Doc# 1618966
Bk# 2260 Pg# 1781

Sponsored by: Puto

CITY OF MARATHON, FLORIDA
RESOLUTION 2006-185

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A DEVELOPMENT AGREEMENT FOR BOAT WORKS INVESTMENT, LLC, FOR THE REDEVELOPMENT OF AN EXISTING BOAT REPAIR MARINA FACILITY WITH BOAT SLIPS, AND EXISTING COMMERCIAL FLOOR AREA, LOCATED AT 700 39TH STREET GULF, MILE MARKER 48.5-49 AND IS LEGALLY DESCRIBED AS PART OF BLOCK 2 AND ALL OF BLOCK 5, LOTS 1, 2, 3, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18 & 19, MARATHON BEACH, KEY VACA, MONROE COUNTY, FLORIDA RE# 00337390-000000, 00103480-000100, 00337270-000000, 00337280-000000, 00337290-000000, 00337300-000000, 00337310-000000, 00337470-000000, 00337380-000000 AND 00337330-000000, PROVIDING FOR CONDITIONS AND REQUIREMENTS OF DEVELOPMENT, INCLUDING BUT NOT LIMITED TO, THE PROVISIONS FOR AFFORDABLE/WORKFORCE HOUSING, BUFFERS BUILDING HEIGHTS, SETBACKS, AND OTHER REQUIREMENTS.

WHEREAS, Boat Works Investment, LLC (the "Owner") owns approximately 6.4748 acres of upland (the "Property") in the corporate limits of the City of Marathon, Florida; and

WHEREAS, the Property includes several parcels with different uses, including The Key Boat Works, the condemned Gulf Shores Apartments and various trailers and unsafe apartment facilities with some lesser included commercial uses, damaged from Hurricane Wilma.

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

WHEREAS, the Plan encourages redevelopment that results in the economic stability of the City and its residents; 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 City has determined that the redevelopment will not adversely affect hurricane evacuation clearance time because the number of dwelling units on the redeveloped Property will not increase beyond the number of dwelling 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 proposed Development Agreement (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 as required by state and local law; and

WHEREAS, the City Planning Commission has held a public hearing 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 November 28, 2006 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 Boat Works Investment, 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 hereby 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 12th day of December, 2006.

THE CITY OF MARATHON, FLORIDA

Christopher M. Bull, Mayor

AYES: Mearns, Pinkus, Tempest, Worthington, Bull
NOES: None
ABSENT: None
ABSTAIN: None

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:

City Attorney

DEVELOPMENT AGREEMENT FOR COMPASS POINTE

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PREPARED BY & RETURN TO:
Boat Work Investments, LLC
11500 Overseas Highway
Marathon, FL 33050

Doc# 1618966 12/21/2006 10:44AM
Filed & Recorded in Official Records of
MONROE COUNTY DANNY L. KOLHAGE

Doc# 1618966
Bk# 2260 Pg# 1727

DEVELOPMENT AGREEMENT
FOR
COMPASS POINTE

THIS DEVELOPMENT Agreement ("Agreement") is entered into by and between the City of Marathon ("City"), a Florida municipal corporation, and Boat Works Investments LLC, a Florida limited liability company ("Boat Works Investments" or the "Developer"), pursuant to Sections 9.5-101 and 9.5-102 of the Code of Ordinances for the City of Marathon ("City Code"), and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2005), and is binding on the Effective Date set forth herein.

WITNESSETH:

WHEREAS, Developer is the owner of approximately 6.442 acres of real property in the City, including properties now known as the "Keys Boat Works" and adjoining/neighboring parcels, and also holds rights to certain Bay Bottom leases, all parcels collectively being one redevelopment parcel referred to and further described herein as the "Property". For purposes of this Agreement, "Property" shall also include additional parcels that may be subsequently acquired by the Developer and which are made subject through amendment to all or certain terms and conditions of this Agreement; and

WHEREAS, the Property is more particularly described in the legal descriptions attached hereto as composite Exhibit "A;" and

WHEREAS, Developer and the City desire that the Property be developed in at least two phases, the "First Phase" to be the development of affordable housing units as described herein, and subsequent phases to include the market-rate residential and commercial redevelopment of the Property not used for any First Phase redevelopment; and

WHEREAS, the Property is currently developed with 83,374 square feet of vested

commercial space (including a marine docking and services facility known as Keys Boat Works), fifty-two (52) market rate residential dwelling units, thirty-four (34) wet boat slips (12 of which are covered), up to thirty-two (32) — twenty-two (22) transient and ten (10) permanent — live-aboard vessels[1], and 1,690 associated linear feet of boat dockage, vacant land, and miscellaneous equipment and storage structures located on or over the bay bottom, as these features may be more fully described in this Agreement; and

WHEREAS, the Developer wishes to redevelop the Property, and to develop eleven (11) or more affordable/workforce housing dwelling units in the First Phase, either on site or off site, up to fifty-two (52) onsite market rate dwelling units, thirty-four (34) wet boat slips preserving the 12 covered slips and/or equivalent linear footage, additional wet boat slips as may be permitted by the U.S. Army Corps of Engineers ("ACOE") (anticipated to be 10 slips, more or less), a clubhouse/community center, commercial uses, swimming pool(s), and other accessory uses; and

WHEREAS, the parties desire that this Agreement serve as a model of the City's vision for Mixed Use redevelopment which maximizes the best economic use of the Property for the benefit of the City; and

WHEREAS, all existing development was in existence at the time of the 1990 Census, which formed the basis of the City's dwelling unit allocation ordinance, also known as Residential ROGO (herein "ROGO"), codified at Sections 9.5-121 through 9.5-129 of the City Code; and

WHEREAS, the existing fifty-two (52) residential dwelling units on the Property

[1] As set forth in the City's Marina Siting Plan document, approved August 23, 2005, to the extent further satisfactorily documented.

are exempt from the requirement to obtain ROGO allocations in order to be redeveloped, and therefore are entitled to ROGO exemptions or credits under Section 9.5-123(f) of the City Code, in that redevelopment or replacement of the units does not increase the number of residential dwelling units above that existing on the site prior to the redevelopment; and

WHEREAS, the commercial uses on the Property also were in existence at the time of the 1990 Census, which formed the basis of the City's nonresidential dwelling unit allocation ordinance, also known as Non-Residential ROGO (herein "NROGO"), codified at Sections 9.5-121 through 9.5-129 of the City Code, and therefore such uses and square footage allocations are NROGO-exempt; and

WHEREAS, the upland land area on the Property is sufficient under the City Code to accommodate the redevelopment approved in this Agreement; and

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

WHEREAS, the City Planning Commission held an advertised public hearing on October 16, 2006, to consider this Agreement, and recommended for approval to the City Council; and

WHEREAS, the City Council held an advertised public hearing concurrent with three public Council meetings held on November 14, November 28 and December 11, 2006, to consider this Agreement and the recommendation of the Planning Commission, and to

accept and encourage public input with respect to the proposal of the Developer contained in this Agreement, and has considered the Planning Commission recommendation, staff report, and public input; and

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

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

I. RECITALS. The foregoing Recitals are a part of this Agreement on which the parties have relied and are incorporated into this Agreement by reference.

II. DEFINITIONS. For the purposes of this Agreement, the following terms shall have the following definitions:

A. *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, et. seq., Florida Statutes.

B. *City Code, land development regulations,* or *LDRs* shall refer to the land development regulations in the Code of Ordinances of the City.

C. *Comprehensive Plan* shall refer to the City's Comprehensive Plan that became effective on July 7, 2005.

D. *Development* shall refer to the redevelopment of the Property for uses permitted by the Comprehensive Plan and the City Code, subject to the conditions, obligations, restrictions and terms contained in this Agreement.

E. *Effective Date* shall refer to the date this Agreement becomes effective, as set

forth herein.

