

**CITY OF MARATHON, FLORIDA
RESOLUTION 2009-100**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY FLORIDIAN HOLDINGS, LLC FOR A DEVELOPMENT AGREEMENT, PURSUANT TO CHAPTER 102, ARTICLE 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED "DEVELOPMENT AGREEMENT", SECURING THE ABILITY TO RE-PLAT VALHALLA ISLAND AND IDENTIFYING BUILDING RIGHTS AT THE PROPERTIES LOCATED ON PRIVATE ROAD OFF OF BANANA ROAD, OCEAN, NEAREST MILE MARKER 56, WHICH IS LEGALLY DESCRIBED AS LOTS 1, 2 AND 3, LOT 4, LOT 5 AND EAST ½ OF LOT 6, LOT 7 AND WEST ½ OF LOT 6, LOT 8, LOT 9, LOT 10, LOT 11, LOT 12, LOT 44, LOT 45, LOT 46, LOT 47, LOT 48, LOT 49, LOT 50, LOT 51 AND 52, LOT 53, LOT 54, LOT 55, TRACT A, PRIVATE ROAD, AMENDED PLAT VALHALLA ISLAND PB7-38, 5 FOOT STRIP ADJACENT PRIVATE ROAD LESS NORTHWESTERLY 25 FEET, NORTHWESTERLY 25 FEET OF 5 FOOT STRIP ADJACENT PRIVATE ROAD, VALHALLA ISLAND PB4-125, PART BLOCK A SHOWN ON PB4-125 AS FUTURE DEVELOPMENT, PART FUTURE DEVELOPMENT ADJACENT LOT 39 AND PRIVATE ROAD PB4-125, SECTION 35, TOWNSHIP 65, RANGE 33, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00360220-000200, 00360220-000400, 00360220-000500, 00360220-000700, 00360220-000800, 00360220-000900, 00360220-001000, 00360220-001100, 00360220-001200, 00360220-004400, 00360220-004500, 00360220-004600, 00360220-004700, 00360220-004800, 00360220-004900, 00360220-005000, 00360220-005200, 00360220-005300, 00360220-005400, 00360220-005500, 00360220-005600, 00360220-005900, 00360220-005700, 00360220-005800, 00358990-000000, AND 00358990-000200. THE DEVELOPMENT AGREEMENT FURTHER STIPULATES THE CONDITIONS AND REQUIREMENTS OF DEVELOPMENT, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on the 20th day of July, 2009, the City of Marathon (the "City") Planning Commission (the "Commission") and on the 28th day of July and 11th day of August, 2009, the City Council (the "Council") conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by Floridian Holdings, LLC (the "Applicant"), for a development agreement permit pursuant to Chapter 102, Article 8 of the City Code (the "Code"); and

WHEREAS, the purpose of the development agreement is to assure a developer that, upon receipt of his approvals and permits under this chapter, he may proceed in accordance with existing ordinances and regulations subject to the conditions of the development agreement at the property described in the application (the "Property").

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


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

Section 2. The City Council hereby approves this Development Agreement, a copy of which is attached hereto as Exhibit "A", granting approvals to Floridian Holdings, LLC to secure the ability to re-plat Valhalla Island into thirteen (13) lots and to recognize nine (9) Building Permit Allocation System (BPAS) exempt market rate building rights existing on the properties as further described in the Agreement. The Director of Planning is authorized to sign the development order on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 11th day of August, 2009.

THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor


AYES: Ramsay, Snead, Vasil, Worthington, Cinque
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:



Jimmy Morales
City Attorney

RE #s:

00360220-000200, 00360220-000400, 00360200-000500
00360220-000700, 00360220-000800, 00360220-000900,
00360220-001000, 00360220-001100, 00360220-001200,
00360220-004400, 00360220-004500, 00360220-004600,
00360220-004700, 00360220-004800, 00360220-004900
00360220-005000, 00360220-005200, 00360220-005300,
00360220-005400, 00360220-005500, 00360220-005600,
00360220-005700, 00360220-005800, 00358990-000000,
00358990-000200, 00360220-005900 (private road)

(Space Reserved for Recording)

Development Agreement for
Valhalla Island
Marathon, Florida

This Development Agreement ("Agreement") is entered into by and between the City of Marathon, a Florida Municipal Corporation (herein referred to as "City"), and Floridian Holdings, LLC, 2500 E. Kearney, Springfield, MO 35898 (herein referred to as "Owner")(City and Owner herein referred to as the "Parties"), pursuant to *Chapter 102, Article 8* of the Land Development Regulations of the City of Marathon, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes, and is binding on the effective date as set forth herein.

WITNESSETH:

WHEREAS, Owner is the owner of the real property located in Valhalla Amended Plat, PB7-38, Marathon, Florida, described on a survey attached as Exhibit A hereto, and which is the subject of this Agreement (hereinafter, "Valhalla Island" or the "Property"); and

WHEREAS, Valhalla Island was platted as a subdivision in 1959 and developed with uses since the 1940's, including a Florida outpost of The Todd School located in Woodstock, Illinois; and

WHEREAS, Valhalla Island is currently platted with twenty-five (25) lots and a private road; and

WHEREAS, the Owner desires to reduce the number of platted lots on Valhalla Island and to develop the island with thirteen (13) market rate residential homes; and

WHEREAS, City has attributed nine (9) Building Permit Allocation System (BPAS) exempt market rate residential units to lots on Valhalla Island, pursuant to a Letter of Understanding issued to the Owner by the City on May 2, 2006, a copy of which is attached hereto as Exhibit B; and

I certify this document to be a True and Correct Copy of the ^{Page 1 of 14} Original.

Diane Claver
City Clerk/City of Marathon

9-16-09
Date

WHEREAS, the Owner has presented to the City for appropriateness and approval documents for the transfer of four (4) transferable building rights to Valhalla Island, which the City has determined that the receiver sites appear to meet the requirements as set forth in Article 2, Chapter 107 of the City's Land Development Regulations ("LDR's) when reviewed against the proposed sending site, as provided in the attached letter from the City to Barbara Mitchell (agent for Owner) dated March 17, 2008 attached hereto as Exhibit C; and

WHEREAS, the Owner shall complete the transfer of the four (4) market rate building rights by submittal to the City the application for Approval of Transfer of Building Rights and may submit such application once the re-platting hereinafter referred to is complete and Monroe County Property Appraiser has assigned Real Estate numbers to the re-platted parcels; and

WHEREAS, Goal 3-1 of the City's Comprehensive Plan requires the City to ensure the availability of needed public facilities associated with wastewater and stormwater; and

WHEREAS, the City assesses sewer and stormwater based on acreage parcels and platted lots located within the City limits; and

WHEREAS, the City has progressed with implementation of the City's Wastewater Capital Improvement Program and during the fall of 2009 the assessment for Service Area 7 shall occur; and the current City sewer and stormwater assessment method shall inequitably assess the Property for the lots as currently platted; and

WHEREAS, the Property is located in the City's Service Area 7 where construction commenced in 2008 and shall proceed through July 2010; and

WHEREAS, Owner desires to replat Valhalla Island to reconfigure the property with thirteen (13) lots as shown on a draft Preliminary Plat attached hereto as Exhibit D, to create a realistic and equitable taxing scenario for sewer and stormwater based on sewer and stormwater assessment of lots that shall be developed with a residential unit; and

WHEREAS, the City's current tracking system for BPAS exempt units is pursuant to Monroe County Real Estate numbers assigned to parcels: and

WHEREAS, in the event the City approves the replatting of Valhalla Island contemplated by this Agreement, Owner desires to memorialize and protect the identification of nine (9) BPAS exempt market rate units attributable to lots on Valhalla Island which are identified by lots and corresponding Monroe County Real Estate numbers that will change pursuant to the replating of the Property; and

WHEREAS, the purpose of this Agreement is to assure Owner that it may proceed with its plan to replat Valhalla Island with a thirteen (13) lot configuration for equitable sewer and stormwater assessments and to assure the identification of the nine (9) BPAS exempt market rate units during the replatting process; and

WHEREAS, the Marathon Planning Commission held a public hearing on the 20th day of JULY, 2009, to consider this Agreement, and recommended approval of this Agreement; and

WHEREAS, the City Council of Marathon held public hearings on the 20th day of JULY and 11th day of AUGUST, 2009, to consider this Agreement; and

WHEREAS, the City has determined that this Agreement is in the public interest, is consistent with its policy to encourage the redevelopment of Marathon with market rate single-family residential units, and will further the health, safety and welfare of the residents of Marathon.

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

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. Purposes of Agreement.

The purposes of this Agreement are as Follows:

- A. To encourage Redevelopment of the Property consistent with the City of Marathon's Comprehensive Plan and Objective 1-3.4 of the City of Marathon's Comprehensive Plan;
- B. To secure the ability to replat Valhalla Island with thirteen (13) lots to provide for an equitable taxing assessment for sewer and stormwater based on an accurate number of lots that can be developed with a residential unit; and to secure the identification of the existing nine (9) market rate BPAS exempt residential units attributed to the Property.

III. Definitions.

For the purposes of this Agreement, all terms shall have the definitions as found in the LDRs, Comprehensive Plan and in Chapter 163, Florida Statutes, or in other applicable Florida Statutes, and if not defined in the Code, Plan, or Statute, the term shall be understood by its usual and customary meaning.

IV. Statutory and Code Requirements.

The Parties recognize the binding effect of the Florida Local Government Development Agreement Act, Sections 163.3221, et seq., Florida Statutes, as to the form and content of this Agreement and in accordance therewith set forth and agree to the following:

A. Legal Description and Ownership.

Floridian Holdings, LLC is the Owner of the Property, which Property is the subject of this Agreement, as described in Exhibit A, Boundary and Topographic Survey. There are no other legal or equitable owners of the subject property known to the parties to this Agreement.

