

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2005-113**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A DEVELOPMENT AGREEMENT FOR SAPODILLA HOLDINGS, LLC, FOR THE REDEVELOPMENT OF PROPERTY LOCATED AT 7200 AVIATION BOULEVARD, WHICH IS LEGALLY DESCRIBED AS PART OF THE MASTER PLAT OF NORTH MARATHON SHORES, PART OF GOVERNMENT LOT 1 OF SECTION 2 AND PART OF GOVERNMENT LOTS 2 AND 3 OF SECTION 1, TOWNSHIP 66 SOUTH, RANGE 32 EAST, KEY VACCAS, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00328520-000000, PROVIDING FOR CONDITIONS AND REQUIREMENTS OF DEVELOPMENT, INCLUDING BUT NOT LIMITED TO, BUFFERS, BUILDING HEIGHTS, SETBACKS, AND OTHER REQUIREMENTS**

**WHEREAS**, Sapodilla Holdings, LLC (the "Owner"), own approximately 106,182 contiguous square feet (2.43 acres) of upland property (the "Property") in the corporate limits of the City of Marathon, Florida; and

**WHEREAS**, the Property is a fully developed site with hotel units, amenities, and marina facilities; and

**WHEREAS**, the City Comprehensive Plan encourages redevelopment that results in the removal of cesspits, the replacement of substandard dwelling/transient units, the replacement of substandard on-site wastewater treatment, and the implementation of effective stormwater management plans; and

**WHEREAS**, the City Comprehensive Plan encourages redevelopment that results in the economic stability of the City and its residents; and

**WHEREAS**, the City needs redevelopment to protect the environment, its residents, its infrastructure and economy by redeveloping structures that are highly vulnerable in storm events, are below the required base flood elevations and are uninsurable; and

**WHEREAS**, the redevelopment contemplated by the Owners will remove all existing structures and reconstruct structures in compliance with all applicable Federal Emergency Management Agency (FEMA) regulations, the Florida Department of Health (DOH) regulations, the Florida Department of Environmental Protection ("DEP") regulations, South Florida Water Management District ("SFWMD") regulations, applicable building codes and the City Code, including setback, open space, stormwater, and landscape bufferyard criteria; and

**WHEREAS**, the Property offers the attractions of swimming, boating, and fishing that families enjoy, and Property redevelopment provides an opportunity for the type of development that will provide facilities to serve and attract family oriented tourism to the City; and

**WHEREAS**, the Property redevelopment will encourage owners of other properties to renovate or upgrade their sites, producing greater aesthetic and economic benefits to the City, providing enhanced environmental and storm hazard protection; and

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

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

**WHEREAS**, the City has held public hearings to accept and encourage public input with respect to the proposal by the Owner contained in the proposed Development Agreement (the "Agreement"), and has considered such public input; and

**WHEREAS**, the Agreement is consistent with the Principles for Guiding Development for the Florida Keys Area of Critical State Concern; and

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

**WHEREAS**, the City Planning Commission has held a public hearing on August 15, 2005, to consider the Agreement and recommended that the City Council conditionally approve the Agreement, and the City Council of the City has held a public hearing on August 23, 2005 to consider the Agreement; and

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

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

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

**Section 2.** The Development Agreement between the City and Sapodilla Holdings,

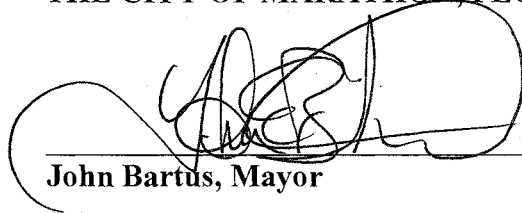
LLC, in substantially the form as the attached Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is approved.

**Section 3.** The City Manager is authorized to execute the Development Agreement on behalf of the City.

**Section 4.** This resolution shall become effective immediately upon its adoption.


**PASSED AND APPROVED** by the City Council of the City of Marathon, Florida, this 13<sup>th</sup> day of September, 2005.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**John Bartus, Mayor**

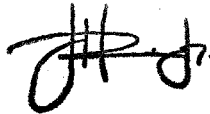
AYES: Bull, Mearns, Miller, Pinkus, Bartus  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

  
\_\_\_\_\_  
Cindy L. Ecklund  
City Clerk

(City Seal)

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



\_\_\_\_\_  
City Attorney

Parcel I.D. Nos.:  
RE# 00328520-000000

**DEVELOPMENT AGREEMENT  
FOR  
COCONUT CAY RESORT AND MARINA**

**THIS AGREEMENT** is entered into by and between SAPODILLA HOLDINGS, L.L.C., a Florida limited liability company, (herein referred to as “Owner”), and the CITY OF MARATHON, a Florida municipal corporation (herein referred to as “City”), pursuant to Sections 9.5-101 and 9.5-102 of the City Code, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2004), and is binding on the “Effective Date” set forth herein.