F. *First Phase* shall mean the development of the affordable units as scheduled and set forth in this Agreement. The First Phase shall be a continuous and ongoing period during which the Developer shall obtain building permits for the initial five (5) required Affordable Housing Units within one (1) year of being awarded corresponding affordable housing dwelling unit allocations from the City's "pool" of available allocations, when and if such pool is replenished, and certificates of occupancy for the completed corresponding units within two (2) years of receiving these five (5) allocations. The Developer understands that as of the date the City Council first formally considers this Agreement, the City's former "pool" of affordable allocations from which it might otherwise have awarded the Developer allocations for affordable units called for under this Agreement has no available allocations that would permit such an allocation award to be made, and also that the City is unable to guarantee when and to what extent such a pool may be replenished in the future. However, the City agrees that should the City replenish with five or more allocations its pool of non-regular ROGO affordable allocations, the City may award to this Developer the five (5) affordable allocations called for in this Agreement, but may award more than five (5) such allocations, in its discretion, in order to reduce the number of affordable allocations the Developer must seek through the regular ROGO allocation process. Also as part of the First Phase, the Developer on an ongoing basis shall submit applications for Affordable Housing allocations through the normal ROGO allocation process in order to obtain affordable allocations for the additional six (6) Affordable Housing Units required under this Agreement. The Developer shall obtain a building permit within sixty (60) days of being awarded the first of the planned for six (6) regular ROGO affordable allocations in order to begin construction of the Lillie Davis home on Louisa Street, which

residence shall be completed within one (1) year of receiving the corresponding building permit. The Developer shall obtain building permits for the remaining five (5) Affordable Housing Units subject to the regular ROGO allocation process within one (1) year of receiving the last of the six (6) regular ROGO affordable allocations, and it shall obtain certificates of occupancy for these additional units within two (2) years of receipt of such allocations. The Developer also shall be permitted to seek through the regular ROGO process the five (5) affordable allocations that might potentially be made available to it from any replenished City affordable allocation pool, and to the extent the Developer obtains in excess of six (6) affordable allocations in that manner, the City shall reduce by the number so obtained the number to be allocated to the Developer from any replenished pool. The affordable unit permitting and completion schedule set forth for five (5) additional affordable units obtained in this manner shall begin to run from the date of the fifth such additional allocation award. If the Developer is unable to timely receive the all five (5) of the additional affordable allocations, it may return the allocations to the City and pay the fees in lieu prescribed under this Agreement. Any development permitted under this Agreement or under any conditional use approval(s) related to it, other than development of the required affordable housing, shall terminate at any point at which the forgoing affordable housing unit schedule is not complied with and such other development shall not resume until the failure to deliver the relevant affordable units is cured to the reasonable satisfaction of the City.

G. *The Property* shall refer to one or more of the parcels of "land", as defined by Section 163.3221, Florida Statutes, located in the City and which are, as required by Section 163.3227(1)(a), Florida Statutes, (i) legally described in section III.A., below, and, which (ii) is subject to this Agreement (the Property collectively being one development "parcel" or "parcel of land" as defined in Section 9.5-4(P-1) of the City Code); including also in the Property such

additional parcels that may be acquired and mutually subjected by the City and the Developer to the terms and conditions of this Agreement through a subsequent amendment.

H. *Public Facilities* shall refer to those facilities that are specifically described in Section 163.3221, Florida Statutes, and as set forth in this Agreement.

I. *State Land Planning Agency* shall refer to the State of Florida Department of Community Affairs, or any statutorily-designated successor agency.

III. TERMS OF AGREEMENT – STATUTORY REQUIREMENTS.

A. Legal Description of the Land Subject to this Agreement and the Names of the Land's Legal and Equitable Owners.

The Property is collectively legally described in the attached composite Exhibit "A" which is incorporated herein. Developer is the owner of all real Property subject to this Agreement, with individual tax assessment parcels being referenced by RE Nos. 00337270-000000, 00337280-000000, 00337290-000000, 00337300-000000 and 00337310-000000, also known or described as 747 41st Street, 781 41st Street, 785 41st Street, Marathon, by RE No. 00337330-000000, also known as 999 41st Street, Marathon, by RE No. 00337380-000000, also known or described as 3916 Louisa Street Gulf, Marathon, Florida, by RE No. 00337470-00000, also known or described as 3905 Louisa Street Gulf, Marathon, Florida (Davis Parcel(s)), and by RE Nos. 00103480-000100, 00337390-000000 (combined for tax assessment purposes), also known or described as 700 39th Street, Marathon, Florida (Keys Boat Works Parcels). There are no other legal or equitable owners of the Property known to the Developer.

B. Duration of the Agreement; Renewals.

This Development Agreement shall remain in effect for a period of seven (7) years, commencing on the Effective Date. This Development Agreement may be renewed or extended as permitted by law, and shall be extended to compensate for any delay in award of affordable

housing allocations as set forth herein. The provisions of this Agreement providing a timeframe for the completion of construction of affordable/employee housing units once allocations are awarded shall be strictly enforced. The Developer shall be permitted to continue existing marine support uses during transition to full redevelopment of the site, but in any case shall submit an application for an amendment of relevant vested conditional uses covering the use and redevelopment of at least fifty percent (50%) of the Property and the redevelopment of at least one-third of the ROGO-exempt market rate dwelling units recognized herein within thirty six (36) months of the Effective Date.

C. The Development Uses Permitted on the Land, Including Population Densities, Building Intensities and Height.

1. *Development Uses Permitted on the Land.*

All of the land proposed for redevelopment under this Agreement is currently zoned Mixed Use. The permitted uses for the land are set forth in Section 9.5-248 of the City Code, which Section in full is attached to and incorporated as Exhibit "B" hereto.

a. *Uses permitted as of right* include, but are not limited to (the full listing of permitted uses is set forth in Section 9.5-248):

i. Detached residential dwellings.

ii. Commercial retail, low- and medium-intensity and office uses, or any combination thereof of less than twenty-five hundred (2,500) square feet of floor area.

iii. Attached and unattached residential dwellings of fewer than six (6) units, designated as employee housing as provided for in section 9.5-266.

iv. Vacation rental use of detached dwelling units is permitted if a

special vacation rental permit is obtained under the regulations established in Code section 9.5-534.

b. *Uses permitted pursuant to conditional use approvals* include, but are not limited to (the full listing of allowed conditional uses is set forth in Section 9.5-248):

i. Attached residential dwelling units: four (4) or fewer as a minor conditional use—five (5) or more as a major conditional use.

ii. Commercial retail, low- and medium-intensity and office uses, or any combination thereof of between twenty-five hundred (2,500) and ten thousand (10,000) square feet of floor area as a minor conditional use—and of greater than 10,000 square feet of floor area as a major conditional use.

iii. Attached and unattached residential dwellings involving six (6) to eighteen (18) units, designated as employee housing as provided for in section 9.5-266.

iv. Marinas.

c. *Existing Approved Conditional Uses.* Pursuant to City Code Section 9.5-2(c) the following existing uses are deemed to already have existing conditional use approvals for all or portions of the Property:

i. Attached dwelling units. This existing approved conditional use is based upon current site conditions showing the existence of at least forty (40) attached dwelling units on the Property. There exist three (3) buildings with ten (10) dwelling units each; five (5) building(s) with two (2) dwelling units each; being in addition to

the twelve (12) detached dwelling units which are permitted as of right uses under Section 9.5-248, as set forth above.

ii. Commercial medium intensity uses including marina uses for up to 80,755 square feet, boat slips, dockage, offices, storage and sales.

iii. Commercial high intensity uses including bar and retail uses for up to 2,619 square feet.

iv. The parties recognize and agree that, pursuant to City Code Sections 9.5-2(c) and 9.5-61, the established uses recognized under this Agreement (1) would have been permitted as conditional uses under applicable City land development regulations, (2) are deemed to have approved conditional use permits under the City's existing land development regulations, and (3) shall continue to be deemed compatible uses, both with each other and with neighboring property uses. However, the parties agree that the Developer's redistribution of existing conditional uses shall require Planning Department and/or Planning Commission review and approval of relocation, redesign and reconfiguration of these uses.

2. *Population Densities.*

The land proposed for redevelopment under this Agreement currently contains (or recently contained until demolished per City condemnation order for unsafe structures) fifty-two (52) ROGO-exempt market rate dwelling units. Pursuant to Comprehensive Plan Policy 1.3.4.1 the market-rate dwelling units and density are to be protected. Under the City Code,

redistribution of all and/or a portion of "attached dwelling units" over portions of the Property not now containing them, or the conversion of all or a portion of the existing attached dwelling units into detached dwelling units, or vice versa, shall require an ( ) amendment(s) to the approved conditional use(s) to ensure that any relocation, redesign or reconfigurations comply with applicable sections of the Code. The following provisions shall further govern the redistribution of density and dwelling units under this Agreement.

a. *Maximum Dwelling Units of All Types on Present Site.* There shall be a maximum of fifty-two (52) market rate dwelling units and eleven (11) affordable dwelling units redeveloped upon the Property as legally described as of the Effective Date. The Developer may by amendment request that additional parcels be subjected to the terms of this Agreement by which additional existing dwelling units or nonresidential square footage capacity for redevelopment on the Property may be recognized. Accessory uses and structures including but limited to boat dockage facilities, swimming pools, detached storage and parking structures appurtenant to designated principal uses shall be permitted.

b. *Transfer of Building Rights.* Should the Developer elect not to redevelop all of its 52 market rate dwelling units on the Property, the Developer may make application to transfer any units not so developed to one or more off-site parcels pursuant to and subject to the terms and conditions of any City transferable building rights ("TBR") ordinance (should one become effective at a future date) or other appropriate transfer mechanism (e.g., 380 agreement or the like). During diligent and timely performance of the First Phase obligations as set forth herein, Developer may, to the extent otherwise consistent with governing

land development regulations, construct on the Property up to 52 market rate dwelling units. If the Developer ultimately limits its market rate dwelling unit construction on the Property to forty (40) units (which under City policy would require eight (8) affordable units instead of the eleven (11) actually being built in the First Phase of this Agreement), then the Developer would be credited three (3) units of completed affordable housing towards any affordable or inclusionary housing requirements that might otherwise be established for the remaining twelve (12) market rate units should they be transferred offsite pursuant to any future TBR ordinance adopted by the City..

