

**CITY OF LIGHTHOUSE POINT, FLORIDA**

**ORDINANCE NO. 2022 - 0984**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIGHTHOUSE POINT, FLORIDA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LIGHTHOUSE POINT AND LIGHTHOUSE POINT YACHT CLUB INVESTMENTS, LLC, FOR THE DEVELOPMENT OF PROPERTY WITHIN THE CITY OF LIGHTHOUSE POINT; AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE THE AGREEMENT AND TAKE ALL ACTIONS TO EFFECTUATE THE TERMS OF THE AGREEMENT; PROVIDING FOR RECORDATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, certain property owned by Lighthouse Point Yacht Club Investments, LLC, identified by Broward County Property Appraiser Tax Folio No. 438317-05-0060, within the City, the legal description of which is set forth in Exhibit “A” attached hereto, is the subject of redevelopment applications with the City, including amendments to the City’s Comprehensive Plan, and rezoning of the property from B-2A (Planned Business District) to YC-MU (Yacht Club – Mixed Use), pursuant to the requirements of the YC-MU (Yacht Club – Mixed Use) zoning district; and,

**WHEREAS**, in order to be rezoned to the YC-MU (Yacht Club – Mixed Use) zoning district, a Development Agreement between the City and the property owner must be approved and executed; and,

**WHEREAS**, the City Administration and the applicant have negotiated the terms and conditions of the Development Agreement, and have engaged the review of the City’s Planning and Zoning Board; and,

**WHEREAS**, the City’s Planning and Zoning Board has considered and discussed the Development Agreement at numerous public meetings, most recently on December 5, 2021, and

**CITY OF LIGHTHOUSE POINT, FLORIDA**

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provided meaningful input and recommendations with which the City Administration and applicant agree; and,

**WHEREAS**, the notice and hearing requirements for review and approval of a Development Agreement set forth by law have been satisfied; and

**WHEREAS**, pursuant to Section 163.3225, the City Commission has conducted two public hearings on the proposed Development Agreement, including one quasi-judicial hearing, and considered the Development Agreement, the recommendations of the Planning and Zoning Board, and the comments from the public.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LIGHTHOUSE POINT, FLORIDA, AS FOLLOWS:**

**Section 1.** The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct, and are hereby made a specific part of this Ordinance.

**Section 2.** The City Commission of the City of Lighthouse Point approves the Development Agreement, attached hereto as Exhibit “B” and incorporated herein.

**Section 3.** The City Commission authorizes the appropriate City officials to execute the Development Agreement, and to take all actions necessary to effectuate the Development Agreement and the intent of this Resolution, including without limitation the recordation of the Development Agreement at the expense of the applicant.

**Section 4.** If any clause, section, or other part or application of this Ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such

**CITY OF LIGHTHOUSE POINT, FLORIDA**

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unconstitutional or invalid part or application shall be considered eliminated and so not affecting the validity of the remaining portion or applications remaining in full force and effect.

**Section 5.** All ordinances or parts of ordinances, resolutions or parts of resolutions in conflict herewith are to the extent of such conflicts hereby repealed.

**Section 6.** This Ordinance shall take effect as provided by law.

**PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF LIGHTHOUSE POINT, FLORIDA, ON PUBLIC HEARING AND FIRST READING, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2022.**

**PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF LIGHTHOUSE POINT, FLORIDA, ON PUBLIC HEARING AND SECOND AND FINAL READING, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2022.**

BY:

\_\_\_\_\_  
Kyle Van Buskirk, Commission President

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Office of the City Attorney

Commission President Kyle Van Buskirk  
Commission Vice President Sandy Johnson  
Commissioner Jason D. Joffe  
Commissioner Michael S. Long  
Commissioner Earl Maucker

Yes	No	Absent
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**CITY OF LIGHTHOUSE POINT, FLORIDA**

**ORDINANCE NO. 2022 - 0984**

**EXHIBIT A**

**LEGAL DESCRIPTION**



# COUSINS SURVEYORS & ASSOCIATES, INC.



3921 SW 47TH AVENUE, SUITE 1011  
DAVIE, FLORIDA 33314  
CERTIFICATE OF AUTHORIZATION : LB # 6448  
PHONE (954) 689-7766 FAX (954) 689-7799

PROJECT NUMBER : 8252-17

CLIENT :  
LIGHT HOUSE  
POINT YACHT CLUB

## LAND DESCRIPTION AND SKETCH

### LAND DESCRIPTION:

BLOCKS 43 AND 43-A, OF VENETIAN ISLES REPLAT, A REPLAT OF A PORTION OF VENETIAN ISLES 3RD SECTION, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 48, PAGE 41, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

### LEGEND:

CKD	CHECKED BY
DWN	DRAWN BY
FB/PG	FIELD BOOK AND PAGE
POB	POINT OF BEGINNING
POC	POINT OF COMMENCEMENT
P.B.	PLAT BOOK
B.C.R.	BROWARD COUNTY RECORDS
POT	POINT OF TERMINATION
REF.PT.	REFERENCE POINT

### NOTES:

1. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD.
3. DATA SHOWN HEREON DOES NOT CONSTITUTE A FIELD SURVEY AS SUCH.
4. THE LAND DESCRIPTION SHOWN HEREON WAS PREPARED BY THE SURVEYOR.
5. BEARINGS SHOWN HEREON ARE BASED ON THE EAST LINE OF LOT 14, BLOCK 37 OF "VENETIAN ISLES 3RD SECTION"  
P.B. 47, PG. 13, B.C.R. SAID LINE BEARS N21°43'05"E.

I HEREBY CERTIFY THAT THE ATTACHED "LAND DESCRIPTION AND SKETCH" IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION IN JANUARY, 2021. I FURTHER CERTIFY THAT THIS "LAND DESCRIPTION AND SKETCH" MEETS THE STANDARD OF PRACTICE FOR SURVEYING IN THE STATE OF FLORIDA ACCORDING TO CHAPTER 5J-17 OF THE FLORIDA ADMINISTRATIVE CODE. PURSUANT TO SECTION 472.027, FLORIDA STATUTES. SUBJECT TO THE QUALIFICATIONS NOTED HEREON.



FOR THE FIRM, BY: -----

RICHARD E. COUSINS  
PROFESSIONAL SURVEYOR AND MAPPER  
FLORIDA REGISTRATION NO. 4188

REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION & SKETCH	01/26/21	----	AM	REC
REVISED PER COMMENTS	03/10/21	----	AM	REC

LAND DESCRIPTION  
AND SKETCH

PROPERTY ADDRESS :

2701 NE 42ND STREET

SCALE: N/A

SHEET 1 OF 3

PROJECT NUMBER : 8252-17

3921 SW 47TH AVENUE, SUITE 1011  
DAVIE, FLORIDA 33314  
CERTIFICATE OF AUTHORIZATION : LB # 6448  
PHONE (954) 689-7766 FAX (954) 689-7799

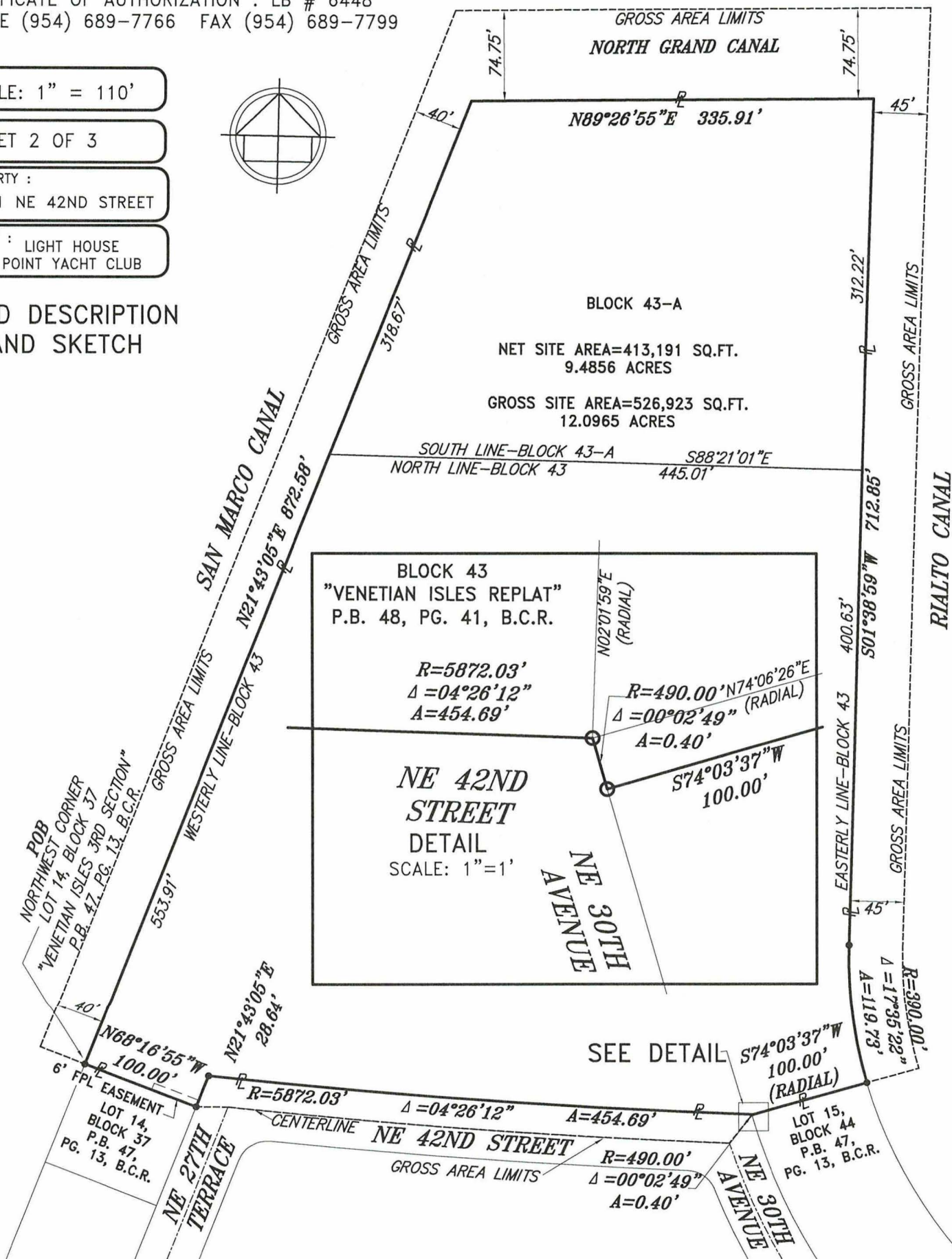
SHEET 2 OF 3

PROPERTY :