B. Duration of Agreement and Submission of Preliminary and Final Plat Application.

Owner shall have a period of forty-eight (48) months from the Effective Date of this Agreement to submit an application for preliminary plat approval with the City.

Owner shall have a period of thirty-six (36) months from the date of approval by the City of the preliminary plat to submit a final plat application to the City.

The duration of this Agreement shall be eight (8) years from the Effective Date.

This Agreement may be renewed or extended as provided herein. If the Owner has not complied with the terms of this section, this Agreement may be subject to termination as provided herein.

C. Replat of Valhalla Amended Plat by City.

City recognizes the inequitable lot demarcation of Valhalla Island in connection with City sewer and stormwater assessments and agrees that a thirteen (13) lot configuration of buildable lots accomplished by replatting the Property will provide an equitable method of assessing lots for sewer and stormwater and will encourage residential development of the Property.

D. Identification of Nine (9) BPAS Exempt Market Rate Units.

The nine (9) BPAS exempt market rate units attributable to Valhalla Island shall be

identified and memorialized as follows:

Doc# 1759497
Bk# 2432 Pg# 220

<u>Current Real Estate Number</u>	<u>Market Rate BPAS</u>
00360220-000200	MRBPAS 1
00360220-000200	MRBPAS 2
00360220-005000	MRBPAS 3
00360220-005200	MRBPAS 4
00360220-005300	MRBPAS 5
00360220-005500	MRBPAS 6
00360220-005600	MRBPAS 7
00360220-005600	MRBPAS 8
00360220-005600	MRBPAS 9

E. Density and Building Height.

The Property is located in a Mixed Use (MU) land use district. Pursuant to Section 103.09 and Section 103.15 of the City Code applicable to the MU districts, and the applicable provisions of the Comprehensive Plan, thirteen (13) single-family homes are allowed per the lot configurations of the replatted Property as anticipated herein.

As provided in the City's Future Land Use Element Policy 1-3.2.5 in the City's Comprehensive Plan and as defined in the LDRs, maximum building height permitted on the Property is thirty-seven (37) feet.

F. Public Facilities, Concurrency, Impact Fees.

The following identifies the public facilities that are required that will service the development of the Property: who shall provide the facilities; what new facilities, if any, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of development.

1. Potable Water. Domestic potable water is provided by the Florida Keys Aqueduct Authority.
2. Electric Service. Electric service is provided by Florida Keys Electric Service.
3. Solid Waste. Solid waste service is provided by Marathon Garbage Service or its successors and assigns, as determined by the City Council.
4. Fire Service. Fire service is provided by the Marathon Fire Department.
5. Wastewater, Sewage Collection and Disposal. Wastewater and sewage collection, treatment and disposal shall be done by connection to the City sewer system.
6. Public Recreational Facilities. Public recreational facilities shall be addressed through impact fees, if any.
7. Stormwater Management. A stormwater management system that meets all

applicable local, state and federal requirements shall be constructed on site as part of the site development of the Property. This system will retain, detain and treat stormwater on the Property and therefore will provide a substantial benefit to water quality in the area. There shall be no direct discharge to the City of Marathon Nearshore Waters.

8. Fire Protection. In connection with the Owner's development of the Property, Owner shall provide fire hydrants and other such fire protection facilities as required by the Life Safety Code administered by the City Fire Department. Fire sprinklers will be installed as required by City Code.
9. Concurrency. All public facilities, with the exception of Wastewater, identified above are available as of the date of this Agreement, and capacity for each is projected to be available concurrent with the impacts of development. Wastewater capacity will be available upon completion of the Central Sewer system for Area 7 of the City of Marathon and target completion date is _____.
10. Impact Fees. Any increased impacts on public facilities or public services attributable to each unit developed on the Property, and the cost of capital improvements to meet the associated increased demand on such facilities or services, shall be assured by payment to the City, concurrent with the issuance of the building permits for each unit, of any applicable City of Marathon impact fees required by ordinance then in effect, as well as by payment by Owner of any applicable utility system development fees. Owner agrees to pay impact fees pursuant to any applicable impact fee ordinances adopted within twenty-four (24) months of the Effective Date of this Agreement, provided such ordinance applies equally and uniformly to all redevelopment in the City of Marathon.

G. Reservations or Dedications of Land for Public Purposes.

The parties anticipate that Owner may reserve or dedicate land for public purposes in connection with the development of the Property, but is currently unaware of the specifics of such reservation(s) or dedication(s). Reservations and dedications for public purposes in connection with this Agreement may be requested by the City's 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.

H. Local Development Permits.

The following City development approvals are required for the development of the Property:

1. This Development Agreement.
2. Preliminary and Final Plat Approval.

3. Building and related construction permits for all structures utilized for principal use or accessory use, land clearing and landscaping. At any time any building permit is applied for, Owner shall demonstrate compliance with all applicable Federal, State and Municipal Disabled Access Regulations in effect at the time of application.
4. Local Permits for Stormwater Runoff. Nothing in this Agreement shall preclude the parties from applying conditions in addition to Federal, State and regional permits, by mutual agreement, during final site plan review or permitting.

I. Finding of Consistency.

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 in Section 380.0552(7).

J. Mutual Cooperation.

City and Owner agree to cooperate fully and assist each other in the performance of the provisions of this Agreement.

K. Development to Comply with Permits and City Comprehensive Plan and Code Provisions.

The redevelopment shall be developed in accordance with all required permits and in accordance with all applicable provisions of the City's Comprehensive Plan and Land Development Regulations in effect on the effective date of this Agreement. No Certificate of Occupancy for an individual building shall be issued until all plans for that building are approved by the City and Owner has complied with all conditions in permits issued by the City and the other regulatory entities for that building. The City agrees that any permits or certificates of occupancy to be issued by the City shall not be unreasonably withheld or delayed.

L. Compliance With Permit, Terms, Conditions, and Restrictions Not Identified Herein.

The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve Owner of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

M. Laws Governing.

1. 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, inclusive of text changes and rezoning approved by the City Council on the date of the City's approval of this Agreement, if any. The parties do not anticipate that the City will apply subsequently adopted laws and policies to the Property, except as expressly provided in this Agreement.

2. Pursuant to Section 163.3233, Florida Statutes, the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that:

- i. 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;
- ii. 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;
- iii. The City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or
- iv. The Agreement is based on substantially inaccurate information supplied by Owner.

Provided, however, nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

3. 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 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.

N. Amendment, Renewal and Termination.

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

1. 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.
2. As provided in Section 163.3237, Florida Statutes, this Agreement may be renewed

by the mutual consent of the parties, subject to the public hearing requirement in Section 163.3225, Florida Statutes, and applicable LDRs. The City shall conduct at least two (2) public hearings, one of which may be held by the local planning agency at the option of the City. Notice of intent to consider renewal of the Agreement shall be advertised approximately fifteen (15) days before each public hearing in a newspaper of general circulation and readership in Marathon, and shall be mailed to all affected property owners before the first public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing. The notice shall specify the location of the land subject to the Agreement, the development uses on the Property, the population densities, and the building intensities and height and shall specify a place where a copy of the Agreement can be obtained.

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

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

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

O. Breach of Agreement and Cure Provisions.

1. If the City concludes that there has been a material breach in this Agreement by Owner, prior to revoking this Agreement, the City shall serve written notice on Owner identifying the term or condition the City contends has been materially breached and providing Owner 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 shall be considered a material breach of this Agreement:

- (i) Failure to comply with the provisions of this Agreement;
- (ii) Failure to comply with terms and conditions of permits issued by the City or other regulatory entity for the development authorized by this Agreement.

2. If Owner concludes that there has been a material breach in the terms of this Agreement by the City, Owner shall serve written notice on the City identifying the term or condition Owner contends has been materially breached and providing the City with ninety (90) days from the date of receipt of the notice to cure the breach, or negotiate an amendment to this Agreement. The following events shall be considered a material breach of this Agreement:

- (i) Failure to comply with the provisions of this Agreement;

(ii) Failure to timely process any application for Site Plan approval or other development authorized by this Agreement.

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

4. Notwithstanding any other provisions of this Development Agreement to the contrary, neither party hereto shall be deemed to be in default under this Development Agreement where delay in the construction or performance of the obligations imposed by this Development Agreement are caused by war, revolution, labor strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions, embargoes, litigation (excluding litigation between the City and the Owner), tornadoes, hurricanes, tropical storms or other severe weather events, or any other causes beyond the control of such party. The time of performance hereunder, as well as the term of this Development Agreement, shall be extended for the period of any forced delays or delays caused or resulting from any of the foregoing causes. The Owner must submit evidence to the City's reasonable satisfaction of any such delay.

P. 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 anyone of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Services 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 OWNER:

Floridian Holdings, LLC
2500 E. Kearney
Springfield, MO 35898

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

Dudley Omura
OMURA CASEY MOREL, INC.
11911 US Highway 1
Suite 207
North Palm Brach, FL 33408

And

Doc# 1759497
Bk# 2432 Pg# 226

James Lupino, Esq.
Hershoff, Lupino & Yagel, LLP
90130 Old Highway
Tavernier, Florida 33070

TO THE CITY:

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

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

Jimmy Morales, Esq.
City Attorney, City of Marathon
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200 Miami, Florida 33130
(305) 789-3200

Q. Annual Report.

On each anniversary date of the Effective Date of this Agreement, Owner 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.

R. 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 Section 163.3220-163.3243, Florida Statutes.

S. Binding Effect.

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

T. Assignment.

This Agreement may not be assigned without the written consent of the parties, which consent shall not be unreasonably withheld.

U. 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.

V. 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 validity of the remaining provisions of this Agreement.

W Applicable Laws.

