

AGENDA

KEY COLONY BEACH CITY COMMISSION PUBLIC HEARING

Thursday, April 20, 2023 – 9:30 a.m.

**Located at the Temporary Meeting Place for the City of Key Colony Beach,
at the Key Colony Inn Banquet Room, 700 W. Ocean Drive, Key Colony Beach
& Virtually via Zoom Conferencing <https://us02web.zoom.us/j/84228204671>**

- 1. *Call to Order, Pledge of Allegiance, Prayer, Roll Call***
- 2. *Agenda Additions, Changes & Deletions***
- 3. *Administration of Oath to Witnesses***
- 4. *Citizen Comments and Correspondence***
(Members of the public may speak for three minutes on any agenda items; and may only speak once unless waived by a majority vote of the commission)
- 5. *Disclosure of Ex-Parte Communications – Pg. 1***
- 6. *Discussion/Approval of a Development Agreement with Garrison Bright Marina Inc, 300/400 Sadowski Causeway, Key Colony Beach:***

Applicant requests approval of a Development Agreement pursuant Chapter 101 of Land Development Regulations Article XII, Section 101-176, seeking approval for redevelopment of an existing marina property. The project combines the two (2) properties located at 400 Sadowski Causeway and adjacent 300 Sadowski Causeway, Key Colony Beach into one property (the “Property”) that will continue to operate a marina facility as its principal use. The proposed marina facility would comprise (a) a marina and ship store, (b) live-aboard vessel slips and other temporary docking facilities, (c) redevelopment of one (1) 3,894 sq. foot restaurant and (d) renovation of existing commercial 6,465 sq. ft building on the Property. New Restaurant will be tiki style construction and new finished floor will meet current flood zone regulations. The maximum height of structures on the property shall be 40 feet in accordance with building plans and permits issued by the City. The unified Property is zoned B-1 Neighborhood Business District and comprises approximately 1.75 acres with a maximum allowable density of 8 units per acre. The request was submitted by Greg Oropeza, Esq., Oropeza, Stones & Cardenas, 221 Simonton Street, Key West, Florida 33040.

“Members of the public may speak for three minutes and may only speak once unless waived by a majority vote of the commission.”

Letters submitted to the city clerk to be read at the Commission Meeting will be made part of the record but not read into record. Persons who need accommodations in order to attend or participate in this meeting should contact the city clerk at 305-289-1212 at least 48 hours prior to this meeting in order to request such assistance. If a person decides to appeal any decision made with respect to any matter considered at any meeting, that person will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

- a. Proof of Legal Publications & Affidavits of Mailing/Posting – Pgs. 2-8*
- b. Presentation of the Development Agreement – Pgs. 9-31*
- c. Statement by Applicant/Applicant’s Representative*
- d. Planning & Zoning Board Recommendation*
- e. Commissioner Comments*
- f. Motion to Approve, Deny, or Approve with Conditions*

7. Other Business

8. Adjournment

The City of Key Colony Beach is inviting you to a scheduled Zoom meeting.

*This meeting will be held in person at **the Temporary Meeting Place for the City of Key Colony Beach, at the Key Colony Inn Banquet Room, 700 W. Ocean Drive, Key Colony Beach** & Virtually via Zoom Conferencing*

Join Zoom Meeting

<https://us02web.zoom.us/j/84228204671>

Meeting ID: 842 2820 4671

One tap mobile

+13052241968,,84228204671# US

+19292056099,,84228204671# US (New York)

Find your local number: <https://us02web.zoom.us/u/kdZVJpSnHG>

“Members of the public may speak for three minutes and may only speak once unless waived by a majority vote of the commission.”

Letters submitted to the city clerk to be read at the Commission Meeting will be made part of the record but not read into record. Persons who need accommodations in order to attend or participate in this meeting should contact the city clerk at 305-289-1212 at least 48 hours prior to this meeting in order to request such assistance. If a person decides to appeal any decision made with respect to any matter considered at any meeting, that person will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

EX-PARTE COMMUNICATIONS

An ex-parte communication is defined as:

any contact, conversation, communication, writing, correspondence, memorandum or any other verbal or written communication that takes place outside a public hearing between a member of the public and a member of a quasi-judicial board, regarding matters which are to be heard and decided by said quasi-judicial board.

Site visits and expert opinions are also considered ex-parte communications.

In the event that someone contacts a Board Member about a quasi-judicial matter outside of a public meeting, at such time that particular issue is brought before the Board, the Board Member should state on the record:

- the existence of any ex-parte communication,
- the nature of the communication,
- the party who originated the ex-parte communication, and
- whether or not the ex-parte communication affects your ability to impartially consider the evidence presented.

Similarly, any correspondence received by a Board Member must be forwarded to the Board Clerk.

Note: The term “Board Member” would include all members of the Code Enforcement Board, the Planning & Zoning Committee, and the City Commission when they are acting in a quasi-judicial capacity (for example, but not limited to, code violation hearings and variance hearings).

AFFIDAVIT OF MAILING

STATE OF FLORIDA
COUNTY OF MONROE

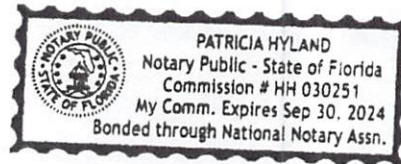
Before me, the undersigned authority, personally appeared Cheryl Baker, who, having been first duly sworn according to law, deposes and says:

1. I am the Administrative Assistant to the City Clerk for the City of Key Colony Beach.
2. I hereby confirm that on the 17 day of March, 2023 (no less than 30 days prior to the Planning & Zoning Public Hearing on April 19th, 2023, and the City Commission Public Hearing on April 20th, 2023) I mailed the Notice of Hearing by first class U.S. mail to the address on file with the Monroe County Property Appraiser's Office for all property owners within 300 feet of the property at 300/400 Sadowski Causeway.

Cheryl Baker
Signature

Sworn and subscribed before me this
17th day of MARCH, 2023.