**WITNESSETH:**

**WHEREAS**, Sapodilla Holdings, L.L.C., a Florida limited liability company, is the Owner of approximately two and one-half (2.5) contiguous acres of land (herein referred to as “Property”) in the corporate limits of the City of Marathon, Florida; and

**WHEREAS**, the Property is a fully developed site from the 1950s with dwelling units, amenities, and marina and is in need of redevelopment; and

**WHEREAS**, the Property contains many aging structures that are non-conforming to required codes; are below the required Federal Emergency Management Agency (“FEMA”) base flood elevation; and are highly vulnerable in storm events, both structurally and due to elevation; and

**WHEREAS**, the Property presently has little erosion control or stormwater management system; and

**WHEREAS**, the City desires the redevelopment of such properties to enable aging tourist facilities to redevelop in a manner that is consistent with market trends in the leisure and hospitality industry for larger hotel and motel rooms or suites to accommodate families for longer stays; and

**WHEREAS**, the City of Marathon desires to encourage development and redevelopment of hotels and motels in the City to attract tourism, enhance the economy of the City for the benefit of its residents, improve the good appearance of the City, enhance the City's ability to support needed improvements in infrastructure, and encourage other redevelopment efforts for the economic growth, prosperity and welfare of the residents of the City of Marathon; and one of the City's enhancement and redevelopment goals is to attract 'family oriented' tourism and the Property offers the attractions of swimming, boating, and fishing that families enjoy; and

**WHEREAS**, in the past number of years, the City of Marathon has not benefited from the economic success of other locales in the Lower and Upper Keys, and is in need of redevelopment and enhancements of its tourist economic base to assist in the City's economic recovery, growth, and continued vitality;

**WHEREAS**, the City needs economically feasible redevelopment of its existing tourist infrastructure to provide quality accommodations to attract the "family market" tourists to Marathon; and

**WHEREAS**, the City needs redevelopment to protect the environment, its citizens, its infrastructure and economy by redeveloping structures that are highly vulnerable in storm events, are below the required baseflood elevations and are uninsurable; and

**WHEREAS**, the redevelopment contemplated by the Owner will remove existing structures and reconstruct structures in compliance with all applicable FEMA regulations, Department of Health regulations (DOH), applicable building codes, Land Development Regulations (LDR's) and the City Code; and

**WHEREAS**, as part of the Property redevelopment, the Owner will obtain all required permits for and will utilize best available technology ("BAT") sewage treatment; and

**WHEREAS**, as part of the Property redevelopment, the Owner will obtain all required permits for and construct a stormwater management system to serve the Property, providing a substantial environmental benefit through retaining, detaining, treating, and managing stormwater runoff and eliminating the untreated discharge of storm water; and

**WHEREAS**, the proposed redevelopment is permissible and appropriate with the City's Comprehensive Plan Future Land Use designations of Mixed Use - Commercial applicable to the Property, which allows Hotel/Motel Use; and

**WHEREAS**, the Property is zoned Suburban Commercial; and

**WHEREAS**, pursuant to City Code Ordinance 2004-017 (hotel/motel ordinance), the redevelopment and use of the Property as contemplated by the Owner is a conditional use within the Property's designated Land Use District of Suburban Commercial; and

**WHEREAS**, the City has determined that the redevelopment of the existing transient units will not increase the number of transient units on the Property and therefore are exempt from the Rate of Growth Ordinance of the City (ROGO) and will not require residential ROGO allocations; and

**WHEREAS**, the City has determined that the redevelopment will not adversely affect hurricane evacuation clearance time as reflected in the traffic study as performed by Transport Analysis Professionals; and

**WHEREAS**, the redevelopment will not increase, but will instead reconstruct, as accessory uses, existing commercial floor area, and existing marina facilities on the Property and therefore will not require Non-residential Rate of Growth Ordinance (NROGO) allocations; and

**WHEREAS**, pursuant to Ordinance 2004-017 of the City Code, the Property could be redeveloped to the existing density; and

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

**WHEREAS**, the proposed redevelopment will promote and further the following Principles for Guiding Development for the Florida Keys Area of Critical State Concern (the "Principles") as set forth in Section 380.0552(7), Florida Statutes (2004):

(b) To protect shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.

(c) To protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, tropical hammocks and pinelands), dune ridges and beaches, wildlife and their habitat.

(d) To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development.

(e) To limit adverse impacts of development on the quality of water throughout the Florida Keys.

...

(h) To protect the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:

...

2. Sewage collection and disposal facilities; and

**WHEREAS**, the City has held public hearings to accept and encourage public input with respect to the proposal by the Owner contained in this Agreement, and has considered such public input; and

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

**WHEREAS**, the City Planning Commission has held a public hearing on August 15, 2005, to consider this Agreement, and the City Council of the City has held public hearings on August 23, 2005, and September 13, 2005, to consider this Agreement; and

**WHEREAS**, the City has determined that this Agreement is consistent with the local comprehensive plan, is in the public interest, and will further the health, safety, welfare, and goals of the residents of the City of Marathon.

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

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



**B. DEFINITIONS.** For the purposes of this Agreement, the following terms shall have the following meanings. Terms not defined in this Agreement shall be as defined in the City Code, in Chapter 163, Florida Statutes, or, if not defined in the Code or statute, shall be understood by their usual and customary meaning.

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

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

3. **“Comprehensive Plan”** shall refer to the City’s Comprehensive Plan in existence on the Effective Date of this Agreement, except as otherwise expressly provided herein.

4. **“Development”** shall refer to the redevelopment of the Property for the uses permitted by the Land Use Plan and Land Development Regulations, subject to the conditions, obligations, restrictions and terms contained in this Agreement.

5. **“Transient Dwelling”** shall refer to the dwelling unit type defined in (Section 9.5-4 (R-17)) of the City Code and defined in Florida Statutes 509.013(4)(a).

