

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase
in wastewater rates in Monroe
County by K W Resort Utilities Corp.

Docket No. 20170141-SU

REBUTTAL TESTIMONY

OF

ROBERT C. PABIAN

on behalf of

K W Resort Utilities Corp.

1 **Q. Please state your name, profession and address.**

2 A. My name is Robert C. Pabian, and my address is 1315 United Street, Key West, Florida
3 33040. I am a developer, through various entities, of modular structures in the Florida Keys,
4 and the sole vendor in the lower Keys for Champion Homes. I am also one of only two
5 vendors for Jacobsen Homes and Palm Harbor Homes. I am also the President of Pabian
6 Outdoor-Southeast, Inc., which has contracted with KWRU for provision of their modular
7 office on Stock Island.

8 **Q. Have you presented direct testimony in this case?**

9 A. No, I have not.

10 **Q. Have you previously filed testimony in Utility Rate Case Proceedings before the Florida
11 Public Service Commission?**

12 A. No, I have not.

13 **Q. Are you sponsoring any exhibits?**

14 A. I am sponsoring Exhibit RCP-1, which is the Modular Office Installation Agreement between
15 KWRU and Pabian Outdoor-Southeast, Inc. I am also sponsoring Exhibit RCP-2, which is
16 documentation of a few of the modular home developments I have completed in recent years
17 in the Keys.

18 **Q. What is the purpose of your rebuttal testimony?**

19 A. I will testify as to the reasonableness of the \$182 cost per square foot of KWRU's new office
20 building based on my experience as a modular developer in the Florida Keys and the past
21 projects in which I have been involved.

22 **Q. Please briefly state your history as a developer in the Florida Keys.**

23 A. I have developed hundreds of modular units over the past five years in the Florida Keys. A
24 sampling of some of the development I have overseen is contained within Exhibit RCP-2.

25 This document includes Southernmost Cabana, a 26 unit development in Key West, at pages

1 1 - 5; Little Torch Cottages, a 58 unit development on Little Torch Key, at pages 6 – 8; and
2 Tarpon Harbour, a 106 unit development in Marathon, at pages 9 – 10.

3 **Q. Would you describe your development experience prior to you beginning work in the**
4 **Keys?**

5 A. Since 1976, I have developed hundreds of commercial, as well as residential, modular units
6 in Georgia, South Carolina, the Florida Panhandle, Mississippi, South Alabama and the
7 Florida Keys. During that period, I also rehabilitated and renovated site-built homes in Key
8 West.

9 **Q. In your capacity as the manager of entities which develop modular structures in the**
10 **Florida Keys, are there challenges specific to the Florida Keys which drive up**
11 **development costs when compared to other markets?**

12 A. The primary reason I focus on developing modular homes in the Florida Keys is the
13 competitive price. The lower Keys are very remote, labor is expensive, and good
14 employees/contractors are hard to come by. Developing modular units alleviates, to a large
15 extent, the increased prices resulting from these factors and time delays which are often
16 experienced in the Keys. In other areas which are nearby materials sources and where labor is
17 not so expensive, the cost savings of developing modular as opposed to site built structures is
18 less pronounced. In the Keys, it is pronounced. This has driven my success over my time
19 developing in the Keys.

20 **Q. Generally speaking, how does the cost of developing a modular unit in the Florida Keys**
21 **compare to the cost of developing a site-built unit?**

22 A. Site built units are generally significantly more expensive on a cost per square foot basis.
23 This is largely due to the high cost of living in the Florida Keys driving labor costs up.
24 Modular units are typically constructed in areas with lower labor costs and shipped to the
25 Keys. This avoids the expense of having contractors on-site for an extended period of time to

1 construct the structure. Most recently, since Hurricane Irma, contractors can cherry pick the
2 projects they wish to work on and the priority of those projects. This has lengthened
3 timetables for construction and decreased the availability of labor.

4 **Q. What does a “vendor for modular homes” do?**

5 A. Modular companies typically do not sell direct to consumer. As a vendor, I work with the end
6 customer to design the unit, engineer the unit for value, and then I work with the various
7 modular companies for whom I am a vendor to price and obtain a suitable unit.

8 **Q. Are there any cost advantages, passed on to the end user, that result from you being a
9 vendor for multiple modular companies?**

10 A. There are. Because I am a vendor for multiple companies, I can bring the specifications to all
11 the companies to obtain the best price. This allows me to lower the “Not to Exceed” cost
12 which forms the basis of my contracts with third parties, and receive inventory on a more
13 timely basis.

14 **Q. What was the cost per square foot for each of the developments you cited earlier?**

15 A. The modular developments cited above had a cost per square foot of \$170, but they were
16 residential developments. Of course, fit and finish vary from project to project, and there are
17 other important factors – most importantly the size of the project – which drive the ultimate
18 construction cost per square foot. These are much larger projects. For the modular clubhouse
19 at Tarpon Harbour, in Marathon, our cost per square foot exceeded \$200. This was a single
20 “commercial” style building, but it is basically an empty shell with a bathroom.