Patricia Hyland
Notary Public, State of Florida
My commission expires: 9/30/24



Personally known

Produced _____ as identification

City of Key Colony Beach

PO Box 510141 Key Colony Beach, Florida • Phone= 305-289-1212 • Fax= 305-289-1767



To: Property Owners within 300 feet of 300/400 Sadowski Causeway
From: The City of Key Colony Beach
Subject: Planning & Zoning Hearing and City Commission Public Hearing

The City of Key Colony Beach will be holding Public Hearings on:

Planning & Zoning Hearing, Wednesday, April 19, 2023, 9:30 A.M.
City Commission Public Hearing: Thursday, April 20, 2023, 9:30 A.M.

NOTICE IS HEREBY GIVEN that the City of Key Colony Beach, Florida, will hold a **Planning & Zoning Hearing on Wednesday, April 19, 2023, at 9:30 A.M.**, and a **City Commission Public Hearing, on April 20, at 9:30 A.M.**, at City Hall Annex located at 600 W. Ocean Drive, Key Colony Beach, Florida, 33051, to consider a Development Agreement with Garrison Bright Marina Inc, 400 Sadowski Causeway, Key Colony Beach. This meeting will be available virtually via Zoom Meetings. Members of the public who wish to attend virtually may email cityclerk@keycolonybeach.net or call 305-289-1212, Ext. 2 for further instructions on attending via Zoom Meetings.

Applicant requests approval of a Development Agreement pursuant to Chapter 101 of Land Development Regulations Article XII, Section 101-176, seeking approval for redevelopment of an existing marina property. The project combines the two (2) properties located at 400 Sadowski Causeway and adjacent 300 Sadowski Causeway, Key Colony Beach into one property (the "Property") that will continue to operate a marina facility as its principal use. The proposed marina facility would comprise (a) a marina and ship store, (b) live-aboard vessel slips and other temporary docking facilities, (c) redevelopment of one (1) 3,894 sq. foot restaurant and (d) renovation of existing commercial 6,465 sq. ft building on the Property. New Restaurant will be tiki style construction and new finished floor will meet current flood zone regulations. The maximum height of structures on the property shall be 40 feet in accordance with building plans and permits issued by the City. The unified Property is zoned B-1 Neighborhood Business District and comprises approximately 1.75 acres with a maximum allowable density of 8 units per acre. The request was submitted by Greg Oropeza, Esq., Oropeza, Stones & Cardenas, 221 Simonton Street, Key West, Florida 33040.

This notice is made under the provisions of Chapter 163.3225, Florida Statutes. The Development Agreement may be inspected by the public by contacting the City Clerk. These matters are subject

to quasi-judicial rules of procedure. Interested parties should limit contact with the City Commission on this topic to properly noticed public hearings or to written communications to the City Clerk. All interested parties are hereby advised that they may appear at said meetings and be heard with respect to said agreement. Interested parties may attend the Hearing and be heard with respect to the requested variance.

If any person decides to appeal any decision made by the City Commission of the City of Key Colony Beach with respect to any matter considered at the Variance Hearing, that person will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

If you are unable to attend the Hearings on Wednesday, April 19, 2023, or Thursday, April 20, 2023, but wish to comment, please direct correspondence to P.O. Box 510141, Key Colony Beach, FL 33051, or cityclerk@keycolonybeach.net, and your comments will be entered into the record.

Mailed: On or before Monday, March 20, 2023

AFFIDAVIT OF POSTING

STATE OF FLORIDA
COUNTY OF MONROE

Before me, the undersigned authority, personally appeared Cheryl Baker, who, having been first duly sworn according to law, deposes and says:

1. I am the Administrative Assistant to the City Clerk for the City of Key Colony Beach.
2. I hereby confirm that on the 3 day of April, 2023 (no less than 14 days prior to the Planning & Zoning Public Hearing on April 19th, 2023, and the City Commission Public Hearing on April 20th, 2023) I posted the Notice of Hearing for the property at 300/400 Sadowski Causeway at the United States Postal Office and at City Hall.

Cheryl Baker
Signature

Sworn and subscribed before me this
3rd day of April, 2023

Christine Marie McLeod
Notary Public, State of Florida
My commission expires: 6/5/2026



Personally known

_____ Produced _____ as identification



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**City of Key Colony Beach Temporary Meeting Place at the
Key Colony Inn Banquet Room,
located at 700 W. Ocean Drive, Key Colony Beach, Florida,**

to consider a Development Agreement with Garrison Bright Marina Inc, 400 Sadowski Causeway, Key Colony Beach. This meeting will be available virtually via Zoom Meetings. Members of the public who wish to attend virtually may email cityclerk@keycolonybeach.net or call 305-289-1212, Ext. 2 for further instructions on attending via Zoom Meetings.

Applicant requests approval of a Development Agreement pursuant to Chapter 101 of Land Development Regulations Article XII, Section 101-176, seeking approval for redevelopment of an existing marina property. The project combines the two (2) properties located at 400 Sadowski Causeway and adjacent 300 Sadowski Causeway, Key Colony Beach into one property (the "Property") that will continue to operate a marina facility as its principal use. The proposed marina facility would comprise (a) a marina and ship store, (b) live-aboard vessel slips and other temporary docking facilities, (c) redevelopment of one (1) 3,894 sq. foot restaurant and (d) renovation of existing commercial 6,465 sq. ft building on the Property. New Restaurant will be tiki style construction and new finished floor will meet current flood zone regulations. The maximum height of structures on the property shall be 40 feet in accordance with building plans and permits issued by the City. The unified Property is zoned B-1 Neighborhood Business District and comprises approximately 1.75 acres with a maximum allowable density of 8 units per acre. The request was submitted by Greg Oropeza, Esq., Oropeza, Stones & Cardenas, 221 Simonton Street, Key West, Florida 33040.