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.

X. Litigation/Attorneys Fees; Venue; Waiver of Right to Jury Trial.

As between the City and Owner, 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 reasonable attorney's 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 THIS AGREEMENT.

Y. Use of Singular and Plural.

Where the context requires, the singular includes the plural, and plural includes the singular.

Z. 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.

A.A. 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 this Agreement.

B.B. 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.

C.C. Recording; Effective Date.

The Owner shall record this Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date the last party signs 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 at the Department of Community Affairs, Division of Community Planning, 2555 Shumard Oak Boulevard, Tallahassee FL 32399-2100 by hand delivery or 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 and received by the Owner or his agents. Owner shall also provide a copy of the recorded Agreement to the City at 9805 Overseas Highway, Marathon, Florida 33050, within the same time period. This Agreement shall become effective thirty (30) days after the date the State Land Planning Agency receives its copy pursuant to Section 163.3239, Florida Statutes.

D.D. Date of Agreement.

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

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

WITNESSES:

Christine L. Torres
Signature

Christine L. Torres
Name of witness (printed or typed)

Evelyn Lambeth
Signature

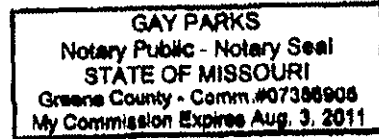
Evelyn Lambeth
Name of witness (printed or typed)

OWNER

Floridian Holdings, LLC

By: [Signature]

Name: John Morris
Title: _____



STATE OF ~~FLORIDA~~ Missouri
COUNTY OF ~~MONROE~~ Greene

The following instrument was acknowledged before me on this 11th day of August, 2009, by John Morris Owner of Floridian Holdings, LLC., who is personally known to me or who produced _____ as identification, and who did/did not take an oath.

Gay Parks
Notary Public, State of ~~Florida~~ Missouri At Large
My commission expires: 8/3/11

On the 11 day of August, 2009, The City Council of the City of Marathon approved this Agreement by Resolution No. 2009-100

ATTEST:
Drake Clavier
City Clerk

CITY OF MARATHON
By: [Signature]
MAYOR

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

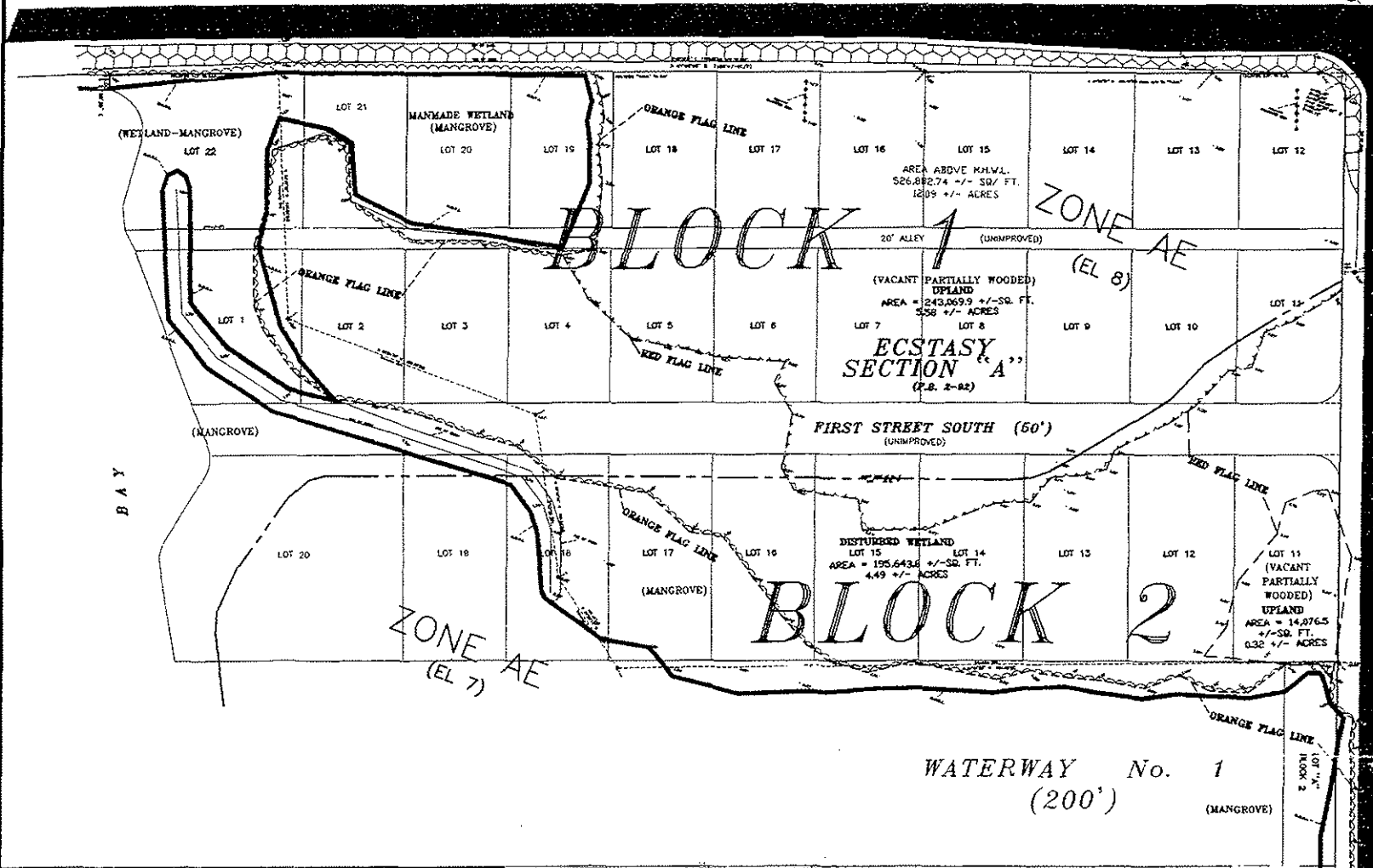
[Signature]

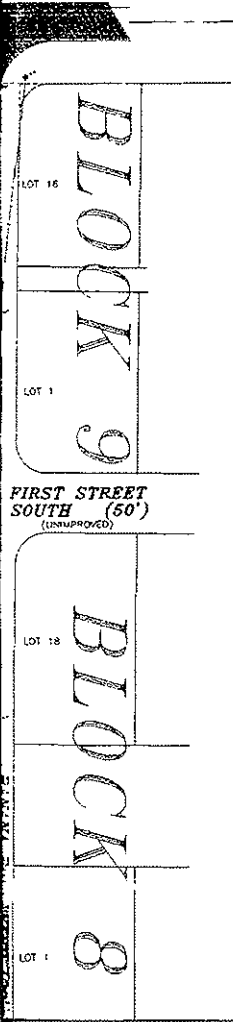
Attachment A

SKETCH OF BOUNDARY SURVEY

Doc# 1759497
Bk# 2432 Pg# 231

U.S. HIGHWAY NO. 1 (100')





LEGAL DESCRIPTION AS FURNISHED BY CLIENT:

LOT 4, BLOCK 4; LOTS 1 AND 2, BLOCK 5, AND ALL PARCELS THAT ARE DESIGNATED AS "PARKING AREA", ECSTASY SECTION "A", PLAT BOOK 2, PAGE 92, TOGETHER WITH ADJACENT BAY BOTTOM LANDS

ALSO LOTS 5, 6, 7, 8 AND 9, BLOCK 3 AND LOT A, BLOCK 3.

LOTS 3, 4, 5, 6 AND 7, BLOCK 5 AND LOT A "RESERVED". BLOCK 5, (NOT SURVEYED) WATER WAY NO. 2, LESS THE FOLLOWING PORTION, TO-WIT: (SEE METES AND BOUNDS)

ALSO LOT 1, BLOCK 4.

ALL OF BLOCKS 1 AND 2, LOTS 10 - 19, BLOCK 3, LOTS 2 AND 3, BLOCK 4, WATER WAY NO. 1, ALL AS REFLECTED IN ECSTASY SECTION "A", A SUBDIVISION AS RECORDED IN PLAT BOOK 2, PAGE 92, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA.

ALSO 2 TRACTS OF SUBMERGED LAND IN THE STRAITS OF FLORIDA

LOT 53, VALHALLA ISLAND AMENDED OR REVISED PLAT, TOGETHER WITH THAT PORTION OF THE BAY BOTTOM ADJACENT THERETO (METES AND BOUNDS)

LOTS 1, 2, 3 AND 4, VALHALLA ISLAND AMENDED PLAT,

ALSO A TRACT OF LAND ENCOMPASSING PART OF LOT 12 AND THE ADJACENT LANDS TO THE WEST OF VALHALLA ISLAND AMENDED PLAT (METES & BOUNDS) (DELINEATED AS PARCEL III)

PARCEL I

LOTS 8, 9, 10, 11, 44, 45, 46, AND ALL OF LOT 12, (EXCEPT THAT PORTION OF LOT 12 (SEE PARCEL III ABOVE)), OF VALHALLA ISLAND AMENDED PLAT

PARCEL II

THAT CERTAIN PARCEL OF LAND DESIGNATED "NOT A PART OF THIS PLAT" WHICH DESIGNATION APPEARS ON SAID PLAT OF VALHALLA ISLAND AMENDED PLAT AND WHICH PARCEL LIES WEST OF LOTS 11 AND 12 AND WEST OF THE WEST END OF THE PRIVATE ROAD SHOWN ON SAID PLAT, EXCEPT A PART OF THE SOUTH END THEREOF (SEE PARCEL III ABOVE)