2701 NE 42ND STREET

CLIENT : LIGHT HOUSE  
POINT YACHT CLUB

## LAND DESCRIPTION AND SKETCH





3921 SW 47TH AVENUE, SUITE 1011  
 DAVIE, FLORIDA 33314  
 CERTIFICATE OF AUTHORIZATION : LB # 6448  
 PHONE (954) 689-7766 FAX (954) 689-7799

SCALE: 1" = 110'

SHEET 3 OF 3

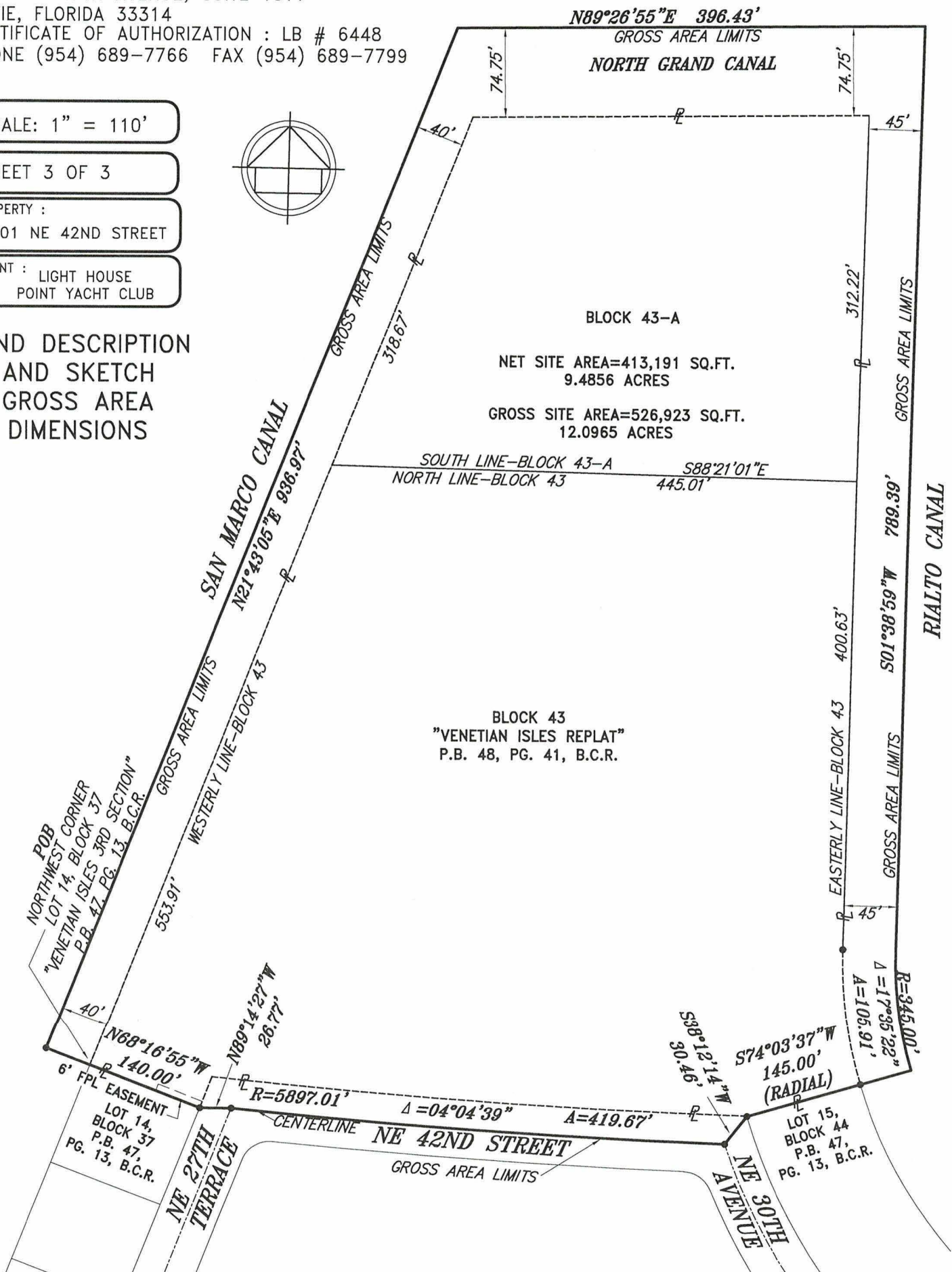
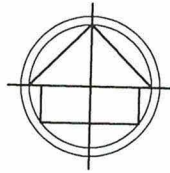
PROPERTY :

2701 NE 42ND STREET

CLIENT :

LIGHT HOUSE  
 POINT YACHT CLUB

## LAND DESCRIPTION AND SKETCH GROSS AREA DIMENSIONS



**CITY OF LIGHTHOUSE POINT, FLORIDA**

**ORDINANCE NO. 2022 - 0984**

**EXHIBIT B**

**DEVELOPMENT AGREEMENT**

Return to: (enclose self-addressed stamped envelope)

**Address**

Toothaker.org  
401 East Las Olas Boulevard, Ste. 130-154  
Fort Lauderdale, Florida 33301

**This Instrument Prepared by:**

Stephanie Toothaker, Esq. Toothaker.org  
401 East Las Olas Boulevard, Ste. 130-154  
Fort Lauderdale, Florida 33301

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**SPACE ABOVE THIS LINE FOR  
PROCESSING DATA**

**SPACE ABOVE THIS LINE FOR  
PROCESSING DATA**

**DEVELOPMENT AGREEMENT BETWEEN  
LIGHTHOUSE POINT YACHT CLUB INVESTMENTS, LLC**

**AND**

**CITY OF LIGHTHOUSE POINT,  
a municipal corporation of the State of Florida**

**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") dated \_\_\_\_\_, 2022, is made by and between LIGHTHOUSE POINT YACHT CLUB INVESTMENTS, LLC, a Florida limited liability company, its successors and/or assigns (the "Developer") and the CITY OF LIGHTHOUSE POINT, a municipal corporation of the State of Florida (the "City"). The Developer and the City are collectively the "Parties" and each individually is a "Party."

**Background:**

**WHEREAS**, Developer holds fee simple title to an approximate 9.5 net acre (12.1 gross acre) parcel of real property, commonly known as the Lighthouse Point Yacht Club in the City of Lighthouse Point and identified by Broward County Property Appraiser Tax Folio No. 484317-05-0060, as more particularly described in the survey attached hereto and made a part hereof as **Exhibit "A"** (the "Property"); and

**WHEREAS**, the Property currently consists of the yacht club facilities, including a clubhouse, Marina, and accessory uses; and

**WHEREAS**, the Developer desires to redevelop the Property to provide both commercial recreation and residential uses as a single, unified mixed-use development, including up to a 63,103 gross square foot, 2-story Yacht Club Clubhouse; up to a 2,420 gross square foot, 1-story renovated Kids' Center; up to a 4,063 gross square foot, 1-story Tennis Center-Bistro; up to a 78-slip Marina inclusive of all slips on the Property; up to a 800 gross square foot Marina dock office (the "Yacht Club Development"), up to a 22-unit residential development consisting of up to twenty-one (21) residential units in Townhouses and one (1) one-family residence (the "Residential Development"), and up to a 774 gross square foot entryway feature at the entryway of the Property, collectively hereinafter referred to as the "Proposed Development", all as depicted in the "Final Site Plan" approved by the City, attached hereto and made a part hereof as **Exhibit "B"**; and

**WHEREAS**, the City and Developer acknowledged that certain amendments to the City's Comprehensive Plan and Land Development Code are required to contemplate and facilitate the mixed use nature of the Proposed Development; and

**WHEREAS**, Developer applied to the City and the City has processed an application for a Land Use Plan Map Amendment to modify the future land use designation of an approximate



3.7 gross acre portion of the Property from Commercial Recreation to Irregular (6 du/ac) Residential to permit the development of up to 22 dwelling units on this portion of the Property, and the remaining approximate 8.4 gross acre portion of the Property shall remain with a future land use designation of Commercial Recreation; and

**WHEREAS**, Developer applied to the City and the City has processed an application for certain text amendments to the City's Comprehensive Plan that contemplate the Proposed Development, including clarifying limitation of uses in the Residential and Commercial Recreation land use categories, with the latter revision recognizing mixed use zoning districts as a permitted zoning district for land with a Commercial Recreation land use designation, and adding intensity limitations to the Commercial Recreation land use category; and

**WHEREAS**, Developer applied to the City and the City has processed an application for certain text amendments to the City's Land Development Code that contemplate the Proposed Development, including establishing a new zoning district entitled Yacht Club – Mixed Use ("YC-MU") district with certain development standards; and

**WHEREAS**, Developer applied to the City and the City has processed an application for a rezoning of the Property from B-2A to the YC-MU district designation; and

**WHEREAS**, Section 42-353 of the City's Land Development Code requires all rezoning applications requesting the YC-MU district designation to be accompanied by a Development Agreement; and

**WHEREAS**, this Development Agreement is entered into under the authority of the Florida Constitution, the general powers confirmed upon municipalities by statute and otherwise, including Sections 163.3220 through 163.3243, Florida Statutes, the Florida Local Government Development Act ("Act"), which authorizes local governments to enter into development agreements with developers to encourage a stronger long-term commitment to comprehensive and capital facilities planning, to ensure the provision of adequate public facilities for development, to encourage the efficient use of resources, to reduce the economic cost of development, and to provide certainty to developers and municipalities in the approval of development and assurances that they may proceed in accordance with the existing laws and policies, subject to the conditions of such development agreement, and is not otherwise inconsistent with the City's Charter, Land Development Code, and Code of Ordinances; and

**WHEREAS**, the Developer and the City desire to establish land development regulations that, upon the Effective Date of this Development Agreement, will establish the manner in which the Property will be developed; and

**WHEREAS**, this Development Agreement is the culmination of discussion, negotiations, and mutual understandings, and the Developer and the City believe that it is in the best interest of each Party to initiate the process required by law to enable the Property to be developed in accordance with the terms and conditions described herein, and in accordance with applicable law.

