



MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

To: Development Review Committee; and
Emily Schemper, AICP, CFM, Senior Director of Planning & Environmental Resources

From: Brad Stein, AICP, Planning and Development Review Manager

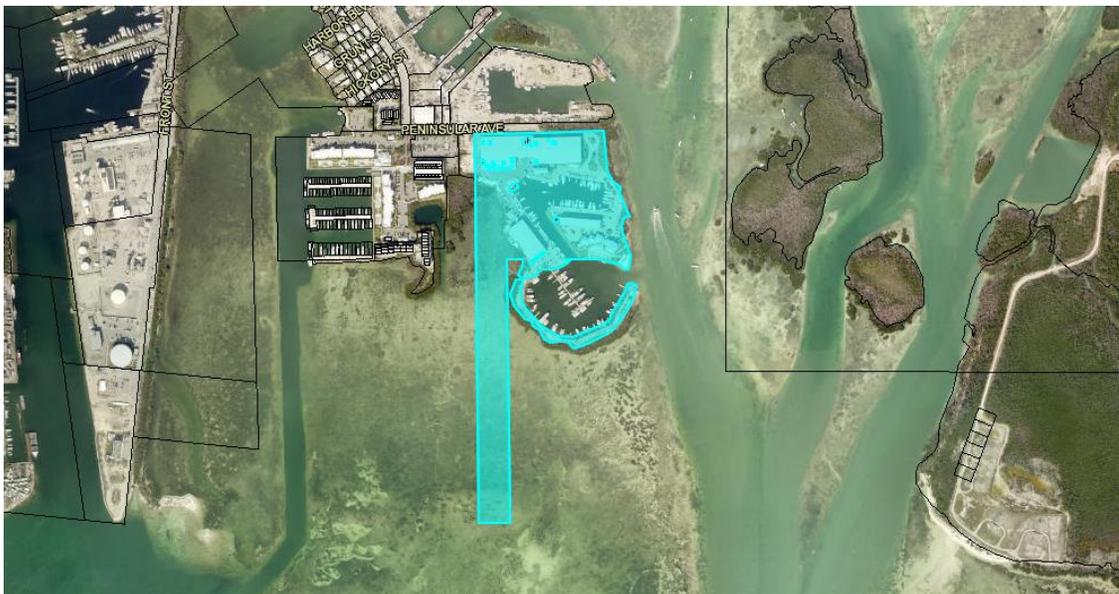
Date: April 15, 2021

Subject: *Request for a Development Agreement between Monroe County, Florida and SH Marinas 6000, LLC. The requested agreement relates to the proposed redevelopment of Stock Island Harbor Yacht Club to include one hundred and thirty-one (131) attached residential dwelling units to be utilized as vacation rentals and up to sixty-six (66) transient hotel dwelling units. No structures will be higher than 40 feet. The subject property is described as a parcel of land in Section 36, Township 67 South, Range 25 East, Stock Island, Monroe County, Florida, having Parcel ID number 00127480-000000 (File #2020-047)*

Meeting: April 27, 2021

1 I REQUEST:

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3 The requested development agreement involves the partial redevelopment of the Stock Island
4 Harbor Yacht Club (SIHYC) formerly known as the Key West Harbor Yacht Club. The
5 proposed development will include up to one hundred and thirty-one (131) attached residential
6 dwelling units to be utilized as vacation rentals and up to sixty-six (66) transient hotel dwelling
7 units at 6000 Peninsular Ave, Stock Island, Florida.
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10 Subject Property highlighted in blue (Aerial dated 2018)

1 **II BACKGROUND INFORMATION:**

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3 **Address:** 6000 Peninsular Avenue, Stock Island, mile marker 5.5 (Atlantic Ocean side of US
4 1)

5 **Property Description:** The subject property is described as a parcel of land in Section 36,
6 Township 67 East, Range 25 South, Stock Island, Monroe County, Florida

7 **Parcel ID Number:** 00127480-000000

8 **Property Owner/Applicant:** SH Marinas 6000, LLC

9 **Agent:** Bart Smith

10 **Size of Site:** 13.14 acres of upland and 18.9 acres of submerged land.

11 **Land Use District:** Mixed Use (MU)

12 **Future Land Use Map (FLUM) Designation:** Mixed Use/Commercial (MC)

13 **Tier Designation:** III Infill Area

14 **Existing Use:** Marina, light industrial, commercial retail, residential and boat storage

15 **Existing Vegetation / Habitat:** Predominately developed and scarified, with mangrove fringe
16 along water on outer perimeter shorelines

17 **Community Character of Immediate Vicinity:** The property is surrounded with a mix of
18 uses including marina, commercial retail, commercial fishing, industrial use and residential
19 dwellings

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21 **III RELEVANT PRIOR COUNTY ACTIONS:**

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23 On December 1, 2006, the Planning & Environmental Resources Department issued a Letter
24 of Development Rights Determination (LDRD) providing the amount of lawfully-established
25 nonresidential floor area and dwelling units on the subject property. (Planning Department
26 File #26112)
27 Clip

Lawfully-Established Non-residential Floor Area:

<i>Building</i>	<i>RE Number</i>	<i>Existing Floor Area</i>	<i>Exempt Floor Area</i>
Two-Story CBS Building	00127470.000000	3,000 ft ²	3,000 ft ²
Attached Metal Buildings	00127480.000000	5,303 ft ²	5,303 ft ²
One-Story CBS Shed	00127480.000000	1,023 ft ²	1,023 ft ²
CBS Fish House	00127480.000000	4,813 ft ²	4,813 ft ²
Utility Shed	00127480.000000	240 ft ²	240 ft ²
Utility Shed	00127480.000000	240 ft ²	240 ft ²
Utility Shed	00127480.000000	216 ft ²	216 ft ²
Utility Shed	00127480.000000	336 ft ²	336 ft ²
Utility Shed	00127480.000000	200 ft ²	200 ft ²
Canopy	00127480.000000	966 ft ² (footprint)	0 ft ^{2*}
Canopy	00127480.000000	2,809 ft ² (footprint)	0 ft ^{2*}
total		19,146 ft²	15,371 ft²

* Pursuant to Administrative Interpretation No. 03-123 and MCC Sec. 9.5-124.2(d), canopies permitted before the adoption of NROGO may not be enclosed or converted to nonresidential

floor area without a NROGO allocation. The 966 ft² and 2,809 ft² canopies may be replaced by new canopies, but not enclosed or converted to nonresidential floor area without a NROGO allocation.

