemed delivered:

- a. On the date delivered if by personal delivery.
- b. On the date of facsimile transmission if by facsimile; and
- c. If the notice is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; (b) the date upon which delivery is refused; (c) the date upon which notice is designated by the postal authorities as not having been delivered; or (d) the third business day after mailing.
- d. Notwithstanding the foregoing, service by personal delivery delivered, or by facsimile sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.

11.1.3 If a notice is delivered by multiple means, the notice shall be deemed delivered upon the earliest date determined in accordance with the preceding subparagraph.

11.1.4 If the above provisions require notice to be delivered to more than one person (including a copy), the notice shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.

11.2 Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership before Owner and City in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprises. Each Party shall be considered a separate Party, no Party shall have the right to act as an agent for another Party and no Party shall the right to act as an agent for another Party unless expressly authorized to do so in this Agreement.

11.3 No Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided no right, privileges or immunities of any Party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained in this Agreement.

11.4 Default Provisions.

11.4.1 The terms of this Agreement shall not entitle any Party to cancel, rescind, or otherwise terminate this Agreement. However, except as expressly set forth herein (e.g., in paragraph 8.4.5), such limitations shall not affect in any manner any other rights or remedies which a Party may have hereunder or under applicable law by reason of any such breach.

11.4.2 All easements, rights and covenants contained herein shall be enforceable by suit for specific performance and mandatory injunctive relief, in addition to any other remedies provided by law or equity except as expressly set forth herein (e.g., in paragraph 8.4.5).

11.4.3 No Party shall be entitled to pursue any action for specific performance, injunctive relief, or any other available remedy arising out of a default under this Agreement until the non-defaulting Party has provided to the Party alleged to be in default a written Default Notice specifying the specific nature of the default, and the alleged defaulting Party has failed to cure the default within sixty (60) days of the effective date of the Default Notice. In the event the cure of a default reasonably requires greater than the 60 day time period specified, the grace period granted herein shall, if the defaulting Party has initiated cure of the default within the 60 day time period and is continuing to pursue completion of the cure with due diligence, extend the reasonable time period required for the cure of the default to the period which is a reasonable time period.

11.4.4 In the event of a material default by Owner with respect to its obligations to City under this Agreement, and failure of Owner to cure the default within the grace period set forth above, in addition to any other remedies available to them under the terms of this Agreement, City shall be entitled to withhold issuance of additional development permits or authorizations until the default has been cured. If Owner has, prior to the occurrence of the default, conveyed some or all of the Property to unrelated third parties (such parcel or parcels then becoming a "Third Party Parcel") and the default of Owner is not with respect to, or impact City obligations regarding, the Third-Party Parcel, the right of City to withhold permits upon a default by Owner shall not extend to City permits pending or to be issued with respect to a successor owner of such Third-Party Parcel.

11.4.5 In the event of a material default by City with respect to its obligations to Owner under this Agreement, and failure of City to cure the default within the grace period set forth above, Owner may seek relief as set forth in paragraph 8.4.2 against City but may not seek damages (including, without limitation, compensatory damages or lost profits), such relief being expressly waived by Owner.

11.5 Estoppel Statements. Each Party agrees that upon written request from time to time of any other Party it will timely issue at no charge to a current or prospective lender to such Party, or to a current or prospective purchaser or successor party to such other Party, or to another governmental entity requesting or requiring the same, an Estoppel Statement stating:

11.5.1 Whether the Party to whom the request has been directed knows of any default by any Party under this Agreement, and if there are known defaults, specifying the nature thereof.

11.5.2 Whether this Agreement has been modified or amended in any way by such Party (and if it has, stating the nature thereof).

11.5.3 That to the best of the requested Party's knowledge this Agreement, as of the Estoppel Statement date is in full force and effect.

11.5.4 That (if known by the requested Party, if not known by the requested Party that Party shall reply only with respect to any monies owed to it) to the best of the requested Party's knowledge there are not any monies currently owed by any Party to another Party under the terms of this Agreement, or if there are monies owed, the amount and details of all monies owed.