This notice is made under the provisions of Chapter 163.3225, Florida Statutes. The Development Agreement may be inspected by the public by contacting the City Clerk. These matters are subject



to quasi-judicial rules of procedure. Interested parties should limit contact with the City Commission on this topic to properly noticed public hearings or to written communications to the City Clerk. All interested parties are hereby advised that they may appear at said meetings and be heard with respect to said agreement.

If any person decides to appeal any decision made by the City Commission of the City of Key Colony Beach with respect to any matter considered at the Hearing, that person will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

If you are unable to attend the Hearings on Wednesday, April 19, 2023, or Thursday, April 20, 2023, but wish to comment, please direct correspondence to P.O. Box 510141, Key Colony Beach, FL 33051, or cityclerk@keycolonybeach.net and your comments will be entered into the record.

Posted: On or before Thursday, April 5, 2023



Published Weekly
Marathon, Monroe County, Florida

PROOF OF PUBLICATION

**STATE OF FLORIDA
COUNTY OF MONROE**

Before the undersigned authority personally appeared **JASON KOLER** who on oath, says that he is **PUBLISHER** of the **WEEKLY NEWSPAPERS**, a weekly newspaper published in Marathon, in Monroe County, Florida: that the attached copy of advertisement was published in said newspaper in the issues of: (date(s) of publication)

April 6, 2023

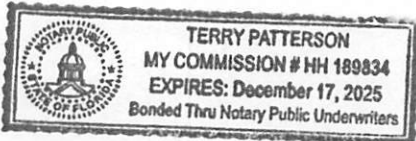
Affiant further says that the said **WEEKLY NEWSPAPERS** is a newspaper published at Marathon, in said Monroe County, Florida, and that the said newspaper has heretofore been continuously published in said Monroe County, Florida, once each week (on Thursday) and has been qualified as a second class mail matter at the post office in Marathon, in Monroe County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement. The affiant further says that he has neither paid nor promised any person, firm, or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper(s) and that The Weekly Newspapers is in full compliance with Chapter 50 of the Florida State Statutes on Legal and Official Advertisements.

PUBLIC MEETING NOTICE
The City of Key Colony Beach will be holding Public Hearings on: **Planning & Zoning Hearing, Wednesday, April 19, 2023, 9:30 A.M.**
City Commission Public Hearing: Thursday, April 20, 2023, 9:30 A.M.
NOTICE IS HEREBY GIVEN that the City of Key Colony Beach, Florida, will hold a **Planning & Zoning Hearing** on **Wednesday, April 19, 2023, at 9:30 A.M.**, and a **City Commission Public Hearing**, on **April 20, at 9:30 A.M.**, at the City of Key Colony Beach Temporary Meeting Place at the Key Colony Inn Banquet Room, located at 700 W. Ocean Drive, Key Colony Beach, Florida, to consider a **Development Agreement** with **Garrison Bright Marina Inc, 400 Sadowski Causeway, Key Colony Beach.** This meeting will be available virtually via Zoom Meetings. Members of the public who wish to attend virtually may email cityclerk@keycolonybeach.net or call 305-289-1212, Ext. 2 for further instructions on attending via Zoom Meetings. Applicant requests approval of a **Development Agreement** pursuant to Chapter 101 of Land Development Regulations Article XII, Section 101-176, seeking approval for redevelopment of an existing marina property. The project combines the two (2) properties located at 400 Sadowski Causeway and adjacent 300 Sadowski Causeway, Key Colony Beach into one property (the "Property") that will continue to operate a marina facility as its principal use. The proposed marina facility would comprise (a) a marina and ship store, (b) live-aboard vessel slips and other temporary docking facilities, (c) redevelopment of one (1) 3,894 sq. foot restaurant and (d) renovation of existing commercial 6,465 sq. ft building on the Property. New Restaurant will be tiki

style construction and new finished floor will meet current flood zone regulations. The maximum height of structures on the property shall be 40 feet in accordance with building plans and permits issued by the City. The unified Property is zoned B-1 Neighborhood Business District and comprises approximately 1.75 acres with a maximum allowable density of 8 units per acre. The request was submitted by Greg Oropeza, Esq., Oropeza, Stones & Cardenas, 221 Simonton Street, Key West, Florida 33040. This notice is made under the provisions of Chapter 163.3225, Florida Statutes. The Development Agreement may be inspected by the public by contacting the City Clerk. These matters are subject to quasi-judicial rules of procedure. Interested parties should limit contact with the City Commission on this topic to properly noticed public hearings or to written communications to the City Clerk. All interested parties are hereby advised that they may appear at said meetings and be heard with respect to said agreement. If any person decides to appeal any decision made by the City Commission of the City of Key Colony Beach with respect to any matter considered at the Hearing, that person will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. If you are unable to attend the Hearings on Wednesday, April 19, 2023, or Thursday, April 20, 2023, but wish to comment, please direct correspondence to P.O. Box 510141, Key Colony Beach, FL 33051, or cityclerk@keycolonybeach.net. and your comments will be entered into the record.
Publish:
April 6, 2023
The Weekly Newspapers

Sworn to and subscribed before me this day of Apr. 6, 2023
(SEAL)

Terry Patterson
Notary



This instrument prepared by:
Vernis & Bowling of the Florida Keys, P.A.
81990 Overseas Highway, 3rd Floor.
Islamorada, FL 33036

Draft Rev: 03/20/2023

After recording return to:

Attn: City Administrator
City of Key Colony Beach
P.O. Box 510141
600 W. Ocean Dr.,
Key Colony Beach, FL 33051-0141

----- [SPACE ABOVE THIS LINE FOR RECORDING DATA] -----

**DEVELOPMENT AGREEMENT
PURSUANT TO
CHAPTER 163, FLORIDA STATUTES**

THIS DEVELOPMENT AGREEMENT, executed by the Parties as of the _____ day of _____ 2023, and having the Effective Date specified below, is entered into by and between:

CITY OF KEY COLONY BEACH, a Florida municipal corporation ("CITY")

and

GARRISON BIGHT MARINA, INC.,
hereinafter referred to as ("Owner").

