

**CITY OF MARATHON, FLORIDA
RESOLUTION 2011-56**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY AND SH3 LTD., PURSUANT TO CHAPTER 102, ARTICLE 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS ("CODE") ENTITLED "DEVELOPMENT AGREEMENT" FOR THE REDEVELOPMENT OF THE PROPERTIES LOCATED AT 1996 OVERSEAS HIGHWAY, 1685 OVERSEAS HIGHWAY AND 1020 15TH STREET, OCEAN, WHICH ARE LEGALLY DESCRIBED AS PART OF THE AMENDED PLAT OF BAYVIEW SUBDIVISION, PART OF DAVIS ADDITION, AND PART OF GOVERNMENT LOT 2 AND ADJACENT BAY BOTTOM OF SECTION 9, TOWNSHIP 66 SOUTH, RANGE 32 EAST, KEY VACA, AND PART OF GOVERNMENT LOT 2 OF SECTION 16, TOWNSHIP 66 SOUTH, RANGE 32 EAST, AND FILLED IN BOOT KEY HARBOR, KEY VACA, AND PART OF LOT 19, LOT 20, PART OF LOTS 21 AND 22, BLOCK 1 AND ADJACENT BAY BOTTOM, KEY VACA, HAVING REAL ESTATE NUMBERS 00102650-000000, 00326620-000000, 00337880-000000 AND 00104050-000000, PROVIDING FOR CONDITIONS AND REQUIREMENTS OF DEVELOPMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on the 18th day of July, 2011, the City of Marathon Planning Commission and on the 26th day of July 201, the City of Marathon City Council, conducted properly advertised public hearings regarding the request submitted by SH3 Ltd. ("Faro Blanco"), for approval of a Second Amendment to an approved Development Agreement pursuant to Chapter 102, Article 8 of the City Code ("Second Amendment"); and

WHEREAS, the purpose of the Second Amendment is to allow Faro Blanco to redevelop the Faro Blanco Resort and Yacht Club.

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.

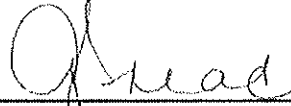
Section 2. The Second Amendment to the Development Agreement between the City and Faro Blanco, attached as Exhibit "A," is hereby approved. The Mayor is authorized to execute the Second Amendment on behalf of the City.

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 9th DAY OF AUGUST, 2011.

THE CITY OF MARATHON, FLORIDA

Doc# 1848353
Bk# 2530 Pg# 2450



Ginger Snead, Mayor

AYES: Cinque, Worthington, Ramsay, Keating, Snead
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

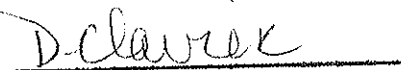

Diane Clavier, City Clerk

(City Seal)

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


City Attorney

I certify this document to be a True and Correct Copy of the original.


City Clerk/City of Marathon

8/15/11
Date

This Instrument Prepared By:
Sherry A. Spiers, Esq.
Apgar & Spiers, PL
322 Beard Street
Tallahassee, FL 32301

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Parcel ID Numbers:
00337880-000000 (Gulf Side),
00102650-000000 (Gulf Side),
00326620-000000 (Oceanside Overseas Highway Parcel)
00104050-000000 (15" Street Parcel/Boot Key Marina)

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

FARO BLANCO RESORT AND YACHT CLUB

MARATHON, FLORIDA

This Second Amendment to the Development Agreement for the Faro Blanco Resort and Yacht Club, Marathon, Florida ("Second Amendment to Development Agreement"), is made and entered into by and between the City of Marathon ("MARATHON"), a Florida municipal corporation, and SH3, Ltd., a Florida limited partnership (SH3" or "Owner"), pursuant to the Code of Ordinances of the City of Marathon and the Florida Local Government Development Agreement Act, and is binding on the Effective Date set forth in this Second Amendment.