21 **Q. In your experience, what is the cost per square foot of site built buildings in the lower
22 Keys?**

23 A. Site-built structures – in my experience in comparing pricing to modular construction – are
24 typically well over \$300 per square foot. For smaller developments (such as a single building,
25 or a cluster of homes) the cost per square foot for site built construction is over \$350. For the

1 clubhouse at Tarpon Harbour I referenced above, the cheapest bid we received from a local
2 contractor for a site-built structure was nearly \$500 per square foot.

3 **Q. In your opinion, is \$182 per square foot a reasonable price to provide and install a**
4 **finished approximately 1,577 square foot modular unit?**

5 A. Yes. One hundred eighty two dollars per foot is within the reasonable market range for
6 provision and installation of a finished singular modular unit in the lower Keys.

7 **Q. Section 2 of Exhibit RCP-1 provides that Pabian Outdoor-Southeast, Inc. is required to**
8 **“obtain the Modular Office from a reputable modular building manufacturer (such as**
9 **Jacobsen, Champion, HBW, etc.) based upon agreed upon specifications and**
10 **finishes...” and complete installation for a cost not to exceed \$250,000.00. How did you**
11 **derive the “not to exceed” price?**

12 A. By discussing the specific function of the KWRU office and KWRU’s needs with KWRU
13 President Chris Johnson, we were able to value engineer the project to eliminate unnecessary
14 features to save money. I have a good picture of installation costs from my other recent
15 projects in the Keys. Putting my estimate of modular unit cost and installation costs together,
16 I was able to provide a not to exceed price of \$250,000.00

17 **Q. Did you discuss KWRU’s needs for the unit with all of the modular construction**
18 **companies for which you are a vendor?**

19 A. I did.

20 **Q. Which vendor will be providing the new office for installation at KWRU?**

21 A. Champion Homebuilders.

22 **Q. Why did you utilize Champion Homebuilders?**

23 A. In this instance, Champion was the only company who could commit to providing the unit
24 within a reasonable timeframe. As a result of the Hurricanes last season which struck Texas,
25 Florida, and Puerto Rico, modular companies are currently experiencing incredibly high

1 demand for units. The other companies did not provide timetables which met KWRU's time
2 constraints.

3 **Q. Does this conclude your testimony?**

4 A. It does.

5

MODULAR OFFICE INSTALLATION AGREEMENT

THIS MODULAR OFFICE INSTALLATION AGREEMENT (this "Agreement"), is made and entered into this 19th day of October, 2017, by and between ~~PP Keys 2016, LLC~~, a Florida limited liability company ("~~PP Keys~~"), having an address at 5625 2nd Avenue, Unit 6, Key West, Florida 33040 and KW RESORT UTILITIES CORP., a Florida corporation ("KWRU"), having an address at 6630 Front Street, Key West, Florida 33040.

*Pabian
Outdoor -
Southeast, In*
[Signature]

Pabian O-S
[Signature]

RECITALS

A. KWRU operates a wastewater facility located at 6630 Front Street, Key West, Florida 33040 ("Facility");

B. Hurricane Irma destroyed the office trailer located at the Facility, necessitating a new modular office of no more than 1,500 square feet ("Modular Office") be installed or constructed at the Facility;

Pabian O-S [Signature]

C. ~~PP Keys~~ has the expertise in the logistics of obtaining, preparing sites and installing modular homes in the Florida Keys; and

Pabian O-S [Signature] Pabian O-S [Signature]

D. KWRU desires, and ~~PP Keys~~ has agreed to, ~~PP Keys~~ obtaining from manufacture and arranging the transportation and installation and construction of the Modular Office at the Facility.

AGREEMENT

NOW, THEREFORE, in consideration of Ten (\$10.00) Dollars, the premises and mutual covenants contained herein and other good and valuable consideration in hand paid by the parties hereto each to the other, simultaneously with the execution and delivery of these presents, the receipt and adequacy of which is hereby acknowledged, the parties hereto do hereby agree upon the following terms and conditions:

1. Recitals. The above recitals are true and correct and are incorporated herein by reference.

2. Modular Office. For all matters related to this Agreement, the parties agree to cooperate and work together to value engineer the construction and installation of the Modular Office in the most cost effective and efficient manner commercially possible. PP Keys shall obtain the Modular Office from a reputable modular building manufacturer (such as Jacobson, Champion, HBW, etc.) based upon agreed upon specifications and finishes between KWRU and PP Keys. PP Keys shall cause the construction and installation of the Modular Office on a location chosen by KWRU in accordance with all detailed architectural and engineering plans and working drawings (the "Plans"), such Plans to be reasonably approved by KWRU. PP Keys assumes no responsibility whatsoever, and shall not be liable, for the manufacturer's, architect's, or engineer's design or