RECITALS:

- A. WHEREAS, the Florida Local Government Development Agreement Act (the "Act"), Chapter 86-191, Laws of Florida, now codified at Sections 163.3220 through 163.3243, Florida Statutes, authorizes local governments to enter into development agreements with property owners subject to the procedures and requirements of the Act; and
- B. WHEREAS the lack of certainty in the approval of a development can result in a waste of economic land resources, discourage sound capital improvement planning and financing and escalate the cost of housing and development and discourage commitment to comprehensive planning; and
- C. WHEREAS, assurance to a developer that upon receipt of his or her development permit that he or she may proceed in accordance with existing laws and policies, subject to the conditions of a development and financing, assists in assuring that there are adequate capital facilities for the development, encourages private participation in comprehensive planning and reduces the economic costs of development; and

- D. WHEREAS, the Owner is the legal and equitable owner of real property located in Monroe County, Florida, with a principal address of 300 and 400 Sadowski Causeway, Key Colony Beach, Florida 33051 also located within the jurisdictional boundaries of the City of Key Colony Beach (the "City"), as described on attached Exhibit "A" (the "Property"); and
- F. WHEREAS, the Owner intends to combine the two (2) properties located at 400 Sadowski Causeway and adjacent 300 Sadowski Causeway into one property (the "Property") that will continue to operate as a marina facility as its principal use; and
- G. WHEREAS, the proposed marina facility would comprise a marina and ship store, liveaboard vessels slips and other temporary docking facilities, as well as redevelop the previously damaged restaurant and existing commercial rental building on the Property; and
- H. WHEREAS, the Owner has disputed the positions asserted by the City regarding the existing and proposed future uses and redevelopment of the Property; and
- I. WHEREAS, the Owner has submitted permit applications to the City to enter into a development agreement to establish for the record existing and proposed uses for the Property; and
- J. WHEREAS, to encourage future development of the Property consistent with the City's Comprehensive Plan and Land Development Regulations, the Owner and the City desire to agree upon and reduce to contractual terms, the status of the current and proposed site development regarding the Property; and
- K. WHEREAS, City has determined that the provisions of this Agreement are consistent with, and not in contravention with, the provisions of City's Concurrency Management System; and
- L. WHEREAS, City has provided its Notice of Intent to consider entering into this Development Agreement by advertisements published in newspapers of general circulation and readership in Monroe County, Florida, on and, and by mailing a copy of the Notice of Intent to Owner, and by announcing the date, time, and place of the second hearing during the first hearing; and
- M. WHEREAS, the City Commission of the City of Key Colony Beach has held public hearings to consider this Agreement, and has found and determined that its execution of this Agreement will further the objectives of the Local Government Comprehensive Planning and Land Development Regulation Act, and that the development contemplated and permitted by this Agreement is consistent with the City's Comprehensive Plan and Land Development Regulations.

NOW THEREFORE, in consideration of the matters set forth above (which are incorporated herein by reference), the exchange of the mutual promises set forth herein, and other good and valuable consideration, the parties hereto agree as follows:

1. **INCORPORATION OF RECITALS & EXHIBITS**. The parties confirm and agree that the above recitals are true and correct and incorporate the terms and provisions herein for all purposes. All terms and provisions of all Exhibits which are attached to this Agreement and referenced in this Agreement are, by this reference, incorporated into this Agreement for all purposes.
2. **DEFINITIONS**. For the purposes of this Agreement, in addition to those terms which are specifically defined elsewhere in this Agreement the following terms shall have the following definitions:
 - 2.1. ***“Agreement”*** – This Development Agreement, as the same may be subsequently amended, modified, or supplemented pursuant to its terms and provisions and pursuant to the provisions of Sections 163.3161 through 163.3215, inclusive, of the Florida Statutes.
 - 2.2. ***“City”*** – City of Key Colony Beach, a Florida municipal corporation.
 - 2.3. ***“City Code”*** – The City’s Code of Ordinances, as the same may be subsequently amended, modified, or supplemented.
 - 2.4. ***“City Laws and Policies”*** – The laws and policies of City concerning development of real property arising under City’s Comprehensive Plan, the City Code, policies approved by City Council, and Resolutions approved by City Council.
 - 2.5. ***“County”*** – Monroe County, Florida, a political subdivision of the State of Florida.
 - 2.6. ***“Effective Date”*** – The date the terms of this Agreement become effective, as set forth in paragraph 8.16.
 - 2.7. ***“Entitlements”*** – All heretofore established and future rights with respect to the Property, or any portion thereof, existing as of the Effective Date of this Agreement to develop the Property or any portion thereof for, under, or in accordance with a particular use, development intensity, requirements (or non-requirements) for site plan review, site and building design specifications and criteria, and requirements (or non-requirements) for public hearings concerning approvals of development plans, existing as of the Effective Date of this Agreement under the provisions of the City Laws and Policies.

- 2.8 **"Florida Department of Economic Opportunity (DEO)" and "state land agency"** - Refers to the "state land planning agency" as defined in Chapter 163, Part II, Florida Statutes.
- 2.9 **"Land Development Regulations"** - Chapter 101. *et seq.*, of the City Code in existence on the Effective Date of this Agreement.
- 2.10. **"Parcel" or "Parcels"** - One or more of the parcels of real property located in Monroe County, Florida, specifically described or referenced in this Agreement, including the Property (as defined below).
- 2.11. **"Party" or "Parties"** - As applicable, either Owner or City, or both Owner and City.
- 2.12 **"Property"** - The real property owned by Owner located within the jurisdictional boundaries of City also located in Monroe County, Florida, as described on attached Exhibit **"A"**.
- 2.13 **"Public Facilities"** - Those facilities that are specifically described in Section 163.3221, Florida Statutes, and as set forth in this Agreement.