ALSO A PARCEL OF LAND WESTERLY OF AND ADJACENT TO A PART OF "VALHALLA ISLAND", AS RECORDED IN PLAT BOOK 4, PAGE 125, (METES AND BOUNDS) (DELINEATED AS PARCEL V)

PARCEL III (BAYBOTTOM)

ALL SUBMERGED BAY BOTTOM LANDS ADJACENT TO THE PROPERTY IN VALHALLA ISLAND AMENDED PLAT EXCEPT A PARCEL OF FILLED AND SUBMERGED BAY BOTTOM LYING SOUTH OF "TRACT A" AND FURTHER EXCEPT THE BAY BOTTOM LYING SOUTH OF LOTS 47 THROUGH 55

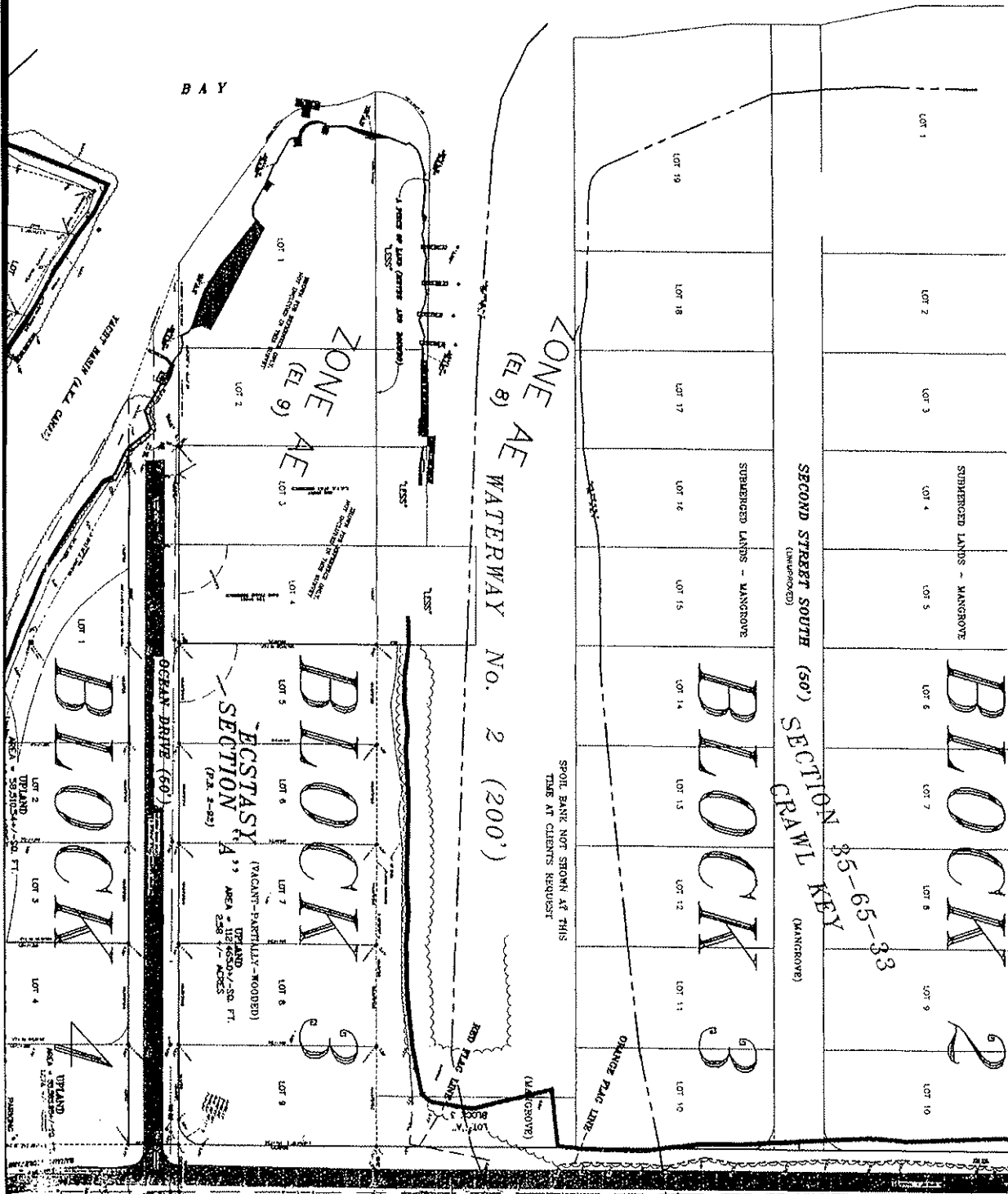
LOT 7 AND THE WESTERLY ONE-HALF OF LOT 6, VALHALLA ISLAND AMENDED OR REVISED PLAT,

ALSO LOT 47, VALHALLA ISLAND AMENDED OR REVISED PLAT, AND QUIT-CLAIM TO BAYBOTTOM

LOTS 54 AND 55, VALHALLA ISLAND AMENDED OR REVISED PLAT, PLAT BOOK 7, PAGE 38

ALSO QUIT-CLAIM DEED FOR ADJACENT BAYBOTTOM

ALSO A FIVE FOOT STRIP OF LAND IN "VALHALLA ISLAND", AS RECORDED IN PLAT BOOK 4, PAGE 125, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, (METES AND BOUNDS)



SECOND STREET
SOUTH (50')
(UNIMPROVED)

Doc# 1759497
Bk# 2432 Pg# 234

LOT 23

BLOCK 7

LOT 1

THIRD STREET
SOUTH (50')
(UNIMPROVED)

BLOCK 6

LOT 1

LOT 2

DISTURBED
WETLAND
AREA = 12,224.77 - 32.77.
AREA = 977 ACRES

OCEAN DRIVE (50')
(UNIMPROVED)

DISTURBED

WETLAND

LOT 4
DISTURBED WETLAND LOT 5
SHOWN FOR REFERENCE ONLY.
NOT INCLUDED IN THIS SURVEY.

BLOCK 5

LOT 6

LOT 7

"A"
RESERVED

SHOWN FOR REFERENCE ONLY.
NOT INCLUDED IN THIS SURVEY.

SHOWN FOR REFERENCE ONLY.
NOT INCLUDED IN THIS SURVEY.

SHOWN FOR REFERENCE ONLY.
NOT INCLUDED IN THIS SURVEY.

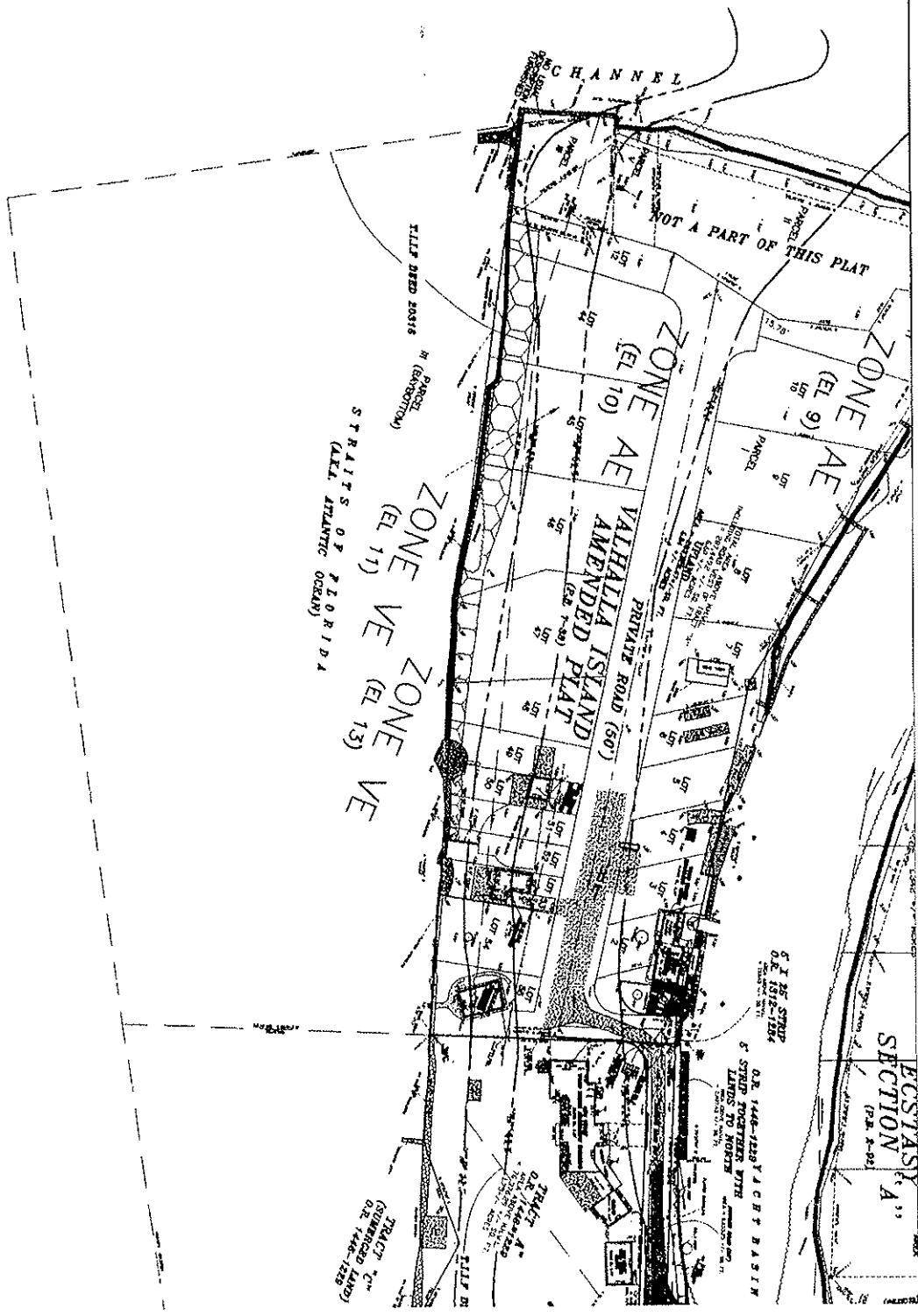
LOTS 3, 4, 5, 6, 7, AND LOT A "RESERVED",
SHOWN FOR REFERENCE ONLY.
NOT INCLUDED IN THIS SURVEY AT THIS TIME
ONLY...