Pabian O-S [Signature]
Pabian O-S [Signature]
Pabian O-S [Signature]
Pabian O-S [Signature]

Pabian O-S [Signature]

performance of the Modular Office. The Plans shall be submitted to the appropriate governmental entities and agencies for approval and shall comply with all applicable laws, ordinances, rules, and regulations of any governmental entity or agency having jurisdiction over the Facility ("Legal Requirements") and ~~PP Keys~~ shall obtain all permits required and shall complete the Modular Office in accordance with the Plans. → Pabian O-S [initials]

3. Cap on Cost. The parties agree and acknowledge that all costs (hard and soft) involved in the manufacture, transportation, installation and construction of the Modular Office, and the most that KWRU will be responsible for is \$250,000.00.

4. Installation and Construction.

(a) The Modular Office construction and installation shall be completed in a manner so as to minimize any interference with the business or operation of the Facility.

(b) ~~PP Keys~~ shall use only licensed, insured contractors and subcontractors to complete the construction and installation of the Modular Office. KWRU is to be included as an additional insured for insurance coverages required of the general contractor. ~~PP Keys~~ shall inform its contractor, subcontractors, and material suppliers that the Facility shall not be subject to any lien to secure payment for work done or materials supplied. In the event a lien is placed on the Facility, ~~PP Keys~~ shall fully discharge any lien by settlement, bonding, or insuring over the lien in the manner prescribed by any applicable lien law. Pabian O-S [initials]

(c) All inspections and approvals necessary and appropriate to complete the Modular Office in accordance with the Plans are the responsibility of ~~PP Keys~~ and its general contractor. Pabian O-S [initials]

5. Completion of the Modular Office. The parties agree that the Modular Office shall be installed and shall be able to be occupied by March 31, 2018 ("Completion Date").

6. Damage Caused by Installation of Modular Office. Any damage to any part of the Facility which occurs due to the construction and/or installation of the Modular Office, shall be promptly repaired by ~~PP Keys~~, at its expense, and all such work shall be done to KWRU's reasonable satisfaction. Pabian O-S [initials]

7. Default and Remedies.

(a) Each of the following events shall be an "Event(s) of Default" by ~~PP Keys~~ under this Agreement: Pabian O-S [initials]

(i) Failure to complete the Modular Office on or prior to the Completion Date;

(ii) Failure to comply with any obligations under this Agreement, if such failure continues for ten (10) days subsequent to written notice thereof; and/or Pabian O-S [initials]

(iii) In the event that (i) ~~PP Keys~~ shall make an assignment for the benefit of creditors, or apply for the appointment of a trustee, liquidator or a receiver of any substantial

Pabian O-S
CS *PP*
part of its assets, or shall commence any proceeding relating to itself under any bankruptcy, reorganization, arrangement or similar law; or (ii) if any such application is filed or proceeding is commenced against ~~PP Keys~~ and ~~PP Keys~~ indicates its consent thereto, or an order is entered appointing any such trustee, liquidator or receiver or approving a petition in any such proceedings and such order remains in effect for more than 60 days; or (iii) if ~~PP Keys~~ shall admit, in writing, its inability to pay its debts as they become due. *Pabian O-S* *CS* *PP*

(b) Upon an Event of Default, KWRU may pursue any and all remedies available to it in law and/or equity.

8. Termination. Either party may terminate this Agreement upon 15 days written notice to the other party, provided that such notice is received prior to the date that (i) the modular production company commences production of the Modular Office and/or (ii) any deposit becomes non-refundable and cannot be returned. Any reasonable costs expended by ~~PP Keys~~ prior to the termination of this Agreement by KRWU shall be promptly reimbursed by KWRU. *Pabian O-S* *CS* *PP*

9. Notice. Whenever notice is required under this Agreement, it shall be sent by certified mail, return receipt requested, by nationally recognized overnight courier service or by hand delivery to the address of the parties set forth in the preamble of this Agreement, provided the parties may change the address provided for above by notifying the other party of the new address in writing. Any notice given shall be effective upon receipt or refusal of delivery.

10. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. By execution of this instrument, the parties acknowledge that in the event of any dispute arising under this Agreement the sole venue for such dispute shall be Monroe County, Florida. *Pabian O-S* *CS* *PP*

11. Further Assurances. KWRU and ~~PP Keys~~ agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all such further acts, assignments, transfers and assurances as shall reasonably be requested of it in order to carry out this Agreement and give effect thereto.

12. Severability. If for any reason any provision of this Agreement is determined to be invalid, or unenforceable in any circumstance, such invalidity or unenforceability shall not impair the effectiveness of the other provision in this Agreement or, to the extent permissible, the effectiveness of such provision in other circumstances.