WHEREAS, SH3 is the owner of real property in the City of Marathon known as: Site I (or "Gulfside Parcel"), consisting of two parcels with approximately 7.39 acres of uplands on the Gulf/north side of US 1 at approximately mile marker 48 (formerly known as the Faro Blanco Marine Resort); and Sites II and III, consisting of two parcels with approximately 5.36 acres of uplands on the Atlantic/south side of US 1 at approximately mile marker 47.5 (Boot Key Marina being referred to as "Site III" or "15th Street Parcel" and the remaining parcel referred to as "Site II" or "Oceanside Overseas Highway Parcel"), all as more particularly described in the First Amended and Restated Development Agreement for the Faro Blanco Resort and Yacht Club; and

WHEREAS, on February 13,2006, Marathon entered into a development agreement with the Owner which recognized that the property is vested for 105 transient residential units, one manager's/caretaker's unit, docks, and commercial space identified in the agreement; and

WHEREAS, the February 13,2006, development agreement authorized redevelopment of the unified parcels with 84 one and two bedroom ROGO exempt transient units based on the conversions provided under Marathon Ordinance No. 2004-017, 125 dock slips, a restaurant, redevelopment of existing commercial uses, and related uses on Site I; 14 affordable housing units on Site II; and redevelopment of existing commercial uses, 125 dock slips, a restaurant, a boat barn for storage of 80 boats, and other uses on Site III, all as described in the agreement; and

WHEREAS, on October 23, 2007, Marathon and the Owner entered into the First Amended and Restated Development Agreement for the Faro Blanco Resort and Yacht Club to authorize revisions to the conceptual site plan to increase the number of one bedroom transient units, decrease the number of two bedroom transient units, provide for additional commercial square footage on Site I (primarily for restaurant and a spa at the Resort), increase dry slips with an equivalent decrease in wet slips, and other modifications consistent with the City's Comprehensive Plan and land development regulations; and

WHEREAS, the Owner wishes to further amend the development agreement to increase the number of transient units on Site I from 91 units to 100 units to ensure the economic viability of the redevelopment project, and to acknowledge that Marathon will provide the Owner with nine (9) affordable housing ROGO allocations to assist the Owner in developing 14 affordable housing units approved for the project; and

WHEREAS, notice of intent to enter into this amendment to the development agreement has been provided as required by the Marathon City Code; and

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WHEREAS, on July 18, 2011, the Planning Commission held an advertised public hearing to consider this Second Amendment to Development Agreement and recommended unanimous approval to the City Council; and

WHEREAS, on July 26, 2011 and August 9, 2011 the City Council held advertised public hearings to consider this Second Amendment to Development Agreement, the recommendations of the Planning Commission and City Staff, and public comment, and has considered all recommendations and comments received; and

WHEREAS, the City Council has determined that the modifications to the redevelopment plan for the Faro Blanco and Boot Key Marina properties reflected in this Second Amendment to Development Agreement are consistent with the City's Comprehensive Plan and land development regulations, and their approval is in the best interests of the City of Marathon.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

I. **Recitals.** The foregoing recitals are incorporated into this Second Amendment to Development Agreement.

II. **Amendments**¹: The First Amended and Restated Development Agreement for the Faro Blanco Resort and Yacht Club is amended as follows:

1. **Purposes of Agreement.** Section II.C. of the First Amended and Restated Development Agreement is revised as follows:

C. To allow redevelopment of vested transient residential dwelling units on the Gulf Side Parcel (Site I) and to authorize the provision of affordable/workforce housing on Sites II and III utilizing a portion of the Owner's ROGO exemptions from vested units on the FARO BLANCO property.

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¹ Additions are underlined; deletions are ~~struck through~~

2. Site Plan. References to the Conceptual Site Plan prepared by axioma 3, Inc., dated August 28, 2007, in Section IV .C.I of the First Amended and Restated Development Agreement are changed to refer to the revised Conceptual Site Plan prepared by Thomas E. Pope, Architect, dated June 30, 2011, attached to this Second Amendment to Development Agreement as Exhibit A, which said revised Conceptual Site Plan is hereby approved and incorporated herein by this reference.