**WHEREAS**, the City held two (2) public hearings on January 11, 2022, and February 8, 2022, prior to entering into this Agreement, both of which were properly noticed by publication in a newspaper of general circulation within the City and by mailed notice to the affected property owners in accordance with Section 163.3225(2), Florida Statutes.

**NOW, THEREFORE**, in consideration of the mutual benefits, terms, conditions, the public interest, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. **Recitals.** The foregoing information is true, correct, and incorporated herein by reference. All Exhibits to the Development Agreement are deemed a part hereof. Exhibits B, C, D, E, and F are incorporated and deemed a part hereof by reference; only Exhibits A and G are attached for recording purposes.
2. **Definitions.** The following definitions shall apply to this Agreement unless otherwise defined in Section 163.3221, Florida Statutes, the City's Land Development Code, and the City Code. Unless otherwise defined herein, the definitions in the YC-MU zoning district shall apply to this Agreement.

**"Agreement"** shall refer to this Agreement, as the same may be subsequently amended, modified or supplemented pursuant to its terms and provisions and pursuant to the provisions of Sections 163.3221 through 163.3243, Florida Statutes.

**"Charter Boat"** shall mean one charter vessel located in the Yacht Club Basin and owned and operated by a third party with no more than six (6) guests per charter permitted, and no more than two (2) charter rentals per day.

**"City Code"** shall refer to the Code of Ordinances of the City of Lighthouse Point, as may be amended from time to time.

**"Comprehensive Plan"** shall refer to the City of Lighthouse Point Comprehensive Plan.

**"Effective Date"** shall refer to the date this Agreement becomes effective as set forth in Section 5 of this Agreement.

**"Kids' Center"** shall mean the Building at the Yacht Club primarily containing amenities and activities for children.

**"Land Development Code"** shall refer to Chapter 42 of the City Code, as may be redesignated, renumbered, and amended from time to time.

**"Live-Aboard Vessel"** shall mean a vessel considered to be the primary residence of a member of the Yacht Club and which is fully operational and fully navigable and meets all safety standards required by any other vessel and subject to Section 8.2.10 of this Agreement.



**"Pump Out Station"** shall mean a centrifugal vacuum pump that directs a vessel's sewage directly into Broward County's sewage system in compliance with the Florida Clean Marina Program, and as approved by Broward County.

**"Temporary Yacht Club Clubhouse"** shall mean the Tennis Center-Bistro facility which will be utilized on a temporary basis as the Yacht Club Clubhouse until such time as the Yacht Club Clubhouse receives a Certificate of Occupancy.

**"Tennis Center-Bistro"** shall mean the Building at the Yacht Club primarily used for tennis and food services associated with tennis use.

**"Transient Boat"** shall mean a vessel belonging to a guest of a member of the Yacht Club or a member of a participating reciprocal yacht club that is temporarily docking in a designated boat slip or dock at the Marina for less than a week based on slip availability and as set forth in Section 8.2.10 of this Agreement. A "reciprocal yacht club" is a network of yacht clubs in agreement for the mutual exchange of privileges within that specific group of yacht clubs, and in which the Yacht Club is a member.

3. **Purpose.** The purpose of this Agreement is to initiate the process required by law to develop the Property, to outline the manner in which the Property will be developed and the conditions that will govern the Property's development, to satisfy the concurrency requirements of Section 42-91 of the City's Land Development Code for the Property for the term of this Agreement, and to establish the respective rights and obligations of the Developer and the City.
4. **Property Ownership.** Developer acknowledges and represents to the City that Developer is the fee simple owner of the Property and is empowered to enter into this Agreement. The City acknowledges that in the event that Developer sells or otherwise transfers title to the Property, all terms, conditions and provisions of this Agreement shall inure to the benefit of and be binding upon any successor(s)-in-title to Developer, provided that the Developer is limited in its authority to assign its rights and obligations under this Agreement by Section 9 herein.
5. **Effective Date.** Within fourteen (14) days after the City executes this Agreement, the City, at Developer's expense, shall record the Agreement in the public records of Broward County, Florida. This Agreement shall become effective upon this Agreement being fully executed by all parties and upon all of the following applications being approved by the City, and all of which becoming final after the conclusion of any appeal period (or in the event of any appeal, the conclusion of an appeal), (hereinafter collectively referred to as the **"Required Development Approvals"**):
  - a. Ordinance amending the future land use designation for the portion of the Property proposing Residential Development from Commercial Recreation to Irregular (6 du/ac) Residential, a copy of which is attached hereto as Exhibit "C";
  - b. Ordinance amending the text of the City's Comprehensive Plan relating to the

- proposed development, a copy of which is attached hereto as Exhibit "D";
- c. Ordinance amending the City's Land Development Code to create the new YC-MU zoning district a copy of which is attached hereto as Exhibit "E";
- d. Ordinance rezoning the Property to YC-MU, a copy of which is attached hereto as Exhibit "F"; and,
- e. Final Site Plan, attached hereto as Exhibit "B"

In addition, the Consents of Mortgagee and other interests on the Property recorded in the public record as of the Effective Date of this Agreement must be executed in order for this Agreement to be effective. Should any of the items listed above not be approved by the City or the Consent of Mortgagee not be executed, then this Agreement shall be of no force and effect. Should the Developer determine not to pursue the development, it may advise the City in writing at any time prior to thirty (30) days after this Agreement becomes effective. In the event Developer so advises the City, the Developer agrees that the City may nullify, with no liabilities to the Developer, any and all of the approvals made by the City, including returning the Property to the land use and zoning it had at the time Lighthouse Point Yacht Club Investments, LLC purchased the Property.

For purposes of this paragraph, an approval becomes effective upon the expiration of any timeframe for lower court, appellate or administrative review of the City's action, or if any review is initiated, the conclusion of such. In the event any approval by the City is overturned through court challenge or administrative action, either party may terminate this Agreement, the Parties may amend this Agreement, or the Parties may proceed consistent with the order issued as a result of the review.

Developer acknowledges that the City does not represent the Developer and is not obligated to represent the Developer in any capacity in any review action relating to the City's decisions on its applications. The Developer shall take an active role in the review on its own behalf. In the event of a review action filed by a person other than a party to this Agreement, Developer shall reimburse the City for all of the City's costs and attorney's fees incurred in any court, appellate or administrative review actions relating to the City's decisions on any of the applications for the development.

6. **Duration of the Agreement.** The duration of this Agreement is for a thirty (30) year period and may be extended only by mutual consent of the Developer and the City. Consent of the City to extend the duration of this Agreement shall be evidenced by adoption of an Ordinance amending the Ordinance adopting this Agreement and in compliance with Section 163.3225, Florida Statutes.
7. **Amendment.** This Agreement may only be amended by a written instrument executed by all Parties in conformance with the requirements of applicable law.
8. **Proposed Development.** This Agreement entitles Developer to develop the Property consistent with the approved land use, YC-MU district regulations, and the following.
  - 8.1. **Entryway Feature.** Consistent with the Final Site Plan, the Developer shall be

permitted to develop up to a 774 gross square foot entryway feature at the entryway of the Property consistent with the Irregular Residential (6 du/ac) land use designation and YC-MU district regulations as shown on the Final Site Plan. The entryway feature shall not be converted to a habitable guardhouse or control entry gate.

- 8.2. **Yacht Club Development.** Upon final approval of the Final Site Plan by the City, the Developer shall be permitted to develop commercial recreation uses consistent with the Commercial Recreation land use designation and YC-MU district regulations as shown on the Final Site Plan.

- 8.2.1. **Permitted Uses.** Developer shall be permitted to develop up to a 63,103 gross square foot, 2-story Yacht Club Clubhouse; up to a 2,420 gross square foot, 1-story renovated Kids' Center; up to a 4,063 gross square foot, 1-story Tennis Center-Bistro; up to a 78-slip Marina, inclusive of all slips on the Property, up to a 800 gross square foot Marina dock office, and other Accessory Buildings, Accessory Structures, and Accessory Uses as defined in Paragraph 8.2.2.

- 8.2.2. **Principal Building and Accessory Buildings Accessory Structures, and Accessory Uses.** The Principal Building shall be considered the Yacht Club Clubhouse. Accessory Buildings, Accessory Structures, and Accessory Uses to the Yacht Club Clubhouse shall include the Kids' Center; Tennis Center-Bistro; Marina; one Charter Boat as provided in the YC-MU district; swimming pools and pool decks; cabanas; sail tents; free standing shade Structures; play Structures; tennis courts; flagpoles; mechanical equipment; all as approved in the Final Site Plan.

The City acknowledges and agrees that separate Business Tax Receipts may be issued for uses incidental to the operation of the Yacht Club.

- 8.2.3. **Floor Areas.** The Yacht Club Clubhouse, Kids' Center, Tennis Center-Bistro, and covered Accessory Structures shall each have a total floor area in accordance with the Final Site Plan.
- 8.2.4. **Setbacks.** Building setbacks for nonresidential uses shall be in accordance with the Final Site Plan.
- 8.2.5. **Building Height.** Building and Structure heights shall be in accordance with the Final Site Plan.
- 8.2.6. **Building Length.** Building lengths for nonresidential buildings shall be in accordance with the Final Site Plan.
- 8.2.7. **Building Separation.** Building separation for nonresidential buildings shall be in accordance with the Final Site Plan.



8.2.8. **Pervious Area.** The total Pervious Area for nonresidential uses shall be in accordance with the Final Site Plan.

8.2.9. **Landscape.** The landscape for nonresidential uses and parking areas shall be in accordance with the Final Site Plan. Landscape planting and maintenance shall be of superior quality.

