

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

This AMENDED AND RESTATED DEVELOPMENT AGREEMENT is entered into on this 28th day of August, 2024, by and between the CITY COMMISSION OF THE CITY OF PANAMA CITY, FLORIDA (“City”), and 305 BEACH DRIVE DEVELOPMENT GROUP, LLC (“Owner”), for the purpose of establishing and binding the Owner’s development rights for the Property described herein, and providing assurances to the Owner that upon receipt of appropriate Development Orders and Development Permits it may proceed with development subject to the terms and conditions of this Agreement.

I. DEFINITIONS

The following definitions shall apply to terms and conditions as used in this Agreement.

1. Act and all references to provisions within the Act shall mean the Florida Local Government Development Agreement Act, Sections 163.3221-163.3243, Florida Statutes (2020).
2. Agreement shall mean this Amended and Restated Development Agreement.
3. City shall mean Panama City, Florida and its City Commission.
4. City Commission shall mean the governing body of the City.
5. Development Permit shall mean any building permit, environmental permit, or other permit, authorization or approval, except a Local Development Order, and any amendments thereto, which may be required by the City or any agency of either the State of Florida or the government of the United States of America in order for the Owner to develop the Property or part of the Property.
6. Effective date shall mean the effective date of this Agreement as specified in Section VII of this Agreement.
7. Local Development Order means the final approval of an application for developing the project herein described.
8. Ordinances shall refer to the City ordinances in effect and published in the Panama City Code of Ordinances on the Effective Date of this Agreement. The term includes all land use regulations governing development of land within the City jurisdiction.
9. Party or Parties shall refer to the City and the Owner.
10. Plan shall mean the Panama City Comprehensive Policy Plan adopted by the City in June 2000 pursuant to Chapter 163, Part II, Florida Statutes, as it has been amended from time to time, which is in effect on the Effective Date of this Agreement.

11. Project shall mean the overall development of the Property subject to the provisions and limitations of this Agreement.
12. Property shall mean the real property legally described in Exhibit A attached hereto and incorporated herein.
13. State shall refer to the State of Florida.
14. Code shall mean the Panama City Florida Unified Land Development Code.
15. Site Plan shall mean the proposed Site Plan for the improvements to be constructed upon the Property together with Notes to the Site Plan all as shown on Exhibit B and C hereto.

II. RECITALS

WHEREAS, this Agreement is intended to and does hereby replace in its entirety that certain Development Agreement between the City of Panama City, Florida and Massalina Holdings, LLC recorded on March 20, 2017 at Book 3883 Page 942, in the Official Records of Bay County, Florida and the First Amendment to Development Agreement between the City Commission of the City of Panama City, Florida and Pelican Path Condominiums, LLC recorded on December 21, 2021 at Book 4501 Page 2030, in the Official Records of Bay County, Florida (“The Previous Development Agreement As Amended”). The Previous Development Agreement As Amended, when this Agreement is adopted and recorded in the Official Records of Bay County, Florida shall have no further force and effect and shall be null and void.

WHEREAS, the Owner is the successor in interest and successor in title to Massalina Holdings, LLC and Pelican Pass Condominiums, LLC and is therefore the proper Party to enter into this Development Agreement, with respect to the Property, with the City.

WHEREAS, the intent of the Florida Local Government Development Agreement Act as expressed in Section 163.3221, Florida Statutes, is as follows:

- (1) The Legislature finds and declares that:
 - (a) The lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning.
 - (b) Assurance to a developer that upon receipt of his or her development permit he or she may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring there are

adequate capital facilities for the development, encourages private costs participation in comprehensive planning, and reduces the economic of development.

- (2) In conformity with, in furtherance of, and to implement the Local Government Comprehensive Planning and Land Development Regulation Act and the Florida State Comprehensive Planning Act of 1972, it is the intent of the Legislature 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, encourage affordable and workforce housing to meet demand, and reduce the economic cost of development.
- (3) This intent is effected by authorizing local governments to enter into development agreements with developers subject to the procedures and requirements of ss.163.3221 B 163.3243; and

WHEREAS, to encourage development of the Property, the Owner is desirous of agreeing with the City, the existing development rights of the Owner with regard to the Property; and

WHEREAS, it is in the best interests of the City and the citizens of the City that the development of the Property be completed in a planned and orderly fashion, giving consideration to the subjects addressed in this Agreement; and

WHEREAS, the Owner and the City have agreed upon the terms and conditions relating to the development of the Property and the Owner's development rights which are acceptable to the Owner and to the City, and the Owner and the City deem it appropriate that the terms and conditions of their agreements be reduced to written form; and

WHEREAS, the Act provides that vehicle for the Owner and the City to document the assurances sought by each; and

WHEREAS, pursuant to the requirements of Section 163.3225, Florida Statutes, the City held the two required public hearings with respect to this Agreement on the 12th day of August, 2024 and the 27th day of August, 2024, with notice of such hearings having been provided as required by law, and has considered the public comments and record of such public hearings.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and other good and valuable considerations, the Owner and the City agree:

1. The foregoing Definitions and Recitals are correct and complete and are incorporated herein.
2. The Owner holds title to the Property.
3. The Property is described in Exhibit A attached hereto and incorporated herein. The Property consists of approximately 3.24± acres designated as of the Effective Date on the

Future Land Use Map in the Plan as Mixed Use (MU) and zoned as of the Effective Date as Mixed Use-3 (MU-3).