c. *Affordable Dwelling Units and Form of Ownership.* Pursuant to City Resolution No. 2006-014, the Developer shall develop eleven (11) affordable/workforce housing units on site or off site, this number of units being equal to twenty percent (20%) of the maximum number of market rate residential dwelling units that are permitted to be redeveloped on the Property under this Agreement. The City shall provide to the Developer within thirty (30) days of the City's replenishing of its affordable housing allocation "pool" five (5) affordable allocations—or fewer if the number of units replenished would not permit awarding the Developer the full five (5) allocations (though the parties recognize that as of the date of the City Council's initial consideration of this Agreement the City's pool of awardable allocations was depleted), and the Developer shall apply for six (6) affordable allocations under the regular ROGO allocation process. No certificate of occupancy ("CO") shall be issued for any redeveloped market rate dwelling unit or commercial use structures while the Developer is in breach of its

timely delivery obligations for affordable housing units. Moreover, prior to issuance of any CO for any redeveloped market rate dwelling unit or for any commercial use structures on the Property (not including wastewater structures), the Developer, based on the actual number of market rate units for which conditional use approvals/amendments or other redevelopment approvals have been obtained, shall verify its compliance with obligations under this Agreement as to (i) completion of affordable units, (ii) payments of fees in lieu as permitted, and as discussed below, and/or (iii) posting of any performance bond ensuring timely completion of units for which allocations were received and accepted by the Developer and for which the Developer's delivery schedule hereunder would permit timely delivery after the date upon which the Developer expects to be ready to obtain one or more COs for non-affordable housing aspects of the Development project. The Developer shall be authorized to pay $200,000 to the City as fees in lieu of affordable unit construction for each affordable housing unit that is required under this Agreement. Any fees in lieu the Developer elects to pay shall be due prior to the issuance of the first certificate of occupancy for the Property for any market rate residential unit or commercial use structure constructed thereon (but not including wastewater treatment facilities), and the number of affordable units/amount of fees in lieu due shall be adjusted according to the actual number of market rate units approved for redevelopment in any corresponding conditional use approval(s) (e.g., if the location of 40 market rate units is approved for onsite redevelopment pursuant to a conditional use amendment application, the then due affordable housing requirement would be

some mixture of eight (8) affordable units and/or fees in lieu). The Developer may offer the City land suitable for affordable housing as a substitute for all or any portion of the fee in lieu payments, which land the City may choose to accept or not to accept in its complete discretion. Where the Developer does not redevelop the Property with the full 52 market rate units, as set forth in subparagraph b., above, any excess fee in lieu payments or land donations made to the City shall similarly be credited to the Developer with respect to any ROGO-exempt market rate units transferred offsite pursuant to any TBR ordinance that the City may enact in the future. Where the Developer is awarded and decides to accept an affordable unit allocation from the City at a date such that the timely completion of the unit under the schedules established under this Agreement would extend beyond the date at which the Developer is ready to have COs issued for non-affordable aspects of the Development, the Developer shall post a performance bond satisfactory to the City ensuring timely completion of the relevant affordable units.

Either of the following shall be deemed a material breach of this Agreement by the Developer: (i) Developer's failure to secure building permits for any required affordable unit within one (1) year of documentation of the award of the respective number of affordable unit allocations by the City, or (ii) the Developer's failure to complete construction of any affordable unit required by this Agreement for which an allocation is awarded to the point of certification for occupancy within two (2) years of documentation of the award of the affordable allocation by the City. The affordable dwelling unit redevelopment

First Phase shall also be subject to the following:

i. *Initial Location of Affordable/Employee Housing Units.* The parties acknowledge and agree that the Developer shall be entitled to construct any number of the eleven (11) required affordable housing units on any portions of the Property, or offsite, but its plans shall be subject to the City's customary approval processes for site and building plans and, where necessary, variance or conditional use amendment requests. It is contemplated but not required that the Developer may develop affordable housing units on the following portions of the Property:

RE NO. 00337470-000000

Lots 1, 2 and 3, Block 1, LINCOLN MANOR, a Subdivision, Plat Book 4, Page 16, of the Public Records of Monroe County, Florida.

RE NO. 00337380-000000

Lot 14, Block 5, RE-SUBDIVISION, of Part of Block 2, and all of Block 5, of MARATHON BEACH, according to the Plat thereof as recorded in Plat Book 2, Page 21, of the Public Records of Monroe County, Florida.

Portion of RE NO. 00337390-000000

Lots 15 and 16, Block 5, a Resubdivision of Marathon Beach, according to the Plat thereof as recorded in Plat Book 2, Page 21, of the Public Records of Monroe County, Florida.

ii. *Permitted Relocation of New Affordable/Employee Housing Units.* Any new onsite affordable/workforce housing unit required by this Agreement may be located offsite, at the discretion of the Developer should the Developer acquire additional parcels upon which to locate the units, but the offsite parcels

need not be made subject to any unity of title with the Property initially described in this Agreement. If additional parcels are incorporated into the "Property" and subjected to this Agreement by amendment, any additional ROGO-exempt dwelling units existing thereon shall be recognized and credited to the Developer in accordance with customary City practice.

iii. *Variances.* The parties further acknowledge that it may be necessary for the Developer to seek a variance from the front, side and rear yard setback requirements in the City Code in order to develop the affordable/workforce housing units on site in the location depicted on Conceptual Site Plan(s), though nothing herein guarantees approval of a variance request.

iv. *ROGO Allocations for Affordable/Employee Housing.* The City shall award to the Developer (should they become available) five (5) ROGO affordable/workforce housing allocations (or such number as becomes available in any "pool" of allocations reconstituted outside of the regular annual ROGO allocations allowed to the City) for development of the affordable/workforce housing units required by this Agreement, and the Developer shall seek an additional six (6) affordable unit allocations through the regular ROGO award process, but as set forth above, may seek additional allocations for affordable units required under this Agreement to the extent they are not available from the City outside of regular ROGO process.

v. *Deed Restriction.* The Developer shall place a deed restriction on the affordable/workforce housing units which shall restrict the use of the units to affordable housing as defined in the City Code for fifty (50) years from the date

of recordation, renewable by the City for two (2) 50-year periods. The restriction shall prohibit transient use of affordable housing units. The restriction shall be recorded in the public records of Monroe County, Florida. Where the Developer completely pays for the land and construction of the affordable housing required by this Agreement and retains ownership of the units, the Developer shall enter into an agreement with the MKCLT or similar entity, at the Developer's discretion, but subject to City approval, which shall not be unreasonably withheld, to perform income qualification evaluation for renters of units on an annual basis and for purchasers of affordable units at the time of sale or resale — employees of the Developer or any subsequent owner(s) of all or any portions of the Property shall be eligible to rent or purchase any affordable units created pursuant to this Agreement if they are otherwise qualified under eligibility guidelines generally applicable to other persons. Such agreement must be approved by the City and executed by the parties prior to issuance of certificates of occupancy for the affordable/workforce housing units. The parties acknowledge that the City is developing an affordable/workforce housing regulation. If the City subsequently adopts an ordinance that requires a shorter time period for which affordable/workforce housing must be restricted to use as affordable/workforce housing, the above restriction shall be reduced to conform to the subsequently-adopted ordinance.

vi. *Form of Ownership of Properties.* Condominium, cooperative, or similar form of ownership of all or a portion of the Property, and the submission of the Property to the condominium, cooperative, or similar form of ownership

(and recordation of a corresponding declaration of condominium or similar instrument), or the sale of individual residential dwelling units, lots or parcels with one or more Developer-assigned ROGO-exempt dwelling unit rights, boat slips, commercial structures and parcels within the Property, and all forms of future ownership or use shall conform with and be subject to the terms and provisions of this Agreement. The Developer is authorized to construct one (1) single-family residence on Lots 2 and 3, Lincoln Manor, in the City of Marathon, as depicted on the Conceptual Site Plan, and to convey said Lots 2 and 3 in fee simple to Lillie Davis, one of the current property owners, as required by the Developer's contract for purchase and sale with Ms. Davis. The first affordable allocation the Developer receives from the City shall be used for the construction of Ms. Davis' residence at 3905 Louisa Street Gulf, Marathon.