3. **REPRESENTATIONS AND WARRANTIES.** As a material inducement to the other Party to enter into this Agreement, each Party makes the following representations and warranties regarding this Agreement:

3.1. **Owner Representations and Warranties.** Owner represents and warrants to City that:

- 3.1.1. Owner is the legal and equitable owner of the Property.
- 3.1.2. Owner has taken all corporate actions prerequisite necessary for the execution and delivery of this Agreement, and upon the execution and delivery of this Agreement by Owner the obligations of Owner hereunder shall be valid and binding obligations of Owner. The entities or individuals executing this Agreement on behalf of Owner are duly authorized representatives of Owner, authorized to execute this Agreement in their respective capacities as set forth below.
- 3.1.3. The execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of any agreement, covenant, Court Order, Judgment, or the Articles of Organization or Operating Agreement of Owner.

3.2. **City Representations and Warranties.** City represents and warrants to Owner that:

3.2.1. The actions by City hereunder are consistent with the terms and provisions of the City's Comprehensive Plan and City Code.

3.2.2. City has taken all necessary actions prerequisite to the execution and delivery of this Agreement, including but not limited to the necessary public hearings, providing proper notice of the public hearings, and conducting public hearings related thereto.

3.2.3. Upon the execution and delivery of this Agreement by the City, the obligations of City shall be valid and binding obligations of City.

3.2.4. Execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of the City's Charter, Code of Ordinances, Land Development Regulations, or by the terms and provisions of any agreement, covenant, Court Order or Judgment to which City is a party.

4. **DURATION OF THE AGREEMENT.** This Agreement shall have a maximum initial term of five (5) years, which may be extended by mutual consent of the City Commission and the Owner, subject to a public hearing in accordance with F.S. Ch. 163.3225 pursuant to procedures set forth in section 101-176 of the City's Code of Ordinances.

5. **STATUS OF SITE DEVELOPMENT.** The Parties agree that as of the Effective Date of this Agreement and continuing thereafter in accordance with the provisions of paragraph 6 below, that the Property has heretofore been developed and is presently pursuing additional permitting for redevelopment.

5.1 The parties agree that the Owner has submitted a revised boundary survey dated September 9, 2022, which is attached hereto and incorporated herein as Exhibit "B" and a Conceptual Site Plan prepared by T. S. Neal Architects, Inc. ("TSN") identifying all existing and proposed uses and structures. Such Conceptual Site Plan will serve as a site plan of reference ("Site Map") for the purposes of this Agreement and the associated building permit application(s) and is attached as Composite Exhibit "C" hereto. The Site Map reflects five (5) units on the combined Property, encompassing the following: (1) Marina and Ship Store with 46 existing boat slips, two (2) House boats, one (1) commercial restaurant structure of 3,894 square feet which previously existed on the Property and was condemned due to damage from Hurricane Irma, and an existing commercial retail center of 6,465 square feet.

5.1.1. **Legal Description: Ownership.** Owner is the legal and equitable owner of real property located in Monroe County, Florida, with a principal address of 300 and 400 Sadowski Causeway, Key Colony Beach, Florida 33051 also located within the

jurisdictional boundaries of the City of Key Colony Beach (the "City"), as legally described on attached Exhibit "A" and incorporated herein

5.1.2 Statutory and regulatory requirements. The parties recognize the binding effect of the Florida Local Government Develop Agreement Act, Sections 163.3221, *et. seq.*, Florida Statutes, and the City Code as to the form and contents of this Agreement. The parties hereto set forth and agree to the terms of this Agreement in accordance therewith.

5.2 Permitted Use Approval of Conceptual Site Map, including Densities and Intensities. The Owner seeks to obtain approval for specific uses associated with the Marina and its related services, as well as redevelopment on the Property consistent with the following:

- (a) Ability to reconfigure exiting structures from current locations identified on the Site Map attached as Exhibit "C"; and
 - (i) Continuing operation of the Marina facility and Ship Store, encompassing 46 existing boat slips inclusive of two (2) existing live-aboard vessels; and
 - (ii) Ability to redevelop a previously existing 3,894 square foot commercial restaurant structure within its prior building footprint; and
 - (iii) Ability to redevelop an existing 6,465 square foot commercial retail center.
- (b) Ability to designate a maximum of ten (10) additional live-aboard vessels within the existing boat slips, subject to the terms of this Agreement and applicable provisions of the City Code and Land Development Regulations.
- (c) Ability to apply for requisite vacation rental license for operation of the live-aboard vessels pursuant to the City Code and Land Development Regulations.

5.2.1. The Site Map referenced above reflects an inventory of the existing structures and uses, referencing the five (5) units on the Property, encompassing the Marina and Ship Store with 46 existing boat slips, two (2) House boats, a proposed commercial restaurant structure of 3,894 square feet which previously existed on the Property, and an existing commercial retail center of 6,465 square feet.

5.2.2 The Site Map reflects and indicates the location of all current structures and uses and the proposed relocation of any structures and uses, and their associated building permits if already applied for.

5.2.3 Density, Intensity and Height Restrictions. Unless otherwise specifically provided for in this Agreement, density, intensity and height restrictions shall be in accordance with applicable provisions of the City Code and Land Development Regulations. The height of any new structure associated with redevelopment of the Property shall not exceed forty-five (45) feet.

5.2.3.1 Density; Live-aboard vessels. The Property is located within the B-1 Neighborhood Business District which allows for live-aboard vessels tied up to docks within B-1 zoning.

- (a) Pursuant to Sections 5-15 and 101-17 of the City Land Development Regulations, live-aboard vessels shall not exceed a density of 8 dwelling units per net acre with each such boat considered a dwelling unit.
- (b) Pursuant to Sections 5-15 and 101-17 of the City Land Development Regulations, Owner and City hereby agree that the maximum number of live-aboard vessels on the Property shall be restricted to ten (10) total (2 existing and a maximum of 8 additional), with each such vessel considered a dwelling unit for density calculation. However, such vessels shall not be used for long term rentals/housing and shall only be used for vacation rentals (VR's) pursuant to the City Code and Land Development Regulations.
- (c) Owner shall be permitted to use the ten (10) live-aboard vessels for short vacation rentals only upon completion of the requisite vacation rental license for short-term rental operation of the live-aboard vessels pursuant to the City Code and Land Development Regulations. The Parties agree that the use of the live-aboard vessels on the Property is a permitted use.
- (d) Pursuant to Section 5-15 of the City Land Development Regulations, all live-aboard vessels shall either be connected to central sewer by means approved and permitted by the City or by proof of sanitary facility pump out service.