- 4. The Owner acknowledges that it has initiated the request that the City enter into this Agreement; that the terms and conditions of the Agreement incorporates proposals made by the Owner and agreed to by the City; and that the City has not required the Owner to draft or enter into this Agreement.
- 5. The public hearings notices, procedures, and conditions required by the Act relating to the Agreement have been held and met.

III. AUTHORITY

Execution of this Agreement is expressly authorized by Section 163.3223, Florida Statutes.

IV. PUBLIC HEARINGS

Public hearings required to enter into, amend or revoke this Agreement shall be advertised and held in accordance with the provisions of Section 163.3225, Florida Statutes.

V. STATUTORY REQUIREMENTS

Required provisions to be included within this Agreement, as set forth in Section 163.3227 of the Act, are hereinafter addressed as follows:

- 1. Legal Description. The legal description of the Property is attached as Exhibit A.
- 2. Duration of the Agreement. The Term of this Agreement shall be for fifteen (15) years from the Effective Date.
- 3. Development Rights and Uses. The City hereby agrees that the Owner shall have the right to proceed with the development of the Property substantially in accordance with the terms and conditions of the Site Plan subject however to Site Plan Notes, and other terms and conditions of this Agreement, and subject however to the acquisition by the Owner of all Permits and approvals required by the Plan and the Code. During the Term of this Agreement and whenever Owner is not in breach of any material covenant of this Agreement, the City hereby agrees that:
 - (a) The City acknowledges and confirms to the Owner that the Owner shall be permitted to develop the Property in accordance with and subject to the provisions of the MU-3 Zoning District in Section 104-32 of the Code, and specifically that permitted uses for the Property are as follows:
 - (1) Single family attached and detached residential units
 - (2) Multi-family residential units

- (3) Marina with wet slips in accordance with such permits and authorizations as may be obtained by the Owner from State and Federal Agencies having jurisdiction of such authorizations and permits
 - (4) Densities, intensities, heights, setbacks, and other provisions of the MU-3 Zoning District in Section 104-32 of the Code
 - (5) On-site parking associated with residential and marina development of two (2) spaces per residential unit.
 - (b) In the event of any conflict or inconsistency between this Agreement and the Plan and Ordinances identified above, this Agreement shall control. Ordinances or regulations adopted after the Effective Date of this Agreement shall not preclude the Owner from developing the uses specifically allowed in this Agreement at the densities, intensities, and other development parameters specified herein.
 - (c) Changes to Comprehensive Plan and Zoning Code. Except as specifically provided herein, the City Comprehensive Plan and Ordinances in effect on the Effective Date of this Agreement as they specify including but not limited to, the land use, density and intensity of the land use shall apply to the Property for the duration of this Agreement.
4. Permits Required by State or Federal Agencies. Any state or federal permits required to commence development of the Property shall be obtained prior to the start of construction.
5. Description of Public Facilities. Public facilities needed to service development authorized by this Agreement shall be determined during the Development Order application process.
6. Consistency with the City Plan and Ordinances. The City hereby finds and confirms that this Agreement is consistent with the Panama City Comprehensive Plan and the uses permitted by the City Ordinance and land use regulations. During the Term, all development that conforms to this Agreement shall be lawfully conforming development as to height, density and intensity and use, regardless of any later amendments to the building height, density or intensity standards or uses permitted in the Plan, Ordinances or Code.
7. Compliance with All Applicable Permit and Approval Requirements. The Owner hereby acknowledges and agrees that the failure of this Agreement to address a particular permit condition, term, restriction, approval, or requirement with respect to the development of the Property, shall not relieve the Owner of the necessity of complying with the law governing said permitting requirement, condition, term, or restriction, or obtaining any applicable permit or approval prior to initiating any part or phase of the development of the Property for which such permit or approval may be required subject in all respects to Owner's right to complete the full development authorized by this Agreement.

8. Specific Conditions. Specific Conditions of this Agreement as agreed to between the City and the Owner are set forth on Exhibit D.

VI. LOCAL LAWS AND POLICIES

This Agreement specifically anticipates and provides that the City may apply certain subsequently adopted Ordinances to the development of the Property; provided, however, that Owner is entitled to apply for a Development Order and all Development Permits required to the maximum development substantially as described in this Agreement. Other subsequently adopted ordinances and policies may be applied to the development that is the subject of this Agreement as provided in Section 163.3233(2), Florida Statutes (2020); provided, however, that no subsequently adopted law or policy shall be construed to render any development to which the owner is entitled under this Agreement or a validly issued Development Order nonconforming during the Term. Nothing set forth in this Section VI shall act to abrogate any rights which may vest in the Owner with respect to the development of the Property pursuant to common law.