6. **“Effective Date”** shall refer to the date this Agreement becomes effective, as set forth in Section C.29 of this Agreement.

7. **“Florida Department of Community Affairs”** and **“state land planning agency”** shall mean and refer to the “state land planning agency” as defined in Chapter 163, Part II, Florida Statutes.

8. **“Land Use Plan”** shall mean the Future Land Use Element and Future Land Use Map of the City’s Comprehensive Plan in existence on the Effective Date of this Agreement, except as otherwise provided herein.

9. **“Land Development Regulations”** shall mean Chapter 9.5 of the City Code in existence on the Effective Date of this Agreement.

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

11. **“Property”** shall refer to one or more of the parcels of real property located in the City that are the subject of this Agreement as set forth in legal description set forth at Exhibit A of this Agreement.

#### **C. TERMS OF AGREEMENT.**

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

a. **Ownership.** The Owner of Coconut Cay Resort and Marina as of the date of execution of this Agreement is Sapodilla Holdings, L.L.C., a Florida limited liability company whose address is 7196 Overseas Highway, Marathon, Florida 33050. There are no other legal or equitable owners of Coconut Cay Resort and Marina known to the parties of this Agreement.

b. **Legal Description.** The legal description of Coconut Cay Resort and Marina subject to this Agreement is included in the Coconut Cay Resort and Marina survey, attached hereto as Exhibit A. The term “Property” as used in this Agreement shall mean and refer to the properties described in Exhibit A.

**2. Duration of Agreement, Agreement Renewal.**

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

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

**3. Existing Development; Preparation for Redevelopment.**

**a. Existing Development.** The following development exists on the Property: seven (7) two bedroom cottages and eighteen (18) hotel/motel units for a total of 25 units with boat access, a waterside beach pavilion, a swimming pool with cabana bathrooms, pavilion and laundry, a twelve (12) slip live aboard marina, office and manager's apartment.

**b. Redevelopment Preparation.** The Property will be prepared for redevelopment by permitted demolition and appropriate removal of all existing structures, except for the pool and marina area, which was recently renovated in 2002.

**4. Plan Approval, including Densities and Intensities.**

**a. Approval of Conceptual Site Plan; Minor Revisions; Final Site Plan.** Redevelopment on the Property shall be 22 dwelling units, together with 200 feet of commercial space, and accessory structures and facilities as described in this Agreement and depicted on the Conceptual Site Plan for Coconut Cay Resort and Marina, dated June 30, 2004, which was prepared by deHaas Consulting and Design / Keys Engineering Services Inc., of Islamorada, Florida, and is attached hereto as Exhibit B. The Conceptual Site Plan hereby approved by the City, and all subsequent site plans, site plan approvals and building permits shall

substantially comply with this Conceptual Site Plan; provided, however, that the final site plan may deviate from the Conceptual Site Plan to accommodate: (1) refinements to the development plan including minor shifts in location; or (2) modifications that are necessary to meet regulatory requirements imposed by any other governmental entity. Except as provided herein, the setback, open space, landscape bufferyard, parking and building height requirements established in City Code shall not be varied.

**b. Dwelling Units under this Agreement.** Pursuant to Ordinance 2004-017 of the City Code, the 25 dwelling units on the Property are exempt from the requirements of the City's ROGO.

**c. Density under this Agreement.** Pursuant to Ordinance 2004-017 of the City Code and any applicable provisions in the City's Comprehensive Plan which was adopted on January 11, 2005, Owner is entitled to redevelop, and will redevelop, 22 transient dwelling units on the Property and shall retain the right for the additional three (3) dwelling units at a future date according to the terms of Ordinance 2004-017 of the City Code which requires the units to inure to the property. The three (3) dwelling units reduced and not included in the redevelopment shall be tracked over time and registered by the City as Conditional Redevelopment Units and shall be reflected in the data and analyses of the City of Marathon Comprehensive Plan.

**d. Conceptual Site Plan.** The redevelopment of the 22 dwelling units, as depicted on the Conceptual Site Plan, is approved by this Agreement.

e. **Structures.** The redevelopment depicted on the Conceptual Site Plan, and listed below, is approved by this Agreement. Exhibit C, incorporated by reference herein, depicts the building schematics for the residential dwelling units.

f. **Commercial Floor Area Approved Under This Agreement.** Pursuant to City Code 9.5-124.3, the site contains 634 square feet of existing commercial floor area or non-residential development on the Property, without being subject to nonresidential ROGO requirements. The total commercial floor area redevelopment on the Property approved by this Agreement equates to 200 square feet, as depicted on the Conceptual Site Plan. This commercial redevelopment will be used as accessory uses to the dwelling unit redevelopment of the Property. This leaves 434 square feet of commercial floor area remaining undeveloped. Any subsequently requested commercial floor area development approvals shall not exceed the remaining 434 square feet of floor area for which the Owner is vested, except as may otherwise be allowed by the City Code.

g. **Accessory Uses.** Accessory uses, to be developed as amenities ancillary to the dwelling units redevelopment on the Property, are for the use of Coconut Cay Resort and Marina Owner and guests. Signage shall be erected to indicate that accessory uses are for Coconut Cay Resort and Marina Owners and guests. Accessory uses to be developed or redeveloped on the Property are the office, activities pavilion, pool and pool pavilion, and restrooms and showers for residents of the marina.