11.5.5 That, as to the Project or as to a specific parcel therein (as applicable, based upon the request) there are no moratoriums or suspensions of the right to procure Development Orders, Building Permits, or Certificate of Occupancy or other development approvals in effect as of the date of the Estoppel Statement.

11.5.6 Such written statement shall act as a waiver of any claim by the Party furnishing it to the extent such claim is based on facts contrary to those asserted against a bona fide mortgagee or purchaser for value without knowledge of facts to the contrary of those contained in the Estoppel Certificate who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the Party furnishing it to any liability whatsoever, notwithstanding the negligent or other inadvertent failure of such Party to disclose correct and/or relevant information.

11.6 Litigation. In the event of any litigation arising out of this Agreement, each party shall bear their own costs incurred with respect to such litigation. In the event this Agreement is challenged successfully, the parties agree to be bound by any modification pursuant any legal authority. If any such event occurs the City shall be indemnified by Owner for any costs, including attorney's fees, in defending such challenge. In the event that any legal modification to this Agreement results from a legal challenge, the City shall not be held responsible for any resultant impact including financial consequences in accordance with this Section 8.6. In the event that the proposed development becomes impossible or impractical based upon such legal challenge, the parties agree that this Agreement is void.

11.7 Binding Effect. The parties to this Agreement represent to each other that each party fully understands the facts surrounding this Agreement and each is

signing this Agreement fully and voluntarily, intending to be bound by it. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective spouses, heirs, executors, and administrators. There are no representations or warranties other than those set forth herein.

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

11.9 **Severability.** Except as otherwise set forth herein, in the event any provision or paragraph of this Agreement is determined to be invalid or unenforceable, such determination shall not affect the enforceability or the validity of the remaining provisions of this Agreement.

11.10 **Survival of Representations and Warranties.** All representations and warranties contained herein are made in writing by the parties in connection herewith shall survive the execution and delivery of this Agreement.

11.11 **Successors.**

11.11.1 All covenants and agreements in this Agreement made by or on behalf of any parties hereto shall bind and inure to the benefit of the respective successors of the parties hereto, whether so expressed or not.

11.11.2 Upon a sale or other transfer of a Parcel or a portion thereof, the terms and provisions of this Agreement, as applicable, shall remain in full force and effect as to the Parcel or a portion of the Parcel.

11.11.3 Assignment. This Agreement is non-assignable without City's consent, and the Owner shall not assign the Owner's rights and obligations under this Agreement without the prior written consent of the City, which shall not be unreasonably withheld.

11.12 **Applicable Law.** This Agreement is being delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida. The venue for any legal proceeding arising out of this Agreement shall be Monroe County, Florida.

11.13 **Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

11.14 **Amendment of Agreement.** This Agreement cannot be changed, modified or released orally, but only by an agreement in writing signed by the parties against whom enforcement of said change, modification or discharge is sought.

11.15 **Gender.** As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular as the context may require.

11.16 **Effective Date.**

11.16.1 This Agreement shall become effective upon completion of its execution by both Parties, and the recordation of the Agreement in the Public Records of Monroe County, Florida.

11.16.2 Notwithstanding the foregoing:

- a. The parties shall be obligated to perform any obligations hereunder that are required before such Effective Date; and
- b. In the event that this Agreement is challenged, including a challenge pursuant to Section 163.3243, Florida Statutes, within thirty (30) days of the recordation of this Agreement in the Public Records of Monroe County, Florida, the obligations of the parties shall be suspended hereunder, except to the extent such suspension would be inconsistent with requirements of Florida Department of Commerce.

(This Space is intentionally left blank)

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

**SIGNATURE PAGE(S) OF
CITY OF MRATHON AND
WHARF MARINA, INC.**

ATTEST: CITY OF MARATHON, FLORIDA

By: _____
Diane Clavier, City Clerk

By: _____
Lynn Landry, Mayor

APPROVED AS TO FORM AND
LEGALITY:

Date: _____, 2025.

Steven Williams, City Attorney

APPROVED BY THE CITY COUNSEL OF MARATHON ON
_____, 2025.