VII. RECORDING AND EFFECTIVE DATE

Within fourteen (14) days after this Agreement is executed by the City and the Owner the Agreement shall be recorded in the Official Records of Bay County, Florida, and upon such recording this Agreement shall be effective.

VIII. ASSIGNMENT OF DEVELOPMENT RIGHTS AND OBLIGATIONS

The City acknowledges that the Owner has the right at any time, to assign all, but not less than all, of this Agreement, together with the developing rights and obligations established herein, to a third-party owner and developer of the Property, provided that any such assignee third party owner and developer shall be bound to develop the Property in accordance with the provisions of this Agreement. Provided, further that by executing this Agreement the City consents in advance that Owner may assign all, but not less than all, of this Agreement to any assignee as to which a party to this Agreement is an equity owner in the assignee without prior written consent of the City. The City and the Owner acknowledge that, in accordance with Section 163.3239, Florida Statutes (2020), the burden of this Agreement and the benefits of this Agreement shall inure to the benefit of and be binding upon all of the successors in interest to the Parties in this Agreement.

IX. DISPUTE RESOLUTION

1. Notice of Default. The City agrees to use its best efforts to promptly notify the Owner of any breach of a material covenant under this Agreement, provided that the failure to do so shall not constitute a waiver of the same or of any subsequent breach, or affect any remedy available to the City.
2. Mediation. The Parties will attempt in good faith to resolve by mediation any controversy or claim of any kind or nature arising out of or relating to this Agreement prior to the commencement of any litigation. If the Parties are unable to agree upon a mediator to serve, the mediator shall be selected by the Chief Judge of the Circuit Court of the Fourteenth Judicial Circuit of the State of Florida, upon application being made by either

party. The mediation shall be set by the mediator. The mediation process shall be concluded within 30 days after the mediator is selected, unless extended for good cause by the mediator. In the event that any such dispute cannot be resolved by mediation after a good faith effort by both parties, either party may seek relief in the Circuit Court of the Fourteenth Judicial Circuit, in and for Bay County, Florida.

3. Remedies. Following unsuccessful mediation, the affected Party shall be entitled to pursue all remedies available at law or in equity as shall be necessary to achieve the intent of this Agreement, including without limitation, the right to obtain specific performance and mandatory injunction rescission and the right to such other remedy or remedies as the court having jurisdiction deems appropriate. None of these remedies shall be deemed exclusive of one another, or exclusive of any other remedy which the court having jurisdiction deems appropriate. Such remedies shall be granted either singularly, or in combination, and to the extent necessary to achieve the intent of this Agreement.
4. Upon a breach of a material covenant under this Agreement which also is a violation of a Development Permit issued by the City, the City shall have all rights and remedies accorded to it under general law with respect to such Development Permit. The provisions of this paragraph are cumulative to any other remedy available to the City.
5. Estoppel Certificate. At any time and from time to time, the Owner may request from the City a certificate acknowledging that proposed or constructed facilities, or proposed or finalized documents comply with specific provisions of this Agreement. Upon the receipt of such a request, the City shall have fifteen (15) working days to either issue such certificate or request such additional information or documentation as it may deem appropriate or, necessary to make the requested certificate. In lieu of such additional information or documentation, the Owner may request that the City make stated assumptions in its documentation. Upon receipt of any requested additional information or documentation, or the Owner's request that the City make certain assumptions in lieu of such documentation, the City shall promptly (and in no event more than fifteen (15) working days after such receipt) prepare a certificate stating whether or not the proposed or constructed facilities or the proposed or finalized documents comply with the specified provisions of this Agreement. The City shall be estopped from taking a position inconsistent with such certificate.

X. NOTICES

Any notices required to be given or elected to be given by either of the Parties pursuant to the terms of this Agreement shall be deemed effectively provided when (1) placed in the United States Mail, Certified Mail Return Receipt Requested, (2) placed in the hands of an overnight delivery service e.g. Federal Express, Airborne Express, (3) telefaxed to parties, or (4) hand delivered to the parties at the physical and email addresses and telefax numbers provided below.

5. **No Waiver.** No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided. Neither the failure or an delay by an party hereto in exercising any right or power under this Agreement nor any course of dealing between the parties the City on the one hand, and the Owner or its permitted assignee, on the other hand, will operate as a waiver of such right or power, and no single or partial exercise of any such right or power will preclude any other or further exercise of such right or power or the exercise of any other right or power.
6. **Conditions.** The Conditions in Exhibit D are incorporated herein by reference.

[Signatures continued on the following pages.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their appropriate authorized representative on the dates below written.

CITY OF PANAMA CITY, FLORIDA

Signed, sealed and delivered in the presence of

ATTEST:

[Signature]
Jan Smith, City Clerk

By: [Signature]
Michael X. Rohan, Sr., Mayor

Witnesses:

[Signature]
Signature

Jan Edwards
Printed Name

501 Harrison Ave.
Panama City, FL 32401
Address

[Signature]
Signature

Doreen Geldert
Printed Name

501 Harrison Ave.
Panama City, FL 32401
Address

Approved as to form and correctness:

[Signature]
Nevin J. Zimmerman, City Attorney
Burke Blue P.A.