3. *Building Intensities.*

a. *Existing Non-Residential Floor Area Intensity.* Pursuant to Comprehensive Plan Policy 1-3.4.2 existing nonresidential development shall be recognized for redevelopment at current intensities. The Developer may redevelop onsite up to 80,755 square feet of medium and 2,619 of high intensity nonresidential/commercial use square footage. Should the Developer elect not to redevelop on the Property all of its existing commercial square footage, the Developer may make application to transfer any square footage not so redeveloped to one or more off-site parcels pursuant to any City building rights transfer ordinance, policy or regulation that may be subsequently adopted. Any commercial redevelopment on the Property will not exceed the existing 83,374 square feet of commercial uses on the

Property. No net increase in commercial square footage shall occur without appropriate NROGO square footage allocations made according to City regulations. Unused commercial square footage shall be deemed vested, shall not expire, and may be subsequently used onsite or transferred offsite in accordance with any existing or subsequently adopted transfer ordinance or other appropriate mechanism, e.g., agreement or otherwise.

b. *Existing Marina and Wetslips.* The Keys Boat Works parcel currently operates as a marine-related facility/marina containing 34 wet boat slips, 12 of which are covered, all of which the Developer intends to retain, as well as one hundred thirty (130) dry boat storage slips, subject to any state or federal permitting or other required authorizations. The Developer may maintain and repair its covered boat slips for life safety reasons (including maintenance to improve hurricane safety aspects of those structures) or in accordance with otherwise applicable City Code provisions. Current marina uses may be maintained during the course of the proposed redevelopment and the term of this Agreement and thereafter to the degree that such uses do not conflict with any subsequent development approvals or orders relating to the Property or otherwise threaten health, safety and welfare. Some or all wetslips may be made appurtenant to redeveloped residential units on the Property or may be offered for sale, lease or other lawful access to the general public. Additional wet slips may be added pursuant to Army Corps of Engineers permits (anticipated as approximately ten (10) such slips), which slips, if permitted, shall be appropriately depicted on any approved final site plan. Wet and/or dry slips may be made appurtenant to residential units or commercial elements of the redevelopment, and may be offered for sale, lease and other use by the general public.

Public access marine-related uses and structures shall be permitted according to governing law and regulations.

c. *Liveaboards.* The Keys Boat Works parcel currently hosts thirty-two (32) — twenty-two (22) transient and ten (10) permanent — liveaboard vessels[2]. This number of liveaboards shall be permitted to remain to the extent they comply with the requirements applied to liveaboards existing elsewhere in the City.

d. *Aging Wastewater Facilities.* Aging wastewater treatment facilities exist on portions of the Property, including the plant sited on RE No. 00337330-000000. The Developer shall be authorized to place on the Property wastewater treatment, transmissions and connection facilities, structures and utilities as required to comply with relevant regulations.

4. *Building Height.*

Maximum building height shall be thirty-seven (37) feet, as provided in Future Land Use Element Policy 1-3.2.5 in the Comprehensive Plan. Maximum height shall be determined from the highest point of the crown of 41st Street nearest the Property between Louisa Street and the Gulf of Mexico.

D. Description of Public Facilities and Facility Requirements.

1. *Existing Public Facilities, Providers and Scheduling.*

Public Facilities shall be provided as follows:

a. *Potable Water.* The Florida Keys Aqueduct Authority provides domestic potable water. Scheduling of potable water will be pursuant to permitting of the development requiring these public facilities and adequate future

[2] As set forth in the City's Marina Siting Plan document, approved by the City Council on August 23, 2005 (Resolution 2005-112), to the extent further satisfactorily documented.

capacity exists as shown by Letters of Coordination submitted with the approval applications for this Agreement.

b. *Electric Service.* The Florida Keys Electric Co-Op provides electric service. Scheduling of electric service will be pursuant to permitting of the development requiring these public facilities and adequate future capacity exists as shown by Letters of Coordination submitted with the approval applications for this Agreement.

c. *Solid Waste Service.* Marathon Garbage Service provides solid waste service. Scheduling of solid waste service will be pursuant to permitting of the development requiring these public facilities and adequate future capacity exists as shown by Letters of Coordination submitted with the approval applications for this Agreement.

d. *Wastewater and Sewage Collection and Disposal.* Wastewater treatment shall be provided by the construction of a new advanced wastewater treatment ("AWT") plant approved by DEP. The treatment plant shall meet the AWT nutrient removal standards as specified by DEP and shall be completed before a certificate of occupancy may be issued for any unit. Developer shall be responsible for the design, installation, inspection, and testing of the complete wastewater collection system serving the Property. The term "complete wastewater collection system" shall include all component parts of the wastewater collection system including all collection mains, laterals, force mains, lift or pumping stations, vacuum pits and treatment facility plant including the site for same and all other appurtenances as shown on the approved design for the

installation of such wastewater collection system.

Prior to interconnection with the City's wastewater utility system, Developer shall convey such component parts of the wastewater collection system the City deems necessary to properly operate the City's wastewater utility system. Developer shall convey the component parts by bill of sale in a form acceptable to the City, together with such evidence as may be required by the City that the component parts proposed to be transferred to the City are free of all liens and encumbrances. Furthermore, Developer shall convey any and all necessary on-site and off-site easements that may be required in order to carry out the terms, conditions and intent hereof, at Developer's expense, and shall convey same to City. Mortgagees, if any, holding prior liens on the proposed easements shall be required to release such liens, subordinate their positions or join in the grant or dedication of the easements.

The City shall not be required to accept title to any component part of the wastewater collection system located outside a dedicated or conveyed public right-of-way or easement located on the Properties. Such component parts of the wastewater collection system shall remain the maintenance responsibility of the Developer or subsequent consumers. Additionally, the City shall not be required to accept title to any component parts of the wastewater collection system as constructed by the Developer, and shall only do so if the City has approved the construction of such component parts, and accepted the tests to determine that such construction is in accordance with the criteria established by the City. The Developer shall warrant all component parts transferred to the City against faulty

workmanship and defective materials for a period of one (1) year from the date of City's final letter of acceptance.

The Developer shall maintain accurate cost records establishing the construction costs of the wastewater collection system constructed by the Developer. Such cost information shall be furnished to the City concurrently with the bill of sale, and such cost information shall be a prerequisite for the acceptance by the City of any component parts of the wastewater collection system constructed by the Developer. Alternatively, the Developer shall be permitted and is encouraged to meet its wastewater obligations through cooperation with neighboring property owners where joint use of facilities can be achieved and/or hookup to City facilities.

e. *Educational Facilities.* The Property is currently served by the following schools, operated by the Monroe County School Board: Marathon High School, Marathon Middle School and Stanley Switlik Elementary School.

f. *Recreational Facilities.* The Property includes recreational facilities for residents and guests, including swimming and boating opportunities. Therefore, redevelopment of the Property will have no impact on public recreation facilities.

g. *Impact Fees.* Any increased impacts on public facilities or public services attributable to each unit of the development, and the cost of capital improvements to meet the associated demand on such facilities or services, shall be assured by payment to the City, concurrent with the issuance of the building permits for each unit, of any the City impact fees required by Ordinance then in

effect, as well as by payment by the Developer of any applicable utility system development fees. In addition, the Developer agrees to be subject to any impact fee ordinance adopted by the City within twenty-four (24) months after the Effective Date of this Agreement if such ordinance applies equally and uniformly to all redevelopment in the City.

E. Reservation or Dedication of Land for Public Purposes.

The parties anticipate that the Developer 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). Reservations and dedications for public purposes in connection with this Agreement will be as required by the Comprehensive Plan and City Code. Such reservations or dedications may include, by way of example, easements necessary for the provision of stormwater, utility, and wastewater services to the Property.

F. Description of Local Development Permits Approved or Needed to be Approved.

The following is a list of all development permits approved or needed to be approved for the development of the Property as specified and requested in this Agreement:

1. *Local Development Approvals Deemed Approved.*

a. *Permitted Uses of ROGO-Exempt Units as Detached Dwelling Units.*

b. *Permitted Uses of Commercial Retail, Low and Medium Intensity and Office Uses, of up to Twenty-Four Hundred and Ninety Nine (2,499) Square Feet of Floor Area.*

c. *Permitted Uses of Accessory Residential Uses for Dwelling Units.*

d. *Approved Minor Conditional Uses for Attached Dwelling Units not*

Exceeding Four (4) Units per Building for a Total Number of ten (10) Dwelling Units.

e. *Approved Minor Conditional Uses for Commercial Retail, Low and Medium Intensity and Office Uses, for an Additional Seventy-Five Hundred (7,500) Square Feet of Floor Area.*

f. *Approved Minor Conditional Uses for Commercial Retail, High Intensity Uses, and Office Uses, of up to Twenty-Four Hundred and Ninety Nine (2,499) Square Feet of Floor Area.*

g. *Approved Major Conditional Uses for Commercial Retail, Low and Medium Intensity Uses, and Office Uses, for an Additional Seventy Thousand Seven Hundred Fifty Five (70,755) Square Feet of Floor Area.*

h. *Approved Major Conditional Uses for Commercial Retail, High Intensity Uses, and Office Uses, for an Additional Six Hundred Twenty (620) Square Feet of Floor Area.*

i. *Approved Major Conditional Uses for Attached Residential Dwelling Units for a Total Number of thirty (30) Dwelling Units.*

j. *Approved Major Conditional Uses for Marina Use.*

2. *Additional Required Local Development Approvals.*

a. *Amendment to Minor Conditional Uses for all Existing Minor Conditional Uses.*

b. *Amendment to Major Conditional Uses for all Existing Major Conditional Uses.*

c. *Conditional Use Approvals for Any New Conditional Uses Sought.*

d. *Demolition Permits for Health, Safety, Rehabilitation and the Eventual Redevelopment.*

e. *Any Required Variance(s) from Front, Side and Rear Yard Setbacks for Parcel(s) to be Developed with Affordable/Employee Housing.*

f. *Plat Approvals to the Extent Replatting is Sought.*

G. Finding of Consistency with Comprehensive Plans and Land Development Regulations. By entering into this Agreement, the City finds that the development permitted or proposed herein is consistent with and furthers the Comprehensive Plan, applicable LDRs and the Principles for Guiding Development set forth at Section 380.0552(7), Florida Statutes.