13. Successor and Assigns. The agreements contained herein shall be binding upon and inure to the benefit of the permitted successors and assigns of the respective parties hereto. PP Keys shall not mortgage, pledge, sell, assign, hypothecate, or otherwise encumber, transfer or permit to be transferred in any manner or by any means whatsoever whether voluntarily or by operation of law, all or any part of its interest in this Agreement.

14. Amendments. No amendment or modification of this Agreement shall be effective executed by both parties.

15. Waiver of Jury Trial. Each of the parties waive trial by jury in any litigation, suit or proceeding between them in any court with respect to, in connection with or arising out of this Agreement, or the validity, interpretation or enforcement thereof.

16. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated herein and supersedes all prior understandings or agreements between the parties.

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement binding on the parties hereto.


[Signature to Follow]

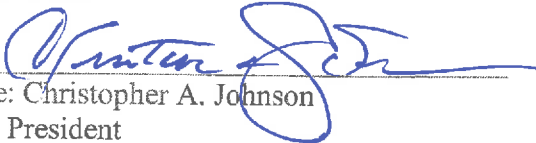
IN WITNESS WHEREOF, the parties have hereunto set forth their hands and seals as of the date first above written.

Signed in the presence of:

KWRU:

KW RESORT UTILITIES CORP., a Florida corporation


Witness: 
Print Name: Greg Wright

By: 
Name: Christopher A. Johnson
Title: President

Witness: 
Print Name: Robert Derraberry

~~PP KEYS~~ Pabian O-S  
Pabian Outdoor Southeast, Inc.  
~~PP KEYS, LLC~~, a Florida limited liability company

Witness: 
Print Name: Brett Smith



By: 
Name: Kristine Pabian
Title: Manager

Witness: 
Print Name: BRANDI GREEN

Southern Most Cabana Resorts

21 single family homes. Land purchased from the Catholic Church on the corner of Simonton and Virginia St., Old Town Key West.