8.2.10. **Marina.**

- (a) The Marina will consist of seventy-eight (78) slips, including those slips located in the Yacht Club Basin within the Commercial Recreation land use designation and in the City owned canals adjacent to the upland residential units in the designated Irregular Residential (6 du/ac) land use designation.
- (b) The Marina shall be restricted to use by members in good standing of the Yacht Club, Transient Boats, and Charter Boat.
- (c) Boat Detailing, transient diesel fueling, vessel pump out, and provisioning and minor repair and maintenance, including bottom cleaning, reupholstering and canvas, mechanical and other repairs, so long as repairs are performed onboard the vessel, shall be permitted.
- (d) A maximum of twelve (12) Live-Aboard Vessels shall be permitted only in the Yacht Club Basin.
- (e) Developer will provide pump out services for each slip.
- (f) One Charter Boat shall be permitted.
- (g) Boat dock or boat slip rental to Transient Boats shall be permitted. Transient Boats shall be permitted to be berthed in up to a maximum of ten (10) of the seventy-eight (78) slips permitted in the Yacht Club Basin.
- (h) Only licensed and insured sub-contractors are allowed to work/service vessels in the Marina.
- (i) The Marina shall comply with all additional regulations as provided for in the YC-MU district.
- (j) The Marina shall upgrade the fire protection for A and D docks consistent with the requirements of the National Fire Protection Association prior to the Certificate of Occupancy being issued for the Yacht Club Clubhouse. The Marina shall upgrade the fire protection for B and C docks consistent with the requirements of the National Fire Protection Association no later than December 31, 2025

- (k) Should Developer decide to redevelop the existing B and C docks and Marina dock office, the Developer shall be required to obtain approval through the City's procedures for such items contained in the City's Code at the time of site plan application.

8.2.11. **Tennis Court Limitations.** All tennis courts that operate at the Yacht Club Clubhouse shall close at 9:00 p.m. daily. Tennis court lights shall operate only during the permitted hours of play on the tennis courts.

8.2.12. **Parking.** The Yacht Club Development shall provide parking for non-residential uses in accordance with the Final Site Plan. A Valet Parking Agreement shall be recorded in accordance with the requirements of the YC-MU district. Developer agrees that (i) no part of any required nonresidential parking shall be used at any time for vehicle storage, including but not limited to the use or storage of campers and other similar recreational vehicles, boats, trailers and commercial vehicles; (ii) a Charter Boat shall not operate during scheduled occasional events of over 200 people, including but not limited to wedding receptions, parties and fundraisers, held at the Yacht Club; (iii) no parking shall be allowed on any part of the internal vehicular access drive on the Property, excluding the parking drives, lanes and aisles when used as Valet Parking; and (iv) no parking shall be allowed off-site in the adjacent residential neighborhoods. For special events where it is possible that [redacted] persons or more may attend that special event, including additional staff for the event, Developer shall, at least seven (7) business days prior to the event, submit to the City Administrator for review and approval a special event parking management plan which identifies alternate parking plans to accommodate the anticipated parking demand.

Comment [MDCJ1]: TBD

8.3. **Residential Development.** Upon final approval of the Final Site Plan by the City, Developer shall be permitted to develop residential uses consistent with the Irregular Residential (6 du/ac) land use designation and YC-MU district regulations as shown on the Final Site Plan. The aesthetics of the Residential Development shall be consistent with the approval of the City's Community Appearance Board.

8.3.1. **Permitted Uses.** Developer shall be permitted to develop up to twenty-two (22) residential units as set forth in the Final Site Plan

8.3.2. **Principal Buildings and Accessory Buildings, Accessory Structures, and Accessory Uses.** The Principal Building shall be considered the residential dwelling unit on each residential Lot. Accessory Uses and Accessory Structures shall include an entryway feature, walls, fences; swimming pools, spas, hot tubs; mechanical equipment; all to be consistent with the Final Site Plan.

8.3.3. **Floor Area.** Residential dwelling units shall have a total floor area in accordance with the Final Site Plan.

8.3.4. **Setbacks.** Structural setbacks for residential uses shall be in accordance with the

Final Site Plan.

- 8.3.5. **Building Height.** Building and Structure heights shall be in accordance with the Final Site Plan.
  - 8.3.6. **Building Length.** Townhouse Buildings shall have a Building length in accordance with the Final Site Plan.
  - 8.3.7. **Building Separation.** The distance separation between the residential Buildings on the west and east sides of the YC-MU district shall be in accordance with the Final Site Plan.
  - 8.3.8. **Pervious Area.** The total Pervious Area for residential uses shall be in accordance with the Final Site Plan.
  - 8.3.9. **Setbacks.** Structural setbacks for residential uses shall be in accordance with the Final Site Plan.
  - 8.3.10. **Landscape.** The landscape for residential uses shall be in accordance with the Final Site Plan. Landscape planting and maintenance shall be of superior quality.
  - 8.3.11. **Parking.** Parking spaces shall be provided in accordance with the Final Site Plan. Developer agrees that (i) no part of any required residential parking shall be used at any time for vehicle storage, including but not limited to the use or storage of campers and other similar recreational vehicles, boats, trailers and commercial vehicles; (ii) guest spaces shall be distributed throughout the YC-MU district but shall be in addition to all other required parking for uses within the district; (iii) no residential parking shall be allowed on any internal vehicular access drive; and (iv) no residential parking shall be allowed off-site in the adjacent residential neighborhoods.
  - 8.3.12. **Amenity.** Developer agrees that the Yacht Club shall serve as the amenity for the residential uses required by the YC-MU district. Developer shall form a residential Homeowners' Association as defined in Ch. 720.301, F.S., and that Homeowners' Association shall be required to be a member of the Yacht Club. All owners of residential units shall be required to be members of the Homeowners' Association; and therefore will be required to be members of the Yacht Club through their membership in the Homeowners' Association.
  - 8.3.13. **Rental of Units.** Developer agrees that the rental of units shall be limited to long-term rentals only, which is defined as rentals with a term of six (6) months or more, and no more than two (2) rentals per calendar year.
- 8.4. **Combined Pervious Area.** The total minimum Pervious Area for the Proposed Development shall be in accordance with the Final Site Plan.



- 8.5. **Off-Site Landscape.** Developer agrees that the trees and other landscaping provided in the City's right-of-way on Northeast 42<sup>nd</sup> Street in accordance with the Final Site Plan shall have landscape planting and maintenance of superior quality and be perpetually maintained by the Developer.
- 8.6. **Emergency Vehicle Ingress and Egress.** Prior to issuance of any building permit by the City for development of the Property, Developer shall prepare, execute, and record a Declaration of Restrictive Covenants in the public records of Broward County subject to the City's approval in its sole and absolute discretion, restricting the secondary vehicular access drive, as depicted in the Final Site Plan, to emergency response vehicles only. In the event of a breach of this section by the Developer, the City may enforce this requirement through injunctive relief, or any other remedy provided herein, including code enforcement. The Developer shall be responsible for the City's attorney's fees and costs associated with the enforcement of this paragraph.
9. **Development Rights.** Developer shall develop the Property itself, and may not assign, transfer, or otherwise convey any duties or responsibilities for the development of the Property, or its duties or obligations under this Agreement, to any other entity except pursuant to this section. Developer may assign their rights, title, and interest to the Property, including the right to develop pursuant to any Final Site Plan, so long as said assignment is approved by the City Commission which approval may not be unreasonably withheld.
10. **Access Easement for Clean-up.** Prior to issuance of any building permit by the City for development of the Property, Developer shall provide the City with an easement on the Property, in a form acceptable to the City Attorney and approved by the Mayor, that shall remain in effect until the issuance of the final Certificate of Occupancy for the completion of the last Structure or Building as approved in the Final Site Plan, granting the City the right to enter, clean, and secure the Property through the Termination/Abandonment Bond required by Section 16 below. The easement shall be recorded in the public records of Broward County, and the City shall provide a release of the easement, upon the City's issuance of the final Certificate of Occupancy for the completion of the final Structure or Building as approved in the Final Site Plan. Prior to the City entering onto the Property pursuant to this Section 10, the City shall provide the Developer with written notice sent pursuant to the Notice paragraph in Section 26.7, effective upon receipt, advising of the issue that the City feels needs to be addressed and shall provide the Developer with a reasonable time to cure (the "Cure Period") commensurate with the City's estimate to cure. The Cure Period shall be at least ten (10) calendar days unless the City determines in its sole discretion that the issue presents an imminent health and safety risk. Any Cure Period shall start on the date of receipt of notice by Developer.
11. **Required Off-Site Use and Improvements.** The Parties agree that off-site improvements may be required as part of the site plan approval process.

11.1. **Construction MOT.**

11.1.1. Developer shall file with the City, for City's review and approval, a Maintenance of Traffic ("MOT") plan for the Proposed Development to address impacts on public rights of way, including paved road surfaces and adjacent swales. Any type of public road construction or road blockage must be detailed in the MOT plan and approved by the City at least ten (10) business days prior to the construction or road blockage. Failure to comply with this Section shall subject Developer to the penalties in Section 25.3 hereinafter

11.1.2. The City Engineer shall determine the number and location of temporary traffic calming devices to be used during the construction period. City shall be responsible for the installation, and Developer shall be responsible for the cost of installation. Should any temporary traffic calming device be severely damaged or destroyed, Developer shall be responsible for providing City with a replacement device.

11.2. **Permanent Off-Site Improvements.**

11.2.1. **Entranceway Improvements.** Developer agrees to construct improvements to the entrance to the Property at the intersection of NE 27<sup>th</sup> Terrace and NE 42<sup>nd</sup> Street pursuant to the Final Site Plan.

11.2.2. **Traffic Calming Devices.** The number and location of permanent traffic calming devices shall be determined by the City.