ALL AS RECORDED IN OFFICIAL RECORDS BOOK 1312, PAGES 1279-1284 (SEE ATTACHED)

TRACT "A" VALHALLA ISLAND (METES & BOUNDS)
TRACT "B" (METES AND BOUNDS)
A 5' STRIP OF LAND TOGETHER WITH ALL LANDS NORTH OF (METES AND BOUNDS)
A TRACT OF SUBMERGED LANDS DELINEATED AS TRACT "C" (METES AND BOUNDS)
ALL AS RECORDED IN OFFICIAL RECORDS BOOK 1446, PAGES 1229-1232 OF THE PUBLIC
RECORDS OF MONROE COUNTY, FLORIDA. (SEE ATTACHED)

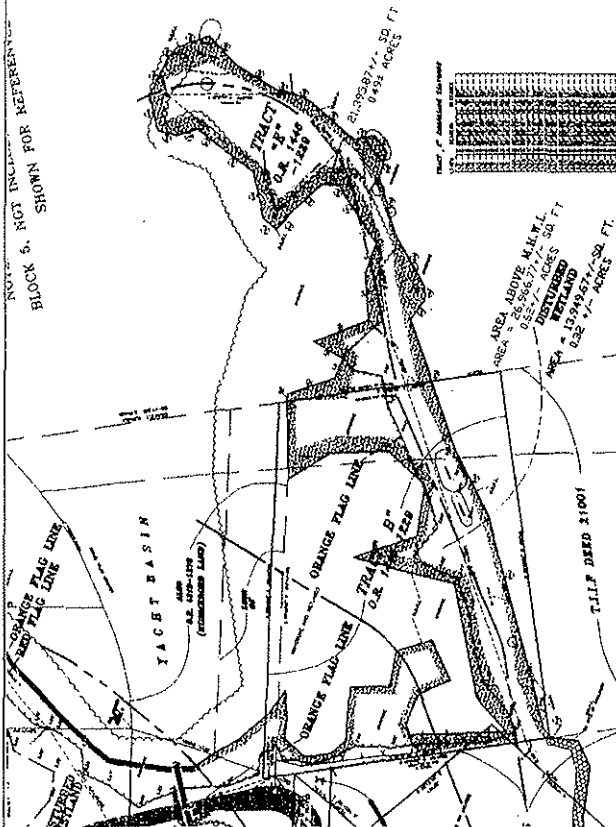
TRACT "E" (ACCRETED BAYBOTTOM) EASTERLY OF TRACT "B", AS RECORDED IN OFFICIAL
RECORDS BOOK 1446, PAGES 1233-1235 OF THE PUBLIC RECORDS OF MONROE COUNTY
FLORIDA. (SEE ATTACHED)

LOTS 5, 48, 49, 50, 51, 52 AND THE EAST HALF OF LOT 6. VALHALLA ISLAND, AMENDED
OR REVISED PLAT, TOGETHER WITH ADJACENT BAYBOTTOM (AS RECORDED IN OFFICIAL RECORDS
BOOK 1552, PAGE 2317. (SEE ATTACHED)



Deed 1759497
 Bk# 2432 Pg# 235

NOTE: BLOCK 5, NOT INCLUDING, SHOWN FOR REFERENCE



1" SCALE = 120'

Doc# 1759497
Bk# 2432 P## 236

ALSO
O.R. 1312-1279
(SUMERGED LANDS)

NOTES:

3.00'00.05"

AREA TABULATIONS

	SITE	AREA ABOVE M.H.W.L.	UPLAND AREA	DISTURBED WETLAND AREA			
ECSTASY SECTION "A"	BLOCK 1 & 2, 20' ALLEY, FIRST STREET SOUTH, N'LY. 1/2 OF SECOND STREET SOUTH AND WATERWAY NO. 1	526,882.74 +/- SQ. FT.	12.09 +/- ACRES	243,069.9 +/- SQ. FT. 14,076.5 +/- SQ. FT.	5.58 +/- ACRES 0.32 +/- ACRES	195,643.8 +/- SQ. FT.	4.49 +/- ACRES
	LOTS 5, 6, 7, 8, 9, & A, BLOCK 3, S'LY. 1/2 OF SECOND STREET SOUTH AND WATERWAY NO. 2	124,418.78 +/- SQ. FT.	2.86 +/- ACRES	112,465.0 +/- SQ. FT.	2.58 +/- ACRES		
	LOTS 1, 2, & 3, BLOCK 4	63,374.36 +/- SQ. FT.	1.45 +/- ACRES	58,510.54 +/- SQ. FT.	1.342 +/- ACRES		
	LOT 4 BLOCK 4, PARKING AREA, LOTS 1 & 2, BLOCK 5, & VACATED PORTION OF BANANA BOULEVARD	100,666.57 +/- SQ. FT.	2.31 +/- ACRES	55,585.85 +/- SQ. FT. 9,046.68 +/- SQ. FT.	1.276 +/- ACRES 0.208 +/- ACRES	12,236.9 +/- SQ. FT.	0.281 +/- ACRES
VALHALLA	TRACT "A"	76,376.29 +/- SQ. FT.	1.75 +/- ACRES	76,376.29 +/- SQ. FT.	1.75 +/- ACRES		
	TRACT "B"	26,966.77 +/- SQ. FT.	0.62 +/- ACRES			13,949.67 +/- SQ. FT.	0.32 +/- ACRES
	TRACT "E"	21,395.87 +/- SQ. FT.	0.49 +/- ACRES				
	WEST END OF VALHALLA ISLAND INCLUDING WEST END OF PRIVATE ROAD AND "NOT A PART"	287,449.21 +/- SQ. FT.	6.60 +/- ACRES	263,028.47 +/- SQ. FT.	6.04 +/- ACRES		
	5' STRIP & LANDS TO NORTH	2937.43 +/- SQ. FT.	0.07 +/- ACRES	1,504.14 +/- SQ. FT.	0.035 +/- ACRES		
	5' X 25' STRIP AND LAND TO NORTH	153.43 +/- SQ. FT.	0.004 +/- ACRES	153.43 +/- SQ. FT.	0.004 +/- ACRES		
	EAST END OF PRIVATE ROAD	8,653.23 +/- SQ. FT.	0.20 +/- ACRES	8,653.23 +/- SQ. FT.	0.20 +/- ACRES		
TOTAL AREAS	1,239,274.68 +/- SQ. FT.	28.444 +/- ACRES	842,470.33 +/- SQ. FT.	19.335 +/- ACRES	221,830.37 +/- SQ. FT.	5.09 +/- ACRES	

Doc# 1759497
Bk# 2432 Pg# 237

Description	Revisions

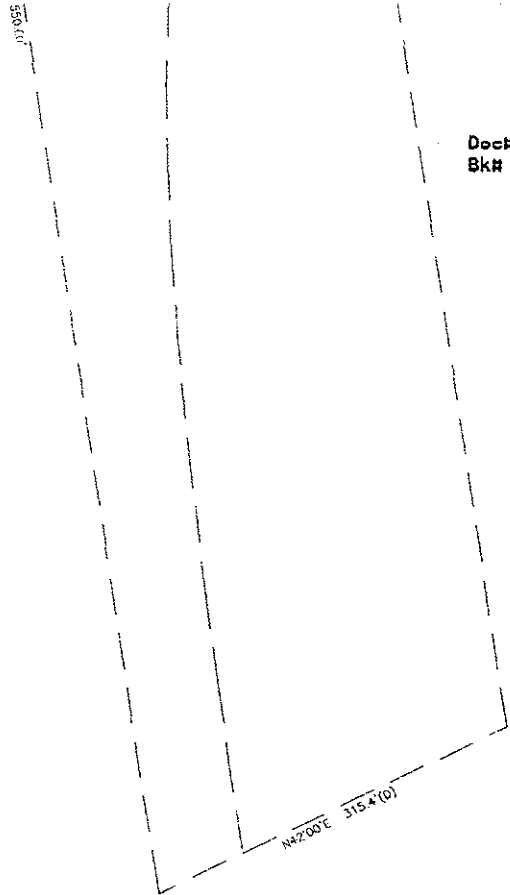


VALHALLA ISLAND AND WESTERLY PORTION OF ECSTASY SECTION "A"

BOUNDARY AND TOPOGRAPHIC SURVEY

PREPARED FOR
JOHN L. MORRIS
c/o OMURA CASEY, INC.

CERTIFIED TO:
GULF STREAM, L.P.
JOHN L. MORRIS, TRUSTEE OF THE JOHN L. MORRIS REVOCAB LIVING TRUST, DATED 10/23/86
AS AMENDED
OMURA CASEY, INC.



