

CITY OF MARATHON, FLORIDA
RESOLUTION 2012-100

APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR SAPODILLA HOLDINGS, LLC, PURSUANT TO CHAPTER 102, ARTICLE 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED "DEVELOPMENT AGREEMENT" FOR THE REDEVELOPMENT OF THE PROPERTY LOCATED AT 7200 AVIATION BOULEVARD, WHICH IS LEGALLY DESCRIBED AS PART OF THE MASTER PLAT OF NORTH MARATHON SHORES, PART OF GOVERNMENT LOT 1 OF SECTION 2 AND PART OF GOVERNMENT LOTS 2 AND 3 OF SECTION 1, TOWNSHIP 66 SOUTH, RANGE 32 EAST, HAVING REAL ESTATE NUMBER 00328520-000000; PROVIDING FOR THE CONDITIONS AND REQUIREMENTS OF DEVELOPMENT; PROVIDING FOR RECORDATION IN THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA; PROVIDING FOR TRANSMITTAL TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Marathon, Florida (the "City") and Sapodilla Holdings, LLC (the "Applicant") have previously entered into a Development Agreement which remains in full force and effect; and

WHEREAS, the Applicant has requested the City enter into an amendment to the Development Agreement (the "First Amendment") as provided for in Section 102.34 of the City's Land Development Regulations (the "LDRs"); and

WHEREAS, on the 20th day of August, 2012, the City of Marathon Planning Commission, and on the 28th day of August 2012 and the 11th day of September, 2012, the City of Marathon City Council, conducted properly advertised public hearings regarding the request submitted by the Applicant for approval of the first amendment to the Development Agreement; and

WHEREAS, the purpose of the Development Agreement is to allow the Applicant to redevelop the Coconut Cay Resort and Marina (Sapodilla Holdings, LLC),

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 First Amendment to the Development Agreement between the City and the Applicant, a copy of which is attached hereto as Exhibit "A," is hereby approved. The Mayor is authorized to execute the Third Amendment to the Development Agreement on behalf of the City.


Section 3. This Amendment to the Development Agreement for Sapodilla Holdings, LLC will be recorded by the City in the public records of Monroe County, Florida (Clerk of Courts) within thirty days of the effective date.

Section 4. This Amendment to the Development Agreement for Sapodilla Holdings, LLC shall be transmitted to the State Department of Economic Opportunity for their review under guidance offered in Chapters 163 and 380, F. S.

Section 5. This resolution shall take effect immediately upon approval by the State Department of Economic Opportunity.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 11th DAY OF SEPTEMBER, 2012.

THE CITY OF MARATHON, FLORIDA



Pete Worthington, Mayor

AYES: Snead, Cinque, Keating, Ramsay, Worthington
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

Document prepared by:
James Ruyve
7196 Evercres, Hwy
Marathon, FL 33050

AMENDMENT 1 TO THE DEVELOPMENT AGREEMENT
FOR
COCONUT CAY RESORT AND MARINA

Doc# 1903178
Bk# 2593 Pg# 1822

THIS AGREEMENT is entered into by and between SAPODILLA HOLDINGS, L.L.C., a Florida limited liability company, (herein referred to as "Owner"), and the CITY OF MARATHON, a Florida municipal corporation (herein referred to as "City"), pursuant to Chapter 102, Article 8 of the Land Development Regulations (LDRs), and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2004), and is binding on the "Effective Date" set forth herein.

WITNESSETH:

WHEREAS, Sapodilla Holdings, L.L.C., a Florida limited liability company, is the Owner of approximately two point nine (2.9) contiguous acres of land (herein referred to as "Property") in the corporate limits of the City of Marathon, Florida; and

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

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

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

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

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

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

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

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

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

WHEREAS, as part of the Property redevelopment, the Owner will be required to connect to the City of Marathon Sewer System; and

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

WHEREAS, the proposed redevelopment is permissible and appropriate for the City’s Comprehensive Plan Future Land Use designations of Mixed Use - Commercial applicable to the Property, which allow Hotel/Motel Use, and for the Suburban Commercial designation in the City’s Comprehensive Plan adopted on March 8, 2005; and

WHEREAS, the Property is zoned Mixed Use; and

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

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

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

- (b) To protect shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.
- (c) To protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example,

tropical hammocks and pinelands), dune ridges and beaches, wildlife and their habitat.

