

CITY OF MARATHON, FLORIDA  
RESOLUTION 2013-02

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY BONEFISH PROPERTIES, LLC FOR A DEVELOPMENT AGREEMENT, PURSUANT TO CHAPTER 102, ARTICLE 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS ENTITLED "DEVELOPMENT AGREEMENTS", AUTHORIZING THE REDEVELOPMENT OF THE EXISTING 20 UNIT MOTEL TO A 12 UNIT MOTEL WITH 13 RV UNIT SPACES FOR PROPERTIES LOCATED AT 12565 OVERSEAS HIGHWAY, OCEAN, NEAREST MILE MARKER 53, WHICH IS LEGALLY DESCRIBED AS SET FORTH IN EXHIBIT "A"; PROVIDING FOR THE CONDITIONS AND REQUIREMENTS OF DEVELOPMENT, INCLUDING, BUT NOT LIMITED TO, BUFFERS, BUILDING HEIGHTS, SETBACKS, AND OTHER REQUIREMENTS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Bonefish Properties, LLC (the "Owner") is the current owner of the properties located at 12565 Overseas Highway, Marathon, Florida, having RE Nos. 00100350-000000, 00100350-000100, 00100350-000200 and 100260-000501 (the "Property"); and

WHEREAS, on the 19th day of November, 2012, the City of Marathon Planning Commission (the "Commission") and on the 27th day of November, 2012, the City Council (the "Council") conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by the Owner, for a Development Agreement (the "Development Agreement") pursuant to the Marathon Land Development Regulations (the "LDRs"); and

WHEREAS, the purpose of the Development Agreement is to allow the Applicant to redevelop the existing property to include a 25-unit transient lodging facility with 13 transient RV units and 12 hotel units (the "Proposed Use") at the Property.

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

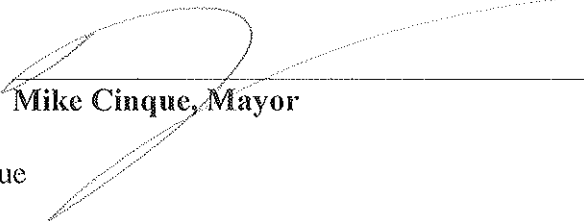
**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** The Development Agreement between the City and Owner, a copy of which is attached hereto as Exhibit "A," is hereby approved. The Mayor is authorized to execute the Development Agreement 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 8<sup>th</sup> DAY OF JANUARY, 2013.**

**THE CITY OF MARATHON, FLORIDA**



\_\_\_\_\_  
**Mike Cinque, Mayor**

AYES: Bull, Keating, Ramsay, Snead, 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:**



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

Prepared by and return to:

(Space Reserved for Recording Information)

City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050

RE No.: 00100350-000000  
00100350-000100  
00100350-000200  
& 100260-000501

**Development Agreement for  
Bonfish Properties, LLC  
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 Bonfish Properties, LLC, a Florida limited liability company (herein referred to as “Owner”), pursuant to *Chapter 102, Article 8* of the Land Development Regulations of the City of Marathon ( the “LDRs”), and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, *Florida Statutes*, and is binding on the parties as of the effective date as set forth herein.

**Witnesseth:**

**Whereas**, Owner is the owner of the real property located at 12565 Overseas Highway in Marathon, Florida at approximate mile marker 53.5, described in Exhibit “1” hereto (the “Property”).

**Whereas**, the Property consists of three parcels identified by RE No.: 00100350-000000, 00100350-000100, 00100350-000200, and 100260-000501; and

**Whereas**, the Property is designated on the City’s Future Land Use Map (FLUM) as Mixed Use Commercial (MUC), and is zoned as Mixed Use (MU), which land use designation and zoning allow for the uses proposed herein with conditional use approval; and

**Whereas**, the City has recognized existing development on the Property shown in Exhibit “2” consisting of 20 Transient Rental (Motel) Units, approximately 2,327 square feet of Commercial Floor Area (Dive Shop, Storage, Tiki), <sup>two</sup>~~one~~ single family residence, approximately 2,370 square feet of pool / pool deck area, and approximately 270 linear feet of marginal dock area; and