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Lawfully-Established Residential Dwelling Units:

<i>Building</i>	<i>RE Number</i>	<i>Existing Dwelling Units</i>	<i>Exempt Dwelling Units</i>
Two-Story CBS Residence	00127470.000100	2 units	2 units
One-Story CBS Residence	00127470.000100	1 unit	1 unit
Mobile Home	00127480.000000	1 unit	1 unit
Mobile Home	00127480.000000	1 unit	1 unit
total		5 units	5 units
Live-Aboard Vessels	n/a	n/a	50 vessels*
total		n/a	50 vessels

* Live-aboard vessels are considered as dwelling units for density purposes. A live-aboard vessel may be deemed permanent or transient, depending on the nature of how the live-aboard vessel's wet slip has been lawfully used. However, a live-aboard vessel may only be replaced by another live-aboard vessel and thereby cannot be transferred upland.

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In 2007, Key West Marina Investments received approval for an amendment to the property's major conditional use permit in order to redevelop the existing marina. The approval was memorialized in Planning Commission in Resolution #P11-07, recorded in the official records of Monroe County on May 25, 2007. (Planning Department File #26093)

In addition, in 2007, Key West Marina Investments concurrently received approval for a variance to the off-street parking requirements in order to carry out the scope of work for the major conditional use permit. The approval was memorialized in Planning Commission Resolution #P10-07. (Planning Department File #27009)

On September 13, 2007, a minor deviation to the major conditional use permit was approved revising the architectural details and expanding the footprint of the ship store approved under Resolution #P11-07. The deviation increased the total nonresidential floor area of the ship store by 1,809 SF to a total floor area of 3,051 SF. The ship store was completed under Building Permit #071-1987 and received its Certificate of Occupancy on June 20, 2008.

On April 21, 2008, a minor deviation to the major conditional use permit was approved revising the site plan to install a swimming pool between the attached market rate dwelling units and the clubhouse building. This swimming pool was completed under Building Permit #081-1336.

On September 15, 2008, a minor deviation to the major conditional use permit was approved revising the site plan to include a private 400 SF tiki hut/bar, a 355 SF bathroom facility building, and associated improvements at the end of the jetty in the southern portion of the parcel. The tiki bar and bathroom facilities were permitted under Building Permit #081-2671. (Planning Department File #28078)

On December 29, 2008, a minor deviation to the major conditional use was approved revising the site plan to include 3,000 SF of automobile storage in an area previously approved for two tiki structures under Resolution #P11-07 which were permitted but never built (Building

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1 Permit #071-2103); and a pergola connecting the approved clubhouse building to the attached
2 market rate dwelling units, which would serve as a covered walkway on the ground level and
3 a 580 SF covered balcony outdoor seating area for the clubhouse on the second level. A
4 building permit associated with the pergola was applied for, Building Permit Application #081-
5 3730, but it was never issued (void) and the pergola was never constructed. It is unknown if
6 the 3,000 SF area approved for automobile storage continues to be used as such at this time.
7 (Planning Department File #28096)
8

9 On April 30, 2014, the Planning Commission considered a proposed major conditional use
10 application to develop a new hotel building consisting of 74 transient residential units, a
11 rooftop pool, 2,500 square feet of hotel office space, 2,000 square feet of conference/meeting
12 space, a 50-seat rooftop poolside bar and modification to the clubhouse building. The Planning
13 Commission voted to approve the conditional use permit, with conditions that needed to be
14 addressed before the approval resolution was signed; however, the applicant at the time failed
15 to comply with the conditions imposed. Therefore, no development order or Planning
16 Commission resolution was issued.
17

18 19 IV REVIEW OF APPLICATION: 20

21 The review of development agreements is set forth in Chapter 110, Article V, Sections 110-
22 132 and 110-133 of the Monroe County Land Development Code (LDC). The BOCC has
23 authority to enter into a development agreement by resolution with any person having a legal
24 or equitable interest in real property located within the unincorporated areas of the county if,
25 the development agreement meets all of the requirements of the Florida Local Government
26 Development Agreement Act, F.S. §§ 163.3220—163.3243; provided, however, that the
27 duration of the development agreement shall not exceed ten (10) years, and any duration
28 specified in a development agreement shall supersede any conflicting duration otherwise
29 specified in the Land Development Code.
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31 The applicant is requesting the development agreement in conjunction with an associated Land
32 Use (Zoning) District amendment from Mixed Use to Destination Resort. All analysis has been
33 completed assuming the Zoning amendment is approved, and approval/effectiveness of the
34 Zoning change will be a condition of the development agreement's effectiveness.
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36 Pursuant to LDC Section 110-133(b)(1), *Requirements of a development agreement*, a
37 development agreement shall include the following:
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- 39 a) A legal description of the land subject to the agreement, and the names of its legal and
40 equitable owners:
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42 In the agreement, a full legal description is provided in Exhibit A. Ownership is described
43 on page 2, and provided in Exhibit B, providing special warranty deed showing ownership
44 by SH Marinas 6000, LLC of the property.
45

- 46 b) The duration of the agreement:

The duration is described in the agreement in Section III. Agreement Requirements, C. Duration of Agreement. The proposed duration is to remain in effect for ten (10) years from the “Effective Date” as defined herein, and may be extended by mutual consent of the Parties and approval at a public hearing.

- c) The development uses permitted on the land, including population densities, and building intensities and height:

The development uses permitted are described in the agreement in Section III. D. Permitted Uses.

Uses permitted are what is currently allowable within the DR Land Use (Zoning) District, as set forth in Monroe County LDC Section 130-81, for as of right uses, minor conditional uses and major conditional uses.

Density and intensity permitted under DR following the current LDC for uses proposed:

Land Use Intensity and Density Proposed by the Development Agreement

Land Use	FAR / Density	Size of Site	Max Allowed	Proposed by D.A.	Potential Used
Boat Barns (Light Industrial)	N/A	570,461 SF	N/A	122,064 SF Less boat barn "3"	0.0 %*
Commercial Retail (Low-intensity) Floor area from last approved deviation P11-07	0.25 FAR	570,461 SF	142,615 SF	11,874 SF Current	8.3%
Permanent Residential (Market-Rate)	Max Net 18 DU/buildable acre TDRs required	13.1 acres 10.5 buildable acres	189 units With TDRs	131 units	69.3%
Permanent Residential (Affordable)**	Max Net 18 DU/buildable acre	13.1 acres 10.5 buildable acres	189 units Deed restricted affordable	3 units	1.6 %***
Transient Residential (Hotel Rooms)	Max Net 25 DU/buildable acre TDRs required	13.1 acres 10.5 buildable acres	262 rooms With TDRs	66 rooms	25.2%
TOTAL					102.8%

* The total floor area of the existing boat barns does not exceed 50 percent of the net buildable area. Therefore, the floor area is not considered non-residential floor area and not subject to FAR under the regulations at the time these boat barns were approved.

** The site may utilize maximum net density for the affordable residential dwelling units without the use of TDRs pursuant to LDC Sec.130-1(a)(2).