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

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

...

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

...

2. Sewage collection and disposal facilities; and

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

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

WHEREAS, the City Planning Commission has held a public hearing on August 20, 2012, to consider this Agreement, and the City Council of the City has held public hearings on August 28, 2012, and September 11, 2012, to consider this Agreement; and

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

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

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

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

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

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

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

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

5. **“Transient Dwelling”** shall refer to the dwelling unit type defined in Chapter 108, Article 3 of the LDRs and defined in Florida Statutes 509.013(4)(a).

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

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

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

9. **“Land Development Regulations”** shall mean the LDRs in existence on the Effective Date of this Agreement.

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

11. **“Property”** shall refer to one or more of the parcels of real property located in the City that are the subject of this Agreement as set forth in C. 1. of this Agreement.

12. **“Public facilities”** means those facilities identified in Section 163.3221, Florida Statutes (2004), and as set forth in Section C. 6. of this Agreement.

C. TERMS OF AGREEMENT.

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

a. **Ownership.** The Owner of Coconut Cay Resort and Marina as of the date of execution of this Agreement is Sapodilla Holdings, L.L.C., a Florida limited liability

company whose address is 7196 Overseas Highway, Marathon, Florida 33050. There are no other legal or equitable owners of Coconut Cay Resort and Marina known to the parties of this Agreement.

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

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

a. **Duration of Agreement.** This Agreement shall remain in effect for a period of thirty-six months (3 years), commencing on the Effective Date set forth below. However, should Sapodilla Holdings LLC / Coconut Cay Resort request, be granted and accept Transient Residential Units TRUs from the City, then conditional time constraints of the TRU Ordinance shall apply.

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

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

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

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

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

a. **Approval of Conceptual Site Plan; Minor Revisions; Final Site Plan.** Redevelopment on the Property shall be 42 dwelling units, together with 200 feet of commercial space, and accessory structures and facilities as described in this Agreement and depicted on the Conceptual Site Plan for Coconut Cay Resort and Marina, dated June 30, 2004, which was prepared by deHaas Consulting and Design / Keys Engineering Services Inc., of Islamorada, Florida, and are attached hereto as Exhibit B. The Conceptual Site Plan hereby approved by the City, and all subsequent site plans, site plan approvals and building permits shall substantially comply with this Conceptual Site Plan; provided, however, that the final site plan may deviate from the Conceptual Site Plan to accommodate: (1) refinements to the development plan including minor shifts in location; or (2) modifications that are necessary to meet regulatory requirements imposed by any other governmental entity. Except as provided herein, the setback, open space, landscape bufferyard, parking and building height requirements established in City Code shall not be varied.

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

c. **Density under this Agreement.** Pursuant to the LDRs of the City Code and any applicable provisions in the City's Comprehensive Plan which was adopted on January 11, 2005, Owner is entitled to redevelop 22 TRU entitlements and to acquire by appropriate means 20 additional TRUs on the Property.

d. **Conceptual Site Plan.** The redevelopment of 22 TRU entitlements and to acquire by appropriate means 20 additional TRUs on the Property as depicted on the Conceptual Site Plan, is approved by this Agreement.

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

f. **Commercial Floor Area Approved Under This Agreement.** Pursuant to Chapter 102, Article 23 of the LDRs, the Owner is vested to reconstruct a total of 634 square feet of commercial floor area or non-residential development on the Property, without being subject to nonresidential BPAS requirements. Total commercial floor area redevelopment on the Property approved by this Agreement is 634 square feet, as depicted on the Conceptual Site Plan. This commercial redevelopment will be used as accessory uses to the dwelling unit redevelopment of the Property.