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

- (a) Potable Water. Domestic potable water is provided by the Florida Keys Aqueduct Authority.
- (b) Electric service. Electric service is provided by Florida Keys Electric Cooperative.
- (c) Solid Waste. Solid waste is provided by Marathon Garbage Services or its successors and assigns, as determined by the City Council.
- (d) Fire Service. Fire service is provided by the Marathon Fire Department.

(e) Wastewater. Wastewater collection and treatment is provided by the City of Key Colony Beach.

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

5.2.5 Impact Fees. Any increased impacts on public facilities or public services attributable to development of the Property and the cost of capital improvements to meet the associated demand on such facilities or services shall be paid by Owner to the City, concurrent with the issuance of the building permits. Owner shall be responsible for any applicable City impact fees required by the City code, as well as by payment of any applicable utility system development fees.

5.3 The Owner recognizes and acknowledges that the Site Map referenced in this Section and attached as Exhibit "B" hereto is a conceptual site plan only and does not constitute a formal or approved site plan by the City.

5.4 Site Plan Approval Required. Owner shall be required to submit an application for and obtain formal Site Plan Approval from the City in accordance with the requisite procedures set forth in the City land development regulations. Owner shall submit such application for Site Plan Approval within twelve (12) months of the execution date of this Agreement and receive approval of the Site Plan prior to the expiration of the initial term of this Agreement.

5.5 Final Approval of pending permitting application(s) shall be obtained by Owner in accordance with the City Code of Ordinances, which shall not be unreasonably withheld by the City.

5.6 Additional Development Conditions. The following additional conditions, terms, restrictions and other requirements have been determined by the City to be necessary for the approval of this Agreement and shall be incorporated into the formal Site Plan approval process.

5.6.1 Setbacks. Setbacks shall comply with all applicable requirements of the City Code.

5.6.2 Utilities, Lighting and Signage. Utilities, lighting and signage shall comply with all applicable requirements of the City Code, including the waterfront lighting criteria set forth therein.

5.6.3 Landscaping. Owner shall submit a plan to utilize best practices of landscaping throughout the Property, in accordance with the provisions of the City Code and Land Development Regulations.

5.6.4 Fire Safety. Owner shall provide fire protection facilities as required by the City Code, Florida Fire Prevention Code and Life Safety Code.

5.6.5. Stormwater Management. The development shall comply with the stormwater management criteria in the City Code and shall meet all applicable federal, state and regional stormwater management requirements.

5.6.6. Additional Conditions by Mutual Consent. Nothing in this Agreement shall preclude the parties from applying additional conditions by mutual agreement during final site plan review or permitting.

5.7 Cost Recovery by City. Owner shall provide a cost recovery deposit to City and reimburse all fees and expenses of outside attorneys and third-party consultants that the City engages in connection with this Agreement and the implementation thereof.

6. CITY LAWS AND POLICIES GOVERNING DEVELOPMENT.

6.1. The City has initiated the process of amending its Comprehensive Plan and portions of the City Code concerning development of real property. It is the intention of the Parties hereto that such actions by the City shall not operate to result in the termination, modification or loss of any of the provisions of this Agreement under the current City Laws and Policies.

6.2. The City Laws and Policies governing the development of the Property on the Effective Date of this Agreement shall govern the future development of the Property for the duration of this Agreement. The Property shall retain, without modification or limitation, all development currently existing and options currently available under the City Laws and Policies, notwithstanding any future amendment of the City Laws and Policies.

6.3. Notwithstanding any recitals above, in the event that the City, subsequent to the Effective Date, modifies City Laws and Policies and includes the Property within such modifications, in a manner that provides the Property with additional options that are reasonably expected to enhance the development of the Property, or decrease the time or expense associated with such development, such modified laws and policies shall apply to the Property.

6.4 Development Permits. Certain provisions of this Agreement will require that the City and/or its boards, departments, or agencies take certain governmental actions, acting in their governmental capacity, and issue Development Permits in order to accomplish and satisfy the authorization and construction of the Owner's Project.

6.5 Applications for Development Approvals. Promptly after the Effective Date hereof, the Owner initiate and diligently pursue any necessary Development Approval applications. The City shall process all Development Permit applications in a timely fashion and the City shall cooperate with the Owner (at no cost to the City) in processing all necessary Development Approvals from federal, State and County agencies, as needed.

6.6 Permits from Other Regulatory Entities. Other agency permits may be required as provided by applicable law prior to the City's issuance of building permits for redevelopment of the Property. The Developer shall obtain all necessary permits from other local, regional, State and federal regulatory entities and provide copies of each to the City within a reasonable time after such permits are issued.

6.7 Development to Comply with City Code, Comprehensive Plan and Permit Conditions. The development described in an authorized by this Agreement shall be developed in accordance with all required permits, and in accordance will applicably provisions of the City's Comprehensive Plan, City Code and Land Development Regulations in effect on the date of execution of this Agreement. No certificate of occupancy for any building on the Property shall be issued until all plans for that building are approved by the City and the Owner has complied with all conditions in permits issued by the City and other regulatory authorities for that building.

6.8 Compliance with Permits, Terms, Conditions and Restrictions Not Identified Herein. The failure of this Agreement to address a particular permit, condition, term or restriction shall no relieve the Owner of having to comply with the law governing said permitting, requirements, conditions, terms or restrictions.

7. **RIGHT OF TERMINATION.**

Notwithstanding anything to the contrary contained herein, if Owner fails to timely comply with the provisions of Section 5, City shall have the right to terminate this Agreement and be released from any liability and obligations hereunder in accordance with Section 101-176 of the City Code of Ordnances.