Mail  

5:10 AM

2 of 18

Cancel



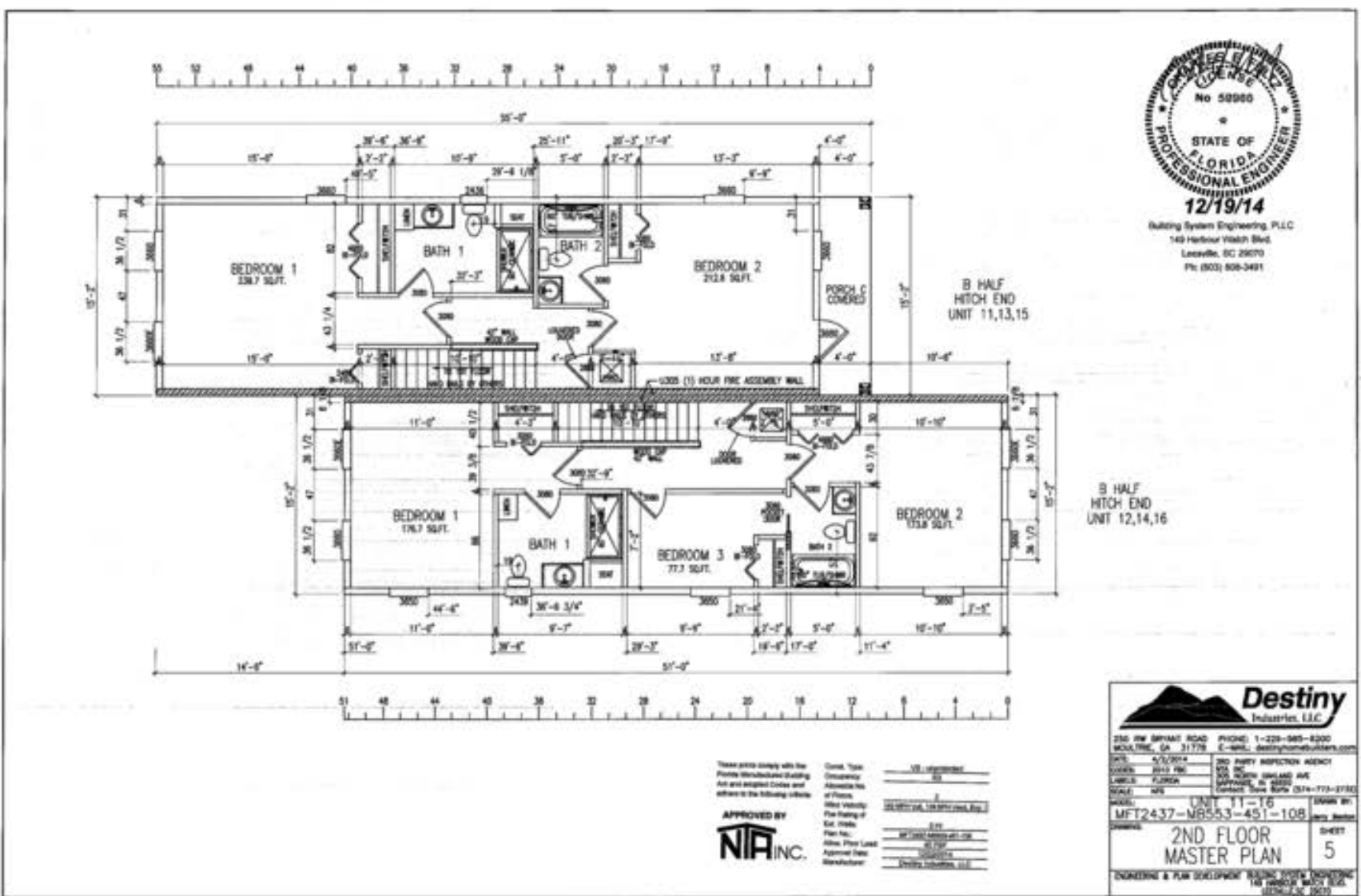
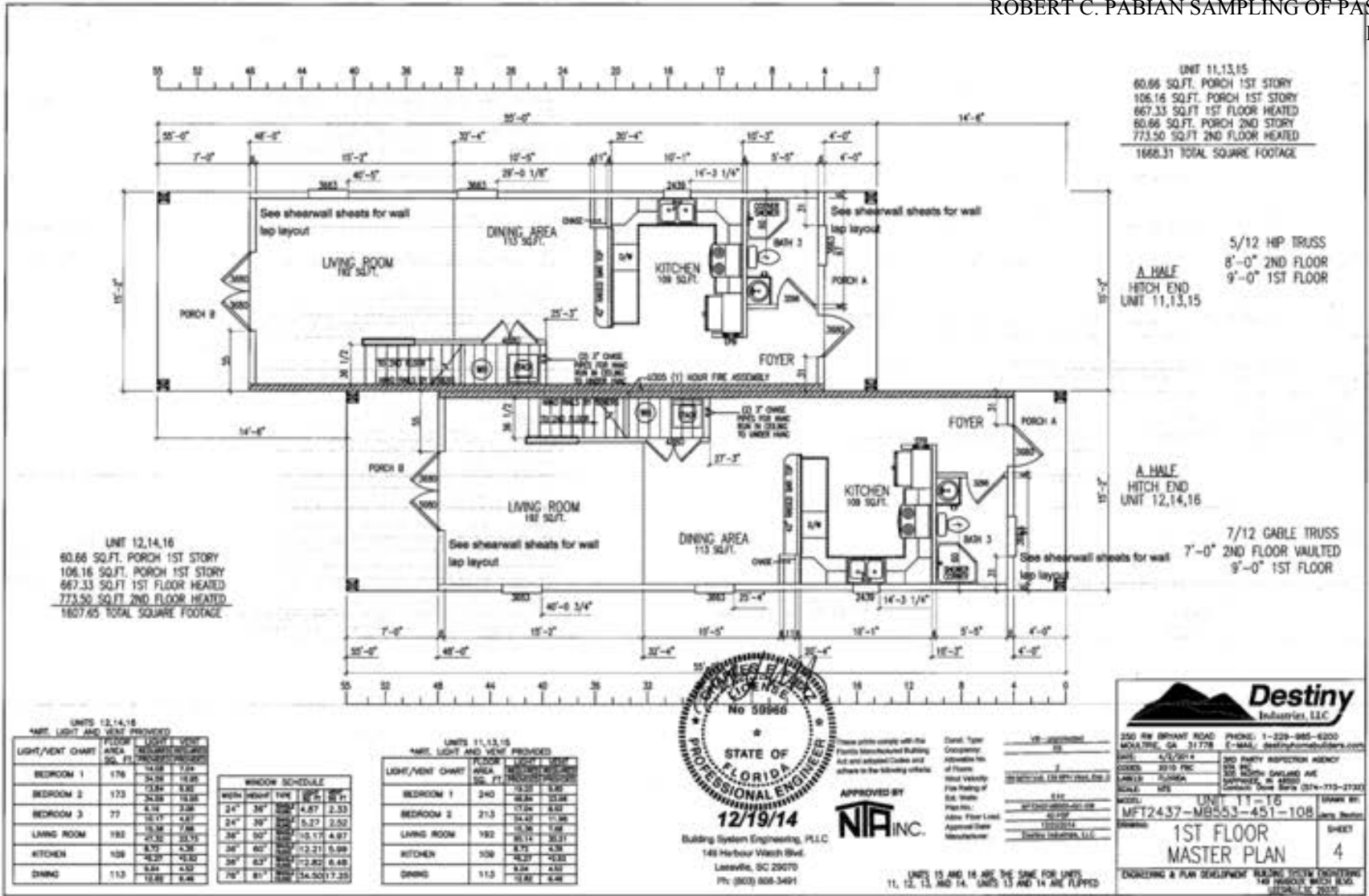