1 ***Affordable units do not count against transient density and nonresidential intensity,
2 pursuant to LDC Sec.130-1(a)(5).
3

4 The development agreement specifically requests up to one hundred and thirty-one (131)
5 attached residential dwelling units, which are permitted to be utilized as vacation rental
6 units, and up to sixty-six (66) transient hotel dwelling units, operating as a vacation resort
7 including associated accessory uses. The total density and nonresidential floor area
8 intensity of the site is over by 2.8% with all the current uses on site and proposed
9 densities. A site plan was not submitted for review. The densities proposed would not
10 exceed the allowable quantities with a reduction in the existing nonresidential floor area or
11 a reduction in requested density.
12

13 The density proposed would require the use of Transfer of Development Rights (TDRs) to
14 use Maximum Net Density (max net) density standard. The Development Agreement
15 alludes that this site is deemed to have max net density without a requirement of TDRs.
16 Section I. Recitals G.7., and other sections throughout the proposed agreement mention
17 that the site currently has max net. The previous determination of the property being
18 deemed to have max net was an administrative interpretation from a previous planning
19 director. The issue of max net has been reviewed by the current Senior Director of Planning
20 and Environmental Resources and determined that the site is not deemed to have max net
21 and the proposed use of the existing liveaboard vessel density from the LDRD dated
22 December 1, 2006, which expressly states that a liveaboard can only be replaced by another
23 liveaboard and cannot be transferred upland, is not permitted.
24

25 It is recommended that all mentions of the use of max net without TDRs and any use of
26 liveaboard density as applicable to upland development be removed from the Development
27 Agreement. To be in compliance with Comprehensive Plan Policy 101.13.2, the applicant
28 must transfer in TDRs to make up the difference between allocated density and max net
29 density on the site.
30

31 **Policy 101.13.2**

32 The Maximum Net Density is the maximum density allowable with the use of
33 TDRs, and shall not exceed the maximum densities established in this Plan. TDRs
34 may be utilized to attain the density between the allocated density standard up to
35 the maximum net density standard. Deed restricted affordable dwelling units may
36 be developed up to the maximum net density without the use of TDRs. The
37 assignment of TDRs to Big Pine Key, No Name Key, and North Key Largo from
38 other areas of the County shall be prohibited.
39

40 The Comprehensive Plan does not provide for assigning max net density to a property
41 without TDRs.
42

43 Height is limited to the requirements set forth in LDC Section 131-2 and Comprehensive
44 Plan Policies 101.5.32 and 101.5.33, no structure shall be permitted to exceed 40 feet. Any
45 proposed new single family dwelling (detached dwelling unit) and multi-family dwelling
46 (attached dwelling unit) will not be permitted to exceed 38 feet in height; the amount of
47 the height exception shall be no greater than the amount of voluntary elevation above BFE;

1 and in no event shall a new building utilizing the height exception exceed two (2) habitable
2 floors, pursuant to LDC Section 131-2(b)(1). The “Hotel” portion of the development will
3 not be permitted to exceed 35 feet in height.
4

- 5 d) A description of public facilities that will service the development, including who shall
6 provide such facilities; the date any new facilities, if needed, will be constructed; and a
7 schedule to assure public facilities are available concurrent with the impacts of the
8 development:
9

10 A description of public facilities is stated in Section III. F. Public Facilities.

- 11
12 1. The Florida Keys Aqueduct Authority (“FKAA”) provides domestic potable water to
13 SIHYC. Excluding existing development that may already be metered, the FKAA will
14 provide sufficient meters for the proposed hotel resort. In addition, the FKAA will
15 meter accessory development accordingly.

16 A preliminary coordination letter from FKAA dated April 19, 2021, was submitted,
17 stating the following:

18 *There is an existing 8” water main on throughout to proposed property with*
19 *individual meters and fire line detector meters feeding each building.*

20 *A complete set of Civil and Architectural/Plumbing plans will need to be submitted to*
21 *determine water meter service requirements and system development charges.*

- 22 2. Keys Energy Services (“KES”) provides electric service to SIHYC.
23 KES will provide sufficient meters required for the proposed hotel resort. In addition,
24 KES will meter accessory development accordingly.
25

26 A letter dated February 22, 2020 was provided by Keys Energy Services, the letter
27 requested a full set of plans in order to ensure that there is adequate capacity.
28

- 29 3. Solid waste service is provided to the SIHYC by a solid waste collection system
30 franchised by Monroe County.
31

32 A letter dated February 19, 2020, from Monroe County Solid Waste states that there
33 is the ability to handle the solid waste. Coordination will again be required at time of
34 Major Conditional Use Permit review.
35

- 36 4. SIHYC is connected to central sewer via KW Resort Utilities Corp.’s system.
37

38 A letter of coordination dated August 20, 2020, states that with the addition of the
39 density the site will have capacity available to service the site.
40

41 The applicant has shown coordination with all of the entities but will be required to show
42 proof of availability of service. Some entities have requested additional information to
43 confirm capacity. It is recommend that a site plan be provided for these reviews.
44

- 45 e) A description of any reservation or dedication of land for public purposes:
46

1 There is no reservation or dedication of land for public purpose contemplated by this
2 Agreement. This is stated in in Section III. G. Reservation or Dedication of Land.

- 3
4 f) A description of all local development permits approved or needed to be approved for the
5 development of the land:

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7 A description of all local development permits approved or needed to be approved for the
8 development of the land is stated in Section III. H., I. & J. of the development agreement.

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10 g) A finding that the development permitted or proposed is consistent with the local
11 government's comprehensive plan and land development regulations:

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13 A finding of consistency is stated in Section III.J. Finding of Consistency. It has not been
14 determined that the County's comprehensive plan and land development regulations are
15 consistent with the development agreement until all approvals of the Land Use (Zoning)
16 District amendment have been completed, and a Major Conditional Use has been applied
17 for and approved by the Monroe County Planning Commission.

- 18
19 h) A description of any conditions, terms, restrictions, or other requirements determined to be
20 necessary by the local government for the public health, safety, or welfare of its citizens:

21
22 A description of any conditions, terms, restrictions or other requirements is not provided
23 in a single section. Such conditions, terms, restrictions and other requirements are provided
24 throughout the agreement.

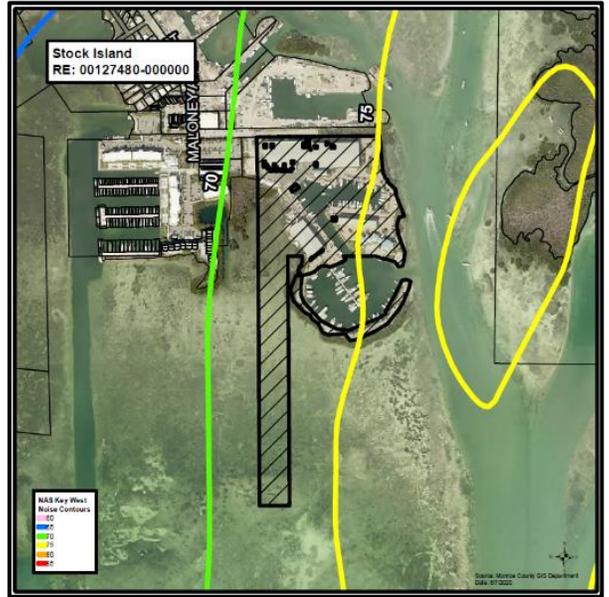
- 25
26 i) A statement indicating that the failure of the agreement to address a particular permit,
27 condition, term, or restriction shall not relieve the developer of the necessity of complying
28 with the law governing said permitting requirements, conditions, term, or restriction:

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30 Breach, amendment, enforcement and termination of the development provisions are
31 provided in Section III. Agreement Requirements, K. Breach, Amendment, Enforcement,
32 and Termination.