8. **GENERAL PROVISIONS.**

8.1. **Notices.**

8.1.1. All notices, requests, consents and other communications required or under this Agreement shall be in writing (including faxed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, faxed, or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed to the following or to such other addresses as any party may designate by notice complying with the terms of this paragraph:

a. AS TO THE CITY:

Attn: City Administrator
City of Key Colony Beach
P.O. Box 510141
600 W. Ocean Dr.,
Key Colony Beach, FL 33051-0141

1) With Copy To:

Attn: City Attorney
Vernis & Bowling of the Florida Keys, P.A.
81990 Overseas Highway, 3rd Floor.
Islamorada, FL 33036

b. AS TO OWNER:

Attn: James Figuerado, Jr.
Garrison Bight Marina, Inc.

[REDACTED]
[REDACTED],

1) With Copy To:

Gregory S. Oropeza, Esq.
Oropeza, Stones & Cardenas, PLLC
221 Simonton Street
Key West, Florida 33040

8.1.2. Each such notice shall be deemed delivered:

- a. On the date delivered if by personal delivery.
- b. On the date of facsimile transmission if by facsimile; and
- c. If the notice is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; (b) the date upon which delivery is refused; (c) the date upon which notice is designated by the postal authorities as not having been delivered; or (d) the third business day after mailing.
- d. Notwithstanding the foregoing, service by personal delivery delivered, or by facsimile sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.

8.1.3. If a notice is delivered by multiple means, the notice shall be deemed delivered upon the earliest date determined in accordance with the preceding subparagraph.

8.1.4. If the above provisions require notice to be delivered to more than one person (including a copy), the notice shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.

8.2. **Negation of Partnership.** None of the terms or provisions of this Agreement shall be deemed to create a partnership before Owner and City in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprises. Each Party shall be considered a separate Party, no Party shall have the right to act as an agent for another Party and no Party shall the right to act as an agent for another Party unless expressly authorized to do so in this Agreement.

8.3. **No Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided no right, privileges or immunities of any Party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained in this Agreement.

8.4. **Default Provisions.**

8.4.1. The terms of this Agreement shall not entitle any Party to cancel, rescind, or otherwise terminate this Agreement. However, except as expressly set forth herein (e.g., in paragraph 8.4.5), such limitations shall not affect in any manner any other rights or remedies which a Party may have hereunder or under applicable law by reason of any such breach.

8.4.2. All easements, rights and covenants contained herein shall be enforceable by suit for specific performance and mandatory injunctive relief, in addition to any other remedies provided by law or equity except as expressly set forth herein (e.g., in paragraph 8.4.5).

8.4.3. No Party shall be entitled to pursue any action for specific performance, injunctive relief, or any other available remedy arising out of a default under this Agreement until the non-defaulting Party has provided to the Party alleged to be in default a written Default Notice specifying the specific nature of the default, and the alleged defaulting Party has failed to cure the default within sixty (60) days of the effective date of the Default Notice. In the event the cure of a default reasonably requires greater than the 60 day time period specified, the grace period granted herein shall, if the defaulting Party has initiated cure of the default within the 60 day time period and is continuing to pursue completion of the cure with due

diligence, extend the reasonable time period required for the cure of the default to the period which is a reasonable time period.

8.4.4. In the event of a material default by Owner with respect to its obligations to City under this Agreement, and failure of Owner to cure the default within the grace period set forth above, in addition to any other remedies available to them under the terms of this Agreement, City shall be entitled to withhold issuance of additional development permits or authorizations until the default has been cured. If Owner has, prior to the occurrence of the default, conveyed some or all of the Property to unrelated third parties (such parcel or parcels then becoming a "Third Party Parcel") and the default of Owner is not with respect to, or impact City obligations regarding, the Third-Party Parcel, the right of City to withhold permits upon a default by Owner shall not extend to City permits pending or to be issued with respect to a successor owner of such Third-Party Parcel.

8.4.5. In the event of a material default by City with respect to its obligations to Owner under this Agreement, and failure of City to cure the default within the grace period set forth above, Owner may seek relief as set forth in paragraph 8.4.2 against City but may not seek damages (including, without limitation, compensatory damages or lost profits), such relief being expressly waived by Owner.

8.5. **Estoppel Statements.** Each Party agrees that upon written request from time to time of any other Party it will timely issue at no charge to a current or prospective lender to such Party, or to a current or prospective purchaser or successor party to such other Party, or to another governmental entity requesting or requiring the same, an Estoppel Statement stating:

8.5.1. Whether the Party to whom the request has been directed knows of any default by any Party under this Agreement, and if there are known defaults, specifying the nature thereof.

8.5.2. Whether this Agreement has been modified or amended in any way by such Party (and if it has, stating the nature thereof).

8.5.3. That to the best of the requested Party's knowledge this Agreement, as of the Estoppel Statement date is in full force and effect.

8.5.4. That (if known by the requested Party, if not known by the requested Party that Party shall reply only with respect to any monies owed to it) to the best of the requested Party's knowledge there are not any monies currently owed by any Party to another Party under the terms of this Agreement, or if there are monies owed, the amount and details of all monies owed.

8.5.5. That, as to the Project or as to a specific parcel therein (as applicable, based upon the request) there are no moratoriums or suspensions of the right to procure Development Orders, Building Permits, or Certificate of Occupancy or other development approvals in effect as of the date of the Estoppel Statement.

8.5.6. Such written statement shall act as a waiver of any claim by the Party furnishing it to the extent such claim is based on facts contrary to those asserted against a bona fide mortgagee or purchaser for value without knowledge of facts to the contrary of those contained in the Estoppel Certificate who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the Party furnishing it to any liability whatsoever, notwithstanding the negligent or other inadvertent failure of such Party to disclose correct and/or relevant information.