*mf*  
*pparrish*  
4/18/2013

**Whereas**, Owner desires to re-develop the Property with the demolition of six (6) motel buildings housing sixteen (16) individual motel rooms and the existing 578 square foot tiki structure; and the construction of one (1) two-story building housing eight (8) individual motel rooms; construction of thirteen (13) Transient RV Unit sites, and construction of a 600 square foot bathhouse facility, while leaving intact the commercial space (dive shop), storage, pool, single family residence, and dock space; and

**Whereas**, Owner will need to transfer five (5) additional transient units to the Property pursuant to Section 107.14 of the LDRs relating to the transfer of building rights from one property to another; and

**Whereas**, the City Planning Commission held a public hearing on November 19, 2012, to consider and unanimously recommend approval of this Agreement; and

**Whereas**, the City Council held public hearings on the November 27, 2012 and December 11, 2012 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 property in the City, and will further the health, safety and welfare of the residents of the City.

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

I. Recitals.

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

II. Purposes of Agreement.

The purposes of this Agreement are as Follows:

- A. To encourage Redevelopment of the Property consistent with Objective 1-3.1 of the City's Comprehensive Plan;
- B. To secure the ability to redevelop the site by replacing sixteen (16) single room transient motel units currently existing on the property with a new building housing eight (8) single room transient motel units, thirteen (13) Transient RV site, and a 600 square foot bathhouse facility;

### 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 Statutes, 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.

Owner is the owner of the Property, which Property is the subject of this Agreement, as described in Exhibit "1". There are no other legal or equitable owners of the subject property known to the parties to this Agreement.

#### B. Duration of Agreement.

The Owner shall have ninety (90) days from the Effective Date of this Agreement to submit a permit application to obtain the building permits for the first phase of site re-development and thirty-six (36) months from the Effective Date of this Agreement to obtain Certificates of Occupancy for the two approved phases and all components of the project under this Agreement.

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; provided, however, that delays in the adherence to the schedule of construction that are occasioned by Acts of God or circumstances outside the control of the City or Owner shall not be grounds for termination so long as the Owner demonstrates reasonable progress in the schedule of construction as shown in the Annual Report(s) due hereunder.

#### C. Permitted Uses.

1. The Development permitted on the Property shall consist of those uses set forth herein, as identified on the conceptual site plan attached hereto as Exhibit "3", and incorporated herein by reference. The permitted uses are as follows:

- i. Transient Units: 8 Single Room Transient Motel Units (one building) and 13 RV Sites;

- ii. Commercial Floor Area: 600 Square Foot Bathhouse Facility; and
- iii. Existing Development to Remain:

*MC* 2 X Single Family Residence  
*pparrish* 1,748 Square Foot Commercial Building (Dive Shop & Storage)  
*4/18/2013* 2,370 Square Foot Pool and Pool Deck  
1,748 Linear Feet Marginal Dock Space

2. For the duration of this Agreement, the Parties agree that any and all of the approved redevelopment shall adhere to, conform to, and be controlled by this Agreement, the Exhibits attached hereto and incorporated by reference, the LDRs and the Comprehensive Plan governing the redevelopment of the Property on the Effective Date of this Agreement. In the event that all or a portion of the existing or authorized development subject to this Agreement should be destroyed by storm, fire or other disaster, the Owner, it's grantees, successors, or assigns shall have the right to rebuild or repair the affected structure(s) and reinitiate the prior approved use so long as such development is in compliance with this Agreement.

3. The following documents are attached hereto and incorporated by reference, showing the Property Boundary and Existing and Proposed Uses:

Exhibit 1: Survey

Exhibit 2: Existing Site Plan

Exhibit 3: Approved Project Site Plan

4. Maximum Building Height shall be thirty-seven (37) feet, as provided in Section 107.40 of the LDRs, with the exception of any architectural features depicted on the conceptual site plan, which will require approval by the Director.

5. The Owner shall execute a binding Unity of Title combining the three upland parcels of the Property described above for the purposes of redevelopment authorized under this Agreement. The Owner shall provide the proposed binding instrument in a form acceptable to the City within thirty (30) days after the execution of this Agreement. Within fifteen (15) days thereafter, the City shall advise the Owner if the proposed Unity of Title is acceptable as to form and substance. Subsequently, the Owner shall revise the Unity of Title (if necessary) and shall record the instrument in the Public Records of Monroe County, Florida, at its sole expense, within thirty (30) days after the date thereof. The Owner shall provide copies of the recorded instrument, showing the book and page where recorded, to the City at 9805 Overseas Highway, Marathon, Florida 33050 (or at such place as otherwise designated in writing by the City).