STATE OF FLORIDA
COUNTY OF BAY

Sworn to and subscribed before me by means of physical presence or online notarization, this 29th day of August, 2024, by MICHAEL ROHAN, as MAYOR of the City of Panama City, who is personally known to me or produced (type of identification) _____ as identification.



DOREEN GELDERT
Commission # HH 205136
Expires December 7, 2025

[Signature]
NOTARY PUBLIC
Doreen Geldert
Printed Name of Notary
My Commission Expires: _____
Commission No.: _____

305 BEACH DRIVE DEVELOPMENT
GROUP, LLC

By: SOUTHERN AMERICAN
CONSTRUCTION LLC

Its: Manager

By: [Signature]
Michael McNeil
Manager

Witnesses:

[Signature]
Signature

Amy L. Shaw
Printed Name
131 Via Largo
SRB, FL 32459
Address

[Signature]
Signature

Mary M Urban
Printed Name
10343 E Co Hwy 30A, Suite E104
Inlet Beach FL 32441
Address

STATE OF FLORIDA
COUNTY OF BAY

Sworn to and subscribed before me by means of physical presence, this 3rd day of Sept, 2024, by Michael McNeil, as Manager of Southern American Construction LLC, as Manager of 305 BEACH DEVELOPMENT GROUP, LLC, on behalf of the limited liability company, who is personally known to me or produced (type of identification) _____ as identification.



[Signature]
NOTARY PUBLIC
Amy L. Shaw
Printed Name of Notary
My Commission Expires: 4/30/2028
Commission No.: HH 516504

Exhibit A

Legal Description for Property

DESCRIPTION OF PARCEL:

PARCEL 1:

A PARCEL OF LAND BEGINNING AT A POINT 389.2 FEET NORTH OF THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 4 SOUTH, RANGE 14 WEST, BAY COUNTY, FLORIDA; THENCE N41°30'00"W 81.5 FEET TO THE MARGIN OF MASSALINA BAYOU; THENCE IN A NORTHEASTERLY DIRECTION ALONG SAID MARGIN OF MASSALINA BAYOU TO A POINT WHERE SAME IS INTERSECTED BY THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 9; THENCE SOUTH ALONG SAID WEST LINE TO THE POINT OF BEGINNING; LYING AND BEING IN BAY COUNTY, FLORIDA.

PARCEL 2:

A PARCEL OF LAND BEGINNING AT A POINT 334.7 FEET NORTH OF THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 4 SOUTH, RANGE 14 WEST, BAY COUNTY, FLORIDA; THENCE N41°30'00"W TO THE MARGIN OF MASSALINA BAYOU; THENCE NORTHEASTERLY ALONG SAID MARGIN OF MASSALINA BAYOU TO A POINT WHERE IT IS INTERSECTED BY A LINE PARALLEL TO THE FIRST MENTIONED LINE AND 36.5 FEET THERE FROM; THENCE S41°30'00"E, ALONG SAID PARALLEL LINE TO ITS INTERSECTION WITH THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 9, TOWNSHIP 4 SOUTH, RANGE 14 WEST; THENCE SOUTH ALONG SAID WEST LINE A DISTANCE OF 54.5 FEET TO THE POINT OF BEGINNING; LYING AND BEING IN BAY COUNTY, FLORIDA. LESS & EXCEPT ANY PORTION LYING WITHIN THE RIGHT OF WAY OF BEACH DRIVE.

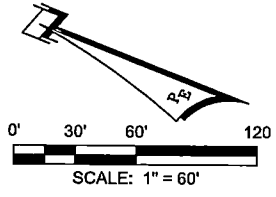
PARCEL 3:

PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, SECTION 9, TOWNSHIP 4 SOUTH, RANGE 14 WEST, BOUNDED AS FOLLOWS: ON THE NORTH BY MASSALINA BAYOU; ON THE EAST BY HARMON AVENUE; ON THE SOUTH BY SECOND COURT; ON THE WEST BY BEACH DRIVE; IN PANAMA CITY, FLORIDA. SUBJECT TO THAT CERTAIN EASEMENT GRANTED TO CITY OF PANAMA CITY BY INSTRUMENT RECORDED IN OFFICIAL RECORDS BOOK 35, PAGE 46, OF THE PUBLIC RECORDS OF BAY COUNTY, FLORIDA.