H. Failure to Address Particular Permits, Terms, Conditions and Restrictions. The failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions.

IV. TERMS OF AGREEMENT – ADDITIONAL REQUIREMENTS.

H. Additional Conditions, Terms, Restrictions or Other Requirements Determined to be Necessary by the Local Government for the Public Health, Safety or Welfare of its Citizens.

1. *Site Plans.* The development authorized by this Agreement shall be depicted on Conceptual Site Plans acceptable to the City under standards customarily used at the time of submission for approval. The Conceptual Site Plans provided at public hearings on this Agreement have been for example only, it being expressly understood and agreed by the Developer that it shall submit final site and building plans as customarily required for site plan approvals and building permit applications which plans shall comply with the requirements of the City Code existing as of the date of this Agreement. Where a particular aspect of a later-

submitted site plan complies with future amended code provisions, the Developer may, with respect to such aspect, request that such site plans be approved in the customary manner according to the relevant revised or amended Code provision(s) in lieu of the standards set forth in current regulations.

2. *Buffers.* None required.

3. *Setbacks.* The City acknowledges that there is no undisturbed or unaltered shoreline on the Property. Pursuant to the City Code, setbacks shall be as follows:

a. Shoreline: twenty (20) feet.

b. From side lines adjoining neighboring properties: ten (10) feet (except that one side may be five (5) feet) (variances may be required for Davis parcels).

c. Front: twenty-five (25) feet (variances may be required for Davis parcels).

d. Rear: twenty (20) feet (variances may be required for Davis parcels).

e. Between on-site structures: with the recordation of a Unity of Title instrument as set forth herein, internal setbacks are not required, other than a minimum of ten (10) feet between the exterior walls of each building for fire safety, or less as may be determined by the City's Fire Marshall.

4. *Utilities, Lighting and Signage.* Utilities, lighting, and signage shall comply with all applicable requirements of the City Code, including the waterfront lighting criteria in Section 9.5-395 of the City Code. The Developer shall install all utilities underground where practical and shall screen all utility facilities. The Developer shall utilize shaded light sources or lens structures that direct light downward to illuminate all signs, facades, buildings, parking and loading areas, and shall arrange such lighting so as to eliminate glare to properties lying outside the Property.

5. *Landscaping.* The Developer shall utilize the best practices of landscaping throughout the development, and shall guarantee survival for one year of all Developer-installed plants as provided in the City Code. The Developer shall remove all invasive exotic plants in each area of the Property, if any, at the time new plant material is installed in such area. The Developer shall comply with applicable parking area landscape standards in the City Code.

6. *Parking.* Parking shall be provided pursuant to the Code.

7. *Internal Infrastructure.* The roads, landscaping, and other internal Developer-provided infrastructure serving residential dwelling units shall be completed before a certificate of occupancy may be issued for the dwelling unit(s) served. The Developer and/or successor owners shall be responsible for the maintenance and repair of internal infrastructure.

8. *Fire Safety.* The Developer shall provide such fire wells and other fire protection facilities as required by the Life Safety Code administered by the City Fire Department.

9. *Open Space Ratio.* Pursuant to Sections 9.5-262 and 9.5-343 of the City Code, the Developer shall maintain a minimum twenty percent (20%) open space ratio on the Property.

10. *Permits from Other Regulatory Entities.* The Developer shall obtain all necessary permits from other local, regional, and state regulatory entities and provide copies of same to the City within a reasonable time after such permits are issued.

11. *Stormwater Management.* The development shall comply with the stormwater management criteria in City Code Section 9.5-293, and shall meet all applicable federal, state, and regional stormwater management requirements.

12. *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.

13. *Mutual Cooperation.* The City and the Developer agree to cooperate fully with and assist each other in the performance of the provisions of this Agreement.

14. *Development to Comply with Permits and City Comprehensive Plan and Code Provisions.* The development described in and authorized by this Agreement shall be in accordance with all required permits and all applicable provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Agreement, though the City authorizes and encourages the Developer and at its discretion, wherever it deems practical, to elect to apply subsequently-adopted aspects of the LDRs and Comprehensive Plan in lieu of current regulations with respect to particular aspects of the redevelopment authorized by this Agreement.

15. *Disaster Reconstruction.* 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 common disaster, the Developer, its grantees, successors, or assigns shall have the absolute 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.

16. *Laws Governing.*

a. *Effective Date Regulations to Apply.* For the duration of this Agreement, all approved development of the Property shall comply with and be controlled by this Agreement and provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Agreement. The parties do not anticipate that the City will apply subsequently-adopted laws and policies to the Property, though the City authorizes and encourages the Developer, at its discretion, to elect to apply subsequently-adopted aspects of the LDRs and

Comprehensive Plan in lieu of current regulations with respect to particular aspects of the redevelopment authorized by this Agreement.

b. *Applicability of Subsequently Adopted Regulations.* Pursuant to Section 163.3233, Florida Statutes, the City may apply subsequently adopted laws and policies to the Developer 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 City 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 Developer. However, nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Developer.

c. *Modification for State or Federal Law Change.* If state or federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this Agreement, it 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 law.

17. *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 in 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 163.3229, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirements 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 seven (7) days before each public hearing in a newspaper of general circulation and readership in the City, 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 the Developer or its successor(s) in interest following a breach of this Agreement upon written notice to the City as provided in this Agreement.

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

Agreement.

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

18. *Breach of Agreement and Cure Provisions.*

a. If the City concludes that there has been a material breach in this Agreement by the Developer, prior to revoking this Agreement, the City shall serve written notice on the Developer identifying the term or condition the City contends has been materially breached and providing the Developer with ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Agreement. Each of the following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the Developer, shall be considered a material breach of this Agreement: (1) failure to comply with the provisions of this Agreement; and (2) failure to comply with terms and conditions of permits issued by the City or other regulatory entity for the development authorized by this Agreement.

b. If the Developer concludes that there has been a material breach in the terms and conditions of this Agreement by the City, the Developer shall serve written notice on the City identifying the term or condition the Developer contends has been materially breached and providing the City with 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: failure to comply with the provisions of this Agreement; failure to timely process

any application for site plan approval or other development approval required to be issued by the City for the development/redevelopment authorized by this Agreement.

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

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

19. *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) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; or (c) by deposit with an overnight express delivery service with a signed receipt required. Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

To the Developer:

Mr. Amedeo D'Ascanio
BOAT WORKS INVESTMENTS LLC
11500 Overseas Highway
Marathon, Florida 33050
Telephone: (305) 743-7130

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

Sherry Spiers, Esquire
GREENBERG TRAURIG, P.A.
101 East College Avenue
Tallahassee, Florida 32301

Telephone: (850) 222-6891

Jerry Coleman, Esquire
JERRY COLEMAN, P.L.
201 Front Street, Suite 203
Key West, Florida 33040
Telephone: (305) 292-3095

TO THE CITY:

Mike Puto, City Manager
CITY OF MARATHON
10045-65 Overseas Highway
Marathon, Florida 33050
Telephone: (305) 743-0033

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

John R. Herin, Jr., Esquire
City Attorney
STEARNS, WEAVER, MILLER, WEISSLER
ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33133
Telephone: (305) 789-3427

20. *Annual Report.* On the anniversary date of the Effective Date of this Agreement, the Developer shall provide the City with 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.

21. *Enforcement.* In accordance with Section 163.3243, Florida Statutes, any party to this Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes, or the State Land Planning Agency may file an action for injunctive relief in the circuit court of Monroe County, Florida, to enforce the terms of this Agreement or to challenge

the compliance of this Agreement with the provisions of Sections 163.3220-163.3243, Florida Statutes.

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

23. *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.

24. *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.

25. *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.

26. *Litigation; Attorney's Fees; Venue; Waiver of Right to Jury Trial.* As between the City and the Developer, in the event of any litigation arising out of this Agreement, 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.

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

plural, and the plural includes the singular.

28. *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.

29. *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.

30. *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.

31. *Recording; Effective Date.* The Developer shall record this Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date of this Agreement. A copy of the recorded Agreement showing the date, page and book where recorded shall be submitted to the State Land Planning Agency by hand delivery, registered or certified United States mail, or by a delivery service that provides a signed receipt showing the date of delivery, within fourteen (14) days after the Agreement is recorded. The Developer 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.