8.6. **Litigation.** In the event of any litigation arising out of this Agreement, each party shall bear their own costs incurred with respect to such litigation. In the event this Agreement is challenged successfully, the parties agree to be bound by any modification pursuant any legal authority. If any such event occurs the City shall be indemnified by Owner for any costs, including attorney's fees, in defending such challenge. In the event that any legal modification to this Agreement results from a legal challenge, the City shall not be held responsible for any resultant impact including financial consequences in accordance with this Section 8.6. In the event that the proposed development becomes impossible or impractical based upon such legal challenge, the parties agree that this Agreement is void.

8.7. **Binding Effect.** The parties to this Agreement represent to each other that each party fully understands the facts surrounding this Agreement and each is signing this Agreement fully and voluntarily, intending to be bound by it. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective spouses, heirs, executors, and administrators. There are no representations or warranties other than those set forth herein.

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

8.9. **Severability.** Except as otherwise set forth herein, in the event any provision or paragraph of this Agreement is determined to be invalid or unenforceable, such determination shall not affect the enforceability or the validity of the remaining provisions of this Agreement.

8.10. **Survival of Representations and Warranties.** All representations and warranties contained herein are made in writing by the parties in connection herewith shall survive the execution and delivery of this Agreement.

8.11. Successors.

8.11.1. All covenants and agreements in this Agreement made by or on behalf of any parties hereto shall bind and inure to the benefit of the respective successors of the parties hereto, whether so expressed or not.

8.11.2. Upon a sale or other transfer of a Parcel or a portion thereof, the terms and provisions of this Agreement, as applicable, shall remain in full force and effect as to the Parcel or a portion of the Parcel.

8.12. **Applicable Law.** This Agreement is being delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida. The venue for any legal proceeding arising out of this Agreement shall be Monroe County, Florida.

8.13. **Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

8.14. **Amendment of Agreement.** This Agreement cannot be changed, modified or released orally, but only by an agreement in writing signed by the parties against whom enforcement of said change, modification or discharge is sought.

8.15. **Gender.** As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular as the context may require.

8.16. Effective Date.

8.16.1. This Agreement shall become effective upon completion of its execution by both Parties, and the recordation of the Agreement in the Public Records of Monroe County, Florida.

8.16.2. Notwithstanding the foregoing:

- a. The parties shall be obligated to perform any obligations hereunder that are required before such Effective Date; and
- b. In the event that this Agreement is challenged, including a challenge pursuant to Section 163.3243, Florida Statutes, within thirty (30) days of the recordation of this Agreement in the Public Records of Monroe County, Florida, the obligations of the parties shall be suspended hereunder, except to the extent such suspension would be inconsistent with requirements of Florida Department of Economic Opportunity.

(This Space is intentionally left blank)

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

**SIGNATURE PAGE(S) OF
CITY OF KEY COLONY BEACH AND
GARRISON BIGHT MARINA, INC.**

ATTEST:

**CITY OF KEY COLONY BEACH,
FLORIDA**

Silvia Gransee, City Clerk

By: _____
Patricia Trefry, Mayor

**APPROVED AS TO FORM AND
LEGALITY:**

Date: _____, 2023.

Dirk M. Smits, City Attorney

**APPROVED BY THE CITY COMMISSION OF KEY COLONY BEACH ON
_____, 2023.**

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing **DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163, FLORIDA STATUTES** was acknowledged before me this _____ day of _____, 2023, by Patricia Trefry, as Mayor of Key Colony Beach, Florida, a Florida municipal corporation, on behalf of the City.

Notary Public, State of Florida
Name: _____

(Please print or type)

Commission Number:

Commission Expires:

Notary: Check one of the following: ___ Personally known
OR ___ Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: _____

**SIGNATURE PAGE(S) OF
SIGNATURE PAGE(S) OF
CITY OF KEY COLONY BEACH AND
GARRISON BIGHT MARINA, INC.**

GARRISON BIGHT MARINA, INC.

By: _____

Date: _____, 2023

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing **DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163,
FLORIDA STATUTES** was acknowledged before me this _____ day of _____,
2023, by _____.

Notary Public, State of Florida

Name: _____

(Please print or type)

Commission Number:

Commission Expires:

Notary: Check one of the following: ___ Personally known
OR ___ Produced Identification (if this box is checked, fill in
blank below).

Type of Identification Produced: _____

EXHIBIT "A"

Property Addresses and Parcel Identification Numbers:

300 Sadowski Causeway, Key Colony Beach, Florida 33051
Real Estate No.: 00079371-000200
Alternative Key No.: 1086410

LTS 2 -3 AND 3A MARINA SUBDIVISION REPLAT PB7-2 SHELTER KEY OR760-528 OR760-529 OR918-62 OR1145-1510 OR2213-667/68 OR2340-2174 OR2490-73/74 OR2490-75/76 OR2777-988/89 OR3189-0658 OR3189-1676

400 Sadowski Causeway, Key Colony Beach, Florida 33051
Real Estate No.: 00079371-000100
Alternative Key No.: 1086401

LOT 1 & BB ADJ TO KCB CAUSEWAY & PVT ROAD MARINA SUBDIVISION REPLAT PB7-2 SHELTER KEY OR391-241 OR410-548 OR410-550 OR424-924 OR661-434 OR770-1113 OR856-846 OR862-1289 OR864-892 OR1185-472 OR1511-1142 OR3155-2465 OR3155-2467

FULL LEGAL DESCRIPTION(S) TO BE DETERMINED

SEE ATTACHMENT "1"

EXHIBIT "B"

Site Map:

MAP OF BOUNDARY SURVEY

MATCH LINE SHEET 2

MATCH LINE SHEET 1

S12° 40' 59" E MEAS
955.00 MEAS

S12° 47' 59" E MEAS
955.00 MEAS

CANAL

100' CANAL

PARCEL E

LOT 3A

LOT A

LOT B

LOT C

LOT D

LOT E

LOT F

LOT G

LOT H

LOT I

LOT J

LOT K

LOT L

LOT M

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LOT JQ

LOT JR

LOT JS

LOT JT

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