Doc# 1759497
Bk# 2432 Pg# 238

- 1) NO LEGAL DESCRIPTION FURNISHED FOR UTILITIES. UTILITY LINES & GUY WIRES MAY HAVE ACQUIRED PRESCRIPTIVE EASEMENTS AND THEREFORE ARE NOT SHOWN AS ENCROACHMENTS.
- 2) SURVEYED AS SINGLE SITE AT CLIENTS REQUEST
- 3) PURSUANT TO CHAPTER 177 OF THE FLORIDA STATUTES AND CHAPTER 16-3 OF THE FLORIDA ADMINISTRATIVE CODE, THE LOCATION OF THE APPROXIMATE MEAN HIGH WATER LINE, AS SHOWN HEREON DOES NOT PURPORT TO LOCATE SAID LINE FOR TIDAL PROPERTY BOUNDARY PURPOSES, AND WAS NOT LOCATED IN ACCORDANCE WITH PROCEDURES SPECIFIED IN THE ACT/RULES.
- 4) A LATENT AMBIGUITY EXISTS IN THE LEGAL DESCRIPTION FURNISHED. THE "P.O.C./P.O.B" OF TRACT "A" IS LOCATED AT THE TANGENT INTERSECTION OF A 25' RADIUS, THEREFORE CREATING AN OVERLAP WITH THE EXISTING ROAD RIGHT-OF-WAY.
ALSO "VALHALLA ISLAND" (P.B. 4-126) HAS BEEN VACATED AND REPLACED WITH "VALHALLA ISLAND AMENDED PLAT" (P.D. 7-138)

G.R. = OFFICIAL RECORDS BOOK-PAGE P & A = PETSCH AND ASSOCIATES
P.B. = PLAT BOOK-PAGE P.T.S. = PHILLIPS AND TRICE SURVEYING
S.F. = SQUARE FOOT (AREA) R.M. = REFERENCE MONUMENT
 F.C.M. = FOUND CONCRETE MONUMENT

LEGEND		ABBREVIATIONS	
● F.C.P.	FOUND CONTROL POINT	ENC.	ENCROACHMENT
○ 40d NAIL/PK	40d NAIL/PK	C.L.	CHAIN LINK FENCE
○ SET CONTROL POINT	SS SCREW/DISC#4906	CONC	CONCRETE
● F.I.P.	FOUND 3/4" PIPE	R/W	RIGHT-OF-WAY
○ /SIZE/CAP TYPE	SET 3/4" PIPE	(P)	PLAT
● F.I.P.	FOUND 5/8" REBAR	(M)	MEASURED
○ /SIZE/CAP TYPE	PERMANENT REFERENCE MONUMENT	(C)	CALCULATED
● P.P.	POWER POLE /BENCH MARK	(D)	DEED/DESCRIPTION
-P-T-C-	AERIAL POWER, TELEPHONE, AND/OR CABLE LINES	P.O.C.	POINT OF COMMENCEMENT
M.H.W.L.	APPROXIMATE MEAN HIGH WATER LINE ACCORDING TO ARMY CORP OF ENGINEERS ESTIMATE	P.O.B.	POINT OF BEGINNING
EL.	ELEVATIONS (SHOWN THUS X 5.00') ARE RELATIVE TO 1929 NATIONAL GEODETIC VERTICAL DATUM.	P.C.	POINT OF CURVE
	MONUMENT # X-277 ELEVATION 6.89	P.I.	POINT OF INTERSECTION
		P.T.	POINT OF TANGENT
		C	CENTERLINE

100 Year Coastal Flood Zone AS SHOWN. Base Flood Elevation AS SHOWN. FIRM NO.125122. PAVEL NO. 1601. H. REV. 03/03/97

NOTE: UNDERGROUND ENCROACHMENTS IF ANY ARE NOT LOCATED. ALL ANGLES ARE 90° UNLESS OTHERWISE NOTED.

J.P. GRIMES

SURVEYOR & MAPPER

State of Florida
Registration No. 4906

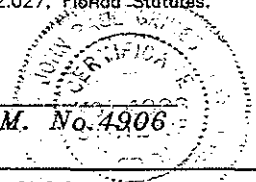
P.O. BOX 510403
#14 6th STREET
KEY COLONY BEACH, FLORIDA 33051-0403
PH (305) 743-4510 FAX (305) 743-3277

This certifies that a survey of the above furnished description was made under my supervision and the survey meets the "Minimum Technical Standards" set forth by the Florida Board of Professional Land Surveyors in Chapter 61G17-6, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

John Paul Grimes, III
JOHN PAUL GRIMES, III, S. & M. No. 4906

MUST HAVE EMBOSSED SEAL IMPRINT TO BE VALID
THIS SURVEY IS NOT ASSIGNABLE.
THIS SURVEY SUBJECT TO A TITLE SEARCH.

Date survey completed 09/30/99



Design	Drawn	Checked
	DBT/JPG	CSG
Approved by	JPG	
Scale:	1"=120'	
Project No.	990706	
Drawing No.	990706	
Date Issued	10/07/99	
Sheet No.	1 of 5	

Attachment B



CITY OF MARATHON, FLORIDA

10045-55 Overseas Highway, Marathon, Florida 33050
Phone: (305) 743-0033 Fax: (305) 743-3667

2 May 2006

Omura Casey Morel, Inc.
11911 US Hwy One Ste 207
N. Palm Beach, Fl 33408

SUBJECT: Pre-Application Conference
Letter of Understanding
RE# 00360220-000200, 00360220-000500, 00360220-000700, 00360220-
005000, 00360220-005200, 00360220-005300, 00360220-005500, 00360220-
005600

Dear Mr. Omura:

Pursuant to Section 9.5-43 of the City Code, this document shall constitute a letter of understanding. On March 3, 2006 a Pre-Application Conference was held at the request of the applicant. It is the desire of the applicant to determine the re-development options available under the current City of Marathon Land Development Regulations (LDRs).

Attendees of the meeting included Barbara Mitchell, Applicant, Dudley Omura, Applicant, Gail Covington, Assistant Planner, and Beth Bergh, Land Steward/Biologist.

Application Materials

- a) Application requesting the pre-application conference
- b) Survey
- c) Documentation to determine ROGO exempt units
- d) Monroe County Development order 1-92
- e) Previous Owners and purchase dates

Proposed Development

There is no proposed redevelopment at this time the following data is requested:

- The number of existing ROGO Exempt units.
- Verification of existing TDR's.

Future Land Use Map Designation: Mixed Use Commercial

Site Data:

Legal Description: **RE# 00360220-000200** Lots 1 2 & 3 & Pt Private Rd Valhalla Island PB4-125 (AKA Lts 1 2 & 3 Amended Plat Valhalla Island PB7-38)
RE# 00360220-000700 Lot 7 & Pt Lt 6 & Pt Lt 8 & Pt Lt 22 & Pt Lt 23 & Pt Private Rd Valhalla Island PB4-125 (AKA Lt 7 & W 1/2 Lot 6 Amended Plat Valhalla Island PB7-38)
Valhalla Island PB4-125
RE# 00360220-005000 Lot 50 & Pt Private Road (AKA RE# 00360220-000200 Lt 50 Amd Plat Valhalla Island PB7-38)
RE# 00360220-005200 lot 52 & 51 pt private rd valhalla island PB4-125 (AKA Lt 52 & 51 Amended Plat Valhalla Island PB7-38) OR437-989 (RE360220-005100 Combined With This Parcel 1986)
RE# 00360220-005300 Lt 53 & Pt Private Rd Valhalla Island PB4-125 (AKA Lt 53 Amended Plat Valhalla Island PB7-38)
RE# 00360220-005500 Lot 55 & Pt Private Rd Valhalla Island PB4-125 (AKA Lt 55 Amended Plat Valhalla Island PB7-38)
RE# 00360220-005600 Tr A Valhalla Island PB4-125 (AKA Tr A Amended Plat Valhalla Island PB7-38)

Address: Private Road

Lot Area: RE# 00360220-000200 - 12,683.77
RE# 00360220-000700 - 9,815.80
RE# 00360220-005000 - 3,851.80
RE# 00360220-005200 - 7,259.39
RE# 00360220-005300 - 3,981.21
RE# 00360220-005500 - 5,630.27
RE# 00360220-005600 - 76,052.64

Existing Environmental Conditions: Disturbed, with the possible exception of the northeast corner of parcel 00360220-005600, which will need to be site verified to determine the presence of wetland/mangroves.

Zoning: Mixed Use (MU) Land Use District

Section 9.5-219 of the City's LDRs states "the purpose of the MU district is to establish or conserve areas of mixed uses, including commercial fishing, resorts, residential, institutional and commercial uses, and preserve these areas representative of the character, economy and cultural history of the Florida Keys.

Section 9.5-248 gives further details as to specific uses allowed in the MU zone.

Fema Data: The parcels appear to fall within the AE-9, AE-10, VE11 and VE13 flood zones (FIRM Panel 1401K, February 18, 2005). The location of development will determine the elevation of the first floor. Should a building overlap multiple flood zones, the entire building must be built to the most restrictive height. A survey will be required to confirm the location of the flood zone designations.