11.2.3. **Off-Site Sidewalk Improvement.** Developer shall be responsible for all costs associated with the installation of approximately 1,300 linear feet of sidewalk, the location of which shall be determined by the City. City shall be responsible for all permitting, engineering, construction, testing and construction engineering inspections and installation of sidewalk. All costs will be paid by Developer within thirty (30) calendar days of City providing Developer with final invoice for the improvements. Should Developer fail to timely pay as required herein, the City may make a claim on the public improvement bond and withhold the issuance of Certificates of Occupancy until the City receives full payment.

11.3. **Development and Maintenance.** Developer shall be responsible for the cost of maintenance and repair for the improvements constructed pursuant to Section 11.2.1 and the City shall be responsible for the maintenance and repair improvements constructed pursuant to Sections 11.2.2 and 11.2.3.

11.4. **Protection of Off-Site Property, Repair and Maintenance.** Developer agrees to the following to protect against off-site damage and adverse impacts relating to the construction of the project.

11.4.1. Developer shall inspect and perform daily off-site cleanup of all debris generated from the development. Developer shall not leave the work location until



cleanup is performed. The City right of way adjacent to the development shall be left equal to or cleaner than pre-work conditions.

11.4.2. Developer shall use extreme caution in order to preserve adjacent City and private properties of work site. Developer shall protect pavement, driveways, sidewalks, pavers, landscaping, sodded areas, and fencing.

11.4.3. Developer shall be responsible for repairs or replacements of plants, materials, sprinkler pipe and heads, pavement, and all property damaged by Developer. Replacement and/or repairs of damaged property will be at Developer's expense and must meet the satisfaction of the City and the affected property owner. Should Developer receive a claim for such damages, it shall notify the City. Should the City receive a claim for such damages, it shall forward the claim to the Developer. Developer shall pay the claim within thirty (30) days of receipt of such claim.

11.4.4. Damage to any tree during the performance of the development shall be reported to the Public Works Director for evaluation and additional instructions no later than twenty-four (24) hours.

11.4.5. Developer shall not use any private property for any reason, including parking of or maneuvering of vehicles or adjacent swales without the prior written consent of the property owner.

11.4.6. Noise levels, dust, and inconvenience to adjacent private properties and residents must be kept at a minimum.

11.4.7. Developer shall be responsible for the costs of repair of any road or right-of-way caused by the construction activities by Developer, including milling or repaving any damaged section of the road as determined by the City in its sole discretion, prior to receiving the final Certificate of Occupancy.

11.4.8. Developer acknowledges and agrees to minimize impact on neighbors and shall provide advanced public notice through social media platforms to inform neighbors of major construction activities, which shall mean major demolition, large concrete pours, major crane operations and events that require a MOT plan.

12. **Confirmation of Financial Viability of Project.** Prior to this Agreement becoming effective, Developer shall provide the City with a financing commitment from its lender that demonstrates to the reasonable satisfaction of the City that funding is either in place or available sufficient to complete the entire Proposed Development approved by the City. After site plan approval but prior to the issuance of any building permit for the Proposed Development the Developer shall provide the City with a financing commitment from its lender that demonstrates to the reasonable satisfaction of the City that funding is either in place or available sufficient to complete the improvement or Building for which the building permit is applied. In the event that the Developer is not

using debt financing for a particular improvement or Building, the Developer shall provide the City with verification that demonstrates to the reasonable satisfaction of the City that Developer has access to sufficient funding such that a binding commitment/allocation of funds for that improvement or Building are available. Developer represents that they have and shall maintain the financial capability sufficient to perform its duties pursuant to this Agreement.

13. **Duration of Development.** “Start of Construction”, shall mean within thirty calendar (30) days after building permit issuance (including demolition permit) for the first residential Building or Yacht Club Clubhouse, whichever is issued first, Developer agrees that all construction together with all required on and off-site infrastructure, landscaping, and parking facilities for the approved Development will be completed within forty (40) calendar months (“Completion Period”) from the Start of Construction, unless the Completion Period is extended by the mutual written agreement of the Parties as provided for in Section 14.6, and the duration of any permit or approval relative to the Property will be limited in duration by the law in effect at the time the permit or approval is issued. The Proposed Development shall be exempt from the City’s time limits for completing construction and repair described in the City’s Code Section 42-247.

14. **Phasing of Proposed Development.** Developer shall develop the Proposed Development pursuant to the “Phasing Plan” attached as **Exhibit “G”** and more particularly described in this Section 14.

Comment [MDCJ2]: Being revised/reviewed as of 12-29-22

14.1. **Description of Phases.**

- 14.1.1. **Phase 1.** Phase 1 shall be completed no later than twenty-six (26) calendar months after the Start of Construction. All construction except for the Townhouse Buildings 1 and 6 shall be completed within Phase 1; provided that the following items shall be completed within ten (10) months of the Start of Construction:

- (a) The Kids’ Center as identified in the Final Site Plan;
- (b) Tennis Center-Bistro as identified in the Final Site Plan; and
- (c) The 3’-0” - 5’-0” high exterior wall and required landscaping along NE 42<sup>nd</sup> Street as required by the Final Site Plan shall be installed during this phase.

- 14.1.2. **Phase 2.** Phase 2 shall be completed no later than forty (40) calendar months after the Start of Construction. While not required, it is acknowledged that the construction of Townhouse Buildings 1 and 6 as identified in the Final Site Plan will not begin until Phase 1 is completed. Townhouse Buildings 1 and 6 as identified in the Final Site Plan shall be completed no later than forty (40) calendar months after the Start of Construction. At the end of Phase 2, all construction other than the One-Family Residence shall be completed.

- 14.1.3. The One-Family Residence as identified in the Final Site Plan may be completed at any time, subject to the time limitations of construction in the City Code.

- 14.2. **Infrastructure.** No Certificates of Occupancy will be issued for the Proposed



Development until all infrastructure required by the Final Site Plan to be installed is completed.

- 14.3. **Temporary Yacht Club Clubhouse.** The new Tennis Center-Bistro shall be constructed as expeditiously as possible. City acknowledges and agrees that Developer intends to apply for permits to construct the Tennis Center-Bistro prior to the demolition of the existing clubhouse and to use the Tennis Center-Bistro as a Temporary Yacht Club Clubhouse until the Yacht Club Clubhouse receives a Certificate of Occupancy. Developer shall be permitted to apply for all permits for the Tennis Center-Bistro prior to the Effective Date of this Agreement and no later than six (6) months of the Effective Date of this Agreement. The new Tennis Center-Bistro shall be constructed as expeditiously as possible. Upon issuance of a Certificate of Occupancy for the new Yacht Club Clubhouse, Developer shall cease use of the Temporary Yacht Club Clubhouse as the Clubhouse, and that Building shall be used solely as the Tennis Center-Bistro.
- 14.4. **Yacht Club Clubhouse.** Developer agrees to apply for a building permit for the Yacht Club Clubhouse no later than six (6) months after the Effective Date and prior to or concurrently with the application for the building permit for the first residential Building. The construction of the Yacht Club Clubhouse shall commence prior to or concurrently with the construction of the first residential Building. The Certificate of Occupancy for the Yacht Club Clubhouse shall be received no later than twenty-six (26) months from the Start of Construction as defined in Section 13. Certificates of Occupancy may be issued only for the eight (8) units within Townhouse Buildings 2 and 3 as indicated on the Final Site Plan prior to the issuance of the Certificate of Occupancy for the Yacht Club Clubhouse. Should the Yacht Club Clubhouse not receive a Certificate of Occupancy within twenty-six (26) months from the Start of Construction as defined in Section 13, the City will issue no further Certificates of Occupancy for any units or building permits for any residential or non-residential Buildings until the Certificate of Occupancy is issued for the Yacht Club Clubhouse; and Certificates of Occupancy for units in any residential Building other than the eight (8) units within Townhouse Buildings 2 and 3 as indicated on the Final Site Plan shall be issued only after the Certificate of Occupancy for the Yacht Club Clubhouse has been issued. The Developer specifically acknowledges and agrees that the City may withhold Certificates of Occupancy for residential construction in the event that a Certificate of Occupancy is not issued for the Yacht Club Clubhouse within the time frame in this Paragraph 14.4.
- 14.6. **Extensions.** A one year extension of the Completion Period as defined in Section 13 may be granted by the City Commission, in its sole discretion exercised in good faith and consistent with fair dealing, after written request is made by the Developer at least sixty (60) days prior to the expiration of the Completion Period. Developer shall also be permitted to invoke the tolling and extension of permits and other authorizations granted under Section 252.363, Florida Statutes, to extend the deadlines in Section 13 only for declarations of a state of emergency for natural emergencies which directly affect the ability of the Developer to meet the schedule

agreed upon in this Agreement for the Proposed Development.

15. **City's Use of the Yacht Club Clubhouse.** The Developer agrees that the City may use the Yacht Club Clubhouse a minimum of twice a year for events of the City's choice. The City agrees to pay all commercially reasonable costs associated with the City's use of the Yacht Club Clubhouse.
16. **Required Bonds and Deposits.** The Developer shall provide the following bonds to the City prior to the issuance of any building permits:
  - 16.1. **Termination/Abandonment Bond.** Prior to issuance of any building permit by the City for development of the Property, the Developer shall provide either a letter of credit or Performance Bond in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) relative to the clean-up of the Property, in a form acceptable to the City Attorney and approved by the Mayor, that shall remain in effect until the final Certificate of Occupancy for all development required by this Agreement is complete ("Termination/Abandonment Bond"). Upon such termination of work or abandonment of the Property by the Developer, its agents, contractors, or subcontractors, defined as no substantial construction work being performed at the Property toward completion of the Proposed Development as determined by the City for a period of thirty (30) days, so long as Developer is not waiting on City to issue permits or perform inspections, and upon such termination or work of abandonment, Developer shall clean the Property, including cleaning all surfaces, Structures, streets and parking lots, removal of all waste and unused construction materials, and grading of Property in a safe manner that provides effective drainage and access for and on the Property. In the event Developer fails to clean up the Property, the City shall provide notice to the Developer of its intent to complete the clean-up and draw upon the Termination/Abandonment Bond, and Developer shall have the time provided in the notice (which shall be no less than ten (10) days to complete the clean-up). Should Developer fail to complete the clean-up within the time provided in the City's notice, the City shall have the right to use the Bond to pay all costs of the required clean-up. The Termination/Abandonment Bond, executed by the Developer, the City, and surety, shall be a guarantee for the faithful performance of cleanup activities to keep the Property and adjoining ways free of waste material, rubbish, and debris together with all its tools, equipment, machinery and surplus materials caused by its work, and to conduct clean-up operations, including but not limited to, the cleaning of all surfaces, Structures, paved streets or parking lots, walks, and steps. The letter of credit or Bond shall be released upon completion of the approved Proposed Development as evidenced by the City's issuance of the Certificate of Occupancy for the completion of the final Structure approved on the Approved Site Plan.
  - 16.2. **Public Improvement Performance and Payment Bond.** Prior to the issuance of the first building permit for the Proposed Development, the Developer shall obtain and furnish a Performance Bond to the benefit of the City in an amount equal to 125% of the project engineer's cost estimate, as reviewed and approved by the City



Engineer, for any off-site improvements within, or potential required repairs to, the City's public rights-of-way associated with the Development, as approved by the City Engineer ("Work"). The Bond shall remain in place until confirmation of final completion and full payments for the Work.