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

33. *Assignment.* The Developer may assign all or a portion of this Agreement to an unrelated entity or party only upon written approval by the City, which approval shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year below written. Signed, sealed, and delivered in the presence of:

BOAT WORKS INVESTMENTS LLC, a Florida limited liability company

December 19, 2006 By _____
AMEDEO D'ASCANIO

Signed, sealed, and delivered in the presence of:

_____
Signature
Lindsey Demers
Name of Witness (printed or typed)

_____
Signature
Pamala S. Aldridge
Name of Witness (printed or typed)

STATE OF FLORIDA)
COUNTY OF MONROE)

The foregoing Agreement was acknowledged before me on this 19 day of December, 2006, by Amedeo D'Ascanio, and the respective witnesses, Lindsey Demers and Pamala S. Aldridge, who are either personally known to me or produced Florida drivers licenses as identification.

Pamela S. Aldridge (SEAL)
Notary Public
Pamela S. Aldridge
Name (typed, printed or stamped)
My commission expires:

PAMALA S. ALDRIDGE
Notary Public - State of Florida
My Commission Expires Feb 25, 2008
Commission # DD281217
Bonded By National Notary Assn.

On the 12 day of December, 2006, the City Council of the City of Marathon approved this Agreement by Resolution No. 2006-185.

CITY OF MARATHON

By _____
Michael H. Puto, City Manger

ATTEST:

_____
Diane Clavier, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
City Attorney

DEVELOPMENT AGREEMENT FOR COMPASS POINTE

EXHIBIT A: Legal Descriptions

RE NO. 00337290-000000; 00337300-000000

All of Lots 6 and 7, Block 5, MARATHON BEACH SUBDIVISION, according to the Plat thereof as recorded in Plat Book 2, Page 21, of the Public Records of Monroe County, Florida.

RE NO. 00337270-000000; 00337310-000000

Lot No. 5, of Block 5, according to the Resubdivision of part of Block 2 and all of Block 5, of Marathon Beach as recorded in Plat Book 2, at Page 21, in the Office of the Clerk of the Circuit Court in and for Monroe County, Florida.

a/k/a 747 41st Street Gulf, Marathon, Florida

Lot 8, less the rear 25 feet, thereof, Block 5, MARATHON BEACH SUBDIVISION, according to the Plat thereof as recorded in Plat Book 2, Page 21, of the Public Records of Monroe County, Florida.

TOGETHER WITH: The rear Twenty Five Feet of Lot 8, in Block Five, according to a RE-SUBDIVISION, of part of Block Two, and all of Block Five, of Marathon Beach, Subdivision, Plat of which is duly recorded in Plat Book Two, on Page Twenty-One, Monroe County, Florida records.

a/k/a/ 785 41st Street Gulf, Marathon, Florida

RE NO. 00103480-000000

Situated in the County of Monroe and State of Florida and known as being the northerly portion of a parcel of submerged land (now filled) located in Section 10, Township 66 South, Range 32 East as described in a conveyance recorded in Official Records Book 339, at Pages 472 & 473 of Monroe County Public Records, more particularly described as follows:

Commencing on the westerly line of First Street at the southeasterly corner of Lot 9, Block 2, of Marathon Beach Subdivision as recorded in Plat Book 2, Page 21, of Monroe County Public Records; Bear North 15 degrees, 40 minutes, 00 seconds West along the said westerly line of First Street and northerly prolongation thereof, 166.82 feet to the POINT OF BEGINNING of the parcel of land herein intended to be described; thence continue bearing North 15 degrees, 40 minutes, 00 seconds West along said prolongation 148.18 feet to the northeasterly corner of the submerged land described in Official Records Book 339, as aforesaid; thence bear South 74 degrees, 20 minutes, 00 seconds West along the northerly line 200.00 feet to the northwesterly corner of the said submerged land described as aforesaid; thence bear South 15 degrees, 40 minutes, 00 seconds East along the westerly line of said submerged land 148.18 feet; thence bear

North 74 degrees, 20 minutes, 00 seconds East 200.00 feet to the Point of Beginning and containing 0.68 Acres of Land above Mean High Water.

RE NO. 00337390-000000

Lots 15, 16, 17, 18 and 19, Block 5, a Resubdivision of Marathon Beach, according to the Plat thereof as recorded in Plat Book 2, Page 21, of the Public Records of Monroe County, Florida.

ALSO: A parcel of bay bottom land in the Bay of Florida, North of and adjacent to Lots 17, 18 and 19, Block 5, a "Resubdivision of a part of Block 2 and all of Block 5 of Marathon Beach Subdivision" as recorded in Plat Book 2, Page 21, of the Public Records of Monroe County, Florida, same being on Key Vaca, Monroe County, Florida and more particularly described as follows:

Commencing at the intersection of the East line of Government Lot 3, Section 10, Township 66 South, Range 32 East, and the Northwesterly right-of-way line of Old State Highway No. 4A, run Southwesterly along the Northwesterly right-of-way line of Old State Highway 4A, for a distance of 697.39 feet to a point; thence at right angles and Northwesterly along the Northeasterly right-of-way line of Second Street, of said Subdivision for a distance of 750 feet, more or less, to a point on the shoreline of the Bay of Florida, said point also to be known as the Point of Beginning of the bay bottom land hereinafter described; from said Point of Beginning, continue Northwesterly along Northeasterly right-of-way line of Second Street, extended, for a distance of 300 feet, more or less, to a point; thence at right angles and Northeasterly for a distance of 300 feet to a point; thence at right angles and Southeasterly along the Northeasterly line of Lot 17, Block 5, of the aforementioned subdivision, extended Northwesterly, for a distance of 100 feet, more or less, to a point on the shoreline of the Bay of Florida; thence meander the shoreline of the Bay of Florida in a Southwesterly, Northwesterly, Northerly and Southwesterly direction back to the Point of Beginning.

RE NO. 00337330-000000

Situated in the County of Monroe and State of Florida and known as being a parcel of land consisting of all of Lots 9 and 10, Block 5, of the resubdivision of part of Block 2, and all of Block 5 of Marathon Beach, a subdivision of part of Government Lot 3, Section 10, Township 66 South, Range 32 East on Key Vaca as shown by plat recorded in Plat Book 2, Page 21 of Monroe County, Florida, Public Records, and a parcel of contiguous, filled bay bottom land in the Gulf of Mexico, bounded and described together as follows:

Beginning on the Westerly line of First Street at the Southeasterly corner of Lot 9, Block 5, of Marathon Beach Subdivision recorded as aforesaid, bear North 15°40'00" West along the said Westerly line of First Street, and Northerly prolongation thereof 166.82 feet; said prolongation being also a portion of the Easterly line of a parcel of submerged land described in Official Records Book 339, Pages 472 & 473 of Monroe County Public Records; thence bear South 74°20'00" West 200.00 feet to a point on the Westerly line of said submerged lands described in Official Records Book 339, Pages 472 & 473 as aforesaid; thence bear South 15°40'00" East along the said Westerly line of said submerged lands and the Westerly lines of said Lots 10 and

9, Block 5 of Marathon Beach Subdivision recorded as aforesaid, 166.82 feet to the Southwesterly corner of said Lot 9, Block 5; thence bear North 74°20'00" East along the Southerly line of said Lot 9, 200.00 feet back to the point of beginning and containing 0.765 acres of land above mean high water.

RE NO. 00337380-000000

Lot 14, Block 5, RE-SUBDIVISION, of Part of Block 2, and all of Block 5, of MARATHON BEACH, according to the Plat thereof as recorded in Plat Book 2, Page 21, of the Public Records of Monroe County, Florida.

RE NO. 00337470-000000

Lots 1, 2 and 3, Block 1, LINCOLN MANOR, a Subdivision, Plat Book 4, Page 16, of the Public Records of Monroe County, Florida.

DEVELOPMENT AGREEMENT FOR COMPASS POINTE

EXHIBIT B: City Code Section 9.5-248

Sec. 9.5-248. Mixed Use District (MU).

(a) The following uses are permitted as of right in the Mixed Use District:

(1) Detached residential dwellings;

(2) Commercial retail, low- and medium-intensity and office uses, or any combination thereof of less than twenty-five hundred (2,500) square feet of floor area;

(3) Institutional residential uses, involving less than ten (10) dwelling units or rooms;

(4) Commercial apartments involving less than six (6) dwelling units, but, tourist housing use, including vacation rental use, of commercial apartments is prohibited.

(5) Commercial recreational uses limited to:

a. Bowling alleys;
b. Tennis and racquet ball courts;
c. Miniature golf and driving ranges;
d. Theaters;
e. Health clubs;
f. Swimming pools;

(6) Commercial fishing;

(7) Manufacture, assembly, repair, maintenance and storage of traps, nets and other fishing equipment;

(8) Institutional uses and accessory residential uses involving less than ten (10) dwelling units or rooms;

(9) Public buildings and uses;

(10) Home occupations--Special use permit required.