Current Use: Residential

Doc# 1759497
Bk# 2432 Pg# 242

Permitted Uses

As-of-Right

1. Detached dwellings
2. Commercial retail of low- and medium-intensity and office uses less than 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
5. Commercial recreational uses
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 requiring a public hearing
11. Community parks
12. Accessory uses
13. Vacation rentals – vacation rental use permit required
14. Wastewater Treatment Facilities
15. Replacement of an existing antenna-supporting structure
16. Collocations on existing antenna-supporting structures
17. Attached wireless communications facilities

Minor Conditional Use

1. Attached residential dwelling units
2. Commercial recreational uses
3. Commercial retail of low- and medium-intensity and office uses greater than 2,500 square feet of floor area but less than ten thousand (10,000) square feet of floor area
4. Commercial retail of high-intensity and office uses less than 2,500 square feet of floor area
5. Commercial apartments involving more than six dwelling units
6. Institutional residential uses involving ten (10) or more dwelling units or rooms
7. Hotels of few than fifty (50) rooms
8. Campgrounds
9. Light industrial uses
10. Parks and community parks
11. Stealth wireless communication facilities

Major Conditional Use

1. Commercial retail of low- and medium-intensity and office uses greater than ten thousand (10,000) square feet of floor area
2. Commercial retail of high-intensity and office uses greater than 2,500 square feet of floor area
3. Attached residential dwelling units

4. Marinas
5. Hotels providing fifty (50) or more rooms
6. Heliports or seaplane ports
7. Light industrial uses
8. Boat building or repair in conjunction with a marina or commercial fishing use
9. Mariculture
10. New antenna-supporting structures
11. Satellite earth stations
12. Wastewater treatment facilities

Density

Residential

Allocated Density	1 dwelling unit per acre
Maximum Net Density	12 dwelling units per buildable acre

Non-Residential

Offices	0.40 FAR
Commercial Retail	
Low intensity	0.35 FAR
Medium intensity	0.25 FAR
High intensity	0.15 FAR

The intensity of commercial retail is determined by number of average daily trips as follows:

- Low: less than 50 trips per 1,000 square feet per day
- Medium: 50 to 100 trips per 1,000 square feet per day
- High: more than 100 trips per 1,000 square feet per day

Setbacks

Front Yard:	25 feet
Side Yard:	10/15 feet, where one side must be at least 10 feet
Rear Yard:	20 feet
Shoreline:	<i>Principal:</i> 30 feet from Mean High Water Line (MHWL), except for the natural shoreline of beach area which has a 50 foot setback, provided that appropriate salt-tolerant native shoreline vegetation is planted and maintained in at least a 10 foot wide buffer across the entire shoreline. (Section 9.5-286(a)(4))

Maximum Height

37 feet above existing grade

Open Space Ratio

20 percent of gross lot area

Existing Development

Currently, the property consists of the following:

- 00360220-000200 1 Duplex (2 dwelling units)
- 00360220-000500 Seawall/Deck
- 00360220-000700 Utility Bldg/Deck/Patio
- 00360220-005000 1 SFR
- 00360220-005200 1 SFR
- 00360220-005300 1 SFR
- 00360220-005500 1 SFR
- 00360220-005600 3 dwelling units above vacant commercial structure

Development Requirements

Planning

1. There are a total of nine ROGO exempt allocations attributed to the parcels that are the subject of this LOU.
2. Each dwelling unit may be redeveloped on the lot (RE number) on which it currently or previous exists. Dwelling units may not be redeveloped on any other parcels unless there is a unity of title, in a form acceptable to the city attorney, or the transfer of an allocation using the Transfer of Building Right (TBR) regulations once the ordinance becomes effective.
3. Any and all redevelopment must comply with both the City's Comprehensive Plan and Land Development Regulations in effect at the time of the application for development approval, including but not limited to density, intensity, setbacks, stormwater management, floodplain requirements, height limitations, open space, landscaping, parking, and wastewater treatment.
4. ROGO allocations will be required for dwelling units that exceed the number demolished.
5. Redevelopment may be required to comply with the City's affordable/workforce housing requirements.
6. Monroe County Development Order #1-92 states that Transfer of Development (density) Rights was approved for multiple lots located in Ecstasy Subdivision. A total of 3.929 TDRs were transferred to the lots in Ecstasy Subdivision. It is the understanding of planning staff that these lots and TDRs are under the same ownership as the lots which are the subject of this LOU. These TDRs may be transferred to the subject lots or other lots provided that all of the requirements of the City's TDR ordinance that is in place at the time of the transfer are met.

Biologist

7. The site consists of "disturbed" habitat. The Open Space Ratio in the MU districts and "disturbed" habitat is 0.2. A site plan clearly identifying and delineating the open space will be required for building permit approval.
8. Any invasive exotic plant species found on the site will be required to be removed as a condition of any permit application. If any native trees are to be disturbed or removed, a separate permit with a transplantation or mitigation plan will be required.
9. Any redevelopment must comply with all environmental regulations, including but not limited to shoreline setbacks, open space ratios, stormwater, and landscaping.

Public Works

10. A Surface Water Management Plan is required by Section 9.5-293 of the Code. A drainage plan and associated calculations for all impervious surfaces must also be submitted for any development approvals to ensure the project complies with surface water management criteria. The drainage plan must be reviewed and approved by the City Engineer.
11. Any driveway connection to the City right-of-way (ROW) will require Public Works approval. The site plans must show a 2% slope back onto the property to prevent stormwater from flowing into the ROW. Also, an isolation joint must be shown at the property line.

Ports

12. Any additional dockage must comply with existing Code and the Comprehensive Plan requirements.
13. The applicant must provide permits/authorizations from applicable State and Federal agencies for any work in, on, or over water or wetlands.

Fire

14. Approved Fire Hydrants shall be provided for buildings to meet necessary fire flow requirements as determined by the Fire Official. (This may require more than one hydrant.). Fire Hydrants shall be installed as a looped system.
15. Provide the Fire Marshal's Office with a copy of the coordination letter with the Florida Keys Aqueduct Authority (FKAA), Engineering Dept., regarding fire hydrant installation and adequate fire flow for fire sprinkler system per project requirements.
 - i. Note: In the event that the FKAA cannot provide adequate fire flow to this location, a site plan shall be provided indicating the proposed location of the water storage tank and fire pump installation.
16. A low voltage smoke/fire alarm detection system, with horn/strobes, manual pull stations, with an annunciator panel and monitored may be required by the Fire Marshal's Office. A

Fire Alarm system professional shall be hired for plans submittal, installation and to meet with the Fire Marshal.

17. A sprinkler system may be required per State Statute 553.895 (1), (2), FFPC, FBC 903.8 (2) or as determined by the Fire Marshal for firefighter and occupant safety. Automatic sprinkler system and/or standpipe when required, the system must be installed per NFPA 13, 13R, or 13 D. A set of engineered plans shall be provided. A FPE shall be hired per the FFPC and to meet with the Fire Marshal.
18. If the proposed redevelopment is to be gated an EVAC Automatic Gate opening system may be required by the Fire Marshal.
19. If Fire Wells are approved (fire wells are a last resort for fire protection), all fire wells shall be located by the Fire Marshal's Office prior to installation, and certified by an outside company supplying 1000+ g.p.m. prior to acceptance and will be required to be tested annually by the property owner and paperwork provided to the Fire Marshal's office.
20. The driveways must be at least 20 feet wide and maintain a 50-foot turning radius for emergency vehicle access. Fire Access and lanes shall be 20' in width; vertical clearance of not less than 13'6". Grass Fire Lanes or Pavers shall be installed per the FFPC. If permitted they shall meet the compaction requirements and will require the Fire Marshals approval. Fire lane signs shall be placed at the appropriate locations determined by the Fire Marshal.
21. All Penetrations (conduit, AC ducting, pipes, CPVC etc.) shall have an approved UL listed fire-stop and smoke-stop system installed. Aerosol foams are not acceptable fire-stopping systems (Great Stuff, etc.).
22. Additional Items may be required under the FFPC, Uniform Fire Code, NFPA 1 4.5.1.2 and NFPA 101 4.6.1.2 "States: Any requirement that are essential for the safety of the building occupants and are not specifically provided for by this Code shall be determined by the Fire Marshal.

Outside Agencies

23. The State of Florida Department of Health (DOH) or Department of Environmental Protection (DEP) will be responsible for the review and permitting of the on-site sewage treatment plant. The City encourages coordination with a community-wide sewage treatment plant.
24. The applicant must provide coordination letters from the Fish and Wildlife Services (FWS) showing approval of the development, with regard to the project's effect on endangered species.

Pursuant to Section 9.5-43 of the City of Marathon Land Development Regulations, you are entitled to rely upon the representations set forth in this letter of understanding as accurate under the regulations currently in effect. However, the Planning Department acknowledges that all items required as a part of the application for development approval may not have been addressed at the March 3, 2006 meeting, and consequently reserves the right for additional department comment. This pre-application letter is based solely upon the information provided by the applicant and is solely intended to familiarize the applicant with the provisions of the comprehensive plan and land development regulations currently in effect that may be applicable to the development project proposed by the applicant. The information provided herein is subject to change based upon the adoption of new policies or regulations, the repeal of existing policies or regulations, submission of additional information, or a determination that incomplete/inaccurate information or misstatements of fact were provided by the applicant. This letter is not a development approval, order or permit, and nothing contained herein shall be construed or interpreted as conveying, conferring, granting or denying any building, development or vested rights. This is not an administrative decision or interpretation regarding the provisions of the comprehensive plan or land development regulations. A final decision or interpretation of the applicable policies and regulations cannot be made until the applicant submits a complete development application for review.

We trust that this information is of assistance. If you have any questions regarding the contents of this letter, or if we may further assist you with your project, please feel free to contact me at 305.289.4111 or kensong@ci.marathon.fl.us

Sincerely,



Gail Kenson, AICP
Planning Director

cc: Barbara Mitchell, Agent
~~XXXXXXXXXX~~
Dale Beaver, Fire Marshal
file

Attachment C



CITY OF MARATHON, FLORIDA

9805 Overseas Highway, Marathon, Florida 33050
Phone: (305) 743-0033 Fax: (305) 743-3667

March 17, 2008

The Craig Company
Ms. Barbara Mitchell
P.O. Box 970
Key West, FL 33041-0970

Subject: TBR Permit # (to be determined upon final approval of transfer)

Sender Site: ID# 70098 Parcel # 00103540-000000
Address: 6600 Overseas Highway, Marathon, FI 33050

Receiver Site: Valhalla Island Re-plat Lots 8,10,11 & 12
Aka: Valhalla Island Amended Plat

Dear Ms. Mitchell:

As we discussed in our March 4th meeting; The City of Marathon Planning Department has reviewed the documents presented for appropriateness and approval of a transfer of building rights from the above captioned sender site to Valhalla Island Amended plat.

