

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

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.

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 11th 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 11th DAY OF MARCH 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").

RECITALS:

- 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 transferred 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