(11) Community parks;

(12) Accessory uses;

(13) Vacation rental use of detached dwelling units is permitted if a special vacation rental permit is obtained under the regulations established in Code section 9.5-534.

(14) Replacement of an existing antenna-supporting structure pursuant to article VII, division 16, section 434.5(b) "Replacement of an existing antenna-supporting structure."

(15) Collocations on existing antenna-supporting structures, pursuant to article VII, division 16, section 9.5-434.5(c) "Collocations on an existing antenna-supporting structure."

(16) Attached wireless communications facilities, as accessory uses, pursuant to article VII, division 16, section 9.5-434.5(d) "Attached wireless communications facilities."

(17) Stealth wireless communications facilities, as accessory uses, pursuant to article VII, division 16, section 9.5-434.5(e) "Stealth wireless communications facilities."

(18) Satellite earth stations less than two (2) meters in diameter, as accessory uses, pursuant to article VII, division 16, section 9.5-434.5(f) "Satellite earth stations."

(19) Attached and unattached residential dwellings involving less than six (6) units, designated as employee housing as provided for in section 9.5-266.

(20) Wastewater nutrient reduction cluster systems that serve less than ten (10) residences.

(b) The following uses are permitted as minor conditional uses in the Mixed Use District, subject to the standards and procedures set forth in article III, division 3:

(1) Attached residential dwelling units, provided that:

a. The total number of units does not exceed four (4); and

b. The structures are designed and located so that they are visually compatible with established residential development within two hundred fifty (250) feet of the parcel proposed for development.

(2) Commercial recreational uses, provided that:

a. The parcel of land proposed for development does not exceed five (5) acres;

b. The parcel proposed for development is separated from any established residential use by a class C buffer-yard; and

c. All outside lighting is designed and located so that light does not shine directly on any established residential use;

(3) Commercial retail, low- and medium-intensity and office uses or any combination thereof of greater than twenty-five hundred (2,500) but less than ten thousand (10,000) square feet of floor area, provided that access to U.S. 1 by way of:

a. An existing curb cut;
b. A signalized intersection; or
c. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least four hundred (400) feet;

(4) Commercial retail, high-intensity uses, and office uses or any combination thereof of less than twenty-five hundred (2,500) square feet of floor area provided that access to U.S. 1 is by way of:

a. An existing curb cut;
b. A signalized intersection; or
c. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least four hundred (400) feet;

(5) Commercial apartments involving six (6) to eighteen (18) dwelling units, provided that:

a. The hours of operation of the commercial uses are compatible with residential uses; and

b. Access to U.S. 1 is by way of:
(i) An existing curb cut;
(ii) A signalized intersection; or
(iii) A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least four hundred (400) feet;

c. Tourist housing uses, including vacation rental uses, of commercial apartments are prohibited.

(6) Institutional residential uses involving ten (10) or more dwelling units or rooms, providing that:

a. The use is compatible with land use established in the immediate vicinity of the parcel proposed for development; and

b. Access to U.S. 1 is by way of:

(i) An existing curb cut;
(ii) A signalized intersection; or
(iii) A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least four hundred (400) feet;

c. Tourist housing uses, including vacation rental use, of institutional residential dwelling units is prohibited.

(7) Hotels of fewer than fifty (50) rooms provided that:

a. The use is compatible with established land uses in the immediate vicinity; and

b. One (1) or more of the following amenities are available to guests:

(i) Swimming pool;
(ii) Marina; and
(iii) Tennis courts;

(8) Campgrounds, provided that:

a. The parcel proposed for development has an area of at least five (5) acres;

b. The operator of the campground is the holder of a valid Monroe County occupational license;

c. If the use involves the sale of goods and services, other than the rental of camping sites or recreational vehicle parking spaces, such use does not exceed one thousand (1,000) square feet and is designed to serve the needs of the campground; and

d. The parcel proposed for development is separated from all adjacent parcels of land by at least a class C buffer-yard;

(9) Light industrial uses, provided that;

a. The parcel proposed for development is less than two (2) acres;

b. The parcel proposed for development is separated from any established residential use by at least a class C buffer-yard; and

c. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six (6) feet in height;

(10) Parks and community parks.

(11) Satellite earth stations greater than or equal to two (2) meters in diameter, as accessory uses, pursuant to article VII, division 16, section 9.5-434.5(f) "Satellite earth stations."

(12) Attached and unattached residential dwellings involving six (6) to eighteen (18) units, designated as employee housing as provided for in section 9.5-266.

(c) The following uses are permitted as major conditional uses in the Mixed Use District subject to the standards and procedures set forth in article III, division 3:

(1) Commercial retail, low- and medium-intensity uses, and office uses or any combination thereof of greater than ten thousand (10,000) square feet in floor area, provided that access to U.S. 1 is by way of:

a. An existing curb cut;
b. A signalized intersection; or
c. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least four hundred (400) feet;

(2) Commercial retail, high-intensity uses, and office uses or any combination thereof of greater than twenty-five hundred (2,500) square feet in floor area provided that access to U.S. 1 is by way of:

a. An existing curb cut;
b. A signalized intersection; or

c. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least four hundred (400) feet;

(3) Attached residential dwelling units, provided that:

a. The structures are designed and located so that they are visually compatible with established residential development within two hundred fifty (250) feet of the parcel proposed for development; and

b. The parcel proposed for development is separated from any established residential use by a class C buffer-yard.

(4) Marinas, provided that:

a. The parcel proposed for development has access to water at least four (4) feet below mean sea level at mean low tide;

b. The sale of goods and services is limited to fuel, food, boating, diving and sport fishing products;

c. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six (6) feet in height; and

d. The parcel proposed for development is separated from any established residential use by a class C buffer-yard;

(5) Hotels providing fifty (50) or more rooms, provided that:

a. The hotel has restaurant facilities on or adjacent to the premises;

b. Access to U.S. 1 is by way of:

(i) An existing curb cut;
(ii) A signalized intersection; or
(iii) A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least four hundred (400) feet; and

c. The parcel proposed for development is separated from any established residential use by a class C buffer-yard;

(6) Heliports or seaplane ports, provided that:

a. The helicopter is associated with a governmental service facility, a law enforcement element or a medical services facility;

b. The heliport or seaplane port is a Federal Aviation Administration certified landing facility;

c. The landing and departure approaches do not pass over established residential uses or known bird rookeries;

d. If there are established residential uses within five hundred (500) feet of the parcel proposed for development, the hours of operation shall be limited to daylight; and

e. The use if fenced or otherwise secured from entry by unauthorized persons;

(7) Light industrial uses, provided that:

a. The parcel proposed for development is greater than two (2) acres;

b. The parcel proposed for development is separated from any established residential use by a class C buffer-yard; and

c. The use is compatible with land uses established in the immediate vicinity of the parcel proposed for development;

(8) Boat building or repair in conjunction with a marina or commercial fishing use provided that:

a. The parcel proposed for development has access to water at least four (4) feet below mean sea level at mean low tide;

b. The sale of goods and services is limited to fuel, food, boating, diving and sport fishing products;

c. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six (6) feet in height; and

d. The parcel proposed for development is separated from any established residential use by a class C buffer-yard;

(9) Mariculture.

(10) New antenna-supporting structures, pursuant to article VII, division 16, section 9.5-434.5(a) "New antenna-supporting structures."

(11) Reserved.

(12) Land use overlays A, E, PF, subject to provisions of section 9.5-257.

(13) Attached and unattached residential dwellings involving more than eighteen (18) units, designated as employee housing as provided for in section 9.5-266.

[14] Wastewater treatment facilities and wastewater treatment collection system(s) serving (a) use(s) located in any land use district provided that:

a. The wastewater treatment facility and wastewater treatment collection system(s) is (are) in compliance with all federal, state, and local requirements; and

b. The wastewater treatment facility, wastewater treatment collection system(s) and accessory uses shall be screened by structure(s) designed to be architecturally consistent with the character of the surrounding community and minimize the impact of any outdoor storage, temporary or permanent; and

c. In addition to any district boundary buffers set forth in article VII, division 10, a planting bed, eight (8) feet in width, to be measured perpendicular to the exterior of the screening structure shall be established with the following:

1. One native canopy tree for every twenty-five (25) linear feet of screening structure; and

2. One understory tree for every ten (10) linear feet of screening structure and the required trees shall be evenly distributed throughout the planting bed; and

3. The planting bed shall be installed as set forth in article VII, division 10 and maintained in perpetuity; and

4. A solid fence may be required upon determination by the planning director.

Doc# 1629885 02/28/2007 4:14PM
Filed & Recorded in Official Records of
MONROE COUNTY DANNY L. KOLHAGE

Doc# 1629885
Bk# 2275 Pg# 2023

This instrument prepared by,
and after recording return to:

City of Marathon, Florida
Planning Department
10045-55 Overseas Highway
Marathon, Florida 33050
RE NO. 00337470-000000

AGREEMENT AND DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS

THIS AGREEMENT AND DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS ("Declaration") is made and entered into this ~~1st~~ 27th day of ~~March~~ February, 2007 by and between BOAT WORKS INVESTMENTS LLC, whose principal mailing address is 11500 Overseas Highway, Marathon, Florida 33050 (Declarant") and the City of Marathon, a Florida municipal corporation, whose principal mailing address is 10045-55 Overseas Highway, Marathon, Florida 33050 (the "City").