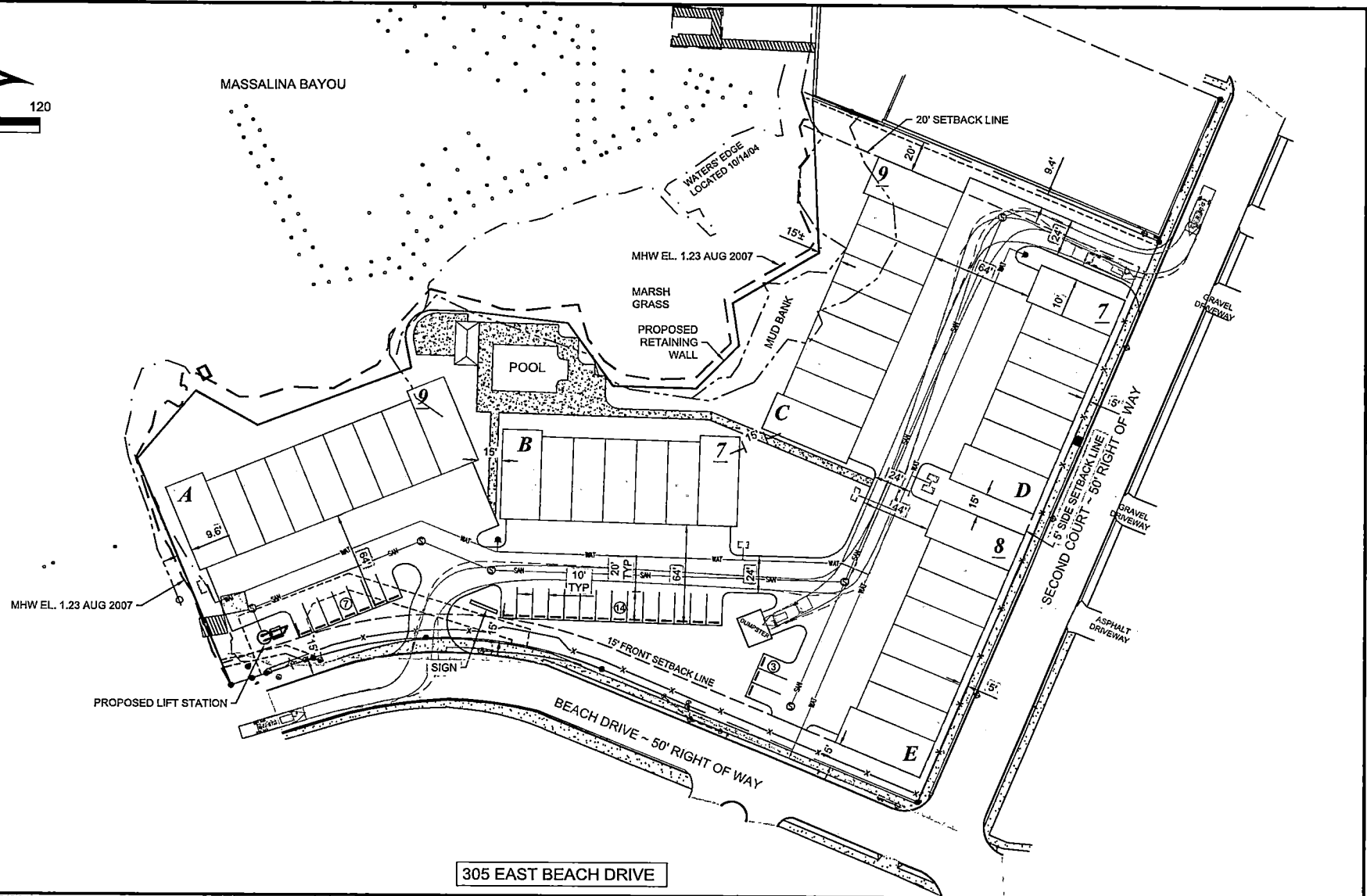
LESS AND EXCEPT:

THAT PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 4 SOUTH, RANGE 14 WEST, BAY COUNTY, FLORIDA, BOUNDED AS FOLLOWS: ON THE NORTH BY MASSALINA BAYOU; ON THE EAST BY HARMON AVENUE; ON THE SOUTH BY SECOND COURT; ON THE WEST BY A LINE 100 FEET WEST OF AND PARALLEL WITH THE WEST RIGHT OF LINE OF HARMON AVENUE.

FOR SCALE VERIFICATION AFTER DUPLICATION, THIS LINE SHOULD BE 1" LONG



Date: Monday, April 8, 2024 10:32:08 AM D:\Jim Husted\Fire_Plan\175501 Pelican Pass Townhouse\CONCEPTS\Drawings\175501 EXHIBIT A-2.dwg