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40 *<remainder of this page intentionally left blank>*
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1 V OTHER ISSUES:

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3 The Property is within the Military Installation Area of
4 Impact (MIAI) boundary. The Property is within the
5 70-74 DNL and the 75-79 DNL. Pursuant to
6 Comprehensive Plan Policy 108.2.6, residential use is
7 strongly discouraged in DNL 70-74. The absence of
8 viable alternative development options should be
9 determined and an evaluation should be conducted
10 locally prior to local approvals indicating that a
11 demonstrated community need for the residential use
12 would not be met if development were prohibited in
13 these Zones. Where the community determines that
14 these uses must be allowed, measures to achieve and
15 outdoor to indoor Noise Level Reduction (NLR) of at
16 least 25 dB in DNL 65-69 and NLR of 30 dB in DNL
17 70-74 should be incorporated into building codes and
18 be in individual approvals; for transient housing a NLR
19 of at least 35 dB should be incorporated in DNL 75-79.



20
21 Both the MC FLUM and the MU zoning district allow for residential uses. Additionally, both the
22 existing and proposed zoning district have the same density standards for residential uses (1du/acre
23 allocated density and 18du/buildable acre maximum net density). Pursuant to Comprehensive Plan
24 Policy 108.2.2 density and intensity standards and land uses established by the Future Land Use
25 Element and Future Land Use Map, on the effective date of this policy, for properties located
26 within the MIAI overlay shall be recognized and allowed to develop to the maximum development
27 potential pursuant to the standards existing on the effective date of this policy. Pursuant to
28 Comprehensive Plan Policy 108.2.4 existing development located within the MIAI overlay shall
29 be recognized and allowed to redevelop. Further, the property's established density and intensity
30 standards and land uses provided by the Future Land Use Element and Future Land Use Map shall
31 be recognized and allowed to redevelop to the maximum development potential pursuant to the
32 standards existing on the effective date of this policy.

33
34 The Property currently has a Land Use District (Zoning) designation of Mixed Use (MU) and a
35 Future Land Use Map (FLUM) designation of Mixed Use / Commercial (MC). The Property was
36 within the BU-3 (heavy business district) and GU (general use) zoning districts prior to September
37 15, 1986. Between 1986 and 1992, the Property was within the MU (mixed use) zoning district.
38 In 1992, the Property was established within the Mixed Use (MU) zoning district. With the
39 adoption of the Comprehensive Plan's FLUM in 1997, the Property was given the current FLUM
40 designation of Mixed Use / Commercial (MC).

41
42 The County cannot enter into the agreement until the proposed Map Amendment has become
43 effective. This includes the Land Use District change from Mixed Use (MU) to Destination Resorts
44 (DR).

1 The subject property is located on Stock Island with nearest access to US1 via 2nd and 3rd Street at
 2 approximate mile marker 5. The 2017 US 1 Arterial Travel Time and Delay Study for Monroe
 3 County indicates levels of serve (LOS) of “B” for Segment 1 (Stock Island, mm 4.0-5.0), with
 4 1,986 reserve trips. U.S 1 is required to maintain a LOS of “C” in order to support development.
 5 Pursuant to Policy 1401.4.9, the County maintains a database to monitor capacity and reserve trips
 6 available. According to the County’s database of remaining capacity, by segment, as of April 15,
 7 2021, the number of trips remaining on Segment 1 is only 14; any trips beyond 14 will reduce the
 8 LOS below C and require mitigation.

9
 10 A Level 3 Traffic Impact Study (TIS), prepared by KBP Consulting, Inc., dated February 2021,
 11 was submitted with this request for a Development Agreement, detailing the trip generation and
 12 distribution characteristics of the development that is proposed on the subject property. The TIS
 13 included an existing trip generation analysis using ITE Land use Codes for Multifamily Housing
 14 (Low-Rise) #220, Hotel #310, Marina #420, and Quality Restaurant #931 to describe current
 15 traffic conditions to and from the subject property.

16
 17 The Proposed Trip Generation Analysis is based on actual traffic counts conducted of an adjacent,
 18 similarly used property known as Oceans Edge (per the TIS, Oceans Edge consists of 17 one-
 19 bedroom hotel rooms, 158 one-bedroom vacation rentals, a restaurant, conference facilities, 111
 20 wet slips, and 52 dry slips). The resulting trip generation rates appear to only be characteristic of
 21 a Resort Hotel Land Use. The TIS, as submitted, anticipates 176 net new daily vehicular trips
 22 generated by subject property as proposed to be redeveloped.

23
 24 It is important to note that the overall use of the property, as proposed through the requested
 25 Development Agreement, includes the potential to permit up to 131 attached market-rate
 26 residential dwelling units, to be used as vacation rental units, the potential to permit up to 66
 27 transient hotel dwelling units, and commercial uses which may include but are not limited to
 28 restaurants, commercial retail, marina, etc. The submitted TIS does **not** address the potential trips
 29 generated by the 131 market-rate dwelling units used as permanent residences, provided a change
 30 in conditions and vacation rental use was not utilized. Additionally, the TIS does not address the
 31 potential nonresidential uses, aside from hotel, which appear to be proposed as a part of the
 32 Development Agreement.

33
 34 For the purpose of reviewing the maximum potential trip generation that is proposed through this
 35 request for a Development Agreement, the trips generated by 131 multifamily permanent
 36 residential dwelling units and the proposed nonresidential uses should also be reviewed.

37
 38 The potential development of the subject property, as proposed, includes the following land uses:

Land Use	Size	Daily Trips Generated	Counts per ITE Manual or TIS where applicable
Marina			
-Wet Slips	100 Berths	259	TIS
-Dry Slips	347 Berths	449	TIS

Resort Hotel	66	314	<i>4.75 daily weighted average weight per TIS</i>
Multifamily Housing	134	977	<i>7.29 daily weighted average weight per ITE Land Use #220</i>
Commercial Use	Unknown at this stage	Unknown at this stage	Unknown at this stage
Total Proposed		1,999 +	
Existing per TIS		1,262	
Net Increase		737+	

1
2 The development that is proposed on the subject property through the request for a Development
3 Agreement *could* result in an increase of at least 737 daily trips from the existing 1,262 identified
4 in the TIS.