- 16.3. **Rescission Deposit.** Prior to any final approvals by the City of the application for the ordinance amending the future land use designation for the portion of the Property proposing Residential Development from Commercial Recreation to Irregular (6 du/ac) Residential, the ordinance amending the text of the City's Comprehensive Plan relating to the proposed development, and the ordinance rezoning the Property to the YC-MU district, Developer shall provide either a letter of credit or deposit to the City for Fifty Thousand Dollars (\$50,000.00) for the City's use for costs of expenses of rescinding any approvals made by the City should the Developer notify the City that it does not intend to proceed pursuant to Section 5 herein or terminated or abandoned the Property by any other manner. Should the City proceed to rescind the approvals, it will draw from the deposit to pay all costs, including but not limited to application fees, professional fees, legal fees, costs of notice and other costs associated with returning the Property to the land use and zoning that existed prior to any City or Broward County approvals. Should the City's costs exceed Fifty Thousand Dollars (\$50,000.00), Developer shall pay the City the additional costs within thirty (30) days of receipt of the invoice from the City. Should the City's costs be less than Fifty Thousand Dollars (\$50,000.00), any balance remaining shall be returned to the Developer. Should the Developer continue, pursuant to the approvals, the City will return the Rescission Deposit upon issuance of the Certificate of Occupancy for the Yacht Club Clubhouse.
17. **Permits and Approvals.** The City agrees to cooperate with Developer in a commercially reasonable and timely manner in its review and approval of any permits required for the construction of the Proposed Development so long as said applications are in compliance with this Agreement, the Florida Building Code, including Broward County Amendments and the City Code as may be amended from time to time.
18. **Public Facilities.** The Developer shall enter into an agreement with Broward County for the provision of sewer service and domestic and fire protection water service prior to the City's issuance of building permits for the Property if required to do so by such governmental entities. Developer shall provide City with verification of such agreements.
19. **Local Development Permits, Requirements, and Fees.** The City hereby agrees that this is a mixed use project that is consistent with the land use and zoning designations of the City, and the City and the Developer agrees that the Developer shall follow the City's approval process before the Development Review Committee, Community Appearance Board, Marine Advisory Board, the Planning and Zoning Board, and City Commission for site plan approval as required by the City Code notwithstanding the Parties' execution of this Agreement. The Developer shall apply for all the development permits and/or approval that are required by the City in connection with the development of the Property. Developer agrees to reimburse City for all of its costs incurred in reviewing

and approving the Proposed Development that are not otherwise collected by the City through fees, including but not limited to planner and consultant fees and costs; attorney's fees and costs; and costs for creating, publishing, mailing and posting all required notices. All impact fees and development permit processing fees that apply to the Property shall be consistent with the fees assessed by the City. The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, term, and conditions.

20. **Necessity of Compliance with Local Law Relative to Permits.** The Developer and the City agree that the failure of this Agreement to address a specific permit, condition, term, or restriction will not relieve the Developer of the necessity of compliance with the law governing development approvals, site plan approvals, permitting requirements, conditions, terms, and restrictions.
21. **Effective Covenants.** The Developer and the City further covenant that they will immediately commence all reasonable actions necessary to fulfill their obligations under this Agreement. The burdens of this Agreement are binding upon, and the benefits of this Agreement inure to, all successors in interest of the Parties to this Agreement and shall run with the land.
22. **Periodic Review.** In accordance with Section 163.3235, F.S., as may be amended from time to time, the City shall review the Property subject to this Agreement at least once every twelve (12) months to determine if there has been demonstrated good faith compliance with the terms set forth herein. If the City finds, on the basis of competent substantial evidence, that there has been a failure to comply with the terms of this Agreement, the Agreement may be revoked or modified by the City Commission.
23. **Enforcement.** In addition to other enforcement mechanisms permitted by law, the Developer agrees that the City may elect to pursue enforcement of the terms of this Agreement through the City's code enforcement process as provided in the ordinance creating the YC-MU zoning district. The Developer hereby waives the time frames for code enforcement activities under Chapter 162, Florida Statutes, for enforcement of this Agreement against the Developer until such time as a final certificate of occupancy for all the construction authorized by the Final Site Plan is issued, and the Developer hereby agrees that fifteen (15) days prior written notice to a code enforcement hearing is sufficient.
24. **Default.** An "Event of Default" or "Default" entitling City to its remedies shall occur on the happening of any of the following events. The provisions of this section at (a) and (b) are meant to apply to representations and warranties provided by the Developer to the City and shall not include Site Plan details or timing provisions contained in this Agreement:
  - (a) **Failure to Observe Agreement.** The Developer shall fail to observe, satisfy or perform any material term or , covenant contained in this Agreement and such failure



shall continue without remedy for thirty (30) days after Developer's receipt of written notice thereof from the City ; provided, however, that if such failure is capable of cure but cannot reasonably be cured within thirty (30) days, such failure shall not constitute an Event of Default so long as the Developer, within the thirty (30) day period, commences and thereafter is in good faith proceeding diligently and continuously to remedy such failure; or

- (b) **Inaccuracy of Representation and Warranties.** Any representation or warranty made by the Developer shall prove to have been incorrect in any material respect as of the date made; or
- (c) **Failure to Commence Construction.** Failure to commence construction of the Proposed Development as required by the Section 13 and 14 of this Agreement so long as delay is not caused in whole or in part by the City; or
- (d) **Work Stoppage.** The occurrence of any unscheduled work stoppage, or any work stoppage inconsistent with industry standards, of any Building within the Proposed Development, or portion thereof, for more than thirty (30) consecutive days, other than as a result of force majeure or action caused by the City; or
- (e) **Bankruptcy.** The Developer shall fail to pay significant debts as such debts become due or shall admit in writing its or their inability to pay its or their debts as such debts become due or shall make a general assignment for the benefit of creditors; significant debts shall mean those debts that place the ownership of the Property at risk; the Developer shall commence any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or them or its or their debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for it or them or for all or any substantial part of its or their property; or any case, proceeding or other action against the Developer shall be commenced seeking to have an order for relief entered against the Developer, as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of the Developer or their debts under any law relating to insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official for the Developer or for all or any substantial part of their respective properties, and (i) the Developer shall by any act or omission, indicate its consent or approval, of, or acquiescence in such case, proceeding or action, (ii) such case, proceeding or action results, in the entry of an order for relief that is not fully stayed within sixty (60) days after the entry thereof, or (iii) such, case, proceeding or action remains undismissed for a period of ninety (90) days or more or is dismissed or suspended only pursuant to Section 305 of the United States Bankruptcy Code or any corresponding provision of any future United States bankruptcy law; or
- (f) **Attachment/Garnishment.** The issuance of any attachment or garnishment against the Developer and the failure to discharge the same (by bond or otherwise) within

sixty (60) days from the issuance thereof, and the impact of which shall materially and adversely affect the Developer's ability to perform its obligations hereunder; or

- (g) **Judgments.** One or more judgments, orders or decrees shall be entered against the Developer which materially and adversely affect the Developer's ability to perform under this Agreement, and such judgments, orders, or decrees are not fully covered by effective insurance (less deductibles) or shall not have been vacated, discharged, stayed or bonded pending an appeal within thirty (30) days from the entry of such judgment, order or decree; or
- (h) **Unpermitted Transfer.** If the Developer effectuates a transfer not permitted by this Agreement.
- (i) The Parties acknowledge the failure to adhere to the Final Site Plan or failure to meet any of the requirements or deadlines in Sections 11.1.1, 13 and 14 above shall not be considered an Event of Default under this Agreement, however, for failure to adhere to the Final Site Plan the City retains all other rights and remedies at law or in equity, including the right to code enforcement activities. The failure of the Developer to meet the phasing deadlines listed herein shall entitle the City to the remedy listed in Section 25.3 of this Agreement.

## 25. **City's Remedies.**

- 25.1. Upon the occurrence of an Event of Default by the Developer, the City shall have the right to terminate this Agreement in addition to all available remedies at law or in equity.
- 25.2. In the event of any such termination of this Agreement, the Developer shall assign all rights, title and interest for any improvements in the City's right-of-way, including plans and specifications, construction documents and design contracts, and the City shall be entitled to access the bond and deposit funds described in Section 16 of this Agreement.
- 25.3. If Developer fails to meet the requirements or deadlines in Sections 11.1.1, 13 or 14 of this Agreement, then, as the City's remedy, the City shall be entitled to \$250.00 per day for each site in default until such default is cured, in addition to any other remedy available to the City. The Tennis Center, Yacht Club Clubhouse, Kids' Center, each individual Townhouse Building 1 - 6, the NE 42<sup>nd</sup> Street landscaping and wall, and the One-Family Residence shall each be considered an individual site for purposes of this paragraph.

## 26. **Miscellaneous.**

- 26.1. All pronouns and any variations of them are deemed to refer to the masculine, feminine, and neuter, singular or plural, as the identity of the party or parties, personal representatives, successors, or assigns, may require.