Cancel

2 of 7





Little Torch Cottages Little Torch 58 Units



Palm Harbor Homes
Plan Number: **69**
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4000 S. Dunbar Rd.
Gainesville, FL 32608
P.O. Box 10000
Plant City, FL 33566

PROJECT INFORMATION
OWNER: **ORLANDO LITTLE TORCH COTTAGE**
PROJECT NAME: **LITTLE TORCH**
DATE: **07/12/13**

LISTING AGENCY APPROVAL
APPROVAL DATE: **NO**

HWC
Rev. 01.01

FRONT & REAR ELEVATIONS
Plan Number: **A2.01**
Rev: **2102-1127**



Palm Harbor Homes
Plan Number: **69**
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Gainesville, FL 32608
P.O. Box 10000
Plant City, FL 33566

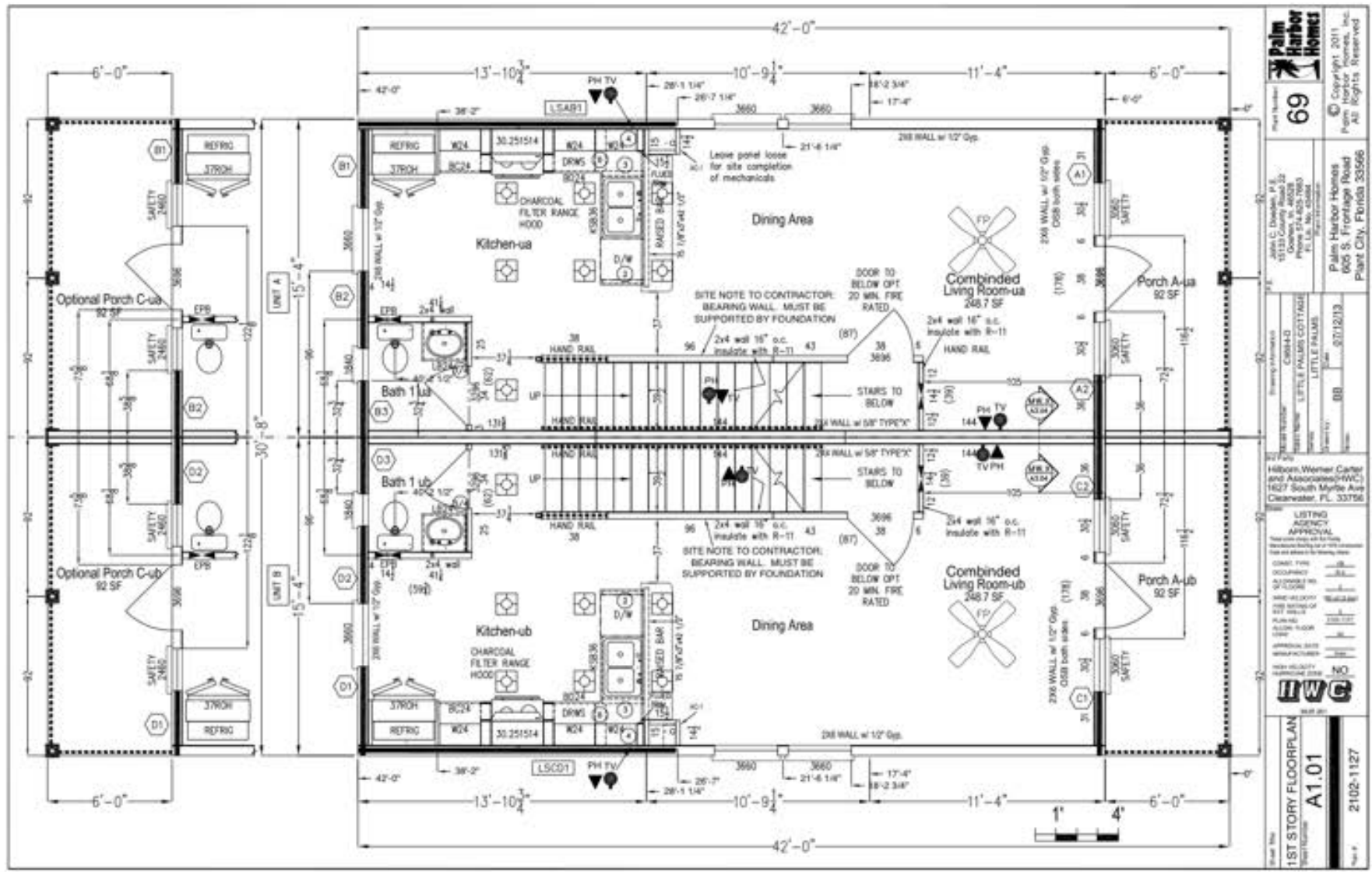
PROJECT INFORMATION
OWNER: **ORLANDO LITTLE TORCH COTTAGE**
PROJECT NAME: **LITTLE TORCH**
DATE: **07/12/13**