RECITALS:

1. Declarant is the fee simple title owner to certain real property (the "Property") located in the City of Marathon, Monroe County, Florida, which is more particularly described as:

   Lots 2 and 3, Block 1, LINCOLN MANOR, a Subdivision, Plat Book 4, Page 16, of the Public Records of Monroe County, Florida.

2. Declarant is the recipient of an Affordable Housing Residential Unit Allocation pursuant to the City's Rate of Growth Ordinance ("ROGO").

3. The Property was assigned additional ROGO points under the Affordable Housing program set forth in Section 9.5-122.3(b) of the City Code.

4. In consideration of the Declarant's receipt of its Affordable Housing Residential Unit Allocation award, and the waiver of fees as set forth herein, and for other good and valuable consideration, Declarant hereby covenants with the City of Marathon, a political subdivision of the State of Florida, its successors or assigns, for itself, its heirs and successors that the property described herein is subject to and bound by the Affordable Housing Restrictions hereinafter set forth, each and all of which is and are for the benefit of the Property, shall run with the land, and are enforceable by the City, its successors and assigns.

NOW, THEREFORE, the Declarant agrees that the Property shall be held and conveyed subject to the following Affordable Housing Restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title or interests in the Property or any part thereof, their heirs, successors and assigns for the entire term of this Declaration.

THE DECLARANT AGREES AND CERTIFIES THAT AS THE OWNER OF THE PROPERTY DESCRIBED HEREIN, THERE IS A CAP AND RESTRICTION UPON THE SALE OR OTHER CONVEYANCE OF THE SUBJECT PROPERTY. IN ORDER TO CONVEY THE PROPERTY, THE DECLARANT, HIS/HER/ITS SUCCESSORS OR ASSIGNS MUST COMPLY WITH THE FOLLOWING:

A. **The prospective purchaser or occupant must be a qualified purchaser or occupant under the City of Marathon Affordable Housing Restrictions as set forth in Section 9.5-266(a)(4) and (5) of the City Code (as may be amended), or the City's successors or assigns, as a precondition of the purchase or other conveyance of the subject property. A valid Certificate of Compliance issued by the City of Marathon, its successors or assigns, within 30 days of the prospective conveyance must be recorded in the Public Records of Monroe County contemporaneously with the recording of the deed of conveyance.**

B. **The Deed, or other document of conveyance must make specific reference to this document by name and the OR Book and Page where it is recorded in the Public Records of Monroe County.**

C. **The Deed, or other document of conveyance, must state, in bold print of at least 14 point font, on the first page of the document, immediately following the legal description the phrase, "THIS PROPERTY IS SUBJECT TO AFFORDABLE HOUSING RESTRICTIONS WHICH MAY EFFECT ITS SALE OR CONVEYANCE".**

1. **Restrictions.** Declarant hereby covenants, agrees and certifies, in so far as the rights, powers, interests and authority of the Declarant is concerned, that development, sale, lease, or other conveyance of the Property shall be in accordance with the City's Affordable Housing Restrictions as set forth in the provisions of Section 9.5-266(a)(4) and (5) of the City Code (as may be amended).

2. **Impact Fees.** Under the provisions set forth in Chapter 9.5 of the City Code, any persons, including any governmental agency, prior to receiving a building permit for any new land development activity shall pay " Fair Share Impact Fees".

3. **Waiver of Impact Fees.** Under the Affordable Housing Provisions set forth in Chapter

9.5 of the City Code, the owner or owners of the above described real Property have been exempted from payment of "Fair Share Impact Fees" for a (check one) _X_ a single family home dwelling to be constructed on said real property.

4. **City.** This Declaration is intended to benefit and run in favor to the City.

5. **Enforcement.** This Declaration may be enforced by the City at law or in equity or as a code compliance action against any party or person violating, or attempting to violate, any of the covenants and restrictions contained herein. The remedies available to the City shall include, but are not limited to, obtaining a court order requiring the Declarant or his/her successor or assigns to comply with the City's affordable housing regulations in effect at the time of such order, and compelling the Property's continuing compliance with the affordable housing regulations until this Declaration has expired. The prevailing party in any action or suit pertaining to or arising out of this Declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, reasonable attorneys' fees and costs as well as attorneys' fees and cost incurred in enforcing this prevailing parties attorneys' fees provision. This enforcement provision shall be in addition to any other remedies available at law or in equity.

6. **Term.** The restrictions, covenants and conditions of this Declaration shall run with the land for a term of fifty (50) years renewable by the City for two (2) 50-year periods, from the date of the issuance of a Certificate of Occupancy issued by City of Marathon, its successors or assigns, for the dwelling unit or units to which this covenant applies. The restriction prohibits transient use of affordable housing unit. If any provision or application of this Declaration would prevent this Declaration from running with the land as aforesaid, such provision and/or application shall be judicially modified, if possible, to reflect the intent of such provision or application and then shall be enforced in a manner allowing the covenant, conditions, and restrictions to so run with the land.

7. **Amendments.** All amendments hereto shall be in writing and must be signed by the Declarant and the City. All amendments hereto shall be recorded in the Public Records of Monroe County, Florida, and shall not be valid until recorded.

8. **Paragraph Headings.** Paragraphs headings, where used herein, are inserted for the convenience only and are not intended to be a part of this Declaration or in any way defined, limited or described to be a part of this Declaration in the Public Records of Monroe County, Florida, and shall not be valid until recorded.

9. **Effective Date.** This Declaration shall become effective upon the date of execution by both parties hereto or the date of recordation of this Declaration in the Public Records of Monroe County, Florida, which ever is later.

10. **Governing Law.** This Declaration and the enforcement of the rights and obligations established hereby shall be subject to and governed by the laws of the State of Florida.

11. **Recordation.** Declarant shall at its sole cost and expenses, record this Declaration in the Public Records of Monroe County, Florida within fifteen (15) days of the execution hereof by both the Declarant and the City. Declarant shall provide the City with proof of the recording of the Declaration in accordance with the provisions of this paragraph. Failure to record these restrictions shall entitle the City to refuse to issue the Certificate of Occupancy for the dwelling unit or units to which this covenant applies, and to other remedies, legal or equitable, available to the City to assure compliance with these Restrictions.

12. **Authorization for City to Withhold Permits and Inspections.** If the terms of this Declaration are not being complied with, in addition to any other remedies available at law or in equity, the City is hereby authorized after notice and an opportunity to cure, to withhold any permits regarding the Property or any portion thereof, and to refuse to make any inspections or grant any approvals for the Property or any portion thereof, until such time as the Declarant or its successor or assigns is in compliance with the covenants of this Declaration. The determination of non-compliance and to withhold permits, inspections, or approvals shall be by the Director of Planning and shall be subject to the appeal provision of the City's land development regulations.

13. **Applicability of Development Agreement for Compass Pointe Recorded on December 21, 2006, at Book 2260 Page 1727, of the Public Records of Monroe County, Florida.** The terms of that certain Development Agreement for Compass Pointe Between Boat Works Investments LLC and the City of Marathon, Florida, dated December 19, 2006, including, but not limited to use restrictions applicable to the real property specified in Recital 1, above, and to the prior transfer of five (5) pre-existing market-rate ROGO-exempt dwelling unit rights for redevelopment pursuant and according to the terms of said agreement are hereby acknowledged and confirmed.

IN WITNESS WHEREOF, Declarant, has caused these presents to be executed on the day and year first above written.

Signed, sealed and delivered
in the presence of:

Printed Name: Pamela Aldridge

Printed Name:Jeff Stuncard

DECLARANT

By: _____
BOAT WORKS INVESTMENTS LLC
Printed Name: Amedeo G. D'Ascanio
Manager

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this ~~1st~~ 27th day of ~~March~~ February, 2007 by, AMEDEO G. D'ASCANIO, as a Manager of BOAT WORKS INVESTMENTS LLC, who personally appeared before me, and ~~is/are~~ personally known to me or have produced _____ as identification and acknowledged executing the foregoing document.

Notary Public, State of Florida
Printed Name: Pamela Aldridge
My commission expires:

PAMALA S. ALDRIDGE
Notary Public - State of Florida
My Commission Expires Feb 25, 2008
Commission # DD281217
Bonded By National Notary Assn.

Agreed and accepted this 1st day of March, 2007:

THE CITY OF MARATHON, a Florida Municipal Corporation

By: _____
Michael H. Puto, City Manager

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:

BY: _____
CITY ATTORNEY

Affordable Housing ROGO Declaration rev4 (1-5-07) r1.doc 27 February 2007