- 26.2. **Severability.** The invalidity of any provision hereof shall in no way affect or invalidate the remainder of the Agreement.
- 26.3. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which is deemed an original, but all of which together constitute one and the same instrument.
- 26.4. **Binding Effect.** The obligations imposed by this Agreement upon the Developer and/or the Property run with and bind the Property as covenants running with the land, and this Agreement is binding upon and enforceable by and against the parties hereto, and if applicable, their personal representatives, heirs, successors, grantees, and assigns. A copy of this Agreement will be recorded in the Public Records of Broward County, Florida, upon the parties' execution of it.
- 26.5. **Entire Agreement.** This Agreement sets forth all of the promises, covenants, agreements, conditions and understandings between the parties hereto, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied, oral or written, except as herein contained. The City shall not request any additional improvements or contributions except for those expressly set forth in this Agreement.
- 26.6. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Florida, and jurisdiction and venue for any proceeding arising between the parties in any manner pertaining to this Agreement shall, to the extent permitted by law, be held in Broward County, Florida. **THE PARTIES KNOWINGLY, VOLUNTARILY AND UNEQUIVOCALLY WAIVE THEIR RIGHT TO A TRIAL BY JURY FOR ANY CLAIMS WHETHER IN CONTRACT, TORT OR STATUTE, ARISING OUT OF OR RELATING TO THIS AGREEMENT.**
- 26.7. **Notice.** Whenever either Party desires to give notice to the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, hand delivered or by e-mail, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. Notice shall be deemed given upon receipt by any method of delivery authorized above. For the present, the Parties designate the following as the respective places for giving of notice:

**To DEVELOPER:**

Terry Paterson, President  
Lighthouse Point Yacht Club Investments, LLC  
2701 NE 42nd Street  
Lighthouse Point, FL 33064  
[terry@patersondevelopment.com](mailto:terry@patersondevelopment.com)

With copy to:

Stephanie J. Toothaker, Esq.  
Toothaker.org  
401 E. Las Olas Boulevard, Suite 130-154  
Fort Lauderdale, Florida 33301  
Telephone: (954) 648-9376  
[stephanie@toothaker.org](mailto:stephanie@toothaker.org)

To CITY:

John D. Lavisky, City Administrator  
City of Lighthouse Point  
2200 NE 38th Street  
Lighthouse Point, Florida 33064  
Telephone: (954) 943-6500  
[jlavisky@lighthousepoint.com](mailto:jlavisky@lighthousepoint.com)

With copy to:

Michael D. Cirullo, Jr., City Attorney  
c/o Goren, Cherof, Doody & Ezrol, P.A.  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, Florida 33308  
Telephone: (954) 771-4500  
[MCirullo@gorencherof.com](mailto:MCirullo@gorencherof.com)

- 26.8 **Time is of the Essence.** All dates and times for performance, pursuant to this Agreement, are of the essence. The acceptance of a late performance, with or without objections or reservations by City, shall not waive the right to claim any remedy for such breach, as provided herein, nor shall constitute a waiver of the requirement of timely performance of any obligations remaining to be performed hereunder.

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Development Agreement to be effective as of the day and year first set forth above.

**CITY OF LIGHTHOUSE POINT**

By: \_\_\_\_\_  
Glenn Troast, Mayor

(CORPORATE SEAL)

Date: \_\_\_\_\_

Attest:

---

Kathryn Sims, City Clerk

APPROVED ASTO FORM:

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Michael D. Cirullo, Jr., City Attorney

*[Continuation of signature page to Development Agreement]*

Developer:

**LIGHTHOUSE POINT YACHT CLUB  
INVESTMENTS, LLC**, a Florida limited liability  
company

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Terence Paterson  
Title: President/Managing Member  
2701 NE 42<sup>nd</sup> Street  
Lighthouse Point, FL 33064

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or  
\_\_\_\_ online notarization this \_\_\_\_ day of \_\_\_\_\_ 2022, by TERENCE PATERSON, as  
President/Managing Members of **LIGHTHOUSE POINT YACHT CLUB  
INVESTMENTS, LLC**. He/she is personally known to me or has produced \_\_\_\_\_  
\_\_\_\_\_ as identification,

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Commission Number: \_\_\_\_\_

**MORTGAGEE**

By executing this Agreement, the Mortgagee, CITY NATIONAL BANK OF FLORIDA, 25 West Flagler Street, Miami, FL 33130 acknowledges and consents that the provisions contained in this Agreement run with the land and that any successors and/or assigns are subject hereto and further this Agreement may not be extinguished by any legal or other process including but not limited to bankruptcy, foreclosure, receivership, etc, including those documents recorded in the public records of Broward County, Instrument Nos. 114512582 and 115021877, 116024848, 116024849, 117486455, and 117486487.

**CITY NATIONAL BANK OF FLORIDA**

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
\_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or \_\_\_\_ online notarization this \_\_\_\_ day of \_\_\_\_\_ 2022, by \_\_\_\_\_, as \_\_\_\_\_ of **CITY NATIONAL BANK OF FLORIDA**. He/she is personally known to me or has produced \_\_\_\_\_ as identification.  
(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Commission Number: \_\_\_\_\_



**MORTGAGEE**

By executing this Agreement, the Mortgagee, YACHT CLUB INVESTMENTS, LLC, 900 N. Federal Highway, Suite 306, Hallandale, FL 33009 acknowledges and consents that the provisions contained in this Agreement run with the land and that any successors and/or assigns are subject hereto and further this Agreement may not be extinguished by any legal or other process including but not limited to bankruptcy, foreclosure, receivership, etc including those documents recorded in the public records of Broward County, Instrument Nos. 114536005.

**LIGHTHOUSE CLUB INVESTMENTS, LLC**

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or \_\_\_\_ online notarization this \_\_ day of \_\_\_\_\_ 2022, by \_\_\_\_\_, as \_\_\_\_\_ of **LIGHTHOUSE CLUB INVESTMENTS, LLC**. He/she is personally known to me or has produced \_\_\_\_\_ as identification.  
(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Commission Number: \_\_\_\_\_

**CONTRACTOR**

By executing this Agreement, the Contractor, THE DOCK EXPERTS, 4235 NE 6<sup>th</sup> Avenue, Oakland Park, FL 33334 acknowledges and consents that the provisions contained in this Agreement run with the land and that any successors and/or assigns are subject hereto and further this Agreement may not be extinguished by any legal or other process including but not limited to bankruptcy, foreclosure, receivership, etc including those documents recorded in the public records of Broward County, Instrument No. 117051455.

**THE DOCK EXPERTS**

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or \_\_\_\_ online notarization this \_\_\_\_ day of \_\_\_\_\_ 2022, by \_\_\_\_\_, as \_\_\_\_\_ of **THE DOCK EXPERTS**. He/she is personally known to me or has produced \_\_\_\_\_ as identification.  
(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Commission Number: \_\_\_\_\_

**ASSIGNEE OF MORTGAGES**

By executing this Agreement, the Assignee, SAFE HARBOR EQUITY DISTRESSED DEBT FUND 3, LP, 1521 Alton Road, #529, Miami Beach, FL 33139, acknowledges and consents that the provisions contained in this Agreement run with the land and that any successors and/or assigns are subject hereto and further this Agreement may not be extinguished by any legal or other process including but not limited to bankruptcy, foreclosure, receivership, etc, including those documents recorded in the public records of Broward County, Instrument No. 117390499, 117390500, 117486455 and 117486487.

**SAFE HARBOR EQUITY DISTRESSED  
DEBT FUND 3 LP**

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or \_\_\_\_ online notarization this \_\_\_\_ day of \_\_\_\_\_ 2022, by \_\_\_\_\_, as \_\_\_\_\_ of **SAFE HARBOR EQUITY DISTRESSED DEBT FUND 3 LP**. He/she is personally known to me or has produced \_\_\_\_\_ as identification.  
(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Commission Number: \_\_\_\_\_



**Exhibit A**  
**Survey**

# COUSINS SURVEYORS & ASSOCIATES, INC.



3921 SW 47TH AVENUE, SUITE 1011  
DAVIE, FLORIDA 33314  
CERTIFICATE OF AUTHORIZATION : LB # 6448  
PHONE (954) 689-7766 FAX (954) 689-7799

PROJECT NUMBER : 8252-17

CLIENT : LIGHT HOUSE  
POINT YACHT CLUB

## LAND DESCRIPTION AND SKETCH

### LAND DESCRIPTION:

BLOCKS 43 AND 43-A, OF VENETIAN ISLES REPLAT, A REPLAT OF A PORTION OF VENETIAN ISLES 3RD SECTION, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 48, PAGE 41, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

### LEGEND:

CKD CHECKED BY  
DWN DRAWN BY  
FB/PG FIELD BOOK AND PAGE  
POB POINT OF BEGINNING  
POC POINT OF COMMENCEMENT  
P.B. PLAT BOOK  
B.C.R. BROWARD COUNTY RECORDS  
POT POINT OF TERMINATION  
REF.PT. REFERENCE POINT

### NOTES:

1. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD.
3. DATA SHOWN HEREON DOES NOT CONSTITUTE A FIELD SURVEY AS SUCH.
4. THE LAND DESCRIPTION SHOWN HEREON WAS PREPARED BY THE SURVEYOR.
5. BEARINGS SHOWN HEREON ARE BASED ON THE EAST LINE OF LOT 14, BLOCK 37 OF "VENETIAN ISLES 3RD SECTION" P.B. 47, PG. 13, B.C.R. SAID LINE BEARS N21°43'05"E.

I HEREBY CERTIFY THAT THE ATTACHED "LAND DESCRIPTION AND SKETCH" IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION IN JANUARY, 2021. I FURTHER CERTIFY THAT THIS "LAND DESCRIPTION AND SKETCH" MEETS THE STANDARD OF PRACTICE FOR SURVEYING IN THE STATE OF FLORIDA ACCORDING TO CHAPTER 5J-17 OF THE FLORIDA ADMINISTRATIVE CODE. PURSUANT TO SECTION 472.027, FLORIDA STATUTES. SUBJECT TO THE QUALIFICATIONS NOTED HEREON.