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing **DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163, FLORIDA STATUTES** was acknowledged before me this _____ day of _____, 2025, by Lynn Landry, as Mayor of Marathon, Florida, a Florida municipal corporation, on behalf of the City.

Notary Public, State of Florida

Name: _____ (Please print or type)

Commission Number:

Commission Expires:

Notary: Check one of the following: ____ Personally known
OR ____ Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: _____

WHARF MARINA, INC.

By: _____
James Figuerado, as President

Date: _____, 2025

STATE OF FLORIDA
COUNTY OF _____

The foregoing **DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163, FLORIDA STATUTES** was acknowledged before me this _____ day of _____, 2025, by James Figuerado, as President of Wharf Marina, Inc.

Notary Public, State of Florida

Name: _____ (Please print or type)

Commission Number:

Commission Expires:

Notary: Check one of the following: ____ Personally known
OR ____ Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: _____

EXHIBIT "1"

Property Address and Parcel Identification Number:

1622 Overseas Highway, Marathon, Florida 33050

Real Estate No.: 00102600-000000

Alternative Key No.: 1119806

Parcel 1

The part of Government Lot 2, Section 9, Township 66 South, Range 32 East, on Key Vaca, Monroe County, Florida, more particularly described as follows:

Begin at the intersection of the West Boundary line of Section 9, Township 66 South, Range 32 East, and the centerline of U.S. Highway No. 1, and run northeasterly along said centerline a distance of 776.60 feet to a point; thence run North a distance of 116 feet to a point on the Northerly right-of-way line of Old State Highway 4A, the point of beginning of the land herein described; thence run Easterly along said Northerly right-of-way line of Old State Highway 4A, and parallel to the said centerline of U.S. Highway No. 1, a distance of 200 feet to a point; from this point run North a distance of 158.78 feet to a point; thence along a line parallel to the said centerline of U.S. Highway No. 1, a distance of 50 feet to a point; from this point run North a distance of 450 feet, more or less, to the waterline of the Bay of Florida; thence continue North for a distance of 220 feet; from this point run West a distance of 248.8 feet to a point; thence run South a distance of 300 feet more or less, to the shoreline of the Bay of Florida; thence continue South for a distance of 520 feet, more or less, to the point of beginning.; also,

All right, title and interest in and to that portion of Old State Highway 4A lying south of the above described land between the West Boundary line extended South to the northerly right-of-way line of U.S. Highway No. 1, and a line parallel to said extended West Boundary line and 200 feet East thereof, and north of the northerly right-of-way line of U.S. Highway No. 1.

Parcel 2

The part of Government Lot 2, Section 9, Township 66 South, Range 32 East, on Key Vaca, Monroe County, Florida, more particularly described as follows:

Commencing at a point at the Southeasterly corner of the property belonging to W.R. Thompson, Trustee, as described in ORB 100, Page 504, public records of Monroe County, Florida, said point being on the northerly Right-of-way line of U.S. Highway No. 1, and said point being also the point of beginning of the property hereinafter described from the point of beginning run Northeasterly along the Northerly Right-of-Way line of U.S. Highway No. 1 for a distance of 200 feet to a point; thence run North 158.78 feet to a point; thence run Northeasterly along a line parallel to the northerly Right-of-way line of said U.S. Highway No. 1 for a distance of 50 feet to a point; thence run North to a point on the mean high water line of the Bay of Florida; thence meander the mean high water line of the Bay of Florida in a Northwesterly and Southwesterly

direction to a point on the East line of the aforesaid property belonging to W.R. Thompson, Trustee; thence South along a line parallel to the aforesaid north course for a distance of 420 feet, more or less, to the point of beginning; said property being described in Deed Book G-9, Page 572, and Deed Book G-24, Page 315, public records of Monroe County, Florida; including Bay Bottom adjoining said land as described in Deed Book G-59, Page 297, Public Records of Monroe County, Florida.

FULL LEGAL DESCRIPTION(S) TO BE DETERMINED

EXHIBIT “2”

Survey

Exhibit “3”
Existing Site Plan

Exhibit “4”
Project Site Plan