3. Density and Intensity. Section IV.E. of the First Amended and Restated Development Agreement is amended as follows:

1. The development permitted on the FARO BLANCO property (Sites I, II and III) shall consist of those uses described herein and shown on the Conceptual Site Plan attached to this Agreement. The maximum density lawfully established and vested on the FARO BLANCO property is 105 transient residential units and one (1) manager's/caretaker's unit to be redeveloped as 9+ 100 one-bedroom transient residential units and one (1) manager's/caretaker's unit on Site I, and 14 5 affordable/workforce housing units on Sites II and III. An additional 9 affordable/workforce housing units shall be developed on Sites II and III with affordable housing ROGO allocations provided by Marathon. Maximum intensity allowed under this Agreement consists of all non-residential development described in subsection E.5 3 below. Final site plans may deviate from the Conceptual Site Plan without an amendment to this Agreement, so long as the deviation is consistent with the Comprehensive Plan and LDRs and the density and intensity identified in this subsection are not exceeded.

~~3. Pursuant to MARATHON Ordinance No. 2004-17, the ninety one (91) lawfully established transient residential dwelling units on the FARO BLANCO Property may be redeveloped on the Gulf Side Parcels (Site 1) as eighty eight (88) transient~~

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~~residential units consisting of fifty seven (57) one-bedroom units and thirty one (31) two bedroom units under the following hotel-motel conversion rates:~~

91 Existing/Vested 1-Bedroom Units	Proposed 1-Bedroom Units	Proposed 2-Bedroom Units	Conversion Rate	Conditional Redevelopment Units	Total Units Allowed Under Ord. 2004-17
57	-57		1.0 (100%)	0	57
28		25	-0.9 (90%)	3	25
Existing 2-Bedroom Units					
6		-6	1.0 (100%)	0	-6
TOTALS	-57	31	N/A	3	88

~~4. This Agreement shall constitute the mechanism by which MARATHON shall track the three (3) Conditional Redevelopment Units created through the conversion of existing efficiency and one-bedroom transient residential dwelling units on the FARO BLANCO Property into two-bedroom units, so they may be redeveloped in the future if MARATHON adopts an ordinance amending the land development regulations to authorize the development of tracked conditional redevelopment units, as provided in Ordinance No. 2004-017. Future development of the three (3) conditional redevelopment units pursuant to a later adopted City ordinance shall not require an amendment to this Agreement.~~

[RENUMBER SUBSEQUENT SUBSECTION FROM 5 TO 3.]

4. **Notices.** The address of SH3 's counsel in Section IV.P. of the First Amended Agreement is amended as follows:

To SH3: no change

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

Robert C. Apgar, Esquire
Sherry A. Spiers, Esquire
~~Greenberg Traurig, P.A.~~
~~101 East College Avenue~~
~~Tallahassee, Florida 32304~~
~~Telephone: (850) 222-6891~~
322 Beard Street
Tallahassee, FL 32308
Telephone: (850) 544-0131 or (850) 671-3213

III. Effect of Second Amendment to Development Agreement. Except as expressly modified in this Second Amendment, all terms and provisions in the First Amended and Restated Development Agreement for the Faro Blanco Resort and Yacht Club dated October 23, 2007, remain unchanged and continue in full force and effect.

IV. Recording and Effective Date. SH3 shall record a copy of this Second Amendment to the Development Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date of this agreement and shall provide copies of the recorded agreement showing the book and page where recorded to Marathon and to the state land planning agency. Pursuant to Section 163.3239, Florida Statutes, this Second Amendment to Development Agreement shall become effective 30 days after it is recorded and a copy is received by the state land planning agency.

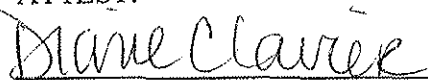
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IN WITNESS WHEREOF the parties have executed this agreement on the day and year below written.

CITY OF MARATHON

By 
Mayor

ATTEST:


City Clerk

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

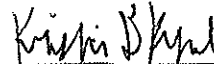

City Attorney

SH3, LTD., a Florida Limited Partnership

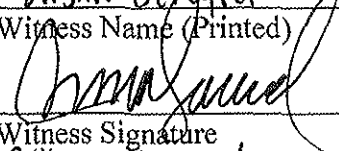
By 
Robert Spottswood

8-19, 2011
Date

Signed, sealed and delivered in the presence of:


Witness Signature

Kristin Deloyel
Witness Name (Printed)

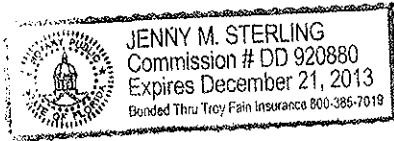

Witness Signature


Bill Spottswood
Witness Name (Printed)

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STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 18th day of August, 2011, by ROBERT SPOTTSWOOD, who is known to me or who produced as identification, and who did / did not take an oath.