5. **Development Conditions.** The following conditions, terms, restrictions, and other requirements have been determined by the City of Marathon to be necessary for the public health, safety, and welfare of its citizens:

**a. Building Height.** Buildings may be constructed to the maximum height as provided in the Comprehensive Plan.

**b. Setbacks.** The City acknowledges that there is no undisturbed or unaltered shoreline on the Property. Pursuant to City Code Section 9.5-286, a twenty (20) foot setback from the mean high water line (“MHWL”) shall be required for all principal structures. City Code Section 9.5-289 establishes provisions for a limited amount of non-enclosed detached outdoor recreational accessory structures that may be developed within the shoreline setback. Pursuant to City Code/Land Development Regulations, Section 9.5-281, the Suburban Commercial district requires a minimum 5 foot side yard setback on one side property line with a combined total of 15 feet for both side yards. With the recordation of the ‘Unity of Title’, internal setbacks are not required other than for fire safety.

**c. Utilities, Lighting, and Signage.** Utilities, lighting, and signage shall comply with all applicable requirements of the City Code, including the waterfront lighting criteria in City Code Section 9.5-395. The Owner shall install all utilities underground and shall screen all utility facilities. The Owner shall utilize shaded light sources to illuminate all signs, facades, buildings, parking and loading areas, and shall arrange such lighting to eliminate glare to parcels lying outside the Property. No intermittent or flashing lights or flashing signs shall be allowed.

**d. Landscaping.** The Owner shall utilize best installation and maintenance practices for landscaping throughout the Property, and shall guarantee one hundred percent (100%) survival of all owner-installed plants for one (1) year. Eighty percent (80%) of all required plants installed shall be Florida Keys native plants that are suitable for the site

conditions and are a species typical of the Middle Keys. The Owner shall remove all invasive exotic plants on the Property. The Owner shall provide, a Class “C” Major Street Buffer yard in accordance with Section 9.5-378 of the City Code. The Owner shall provide a Class “B” District Boundary Buffer, where applicable.

**e. Parking.** The redevelopment shall comply with the parking criteria as required by Section 9.5-351 of the City Code. The Owner shall provide no fewer than one (1) parking spaces per transient dwelling unit, a total of eighteen (18) parking spaces for the marina live-aboard slips, and two (2) accessory use parking spaces for a total of at least 42 parking spaces.

**f. Entrance Street Improvements.** Owner shall provide the following entrance street improvements:

(i) The installation and maintenance of landscaping on the side of Aviation Boulevard bordering the Property; and other improvements.

(ii) Provided Owner is granted the vacation of right-of-way for the right-of-way for the old Aviation Boulevard, Owner shall provide adequate traffic circulation and other features as agreed by the City.

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

**h. Fire Safety.** The Owner shall provide fire wells and other such fire protection facilities as required by the Life Safety Code administered by the City Fire Department. Fire sprinklers will be installed in all dwelling units.

**i. Open Space Ratio.** Pursuant to City Code Sections 9.5-343, 9.5-262, and 9.5-267, a minimum of 20% open space is required. The Owner will maintain a minimum of 20% open space.

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

**k. Energy Efficiency.** The Owner shall construct all residential structures in conformance with the specifications of the State of Florida Energy Efficiency Code for Building Construction (State Energy Code).

**l. Schematics.** All redeveloped residential units constructed on the Property shall adhere to one of the architectural styles and one of the representative floor plans depicted in the schematics in Exhibit C, incorporated by reference herein.

**m. Permits from Other Regulatory Entities.** The Owner shall obtain all necessary permits from other local, regional, State, and federal regulatory entities and provide copies of each to the City within a reasonable time after such permits are issued.

**n. Compliance with Suburban Commercial (SC) District Requirements.** The proposed redevelopment complies with the Conditional Use permitting requirements in the Suburban Commercial (SC) land use district as provided in the City Code and in applicable Comprehensive Plan provisions.



**o. Storm water Management.** The development shall comply with the storm water management criteria in City Code Section 9.5-293 and as approved by the South Florida Water Management District (SFWMD). This design shall provide for no direct discharge to the City of Marathon near shore waters.

**p. Affordable Housing.** The Owner agrees to provide three (3) employee housing units **or** a payment of \$100,000 for each employee housing unit (for a total of \$300,000.00) to a City affordable housing fund. The Owner agrees to make payment to a City affordable housing fund or receive a Certificate of Occupancy on the affordable housing units prior to or concurrent with receiving the first Certificate of Occupancy of the redeveloped hotel units.

In the event that the Owner provides employee housing units, the Owner will enter into an agreement with the Middle Keys Community Land Trust (MKCLT) or other similar organization to provide services for both the initial and annual income qualifications of tenants of the affordable/workforce housing as well as income qualifications for purchasers of any affordable/workforce housing that may be offered for sale. This agreement shall be in place and approved by the City prior to the issuance of a CO for the affordable/working force housing units. The affordable/workforce housing deed restriction shall be for a minimum of fifty years and shall be renewable for a minimum of two (2) fifty year periods.

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

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

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

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

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

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

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

f. **Wastewater.** Wastewater treatment shall be provided by an on-site Best Available Technology (“BAT”) wastewater treatment plant approved by governing Agency (Department of Health or Department of Environmental Protection). The treatment plant shall meet the BAT nutrient removal standards and shall be completed before a certificate of occupancy may be issued for any unit.