REV	DATE	MM	REVISIONS

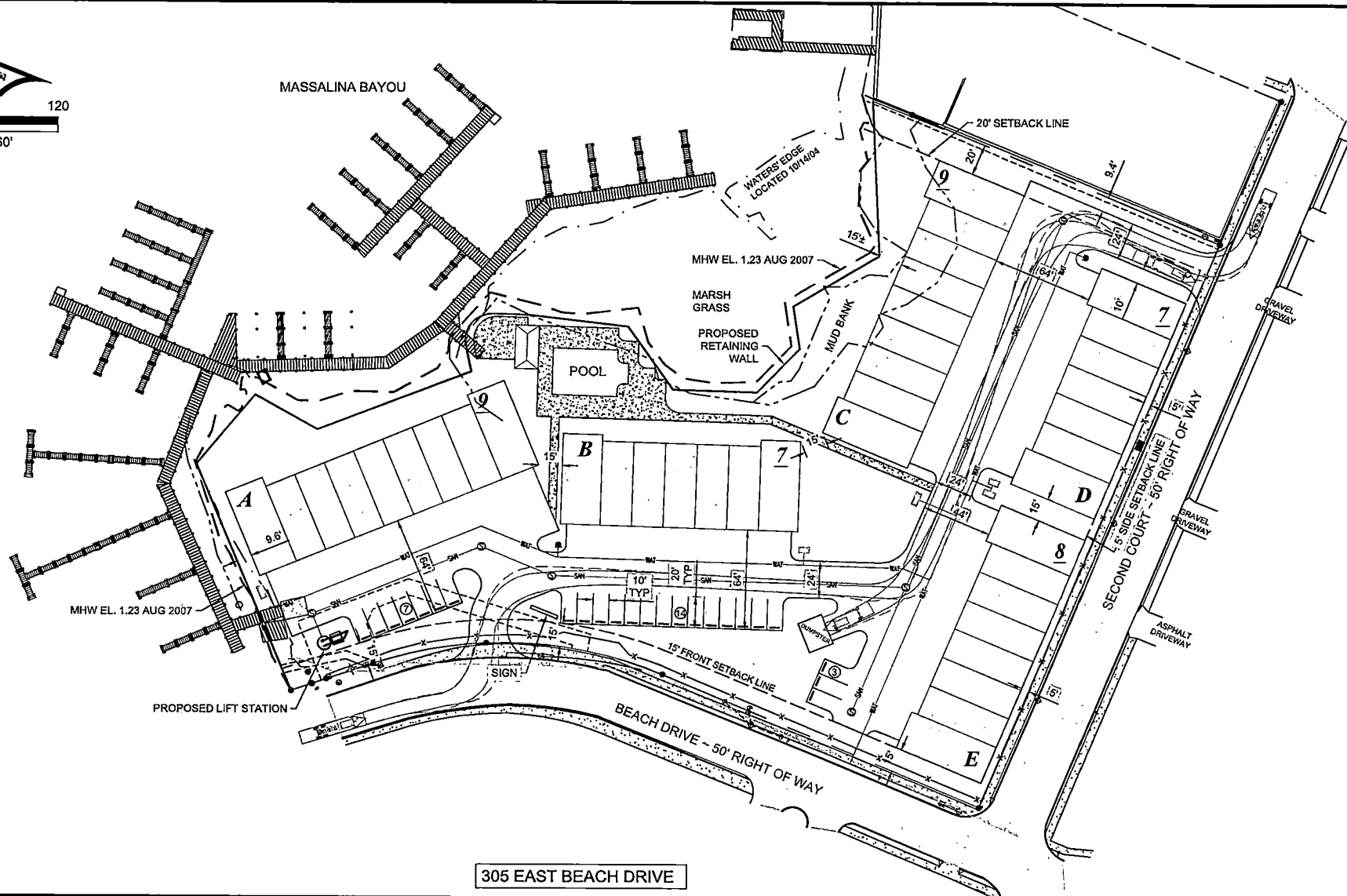
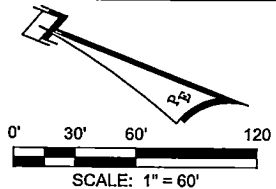
SCALE: AS NOTED
 DESIGNED BY: JHS
 DRAWN BY: JAH
 REVIEWED BY: JHS
 ISSUE DATE: APRIL 2024
 ACAD FILE NAME: 175501 EXHIBIT A-2.dwg

PANHANDLE ENGINEERING
 ENVIRONMENTAL ENGINEERS • CIVIL ENGINEERS • LAND PLANNERS
 600 Ohio Avenue Lynn Haven, Florida 32444
 (850)783-5200 www.panhandleengineering.com

CONCEPTUAL SITE PLAN
 PELICAN PASS TOWNHOUSE SUBDIVISION
 AT MASALINA BAYOU
 PANAMA CITY, FLORIDA

DPR CERTIFICATION No:	EB-7806
SHEET NO:	2 OF 4
PROJECT NUMBER:	175501

FOR SCALE VERIFICATION AFTER DUPLICATION, THIS LINE SHOULD BE 1" LONG



305 EAST BEACH DRIVE

REV	DATE	MM	REVISIONS

SCALE: AS NOTED
 DESIGNED BY: JHS
 DRAWN BY: JAH
 REVIEWED BY: JHS
 ISSUE DATE: APRIL 2024
 ACAD FILE NAME: 175501 EXHIBIT A-2.dwg

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 630 Chilo Avenue Lynn Haven, Florida 32444
 (850)783-5200 www.panhandleengineering.com