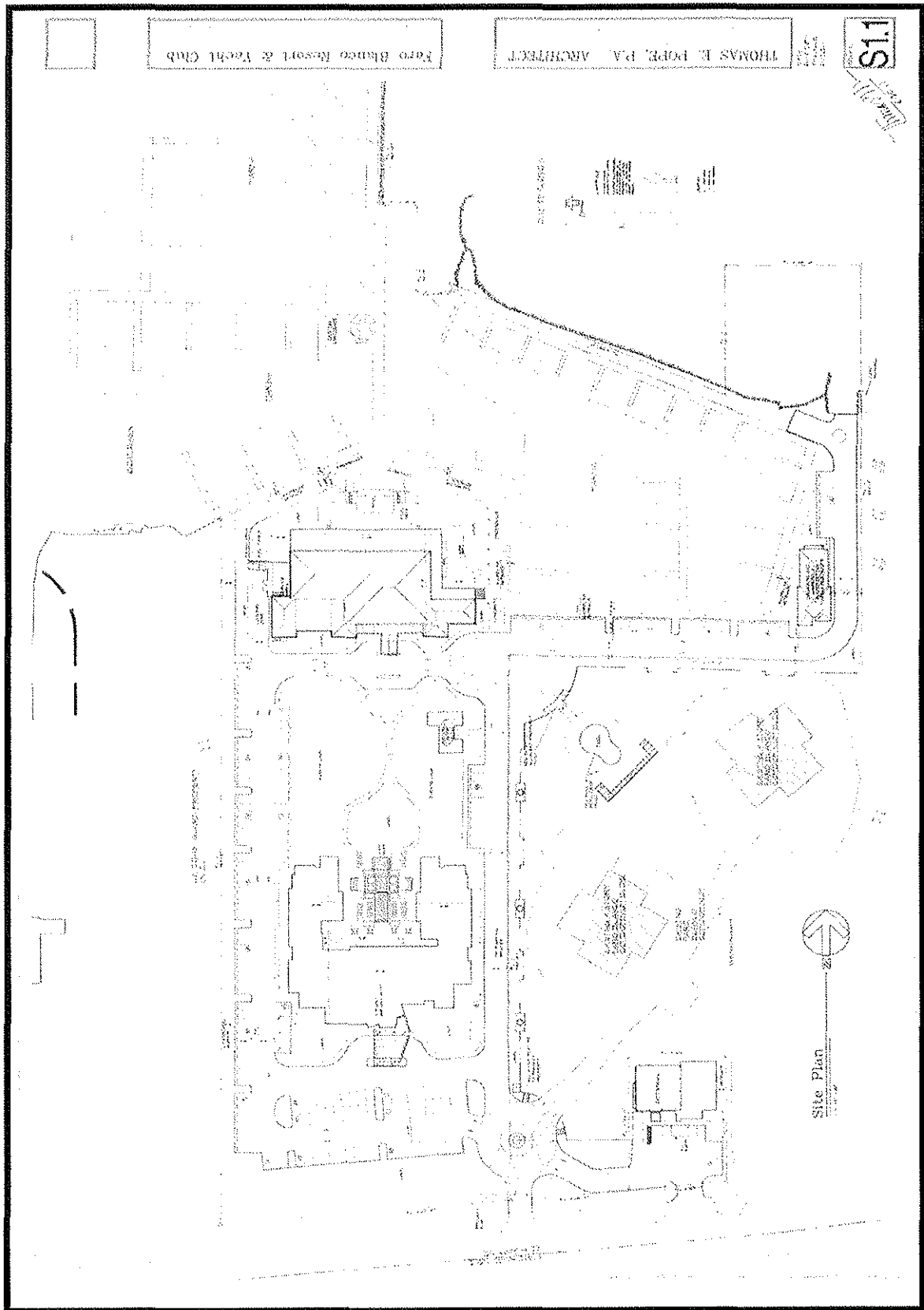
NOTARY PUBLIC
My commission expires: _____