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

**h. Impact Fees.** Any increased impacts on public facilities or public services attributable to each unit of the development, and the cost of capital improvements to meet the associated demand on such facilities or services, shall be assured by payment to the City, concurrent with the issuance of the building permits for each unit, or any applicable City impact fees required by ordinance then in effect, as well as by payment by the Owner of any applicable utility system development fees. Owner agrees to pay impact fees pursuant to any applicable impact fee ordinances adopted within twenty four (24) months of the date of execution of this Agreement. Any impact fees required to be paid by Owner pursuant to any such impact fee ordinances will be offset by the dollar amount paid by Owner toward the provision of any improvements which are the subject of said impact fee ordinances.

**i. Traffic Study.** Prior to issuance of building permits for structures on the Property, Owner agrees to conduct the appropriate traffic study to assess the project's vehicle traffic impacts on U.S. 1. If the traffic study demonstrates that redevelopment of the Coconut Cay Resort and Marina will result in significant traffic impacts above those generated by the development currently existing on the Property, Owner will mitigate its fair share of the increased traffic impacts resulting from redevelopment of the Coconut Cay Resort and Marina.

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

**8. All Local Permits Approved or Needed.**

**a. Development Approvals.** The following City development approvals are needed for the development authorized by this Agreement:

**1. Site Plan.** Final site plan approval by the City building official, fire marshal, and planning staff confirming compliance with this Agreement and applicable City Code requirements.

**2. Conditional Use.** A Conditional Use Approval shall be received from the City of Marathon, prior to the receipt of building permits.

**3. Building Permits.** Building permits will be issued for each building as well as for the pool facilities and pavilion, and other individual structures. An overall Site Plan, as approved by the City of Marathon, will address landscaping, parking, paths, setback, open space and other associated items.

**b. Review.** No further review or discretionary review will be required by the City, it being agreed that the development, as depicted on the approved Conceptual Site Plan attached hereto, requires only the above development approvals so long as the final site plan substantially complies with the Conceptual Site Plan approved under this Agreement.

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

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

9. **Mutual Cooperation.** The City agrees to cooperate with the Owner in a timely manner in providing and/or granting all permits, licenses, approvals, or consents necessary or appropriate to fully implement this Agreement. The City and the Owner agree to cooperate fully with and assist each other in the performance of the provisions of this Agreement.

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

11. **Finding of Consistency.** The City of Marathon finds that the development authorized herein is consistent with the Comprehensive Plan and Land Development Regulations, and with the City's Comprehensive Plan adopted on March 8, 2005, as applicable.

12. **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 the necessity of complying with the laws governing said permitting requirements, conditions, terms, or restrictions.

**13. Governing Laws.**

**a. Controlling Regulations.** For the duration of this Agreement, all approved development on the Property shall comply with and be controlled by this Agreement and by the provisions of the Comprehensive Plan and City Code or the City's Comprehensive Plan adopted on March 8, 2005, as applicable. The parties do not anticipate the application of subsequently adopted laws and policies to the Property except as expressly provided in this Agreement.

**b. Subsequently Adopted Laws and Policies.** Pursuant to Section 163.3233, Florida Statutes (2004), the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that: (a) the new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent development of the land uses, intensities, or densities set forth in this Agreement; (b) the new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they shall apply to the development that is subject to this Agreement; (c) the local government demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or (d) the Agreement is based on substantially inaccurate information supplied by the Owner. Redevelopment of the Property shall not be subject to any moratoria or other restrictions on redevelopment, which may be established or otherwise imposed in any manner or at any time by the City. Nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

**c. State or Federal Laws.** If State or federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this

Agreement, this Agreement shall be modified as is necessary to comply with the relevant state or federal laws. However, this Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common or statutory law.

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

**a. Amendments.** As provided in Section 163.3237, Florida Statutes (2004), this Agreement may be amended by mutual consent of the parties to this Agreement or by their successors in interest; an instrument in writing signed by the parties or their successors shall accomplish an amendment under this provision.

**b. Renewal.** As provided in Section 163.3229, Florida Statutes (2004), this Agreement may be renewed by the mutual consent of the parties, subject to the following public hearing requirements in Section 163.3225, Florida Statutes (2004): the City shall conduct at least two (2) public hearings, one of which may be held by the local planning agency at the option of the City. Notice of intent to consider renewal of the Agreement shall be advertised approximately seven (7) days before each public hearing in a newspaper of general circulation and readership in Monroe County, Florida, and shall be mailed to all affected property owners before the first public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing. The notice shall specify the location of the land subject to the Agreement; the development uses on the Property, the population densities, and the building intensities and height and shall specify a place where a copy of the Agreement can be obtained.

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

d. **Revocation by City.** Pursuant to Section 163.3235, Florida Statutes (2004), this Agreement may be revoked by the City if the City finds, on the basis of competent substantial evidence, that there has been a failure by the Owner to comply with the terms of this Agreement.

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

**15. Breach of Agreement and Cure Provisions.**

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

b. **Written Notice on the City.** If the Owner concludes that there has been a material breach in the terms and conditions of this Agreement, the Owner shall serve



written notice on the City, identifying the term or condition the Owner contends has been materially breached and providing the City thirty (30) days from the date of receipt of the notice to cure the breach. The following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the City, shall be considered a material breach of this Agreement:

(a) failure to comply with the provisions of this Agreement, or (b) failure to timely process any application for site plan approval or other development approval required to be issued by the City for the development authorized by this Agreement.