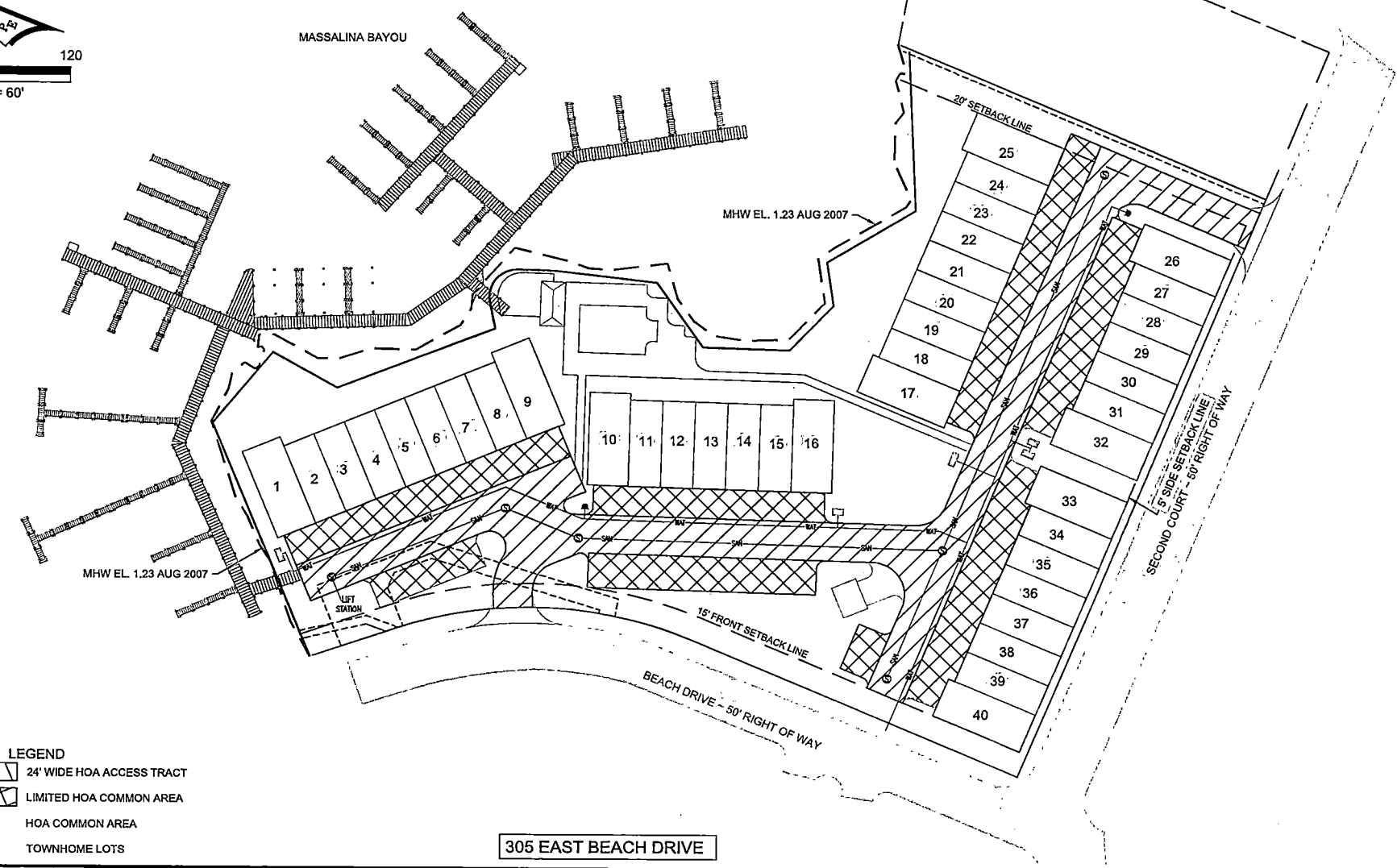
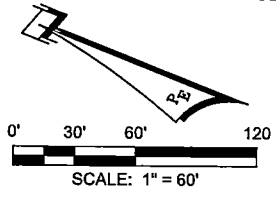
CONCEPTUAL SITE PLAN
 PELICAN PASS TOWNHOUSE SUBDIVISION
 AT MASALINA BAYOU
 PANAMA CITY, FLORIDA

DPR CERTIFICATION No:
 EB-7806
 SHEET NO:
 3 OF 4
 PROJECT NUMBER:
 175501

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Date: Monday, April 8, 2024 10:25:06 AM EDT; User: jhah; File: P:\175501 Pelican Pass Townhouse\1. Conceptual\Drawings\1. CSP\175501 EXHIBIT A-2.dwg

FOR SCALE VERIFICATION AFTER DUPLICATION, THIS LINE SHOULD BE 1" LONG



- LEGEND**
- 24' WIDE HOA ACCESS TRACT
 - LIMITED HOA COMMON AREA
 - HOA COMMON AREA
 - TOWNHOME LOTS

305 EAST BEACH DRIVE

REV	DATE	MMM	REVISIONS

SCALE: AS NOTED
 DESIGNED BY: JHS
 DRAWN BY: JAH
 REVIEWED BY: JHS
 ISSUE DATE: APRIL 2024
 ACAD FILE NAME: 176501 prelim plot.dwg