LISTING AGENCY APPROVAL
APPROVAL DATE: **NO**

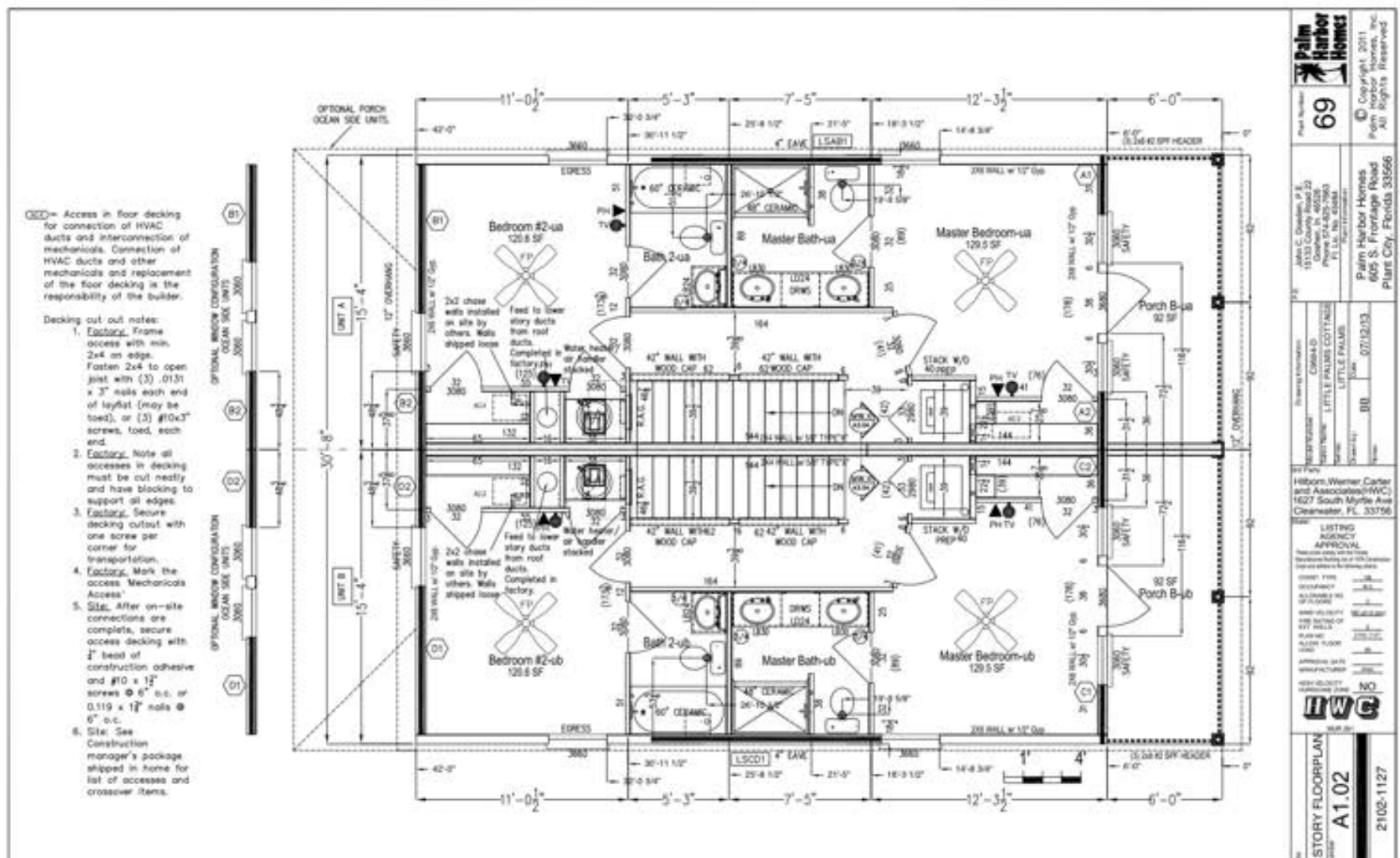
HWC
Rev. 01.01

ELEVATIONS
Plan Number: **A2.02**
Rev: **2102-1127**

PORCH SQUARE FEET SECOND STORY	30
SQUARE FEET A.C. SECOND STORY	352.00
SQUARE FEET A.C. FIRST STORY	352.00
Total Per Unit	1380.08 SF



Palm Harbor Homes
Project Number: 69
15133 County Road 25, Dunedin, FL 34628
Little Palms Cottages
Listing Agency: IWC
2102-1127



Palm Harbor Homes
Project Number: 69
15133 County Road 25, Dunedin, FL 34628
Little Palms Cottages
Listing Agency: IWC
2102-1127



Palm Harbor Builds Modular Little Palm Cottages in Florida



Palm Harbor Homes was selected as the modular builder to produce the multi-family rental units for Little Palm Cottage Development on Little Torch Key, Florida. This unique coastal development is designed to offer 48 two-story resort rental units.