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

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

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

**TO THE OWNER:**

James Rhyne,  
Managing Member  
157 Sapodilla Drive  
Islamorada, FL 33036

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

**TO THE CITY:**

Mike Puto, City Manager  
City of Marathon  
10045-55 Overseas Highway  
Marathon, Florida 33050  
Telephone: (305) 743-0033

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

John R. Herin, Jr., Esquire  
Stearns, Weaver, Miller, Weissler, Aldaheff, & Sitterson, P.A.  
Museum Tower, 150 West Flagler Street  
Miami, Florida 33130  
Telephone: (305) 789-3200

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

**18. Enforcement.** In accordance with Section 163.3243, Florida Statutes (2004), any party to this Agreement, any aggrieved or adversely affected person as defined in

Section 163.3215(2), Florida Statutes (2004), or the state land planning agency may file an action for injunctive relief in the circuit court of Monroe County, Florida, to enforce the terms of this Agreement or to challenge the compliance of this Agreement with the provisions of Sections 163.3220-163.3243, Florida Statutes (2004).

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

**20. Assignment.** This Agreement may not be assigned without the written consent of the parties.

**21. Drafting of Agreement.** The parties acknowledge that they jointly participated in the drafting of this Agreement and that no term or provision of this Agreement shall be construed in favor of or against either party based solely on the drafting of the Agreement.

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

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

**24. Litigation; Attorney's Fees; Venue; Waiver of Right to Jury Trial.** In the event of any litigation arising out of this Agreement between the City and Owner, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such

litigation, including reasonable attorney's fees. This includes, but is not limited to, reimbursement for such reasonable attorneys' fees and costs incurred with respect to any appellate, bankruptcy, post-judgment, or trial proceedings related to this Agreement. Venue for any legal proceeding arising out of this Agreement shall be in Monroe County, Florida. The parties to this Agreement waive the right to a jury trial in any litigation arising out of or initiated under this Agreement.

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

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

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

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

29. **Recording; Effective Date.** The Owner shall record this Agreement in the public records of Monroe County, Florida, within twenty-eight (28) days after the date of execution of this Agreement. A copy of the recorded Agreement showing the date, page and book where recorded shall be submitted to the state land planning agency by hand delivery, registered or certified United States mail, or by a delivery service that provides a signed receipt showing the date of delivery, within a reasonable time days after the Agreement is recorded. The Owner shall also provide a copy of the recorded Agreement to the City within the same time period. This Agreement shall become effective thirty (30) days after the date it is recorded in the public records of Monroe County, Florida, and received by the state land planning agency.

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

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


11/28/05  
Date

SAPODILLA HOLDINGS, L.L.C.  
a Florida limited liability company,

By   
PRESIDENT

STATE OF FLORIDA  
COUNTY OF DADE

The foregoing instrument was acknowledged before me on this 28 day of NOV 2005, by James A. Rhynes as President of Sapodilla Holdings, L.L.C. who is personally known to me or who produced FL DL as identification, and who did/did not take an oath.

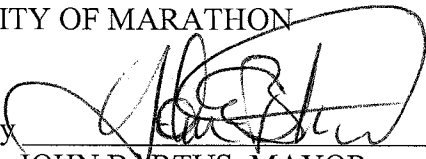
  
Notary Public, State of Florida At Large  
My commission expires:



Gail A. Covington  
My Commission DD304114  
Expires March 25, 2008

CITY OF MARATHON

12/06/05  
Date

By   
JOHN BARTUS, MAYOR

ATTEST:

  
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

  
CITY ATTORNEY

**EXHIBITS TO COCONUT CAY RESORT AND MARINA  
DEVELOPMENT AGREEMENT**

**Exhibit A:** Boundary Survey and Legal Description

**Exhibit B:** Coconut Cay Conceptual Site Plan

**Exhibit C:** Elevation Plans

**Exhibit A**

**Boundary Survey and Legal Description**

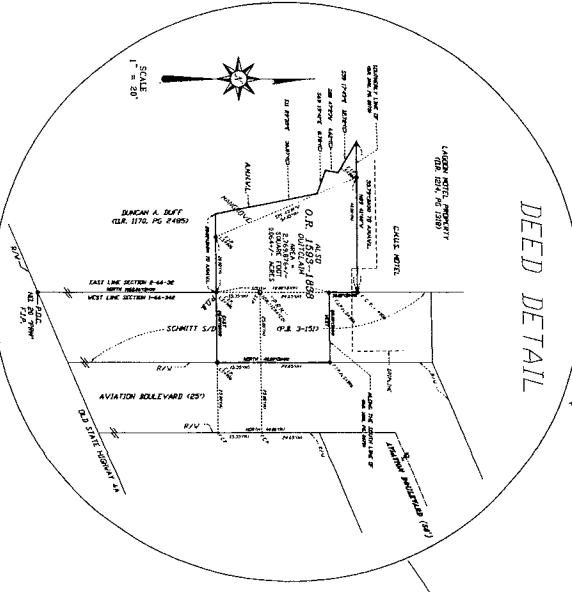
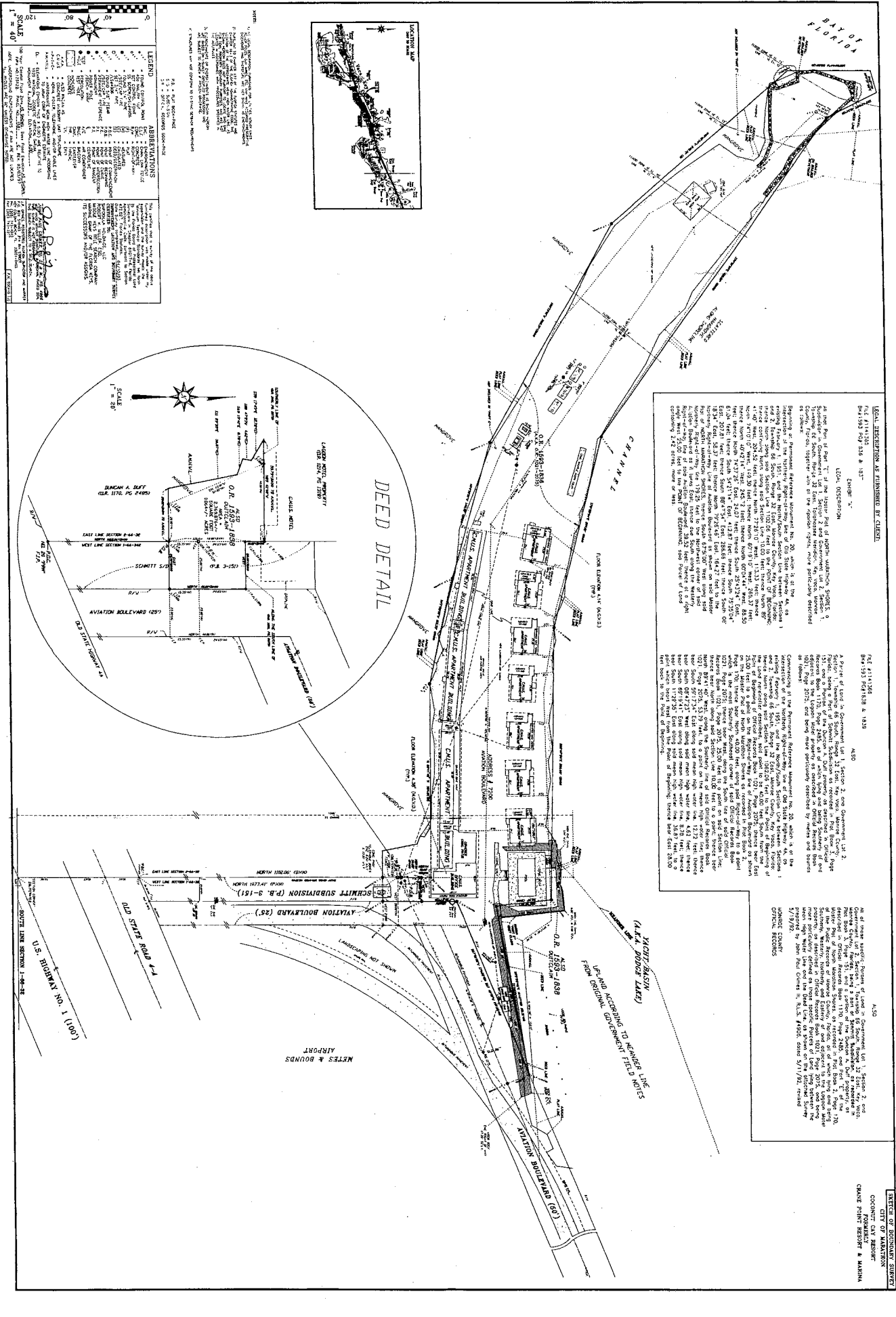


**LEGAL DESCRIPTION AS FURNISHED BY CLIENT**  
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**LEGEND**

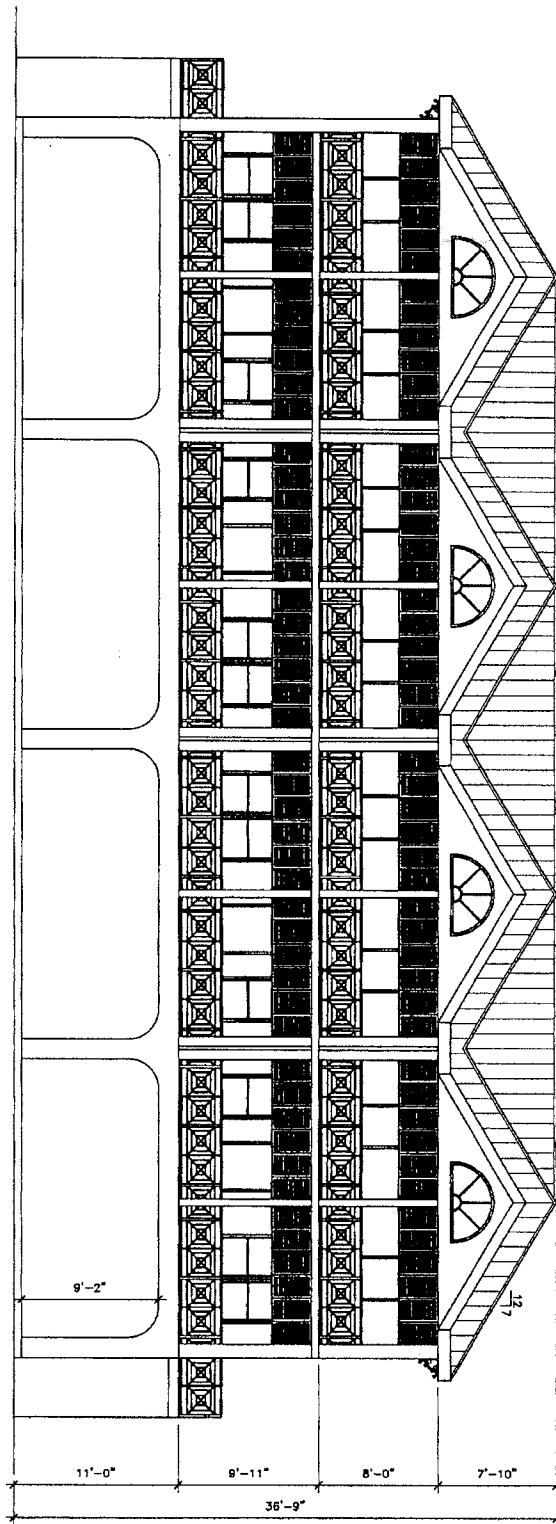
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**Exhibit B**