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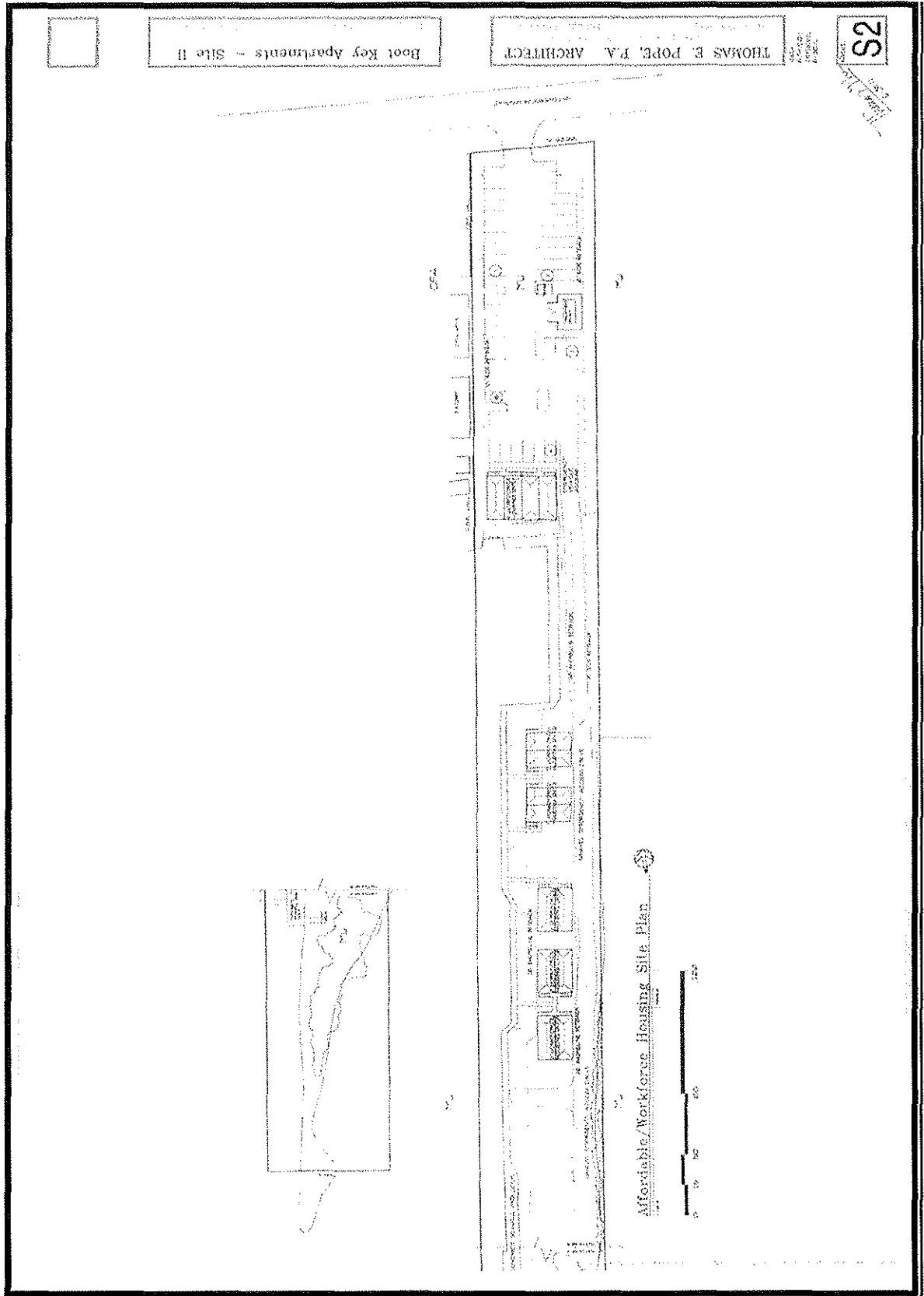
EXHIBIT A