5
6 At the time of any development approval on the site, traffic concurrency will be reviewed and must
7 maintain a LOS of “C” on Segment 1 of US1. In order to be in compliance with Monroe County
8 Comprehensive Plan Policies 301.1.1, 301.1.2, 301.2.2, 301.2.3 and 301.2.4 as well as Land
9 Development Code Sections 114-2(a)(1)a., b., and c., **mitigation, or sufficient evidence**
10 **acceptable to Monroe County that the potential trip generation does not exceed LOS C, must**
11 **be provided prior to issuance of a building permit for development of the subject property.**

12
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14 VI RECOMMENDATION:

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16 Staff does not recommend approval of the proposed Development Agreement as currently
17 written. Staff requests revisions to address the issues identified in this staff report, prior to
18 scheduling the item for Planning Commission hearing, including:

- 19 1. cumulative density/intensity that exceeds 100%
- 20 2. required TDRs for permanent and transient units
- 21 3. use of liveaboard density for upland units
- 22 4. need to submit a conceptual site plan
- 23 5. reference to associated Zoning amendment adoption and effectiveness prior to
- 24 effectiveness of Development Agreement.

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27 VII Attachments:

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- 29 ■ Proposed Development Agreement
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DEVELOPMENT AGREEMENT FOR STOCK ISLAND HARBOR YACHT CLUB

This DEVELOPMENT AGREEMENT ("Agreement") is entered into on the ____ day of _____ 2021, by and between MONROE COUNTY, a political subdivision of the State of Florida ("Monroe County"), and SH Marinas 6000, LLC, a Florida limited liability company ("SH Marina") (singularly a "Party", or collectively the "Parties"), pursuant to Sections 110-132, 110-133, 130-161.1, 130-84 of the Monroe County, Florida Code of Ordinances (2011) ("Monroe County Code") and the Florida Local Government Development Agreement Act, Florida Statutes Sections 163.3220-163.3243 (2013) and is binding on the "Effective Date" set forth herein:

WITNESSETH:

Monroe County and the Parties hereto hereby agree as follows:

I. RECITALS

- A.** This Agreement involves the future redevelopment of property known as "Stock Island Harbor Yacht Club" ("SIHYC"), located at 6000 Peninsular Avenue, Stock Island, Florida 33040 ("Property"), fronting Peninsular Avenue, with access to and from the site from Peninsular Avenue, the legal description of which is contained in **Exhibit A**. SIHYC is owned by SH Marina.
- B.** All Parties have the authority to enter into this Agreement through Florida Statute Sections 163.220-163.3243 and their individual sole and undivided ownership of SIHYC.
- C.** Section 163.3220, Florida Statutes, authorizes Monroe County to enter into development agreements with landowners and/or governmental agencies to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.
- D.** This Agreement, among other things, is intended to and shall constitute a development agreement among the Parties pursuant to the Florida Local Government Development Agreement Act, Section 163.3223, et seq., Florida Statutes (the "Act").
- E.** The Parties recognize that the public noticing and hearing procedures shall follow the requirements of F.S. 163.3225, which require public hearings before the Planning Commission and the Board of County Commissioners ("BOCC") for consideration of a development agreement.

- F.** Monroe County finds that entering into this Agreement furthers the purposes, goals, objectives, and policies of the Monroe County Year 2030 Comprehensive Plan (“Comprehensive plan”) which contains objectives and policies that seek to encourage the provision of affordable housing through incentive programs and changes to the Land Development Regulations and the residential dwelling permit allocation system. (Objective 601.2, Policy 601.1.12 and Objective 601.6).
- G.** SIHYC, 6000 Peninsular Avenue, Stock Island, Florida, is generally described as follows:
1. SH Marina owns that certain real property located at 6000 Peninsular Avenue, Stock Island, Florida. A copy of the Special Warranty Deed evidencing SH Marina’s ownership is attached hereto and incorporated herein as **Exhibit B**. Currently SIHYC is used as a private marina, market rate vacation rentals, a restaurant, and affordable housing.
 2. As of the date of this Agreement, SIHYC is assessed by the Monroe County Property Appraiser as real estate number 00127480-000000.
 3. The Comprehensive Plan designates all the parcels of the SIHYC as Mixed Use/Commercial (MC) on its Future Land Use Map.
 4. The County Land Use District map designation for SIHYC has been amended simultaneously with the approval of this Agreement is Destination Resort (DR).
 5. The County Tier Overlay District map designation for SIHYC is Tier III.
 6. SIHYC consists of 13.14 upland acres.
 7. SIHYC was redeveloped as a full-scale marina resort which includes three (3) boat barns providing space for four hundred and seventy-five (475) dry boat storage; one hundred (100) wet slips; one multi-use building containing a combination of non-residential floor area for a ship store and three (3) affordable housing dwelling units; and three (3) attached market-rate dwelling units which are currently utilized as vacation rentals. The approval was recorded in Resolution No. P11-07, dated March 7, 2007. At the time of SIHYC’s development in 2007, it had obtained a Letter of Development Rights Determination dated December 1, 2006, which provided that the Property had fifty (50) liveaboard vessels and five (5) residential dwelling units. In 2007, Monroe County Code Sec. 114-19 provided liveaboard density counted towards upland density. The Property was recognized with max net density based on the density from the Liveaboards and Residential Dwelling Units which was evidenced in a minor deviation approval issued September 13, 2007¹.

¹ “The site is deemed to have maximum net density for permanent residential uses only”

H. Wrecker’s Cay at Stock Island, LLC (“Wrecker’s Cay”) previously applied to transfer to SIHYC eighty (80) Market Rate Dwelling Units and eighteen (18) Transient Dwelling Units (File No. 2019-149), which approval is conditioned on Wrecker’s Cay obtaining approval of its building foundation first inspections.

I. Road Abandonments

1. Contemporaneously with this Agreement, Monroe County has approved the abandonment of the Eastern most portion of Peninsular Avenue, of which SIHYC has obtained _____ additional acres. The total upland acreage of SIHYC is now _____.

J. Section 163.3220, Florida Statutes, authorizes Monroe County to enter into agreements with landowners and/or governmental agencies to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.

II. PURPOSE

A. The overall purpose of this Agreement is to allow the redevelopment of SIHYC with up to one hundred and thirty-one (131) attached residential dwelling units which are permitted to be utilized as vacation rental units, and up to sixty-six (66) transient hotel dwelling units to be operated as a vacation resort including associated accessory uses, pursuant to Monroe County Land Development Section 130-81.