As a result of this review, it has been determined that the receiver site would meet the requirements set forth in the City's Land Development Regulations ("LDRs") Section 107.18 (c) subsequent to the parcel being replatted, save one issue. Upon replat of the Valhalla project area, the residential footprint of the transferred units may not be placed in the VE Flood Zone, only in the AE Flood Zone. Since each replatted lot may have a portion of both flood zones, this issue may become a condition of the plat replat approval.

Please use the appropriate addresses along with the Sender Site #, indicated above in all correspondence with the City regarding the transfer.

Prior to issuance of a **Building Permit** authorizing the development of the TBR on the receiver site:

1. A **Deed of Transfer** shall be recorded in the chain of title of the sender site containing a covenant prohibiting the further use of the building right
2. A **Memorandum of Transfer of Transferable Building Rights** shall be recorded in the chain of title of the receiver site evidencing the transfer of the building right to the receiver site.
3. **Sending or Affordable Housing Site Compliance**. An applicant proposing to transfer any non-transient dwelling unit building right must comply with the following "**Affordable Housing**" requirements.

CITY OF MARATHON, FLORIDA

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Phone: (305) 743-0033 Fax: (305) 743-3667

Affordable Housing Requirements:

Prior to issuance of a Certificate of Occupancy on the receiver site, the sender site and, if applicable, the Affordable Housing Site, must be brought into compliance with the requirements of the Code and any conditions of approval required by the TBR permit must be met.

These conditions may include but are not limited to:

1. Bringing the sender site and, if applicable, the Affordable Housing Site, into compliance with landscaping, buffer-yards, waste treatment, storm water, and access requirements; and This will require the owner of such structure(s) to upgrade the roof, electric and plumbing of any structure to meet the most recent requirements of the Florida Building Code, and to provide storm shutters that comply with the Florida Building Code. If the structure is rebuilt, the Certificate of Occupancy for such structure must be obtained prior to issuance of the Certificate of Occupancy on the receiver site.
2. In the case of a non-transient dwelling unit, the structure containing the building right to be transferred may be demolished and a cash-in-lieu payment pursuant to Section 107.18 (b) of the LDR's, shall be made to the City, or must obtain a BPAS allocation to either continue use of the existing structure on the sender site or, if demolished, to rebuild the structure on the sender site or, if applicable, the Affordable Housing Site.
3. In lieu of the foregoing for each dwelling unit building right transferred as market rate, to make a cash payment to the City's affordable housing program fund in an amount not less than thirty percent (30%) of the affordable housing cash-in-lieu payment per building right then in effect, as amended from time to time by Resolution of the Council (e.g. in 2006, one building unit equal \$200,000 payment to affordable housing fund; or
4. In lieu of the foregoing, the applicant may choose to donate a buildable parcel located in the City suitable for the development of affordable housing with a value that meets the minimum requirements of Section 107.18 (b), such parcel to be acceptable to the City in its reasonable discretion; or
5. The applicant may choose, with the City's consent, some combination of the above subparagraphs.

Proof required for donated parcel is a Memorandum of Transfer of Transferable Building Rights showing the transfer to the City of Marathon been recorded with the Monroe County Clerk.

Proof required for affordable deed restricted dwelling unit is a Declaration of Affordable Housing Restrictions showing it has been recorded with the Monroe County Clerk as a Restrictive Covenant.

CITY OF MARATHON, FLORIDA

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Environmental Mitigation

1. For parcels which contain tropical hardwood hammocks, palm hammocks or high quality wetlands, as determined by the City Biologist, from which less than all building rights have been transferred, the following will be required:

(a) A restrictive covenant shall be recorded with the Monroe County Clerk of the Court, at the applicant's expense, restricting transfer of building rights back to the parcel; and

(b) The sending site shall be restored pursuant to a restoration plan approved by the City Biologist. The restoration shall be certified as completed by the City Biologist within six (6) months from the approval of the transfer.

2. For parcels which contain tropical hardwood hammocks, palm hammocks or high quality wetlands, as determined by the City Biologist, from which all building rights have been transferred, the following will be required:

(a) A Grant of Conservation Easement shall be recorded with the Monroe County Clerk of the Court, at the applicant's expense, permanently restricting the sending site as open space.

3. The City Biologist has determined the Sender site is scarified and does not require Environmental Mitigation

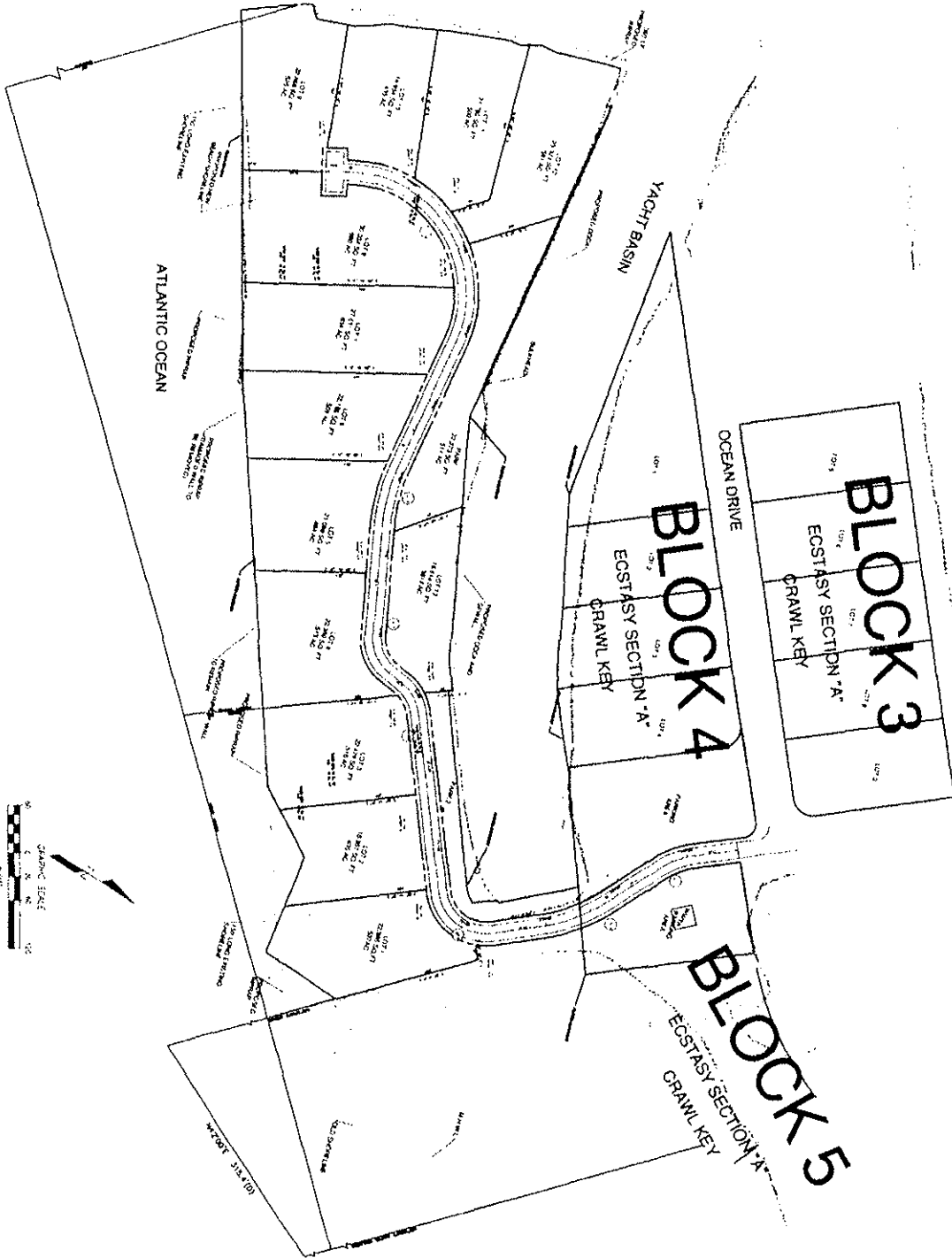
If you have any other questions, please feel free to contact our office at 305-289-4132 or 305-289-4135.

Sincerely,

George Garrett

George Garrett, Planner
City of Marathon

Attachment D



MONROE COUNTY
 OFFICIAL RECORDS

<p>1. 1 2. 1 3. 1 4. 1 5. 1 6. 1 7. 1 8. 1 9. 1 10. 1 11. 1 12. 1 13. 1 14. 1 15. 1 16. 1 17. 1 18. 1 19. 1 20. 1 21. 1 22. 1 23. 1 24. 1 25. 1 26. 1 27. 1 28. 1 29. 1 30. 1 31. 1 32. 1 33. 1 34. 1 35. 1 36. 1 37. 1 38. 1 39. 1 40. 1 41. 1 42. 1 43. 1 44. 1 45. 1 46. 1 47. 1 48. 1 49. 1 50. 1 51. 1 52. 1 53. 1 54. 1 55. 1 56. 1 57. 1 58. 1 59. 1 60. 1 61. 1 62. 1 63. 1 64. 1 65. 1 66. 1 67. 1 68. 1 69. 1 70. 1 71. 1 72. 1 73. 1 74. 1 75. 1 76. 1 77. 1 78. 1 79. 1 80. 1 81. 1 82. 1 83. 1 84. 1 85. 1 86. 1 87. 1 88. 1 89. 1 90. 1 91. 1 92. 1 93. 1 94. 1 95. 1 96. 1 97. 1 98. 1 99. 1 100. 1</p>	<p>Floridian Holdings, LLC Vaihalla Island, FL</p>	<p>Vaihalla Island Marathon, FL 33050</p>	<p>Site Plan</p>	<p>ENGINEERING</p>	<p>ENGINEERING</p>
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