6. The Owner shall execute and record in the public records of Monroe County a Declaration of Covenants and Restrictions in a form acceptable to the City ensuring that

it shall not seek and has no legal right to file for homestead exemption for the Transient Units constructed on the property; and which shall require the occupants of all Transient Units on the property to comply with Hurricane Evacuation Requirements set forth in Policy 1-2.2.1 of the Future Land Use Element of City's Comprehensive Plan, in effect or as amended.

#### D. Public Facilities

1. The Florida Keys Aqueduct Authority provides domestic potable water.
2. Electric Service is provided by the Florida Keys Electric Co-op.
3. Solid Waste Service is provided by Marathon Garbage Service.
4. Wastewater and sewage collection and disposal shall be by connection to the City's wastewater collection and treatment system.
5. Educational Facilities. The redevelopment of transient use as contemplated by this Agreement will not impact educational facilities.
6. Recreational Facilities. The Property includes onsite recreational facilities for visitors and guests. Therefore, redevelopment of the Property will have no impact on public recreation facilities.
7. Stormwater. A Stormwater Management System which meets all applicable local, state and federal requirements shall be constructed onsite as part of the Site Redevelopment. 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's Near-shore Waters.
8. Any increased impacts on Public Facilities or Public Services attributable to each unit of the development, and the cost of capital improvement 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 City Impact Fees required by the LDRs then in effect, as well as by payment by owner of any applicable utility system Development Fees. In addition, Owner agrees to be subject to any reasonable impact fee ordinance adopted by the City within twenty-four (24) months after the Effective Date of the Agreement, providing such ordinance applies equally and uniformly to all redevelopment in the City.
9. Fire Protection. The Owner shall provide such fire protection facilities as required by the Life Safety Code administered by the City Fire Department.

E. Local Development Permits.

The following is a list of all Development Permits approved or needed to be obtained for the redevelopment of the Property as specified and requested in this Agreement:

1. This Development Agreement.
2. Conditional Use Approval.
3. The Final Site Plan, Landscape Plan, Drainage Plan, Building Elevations and Floor Plan approvals.
4. Building and related demolition and 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.
5. Federal, State, Regional, and Local Permits for Stormwater runoff.
6. City approval of the transfer of five (5) transient units to the Property.

Nothing in this Agreement shall preclude the parties from applying additional conditions, by mutual agreement, during Final Site Plan review or permitting.

F. Finding of Consistency.

By Entering into this Agreement, the City finds that the redevelopment permitted or proposed herein is consistent with and furthers the City's Comprehensive Plan, applicable LDRs and the Principles for Guiding Development set forth at Section 380.0552(7), *Florida Statutes*.

G. Redevelopment and Replacement of BPAS Exempt Units and Square Footage

*MP*  
*ppullen*  
*4/8/2013*  
The Parties acknowledge that there existed on the Property a total twenty (20) transient units, one (1) single family residence, 2,327 square feet of commercial space, all of which are lawfully established and BPAS exempt, and 1,748 linear feet of marginal dock space. The City acknowledges that, by the covenants and terms of this Agreement, the Owner may: redevelop 16 transient motel units into 1 two story building housing eight (8) single room transient motel units and thirteen (13) RV transient unit spaces, and the requested 600 square feet of commercial space. All other residential or commercial space will remain in place as it currently exists.



H. 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 Redevelopment, 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 as provided for in the City's Comprehensive Plan, LDRs or the Marathon City Code. Such reservations or rededications may include, by way of example, easements necessary for the provision of stormwater, utility, and wastewater services to the Property.

I. Mutual Cooperation.

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

J. 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 LDRs 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.

K. 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.

L. 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 LDRs 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.

#### M. 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.

N. 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.

O. 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:

Mark Fler  
Bonfish Properties, LLC  
12565 Overseas Highway  
Marathon, FL 33050  
(305) 942 1580  
fleurme@yahoo.com

TO THE CITY:

Roger T. Hernstadt  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
(305) 743-0033

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

John R. Herin, Jr., Esq.  
City Attorney  
GrayRobinson, P.A.  
401 East Las Olas Boulevard, Suite 1850  
Fort Lauderdale, Florida 33301

P. 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. Each Annual Report shall be presented to the Planning Commission by the Owner or authorized agent.