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

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

a. **Building Height.** Buildings may be constructed to the maximum height as provided in the Comprehensive Plan, or to the maximum height allowed under the City's Comprehensive Plan adopted on March 8, 2005, whichever may be applicable at the time of building permit application submittal.

b. **Setbacks.** The City acknowledges that there is no undisturbed or unaltered shoreline on the Property. Pursuant to Chapter 106,28 Water Resource and Wetland Buffers, a twenty (20) foot setback from the mean high water line ("MHWL") shall be required for all principal structures. The same Section establishes provisions for a limited amount of non-enclosed detached outdoor recreational accessory structures that may be developed within the shoreline setback. Pursuant to City Code/Land Development Regulations, Chapter 103, Article 3 establishes that the Mixed Use district requires a minimum 5 foot side yard setback on one side property line with a combined total of 15 feet for both side yards. With the recordation of the 'Unity of Title', internal setbacks are not required other than for fire safety.

c. **Utilities, Lighting, and Signage.** Utilities, lighting, and signage shall comply with all applicable requirements of the City Code, including the waterfront lighting criteria in Chapter 107, Article 6 and elsewhere in the LDRs . The Owner shall install all utilities underground where practicable and shall screen all utility facilities. The Owner shall utilize shaded light sources to illuminate all signs, facades, buildings, parking and loading areas, and shall arrange such lighting to eliminate glare to parcels lying outside the Property. No intermittent or flashing lights or flashing signs shall be allowed.

d. **Landscaping.** The Owner shall utilize best installation and maintenance practices for landscaping throughout the Property, and shall guarantee one hundred percent (100%) survival of all owner-installed plants for one (1) year. Seventy percent (70%) of

all required plants installed shall be Florida Keys native plants that are suitable for the site conditions and are a species typical of the Middle Keys. The Owner shall remove all Category I invasive exotic plants on the Property. The Owner shall provide all required landscaping in accordance with Chapter 107, Article 8 of the LDRs.

e. Parking. The redevelopment shall comply with the parking criteria as required by Chapter 107, Article 6 of the LDRs. The Owner shall provide no fewer than one (1) parking spaces per dwelling unit, a total of 11 (eleven) parking spaces for the marina live-aboard slips, and 9 (nine) onsite guest parking spaces for a total of 62 parking spaces.

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

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

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

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

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

i. Open Space Ratio. Pursuant to Chapter 106, Article 9 a minimum of 20% open space is required. The Owner will maintain a minimum of 20% open space, unless otherwise provided under applicable provisions of the City's Comprehensive Plan adopted on March 8, 2005.

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

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

l. Schematics. All redeveloped residential units constructed on the Property shall adhere to one of the architectural styles and one of the representative floor plans depicted in the schematics in Attachment 1, incorporated by reference herein.

m. Permits from Other Regulatory Entities. The Owner shall obtain all necessary permits from other local, regional, State and federal regulatory entities and provide copies of each to the City within a reasonable time after such permits are issued. A log of the permits and approvals required for the Project and the status of each is incorporated herein as Exhibit C.

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

o. Storm water Management. The development shall comply with the storm water management criteria in Chapter 107, Article 11 and as ultimately must be approved by the SFWMD.

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

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

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

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

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

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

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

f. **Wastewater.** Wastewater treatment shall be provided by permitted hookup to City Of Marathon Central Sewer system as required.

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

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

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

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

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

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

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

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

3. **Transient Residential Units not in possession by Sapodilla Holdings, LLC / Coconut Cay Resort.** The Applicant shall obtain twenty (20) transient residential units (TRUs) in excess of what has been legally established on the parcels, to be transferred onto the property via the Transfer of Building Rights (TBR's), Conditional Redevelopment Units (CRU's), or any other legally established process prior to building permit issuance. **THE GRANTING OF THIS CONDITIONAL USE DEVELOPMENT ORDER DOES NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY TRANSIENT DEVELOPMENT RIGHTS OR UNITS.**

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

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

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

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

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

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

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

12. **Compliance with Permits, Terms, Conditions, and Restrictions not identified herein.** The failure of this Agreement to address a particular permit condition, term, or restriction shall not relieve the Owner of the necessity of complying with the laws governing said permitting requirements, conditions, terms, or restrictions.

13. **Governing Laws.**

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

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

c. **State or Federal Laws.** If State or federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this Agreement, this Agreement shall be modified as is necessary to comply with the relevant state or federal laws. However, this Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common or statutory law.