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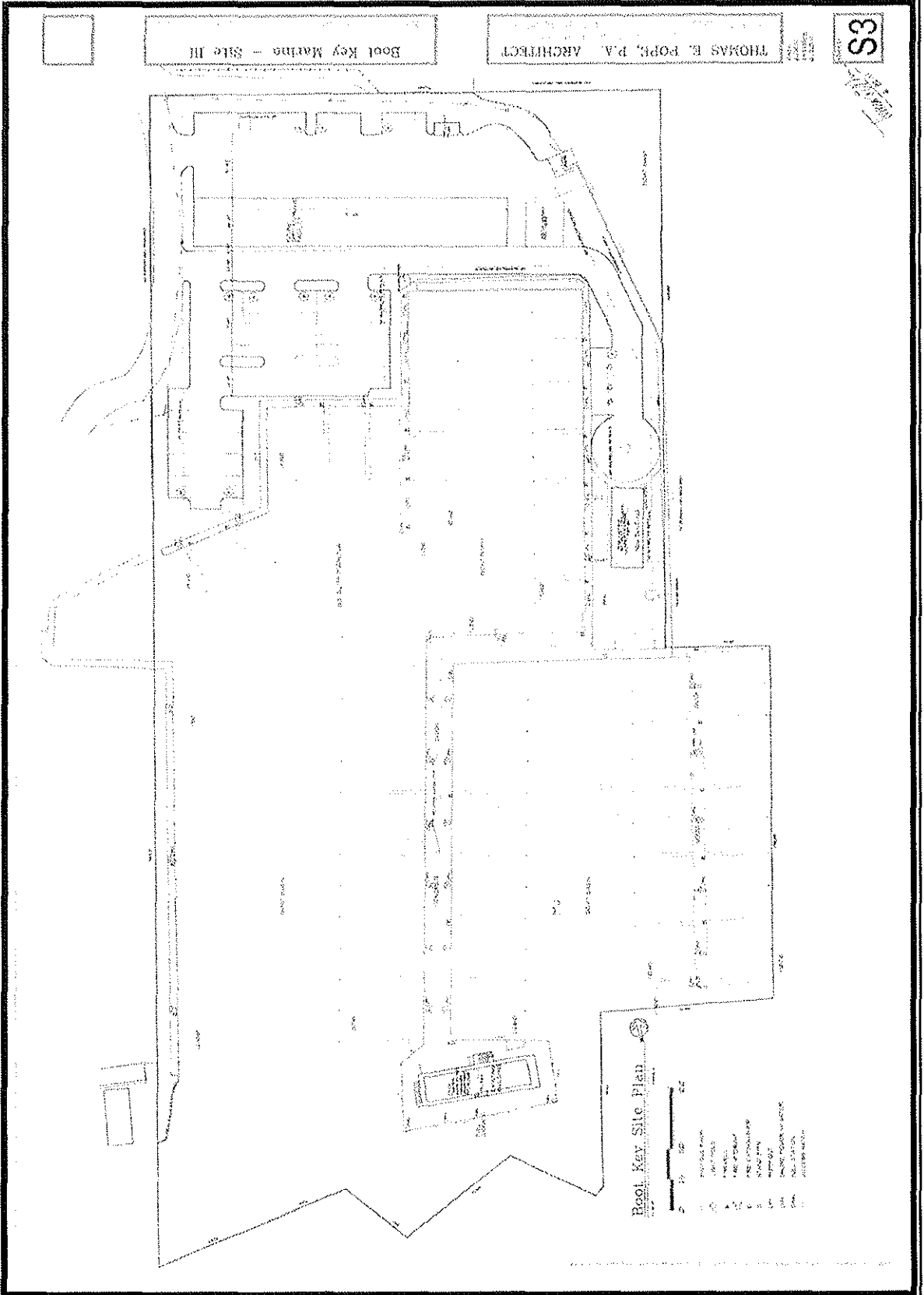
SITE I
Subject to Final Revision



SITE II
Subject to Final Revision



SITE III
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MONROE COUNTY
 OFFICIAL RECORDS