Q. Enforcement.

In addition to any other remedies available at law, 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*.

R. Binding Effect.

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

S. Assignment.

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

T. 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.

U. 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.

V. 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.

W. 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.

X. Use of Singular and Plural.

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

Y. 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.

Z. 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.

AA. 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.

BB. 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 Economic Opportunity, 107 Madison Street, Room 22, Tallahassee, Florida 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.

CC. 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:

OWNER  
Bonefish Properties, LLC

*Mark Fleen*

By: Mark Fleen, its President

WITNESSES:

*JoAnn N. Wagner*  
Signature

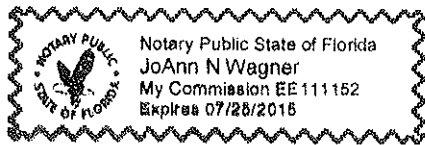
JoAnn N. Wagner  
Name of witness (printed or typed)

*William L. Walton*  
Signature

William L. Walton  
Name of witness (printed or typed)

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me on this 16<sup>th</sup> day of January, 2013, by Mark Fleen, LLC, of Bonefish Properties, LLC who is personally known to me or who produced \_\_\_\_\_ as identification, and who did/did not take an oath.



*JoAnn N. Wagner*  
Notary Public, State of Florida At Large  
My commission expires:

On the 8<sup>th</sup> day of January, 2013, The City Council of the City of Marathon approved this Agreement by Resolution No. 2013-02

ATTEST:

CITY OF MARATHON

*Diane Clavier*  
City Clerk

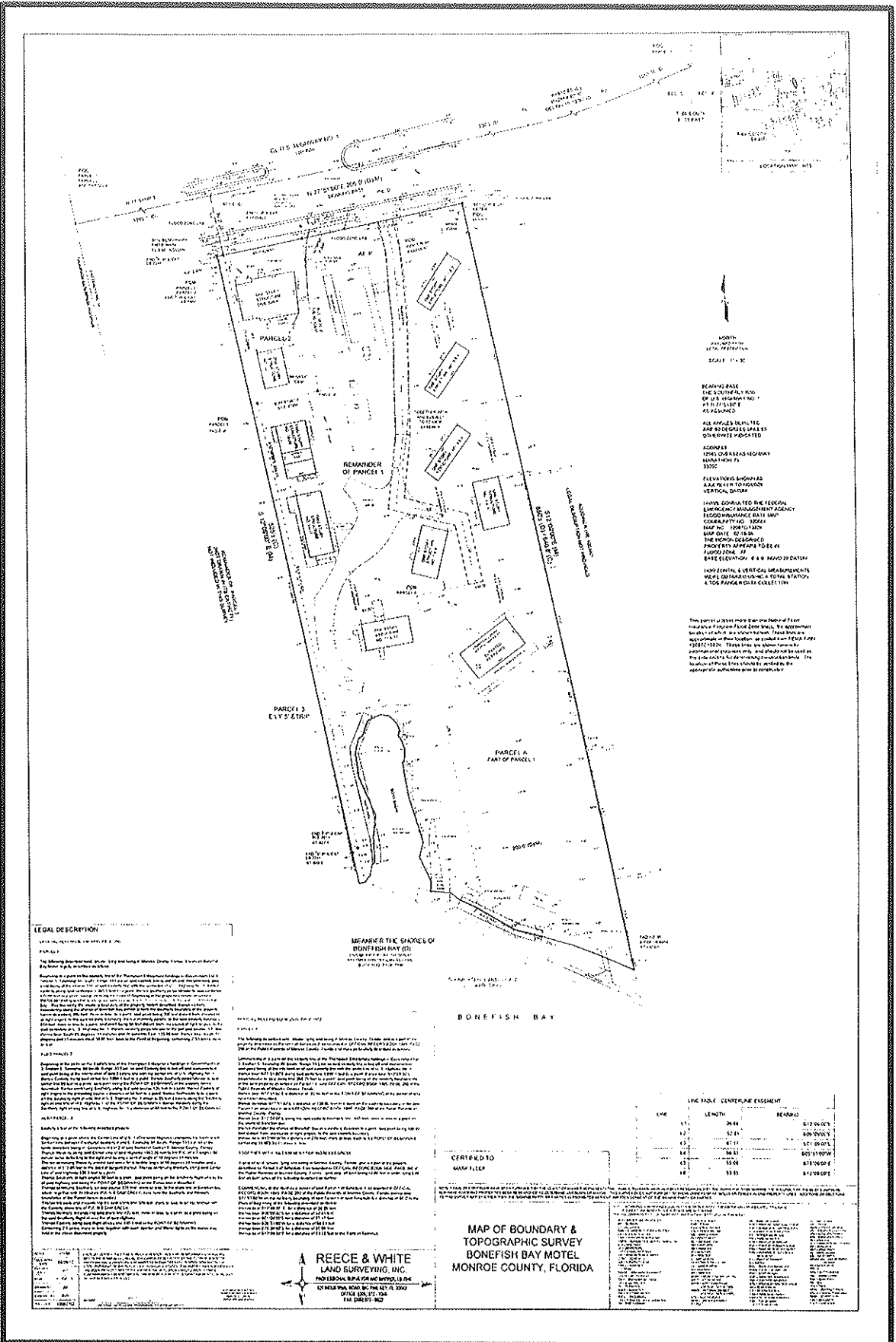
*Mike Cinque*  
Mike Cinque, Mayor

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

*[Signature]*  
City Attorney



EXHIBIT 1  
Survey of Property



NORTH  
ARROW  
SCALE 1"=30'

BEARING BASE  
DETERMINED FROM  
DEED RECORDS  
AT 1:11:10 P.M.  
ALL ANGLES  
WAS APPLIED  
AND 20 DEGREE  
CORRECTIONS  
WAS MADE TO  
ALL ANGLES  
AND 20 DEGREE  
CORRECTIONS  
WAS MADE TO  
ALL ANGLES  
AND 20 DEGREE  
CORRECTIONS

This plan is based on the State of Florida  
Survey of 1900. The approximate  
accuracy is as follows:  
ELEVATION: 1:50,000  
HORIZONTAL: 1:50,000  
PROPERTY APPEARING ON THIS  
PLAN IS NOT TO BE CONSIDERED  
AS A GUARANTEE OF THE  
ACCURACY OF THE DATA  
AND TO BE USED FOR  
ANY OTHER PURPOSE

**LEGAL DESCRIPTION**  
THE SURVEY AND MAP...  
FOR THE BONEFISH BAY MOTEL...  
MONROE COUNTY, FLORIDA

BEARING THE SHARES OF  
BONEFISH BAY...

LINE	LENGTH	BEARING
1-2	24.18	S 71° 00' 00" W
2-3	25.61	S 80° 00' 00" W
3-4	27.17	S 70° 00' 00" W
4-5	24.18	S 71° 00' 00" W
5-6	25.61	S 80° 00' 00" W
6-7	27.17	S 70° 00' 00" W