FOR THE FIRM, BY: \_\_\_\_\_

*Richard E. Cousins*

RICHARD E. COUSINS  
PROFESSIONAL SURVEYOR AND MAPPER  
FLORIDA REGISTRATION NO. 4188

REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION & SKETCH	01/26/21	----	AM	REC
REVISED PER COMMENTS	03/10/21	----	AM	REC

LAND DESCRIPTION  
AND SKETCH

PROPERTY ADDRESS :

2701 NE 42ND STREET

SCALE: N/A

SHEET 1 OF 3

# COUSINS SURVEYORS & ASSOCIATES, INC.

PROJECT NUMBER : 8252-17

3921 SW 47TH AVENUE, SUITE 1011  
DAVIE, FLORIDA 33314  
CERTIFICATE OF AUTHORIZATION : LB # 6448  
PHONE (954) 689-7766 FAX (954) 689-7799

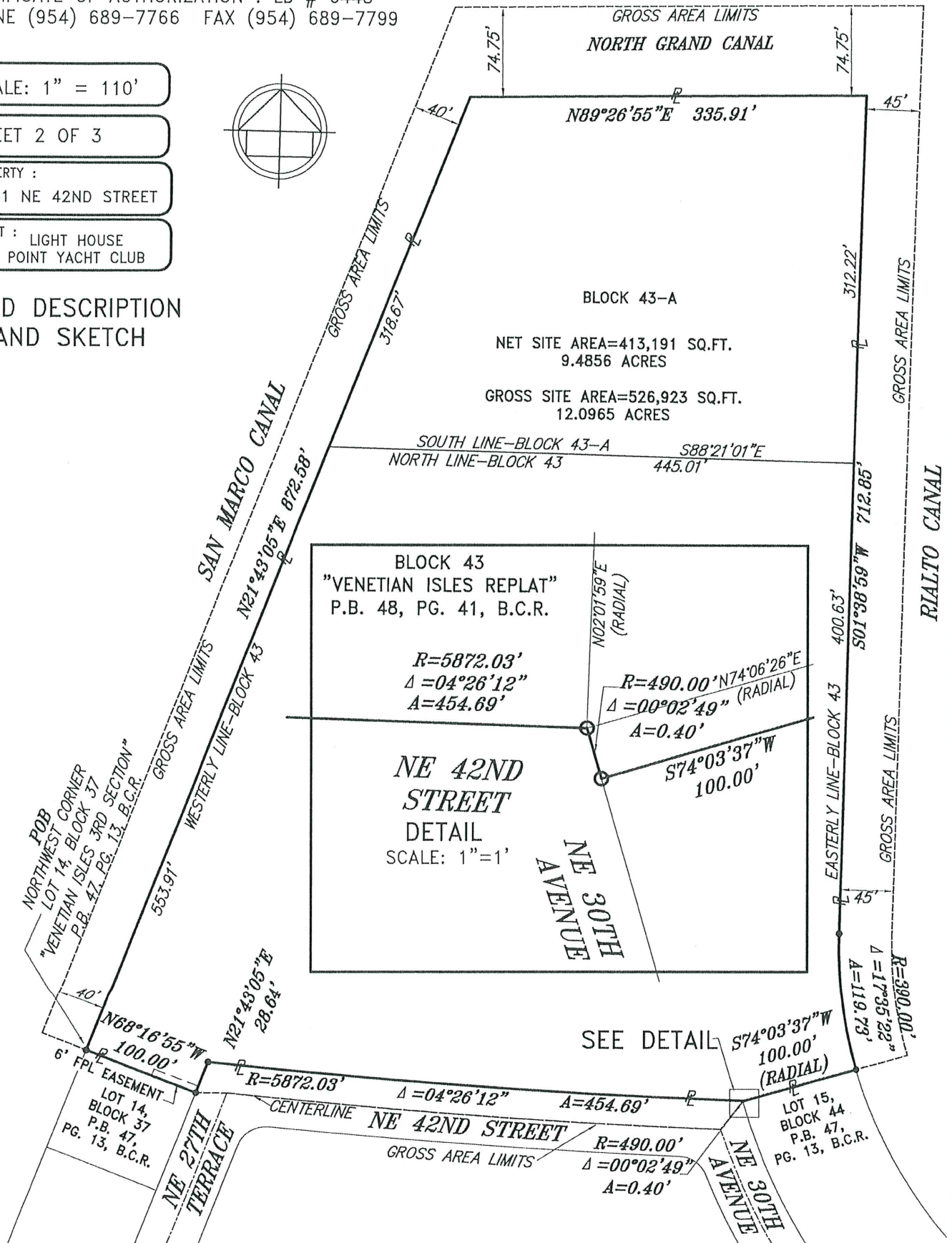
SCALE: 1" = 110'

SHEET 2 OF 3

PROPERTY :  
2701 NE 42ND STREET

CLIENT : LIGHT HOUSE  
POINT YACHT CLUB

## LAND DESCRIPTION AND SKETCH





# COUSINS SURVEYORS & ASSOCIATES, INC.

PROJECT NUMBER : 8252-17

3921 SW 47TH AVENUE, SUITE 1011  
DAVIE, FLORIDA 33314  
CERTIFICATE OF AUTHORIZATION : LB # 6448  
PHONE (954) 689-7766 FAX (954) 689-7799

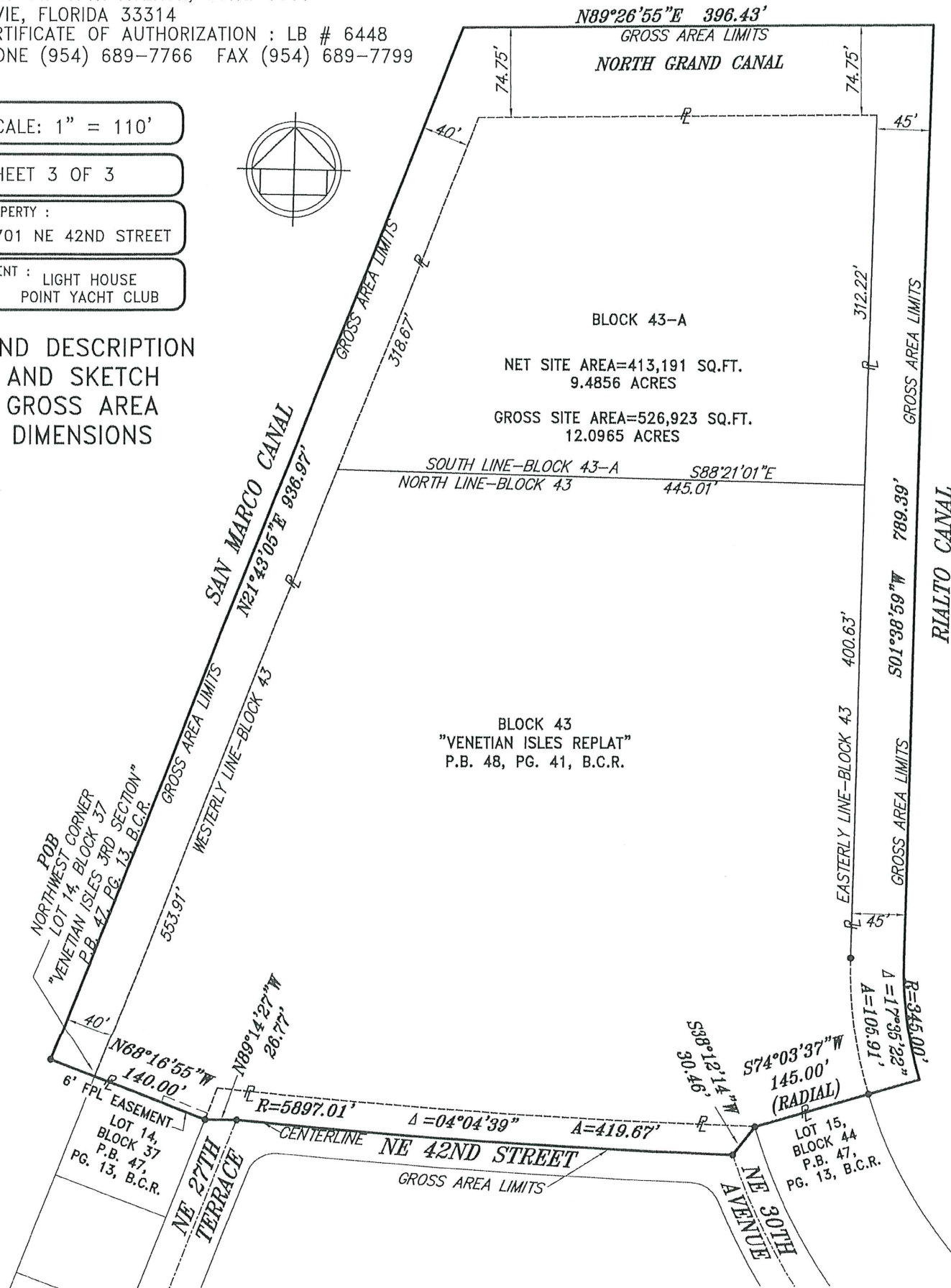
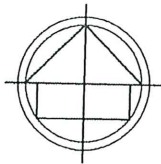
SCALE: 1" = 110'

SHEET 3 OF 3

PROPERTY :  
2701 NE 42ND STREET

CLIENT : LIGHT HOUSE  
POINT YACHT CLUB

## LAND DESCRIPTION AND SKETCH GROSS AREA DIMENSIONS





**Exhibit B**

Final Site Plan as approved by the City Commission on February 8, 2022

**Exhibit C**

Land Use Plan Map Amendment Ordinance No. 2019-0972, adopted by the City  
Commission on February 8, 2022

**Exhibit D**

Land Use Plan Text Amendment Ordinance No. 2020-0977, adopted by the City  
Commission on February 8, 2022

**Exhibit E**

Land Development Code Text Amendments Ordinance No. 2020-0980, adopted by the City  
Commission on February 8, 2022



**Exhibit F**

Rezoning Ordinance No. 2022- , adopted by the City Commission on February 8, 2022

**Exhibit G**  
Phasing Plan