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

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

b. **Renewal.** As provided in Section 163.3229, Florida Statutes (2004), this Agreement may be renewed by the mutual consent of the parties, subject to the following public hearing requirements in Section 163.3225, Florida Statutes (2004): the City shall conduct at least two (2) public hearings, one of which may be held by the local planning agency at the option of the City. Notice of intent to consider renewal of the Agreement shall be advertised approximately seven (7) days before each public hearing in a newspaper of general circulation and readership in Monroe County, Florida, and shall be mailed to all affected property owners before the first public hearing. The day, time, and place at which the second

public hearing will be held shall be announced at the first public hearing. The notice shall specify the location of the land subject to the Agreement; the development uses on the Property, the population densities, and the building intensities and height and shall specify a place where a copy of the Agreement can be obtained.

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

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

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

15. Breach of Agreement and Cure Provisions.

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

b. **Written Notice on the City.** If the Owner concludes that there has been a material breach in the terms and conditions of this Agreement, the Owner shall serve written notice on the City, identifying the term or condition the Owner contends has been materially breached and providing the City thirty (30) days from the date of receipt of the notice to cure the breach. The following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the City, shall be considered a material breach of this Agreement: (a) failure to comply with the provisions of this Agreement, or (b) failure to timely process any application for site plan approval or other development approval required to be issued by the City for the development authorized by this Agreement.

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

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

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

service with a signed receipt required. Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

TO THE OWNER:

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

TO THE CITY:

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

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

John R. Herin, Jr., Esquire
Gray-Robinson, P.A.
401 East Las Olas Boulevard, Suite 1850
P.O. Box 2328 (33303-9998)
Fort Lauderdale, Florida 33301
Telephone: (954) 761-7500

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

18. **Enforcement.** In accordance with Section 163.3243, Florida Statutes (2004), any party to this Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes (2004), or the state land planning agency may file an action for injunctive relief in the circuit court of Monroe County, Florida, to enforce the terms of this Agreement or to challenge the compliance of this Agreement with the provisions of Sections 163.3220-163.3243, Florida Statutes (2004).

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

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

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

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

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

24. **Litigation; Attorney's Fees; Venue; Waiver of Right to Jury Trial.** In the event of any litigation arising out of this Agreement between the City and Owner, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorney's fees. This includes, but is not limited to, reimbursement for such reasonable attorneys' fees and costs incurred with respect to any appellate, bankruptcy, post-judgment, or trial proceedings related to this Agreement. Venue for any legal proceeding arising out of this Agreement shall be in Monroe County, Florida. The parties to this Agreement waive the right to a jury trial in any litigation arising out of or initiated under this Agreement.

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

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

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

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

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

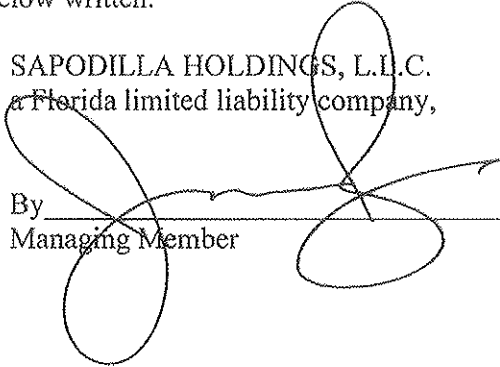
30. **Date of Agreement.** The date of this Agreement is the date the last party signs and acknowledges this Agreement.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

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

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

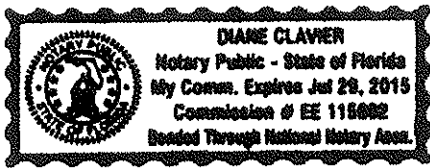
By _____
Managing Member



9/17/12
Date

STATE OF FLORIDA
COUNTY OF DADE

¹² The foregoing instrument was acknowledged before me on this 17 day of September
2008, by James Rhyne as President of Sapodilla Holdings, L.L.C. who is personally
known to me or who produced FL ID as identification, and who did/did not
take an oath.



Diane Clavier
Notary Public, State of Florida At Large

My commission expires: 7/29/15

CITY OF MARATHON

By Pete Worthington
Pete Worthington, MAYOR

9-17-12
Date

ATTEST:

Diane Clavier
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

[Signature]
CITY ATTORNEY

EXHIBITS TO COCONUT CAY RESORT AND MARINA
DEVELOPMENT AGREEMENT

ATTACHMENT 1

SCHEMATIC FOR UNITS