**Coconut Cay Conceptual Site Plan**



**Exhibit C**  
**Elevation Plans**



QUAD UNIT ELEVATION - STREET SIDE  
SCALE: 1/8"=1'-0"

NO.	DATE	BY	CHKD.
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ENGINEERING BY:

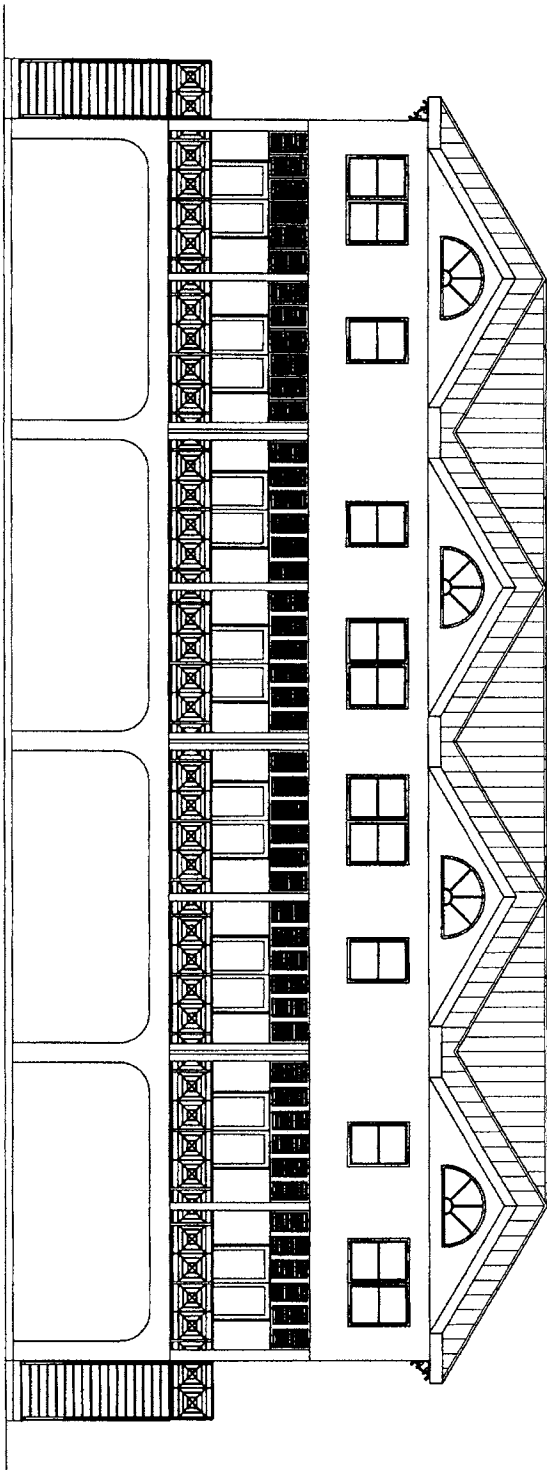
**Keus**  
ENGINEERING SERVICES, INC.  
P.E. No. 41,27428  
68601 OVERSEAS HIGHWAY  
ISLANDHOMA, FLORIDA 33036

**dellaas**  
Consulting & Design  
David dellaas Grosbeck  
905.858.9851 fax: 905.858.6198

NO.	DATE	BY	CHKD.
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50	11/11/08	D. GROSBECK	

COCONUT CAY  
ELEVATIONS  
MANATION, FL.

A-10



QUAD UNIT ELEVATION - WATER SIDE  
SCALE: 1/8"=1'-0"

15	A-11	DATE	1/20/07
14		BY	A. GROSSACK
13		CHECKED	A. GROSSACK
12		SCALE	1/8"=1'-0"

COCONUT CAY  
ELEVATIONS  
MARATHON, FL

ENGINEERING BY:  
**Keys**  
ENGINEERING SERVICES, INC.  
P.E. No. 11, 12438  
8501 CHEVYCHASE HIGHWAY  
ISLANDIA, FLORIDA 33036

**detaas**  
Consulting & Design  
David detaas Grossack  
305.858.9821 fax: 305.858.4138

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