MAP OF BOUNDARY & TOPOGRAPHIC SURVEY  
BONEFISH BAY MOTEL  
MONROE COUNTY, FLORIDA

RECEE & WHITE  
LAND SURVEYING, INC.  
1015 PALM BLVD., SUITE 100  
DADE CITY, FLORIDA 34608

CERIFIED  
MAP FILED  
OFFICE OF THE COUNTY CLERK  
MONROE COUNTY, FLORIDA  
DATE: 05/21/2014  
TIME: 10:00 AM

EXHIBIT 2  
Existing Site Plan

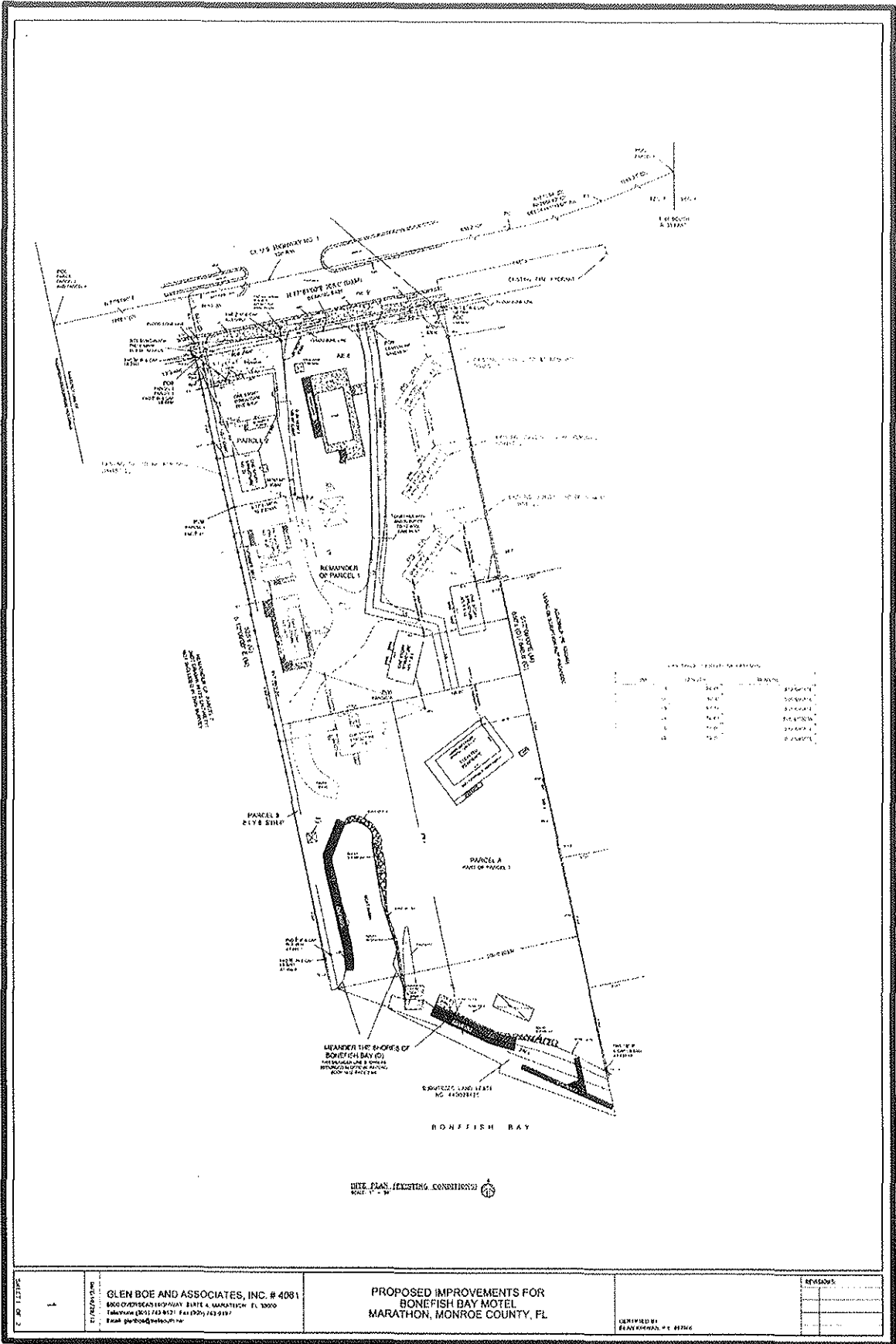
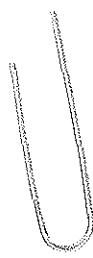


EXHIBIT 3  
Approved Project Site Plan





RECEIVED  
APR 8 2013  
BUILDING

File 2013-02

Receipt# 290249

AMY HEAVILIN  
CLERK OF COURT  
MONROE COUNTY  
500 WHITEHEAD STREET  
KEY WEST, FL  
33040

DUPLICATE RECEIPT

Printed: Apr 8 2013 1:56:45 PM

Doc#: 1927806 Pgs: 20  
Type: AGREEMENT  
Book: 2622 Pages: 378-397  
RECORDING \$ 171.50

Total \$ 171.50  
Check(s) Tendered \$ 171.50  
Balance \$ 0.00

CHECK Number  
2852 \$ 171.50

Total Documents: 1  
Total Fees: 1

Client Name GENERAL PUBLIC  
Filed By BONEFISH PROPERTYS  
Apr 8 2013 1:56:13 PM

Cashier: Tammy Marciel