B. This Agreement allows the redevelopment of the SIHYC utilizing, as part of its overall development, the eighty (80) market rate dwelling units from Wrecker’s Cay, three (3) existing market rate dwelling units on the Property as attached dwelling units permitted to be vacation rentals and eighteen (18) transient dwelling units from Wrecker’s Cay in compliance with all applicable provisions of Florida Statutes, the Principles for Guiding Development in the Florida Keys Area of Critical State Concern, the Comprehensive Plan, the Master Plan for the Future Development of Stock Island and Key Haven, and the Monroe County Code.

C. The Agreement allows the Parties to implement the provisions of Monroe County Code, as applied to SIHYC to develop a vacation and hotel resort at SIHYC, to attract sustainable tourism to Stock Island.

III. AGREEMENT REQUIREMENTS

A. Recitals. The recitals explaining the intent and purpose of the project as set forth in the preceding clauses are incorporated herein and form a material part of this Agreement. The Parties recognize the binding effect of Florida Statutes Sections 163.3220-163.3243, as to the form and content of this Agreement and in accordance therewith set forth and agree to the following:

- B. Legal Description and Ownership.** The legal description for SIHYC is set forth in **Exhibit A**.
- C. Duration of Agreement.** This Agreement shall remain in effect for ten (10) years from the "Effective Date" as defined herein and may be extended by mutual consent of the Parties and approval at a public hearing, in accordance with Florida Statutes Section 163.3229. For the duration of this Agreement, the Parties agree that any development shall comply with and be controlled by this Agreement, the Monroe County Code, and the Monroe County Comprehensive Plan governing the development of the land in effect on the date of execution of this Agreement, in accordance with Section 163.3220, Florida Statutes.
- D. Permitted Uses.**
1. SIHYC, 6000 Peninsular Avenue, Stock Island, Florida:
 - a. SIHYC currently has a MU Land Use (Zoning) District designation and a corresponding MC Future Land Use Map designation.
 - b. Contemporaneously with the approval of this Agreement, SIHYC's Land Use (Zoning) District has been approved for amendment by Monroe County from Mixed Use (MU) to Destination Resort (DR).
 - c. In accordance with this Agreement and with the DR Land Use (Zoning) District, as set forth in Monroe County Code Section 130-34, the principal purpose of the DR Land Use Map Category is to establish areas suitable for the development of planned tourist centers providing on-site residential, recreational, commercial and entertainment facilities of a magnitude sufficient to attract visitors and tourists for tenancies of three or more days.
 - d. In accordance with this Agreement and with the DR Land Use (Zoning) District, as set forth in Monroe County Code Section 130-34, and in compliance with other provisions of the Monroe County Code, the permitted uses in the Land Use (Zoning) District include detached dwellings, vacation rentals (if a special vacation rental permit is obtained under the regulations established in section 134-1), attached dwelling units (as a major conditional use), Hotels (as a minor conditional use) and accessory uses.
 - e. Code Section 130-84 provides, in pertinent part:
 - a. The following uses are permitted as of right in the Destination Resort district:

- (1) Detached dwellings;
 - (2) Vacation rental use if a special vacation rental permit is obtained under the regulations established in section 134-1;
 - (3) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
 - (4) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
 - (5) Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);
 - (6) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e); and
 - (7) Satellite earth stations, as accessory uses, pursuant to section 146-5(f).
- b. The following uses are permitted as minor conditional uses in the destination resort district, subject to the standards and procedures set forth in chapter 110, article III:
- (1) Hotels, provided that:
 - a. The hotel has restaurant facilities on the premises that will accommodate no less than one-third of all hotel guests at maximum occupancy at a single serving;
 - b. There are at least two satellite eating and drinking facilities, each accommodating at least 25 persons;
 - c. A separate meeting/conference and entertainment area that can also function as a banquet facility;
 - d. A lobby that provides 24-hour telephone and reservation service;
 - e. Active and passive recreation land-based activities are available, with a minimum of tennis courts or racquetball courts, or a spa/exercise room, provided at the standards given below and at least two additional active and one additional passive recreational facility, including, but not limited to, the following:

<i>Active Recreational Facilities</i>	
Tennis court	1/25 units
Racquetball court	1/25 units
Spa/exercise room, of no less than 500 square feet	1/150 units
Dance floor	1/hotel
Playfield/playground	1/150 units
Miniature golf course	1/hotel
Golf course	1/hotel
Shuffleboard court, or other court games	2/50 units
Fitness course	1/hotel
<i>Passive Recreational Facilities</i>	
Nature trail walk	1/hotel
Game room	1/150 units
Garden area	1/hotel
Observation area	1/hotel
Other uses may be substituted for these with the written approval of the director of planning stating the standards used and the manner in which guests will be served by such facilities. The director of planning shall base his decision on generally accepted industry standards for comparable destination resorts;	

- f. Active and passive water-oriented recreational facilities are available, a minimum of a swimming pool, or swimming areas, at the rate of seven square feet of water surface (excluding hot tubs and Jacuzzi) per hotel room (this requirement may be converted to linear feet of shoreline swimming area at a ratio of one linear foot of beach per seven square feet of required water surface);
- g. Access to U.S. 1 is by way of:
- i. An existing curb cut;
 - ii. A signalized intersection; or
 - iii. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;
- h. Each hotel establishes and maintains shuttle transport services to airports and tourist attractions to accommodate ten percent of the approved floor area in guest rooms; and such housing shall be of any of the following types: dormitory, studio, one bedroom, two bedrooms and shall be in addition to the approved hotel density and shall be used exclusively by employees qualifying under the employee housing provisions elsewhere in this chapter;

- i. On-site employee housing living space is provided in an amount equal to ten percent of the approved floor area in guest rooms; and such housing shall be of any of the following types: dormitory, studio, one bedroom, two bedrooms and shall be in addition to the approved hotel density and shall be used exclusively by employees qualifying under the employee housing provisions elsewhere in this chapter; and
- j. Commercial retail is provided at a minimum of 200 square feet to include convenience retail, food sales and gifts in one or more sites, excluding restaurants as required by subsection (b)(1) of this section, and in addition one and 1.3 square feet commercial retail per each guest room greater than 150 rooms. Additional commercial retail may be provided subject to the floor area ratio limitations of this chapter. Commercial retail may consist of dive shops, boat rentals, gift shops, barber/beauty services, travel agencies, provided that there is no extension signage advertising these amenities to the general public. Water-related services and activities shall be located immediately proximate to the water unless otherwise prohibited.
- c. The following uses are permitted as major conditional uses in the destination resort district, subject to the standards and procedures set forth in chapter 110, article III:
 - (1) Marinas, provided that:
 - a. There are a minimum of seven boat slips, but the total number of boats stored on-site or elsewhere for guests or employees shall be no greater than one per hotel room;
 - b. The parcel for development has access to water at least four feet below mean sea level at mean low tide;
 - c. The sale of goods and services is limited to fuel, food, boating, and sport fishing products;
 - d. All boat storage shall be confined to wet slips or enclosed dry storage;
 - e. All storage areas are screened from adjacent uses by a solid fence, wall, or hedge of at least six feet in height; and elevated racks, frames, or structures shall be enclosed on at least three sides from the ground to the highest point of the roof;