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CONCEPTUAL SITE PLAN - DRAFT PLAT
 PELICAN PASS TOWNHOUSE SUBDIVISION
 AT MASALINA BAYOU
 PANAMA CITY, FLORIDA

DPR CERTIFICATION No:	EB-7806
SHEET NO:	4 OF 4
PROJECT NUMBER:	176501

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Date: Monday, April 8, 2024 10:32:07 AM D:\srm\sp\pelican\176501_Pelican Pass Townhomes\176501_Pelican Pass Townhomes\176501_Prelim Plot.dwg

EXHIBIT C

NOTES TO THE CONSOLIDATED SITE PLAN

1. The Site Plan is designed to provide a representation of the proposed layout of the development of the Project on the Property.
2. The ultimate development of the Property may vary and be repositioned from that as shown on the Site Plan as such development may be dictated by architectural, engineering, topographic, ecological, environmental, economic or other considerations, however it is anticipated that the development of the Property will generally follow the scheme as depicted on the Site Plan.

EXHIBIT D

CONDITIONS

This Project is anticipated to be developed in three (3) primary phases which may overlap one another:

- a) relocation and construction of Sanitary Lift Station # 80;
- b) permitting and construction of residential townhome and subdivision; and
- c) permitting and construction of a marina to serve the townhomes and the public.

A. The Relocation and Construction of Sanitary Lift Station # 80.
(See Exhibit B hereto)

- (i) The City, Owner and applicable regulatory agencies support the replacement of the aged mechanically-distressed existing lift station # 80 and the relocation and reconstruction of a new sanitary lift station # 80 to best serve the public utility customers, and reduce environmental risks.
- (ii) Initially the aged City sanitary lift station # 80 will be relocated and constructed as shown on the Site Exhibit "B" ("New Lift Station"). The New Lift Station will be constructed consistent with and in compliance with FDEP permit #0414855-001-DWC/CG, 04 February 2022, approved by the City, 13 December 2021, and Sealed by the Engineer of Record, James H. Slonina, PE, 08 December 2021.
- (iii) The New Lift Station # 80 site parcel will be deeded to the City by the Owner, and associated utility and access easements will be provided to the City by the Owner. The City shall, by special warranty deed, the existing Lift Station # 80 site parcel to the Owner. The existing utility and access easements shall be vacated by appropriate action by the City.
- (iv) Following the construction and operational testing, the Engineer of Record shall submit certification of completion to FDEP. Upon receipt of FDEP acknowledgement of operational clearance, the Engineer of Record and City utility staff shall coordinate the transfer of sanitary pumping operations of the new lift station # 80. Upon operational switchover the Owner shall transfer operational and ownership responsibilities to the City.
- (v) Following operational transfer, the existing Lift Station # 80 shall be demolished by the City and all debris and equipment shall be disposed of by the City off-property. The City shall have the opportunity to salvage any equipment during such demolition in a timely manner.

B. With respect to the relocation and construction of Sanitary Lift Station # 80, all reasonable expenses incurred or associated with all of the following shall be shared by the Owner and the City as follows:

the City agrees to pay 50% of the expenses of the project or \$300,000.00 (whichever is less) of the following costs and expenses and the Owner agrees to pay the balance of the costs and expenses which exceeds 50% of the costs (\$300,000.00) paid by the City:

- (i) engineering soft costs and regulatory application fees and expenses;

EXHIBIT D

- (ii) design, permitting, contractor solicitation, construction and operational transfer expenses for New Lift Station; and
- (iii) stormwater relocation and reconstruction.

Expenses shall be overseen and tracked by the Engineer of Record, with the assistance of the City. The Engineer of Record shall periodically, and upon construction monthly, provide a summary of expenses and supporting documentation for expenses incurred to the City and Owner for payment. Payment remittance shall be made to the payment recipients within 30 calendar days.

The City agrees that the Owner shall be entitled to a credit towards utility impact fees which would ordinarily be assessed against the construction of the townhomes planned for the Project in an amount equal to the funds expended by the Owner payable towards the portion of the total costs and expenses paid by the Owner and delineated in the paragraphs B(i), B(ii) and B(iii) above. However, in no event, shall the credit exceed the amount payable by the Owner toward the costs and expenses.

C. Riparian Setback Waiver.

The City will approve a riparian setback waiver allowing the Owner to construct a slip or slips in the marina, planned to be developed in conjunction with the Project, within 25 feet of the Owner's riparian rights.

D. Stormwater Drainage Relocation and Reconstruction Costs.

Currently there is an existing stormwater drainage piping routing from 2nd Street through the development parcel to Massalina Bayou. The drainage piping conflicts with proposed building foundations and is therefore proposed to be reconstructed to route along & within the eastern 20 feet of the development parcel with discharge to Massalina Bayou.