- f. All storage areas are screened from adjacent uses by a solid fence, wall, or hedge of at least six feet in height; and elevated racks, frames, or structures shall be enclosed on at least three sides from the ground to the highest point of the roof;
 - g. Live-aboard vessels are prohibited;
- (2) Attached and detached dwellings, designated as employee housing as provided for in section 139, provided that:
- a. They are built for and occupied by employees of the destination resort facilities;
 - b. The total area is no less than ten percent of the approved floor area in guest rooms of the resort/hotels within the development;
 - c. The structures are designed and located so that they are visually compatible with established residential development within 250 feet of the parcel proposed for development; and
 - d. The parcel proposed for development is separated from any established residential use by a class C buffer yard;
- (3) Attached dwelling units;
- (4) New antenna-supporting structures, pursuant to section 146-5(a);
- (5) Wastewater treatment facilities and wastewater treatment collection systems serving uses located in any land use district, provided that:
- a. The wastewater treatment facility and wastewater treatment collection systems are in compliance with all federal, state, and local requirements;
 - b. The wastewater treatment facility, wastewater treatment collection systems and accessory uses shall be screened by structures designed to be architecturally consistent with the character of the surrounding community and shall minimize the impact of any outdoor storage, temporary or permanent; and
 - c. In addition to any district boundary buffers set forth in chapter 114, article V, a planting bed, eight feet in width, to be measured perpendicular to the exterior of the screening structure shall be established with the following:

1. One native canopy tree for every 25 linear feet of screening structure and one understory tree for every ten linear feet of screening structure;
 2. The required trees shall be evenly distributed throughout the planting bed;
 3. The planting bed shall be installed as set forth in chapter 114, article IV; and
 4. A solid fence may be required upon determination by the planning director.
2. In accordance with the provisions of the Comprehensive Plan or Monroe County Code, (1) the Property is deemed to have a maximum net residential density of eighteen (18) units per buildable acre, the development of which shall not require transferrable development rights (TDRs); (2) buildings that are voluntarily elevated up to three (3) feet above base flood elevation may be two (3) habitable floors, for a maximum total building height of thirty-eight (38) feet; (3) parking requirements one (1) space per each 1-bedroom transient dwelling unit and one (1) space plus a half (0.5) space for each additional bedroom per each two (2) or more bedroom transient dwelling unit.
 3. The height of any new structure associated with the redevelopment of the SIHYC shall not exceed 38 feet from grade except as allowed by code.

E. Military Installation Area of Impact. SH Marina acknowledges and understands that SIHYC is within the Military Installation Area of Impact Overlay as defined by the Comprehensive Plan. SIHYC is located in the 70 DNL (Day-Night Average Sound Level) noise contour pursuant to the 2018 Air Installations Compatible Use Zones study SH Marina agrees to:

1. Sound attenuate all habitable buildings to achieve an outdoor to indoor Noise Level Reduction (NLR) of at least 30 decibels; and
2. Place signage throughout the SIHYC prohibiting the use of unmanned aerial vehicles and/or drones on the Property; and
3. In any lease conveying a leasehold interest in a residential unit or a license agreement for dockage at SIHYC, SH Marina shall include language in the leasing or licensing document stating as follows:
4. “The property is located within the Military Installation Area of Impact Overlay and is subject to high noise levels due to Navy operations nearby. As it is located within the Military Installation Area of Impact of Overlay, the use of any unmanned aerial vehicle or drone is prohibited.”

F. Public Facilities. The numbers of existing vacation rentals, condominium units, and commercial uses were recognized in the planning of the sewage treatment plant serving Stock Island.

1. The Florida Keys Aqueduct Authority (“FKAA”) provides domestic potable water to SIHYC. Excluding existing development that may already be metered, the FKAA will provide sufficient meters for the proposed hotel resort. In addition, the FKAA will meter accessory development accordingly.
2. Keys Energy Services (“KES”) provides electric service to SIHYC. KES will provide sufficient meters required for the proposed hotel resort. In addition, KES will meter accessory development accordingly.
3. Solid waste service is provided to the SIHYC by a solid waste collection system franchised by Monroe County.
4. SIHYC is connected to central sewer via KW Resort Utilities Corp.’s system.

G. Reservation or Dedication of Land. There is no reservation or dedication of land for public purpose contemplated by this Agreement.

H. Development Allowed. The following specific criteria are those which will guide the redevelopment of SIHYC with up to one hundred and thirty-one (131) attached residential dwelling units which are permitted to be utilized as vacation rental units, and up to sixty-six (66) transient hotel dwelling units, operating as a vacation resort including associated accessory uses, , and are the standards by which any further approvals shall be measured and shall be as follows:

1. Provided such development can be designed and approved by all applicable codes, including but not limited to the Monroe County Code and Florida Building Code, SH Marina is permitted to redevelop and operate SIHYC as a resort hotel consisting of the following development:
 - a. Lobby/Reception/Office building
 - b. Maintenance/Housekeeping building
 - c. Restrooms, Fitness and Refreshments building
 - d. Resort Swimming Pool
 - e. Conference Center
 - f. Restaurant, Bar, Kitchen
 - g. Affordable/workforce dwelling units for employees of the resort.
 - h. Parking areas and landscaping.

- b. No modifications, extensions, amendments, or alterations of the terms or conditions contained herein shall be effective unless contained in a written document approved and executed by the Parties.
- c. Amendment, extension or termination shall require at least two (2) public hearings. The hearings shall be held pursuant to an application filed with Monroe County by the Party seeking to amend or terminate this Agreement, along with the requisite filing fee. Notice of public hearing shall be in accordance with Monroe County Ordinances and Florida Statutes.

4. Enforcement.

- a. After notice and an opportunity to respond and/or cure the material breach as provided for below. In addition, Monroe County may utilize appropriate code enforcement remedies to cure any breach after notice and an opportunity to cure as provided herein.
- b. The Parties, their successors or assigns, or any aggrieved or any adversely affected person as defined in Section 163.3215(2), Florida Statutes, may file an action for injunctive relief in the Circuit Court of Monroe County to enforce the terms of this Agreement or to challenge compliance with the provisions of Sections 163.3243, Florida Statutes.
- c. Nothing contained herein shall limit any other powers, rights, or remedies that either Party has, or may have in the future, to enforce the terms of this Agreement.

L. State and Federal Law. If State or Federal laws enacted after the effective date of this Agreement preclude the Parties' compliance with the terms of this Agreement, this Agreement shall be modified as is necessary to comply with the relevant State or Federal laws.

M. Compliance with Other Laws. The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Parties of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restrictions.

N. Reservation of Rights. This Agreement shall not affect any rights, which may have accrued to any party to this Agreement under applicable law. Both Monroe County and the Parties reserve any and all such rights. All approvals referenced in this Agreement are subordinate to compliance with all applicable laws, codes, and land development regulations and permits, except to the extent otherwise provided for in this Agreement.

O. No Permit. This Agreement is not and shall not be construed as a Development Permit, Development Approval or authorization to commence development, nor shall it relieve the Parties of the obligations to obtain necessary Development

Approvals that are required under applicable law and under and pursuant to the terms of this Agreement and Monroe County Code.

- P. Good Faith; Further Assurances; No Cost.** The Parties to this Agreement have negotiated in good faith. It is the intent and agreement of the Parties that they shall cooperate with each other in good faith to effectuate the purposes and intent of, and to satisfy their obligations under, this Agreement in order to secure to themselves the mutual benefits created under this Agreement. The Parties agree to execute such further documents as may be reasonably necessary to effectuate the provisions of this Agreement; provided that the foregoing shall in no way be deemed to inhibit, restrict or require the exercise of Monroe County's police power or actions of Monroe County when acting in a quasi-judicial capacity. Wherever in this Agreement a provision requires cooperation, good faith or similar effort to be undertaken at no cost to a party, the party co-operating, reviewing or undertaking the effort shall, nonetheless, bear its cost of attendance at meetings, hearings or proceedings and comment and/or execution of documents, inclusive of the expense of its counsel.
- Q. Successors and Assigns.** This Agreement shall constitute a covenant running with the land, which shall be binding upon the Parties hereto, their successors in interest, heirs, assigns, and personal representatives.
- R. Joint Preparation.** This Agreement has been drafted with the participation of Monroe County and SH Marina and their counsel and shall not be construed against any party on account of draftsmanship. The captions of each article, section and subsection contained in this Agreement are for ease of reference only and shall not affect the interpretational meaning of this Agreement. Whenever the term "included" is used in this Agreement, it shall mean that the included items, or terms are included without limitation as to any other items or terms, which may fall within the listed category.
- S. Notices.** All notices, demands, requests, or replies provided for or permitted by this Agreement shall be in writing and may be delivered by any one of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Service as Certified or Registered mail, return receipt requested, postage prepaid, to the addresses stated below; or (c) by deposit with an overnight express delivery service with proof of receipt. Notice shall be deemed effective upon receipt. For purposes of notice, demand, request, or replies:

The address of Monroe County shall be:

County Administrator
1100 Simonton Street
Room 2-205
Key West, Florida 33040

with a copy to:

Assistant County Attorney
PO BOX 1026
Key West, FL 33041

and

1111 12th Street
Suite 408
Key West, Florida 33040

The Address of SH Marinas 6000, LLC, a Florida limited liability company shall be:

Robert Spottswood
506 Fleming Street
Key West, Florida 33040

with a copy to:

Smith Hawks, PL
138 Simonton Street
Key West, FL 33040

It is the responsibility of the Parties to notify all Parties of change in name or address for proper notice.

T. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, riot, civil commotion, fire or other casualty and other causes beyond the reasonable control of the party obligated to perform, excluding the financial inability of such party to perform and excluding delays resulting from appeals or rehearing, shall excuse the performance by such party for a period equal to any such period of prevention, delay or stoppage. In order to avail itself of this force majeure provision, the party invoking the same shall provide the other party with a written notice that shall consist of a recitation of all events that constitute force majeure events under this Section, together with the beginning and ending dates of such events.

U. Construction.

1. This Agreement shall be construed in accordance and with the laws of the State of Florida. The Parties to this Agreement have participated fully in the negotiation and preparation hereof; and, accordingly, this Agreement shall not be more strictly construed against any one of the Parties hereto.

2. In construing this Agreement, the use of any gender shall include every other and all genders, and captions and section and paragraph headings shall be disregarded.

All of the exhibits attached to this Agreement are incorporated fully, and made a part of, this Agreement.

- V. Omissions.** The Parties hereto recognize and agree that the failure of this Agreement to address a particular permit, condition, terms, or restriction shall not relieve either Party of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction notwithstanding any such omission.
- W. Jurisdiction and Governing Law.** The Parties hereto agree that any and all suits or actions at law shall be brought in Monroe County, Florida, and no other jurisdiction. This Agreement shall be construed and interpreted under the laws of the State of Florida. This Agreement is not subject to arbitration.
- X. Litigation.** The Parties agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, court costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County. This Agreement is not subject to arbitration.
- Y. Time of Essence.** Time shall be of the essence for each and every provision hereof.
- Z. Entire Agreement.** This Agreement, together with the documents referenced herein, constitute the entire agreement and understanding among the Parties with respect to the subject matter hereof, and there are no other agreements, representations or warranties other than as set forth herein. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the Party against whom enforcement of such change would be sought and subject to the requirements for the amendment of development agreements in the Act.
- AA. Counterparts.** This Agreement may be executed in one or more counterparts, and by the different Parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.
- BB. Recording.** Monroe County shall record this Agreement with the Clerk of the Circuit Court of Monroe County within fourteen (14) days following signature by all Parties. SH Marina agrees that they shall be responsible for all recording fees

and other related fees and costs related to the recording and delivery of this Agreement as described in this section. The provisions hereof shall remain in full force and effect during the term hereof and shall be binding upon all successors in Interest to the Parties to this Agreement. Whenever an extension of any deadline is permitted or provided for under the terms of this Agreement, at the request of either Party, the other Parties shall join in a short-form recordable memorandum confirming such extension that shall be recorded in the Public Records of Monroe County.

- CC. Conflicting Resolutions.** All resolutions or parts thereof in conflict with the provisions of this Agreement and its resolution are hereby repealed to the extent of such conflict.

- DD. Severability.** If any part of this Agreement is contrary to, prohibited by, or deemed invalid under any applicable law or regulation, such provisions shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid; however, the remainder here shall not be invalidated thereby and shall be given full force and effect.

- EE. Effective Date.** The "Effective Date" of this Agreement is thirty (30) days after the duly signed and recorded Agreement is received by the Florida Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

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SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals on the day and year below written.

Sign, sealed, and delivered in the presence of:

**SH Marinas 6000, LLC,
a Florida limited liability company.**

Signature

SH Marinas Manager, LLC,
a Florida limited liability company, Manager

Name of Witness (printed or typed)

BY: _____
Robert A. Spottswood, as Manager

Signature

Dated: _____

Name of Witness (printed or typed)

**STATE OF FLORIDA
COUNTY OF MONROE**

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Robert A. Spottswood, as manager of SH Marinas Manager, LLC, a Florida limited liability company, as Manager of SH Marinas 6000, LLC a Florida limited liability company. He is personally known to me, OR produced _____ as identification and did OR did not take an oath.

(SEAL)

Notary Public, State of Florida

Printed Name

My Commission expires: _____