Little Palm Cottage, LLC chose Palm Harbor's modular construction solution to be able to meet the growing demand in the Florida Keys for affordably priced rental apartments in a resort market. Palm Harbor's unique Gold Key Care interior site finish, Palm Harbor Construction services for set-up, along with responsive design and engineering capabilities were paramount in Little Palm's decision to choose Palm Harbor over other modular manufacturers.

Project Builder

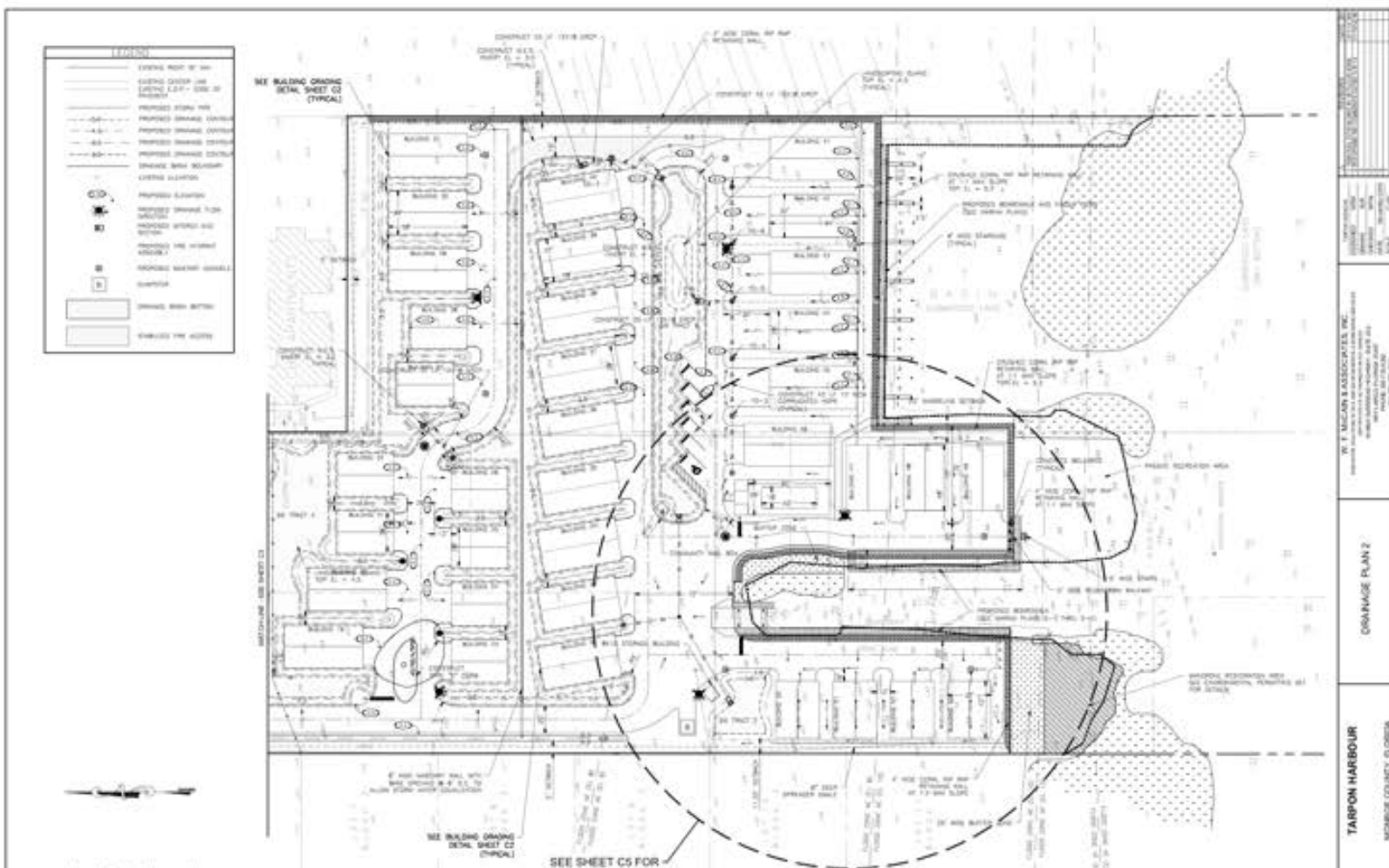
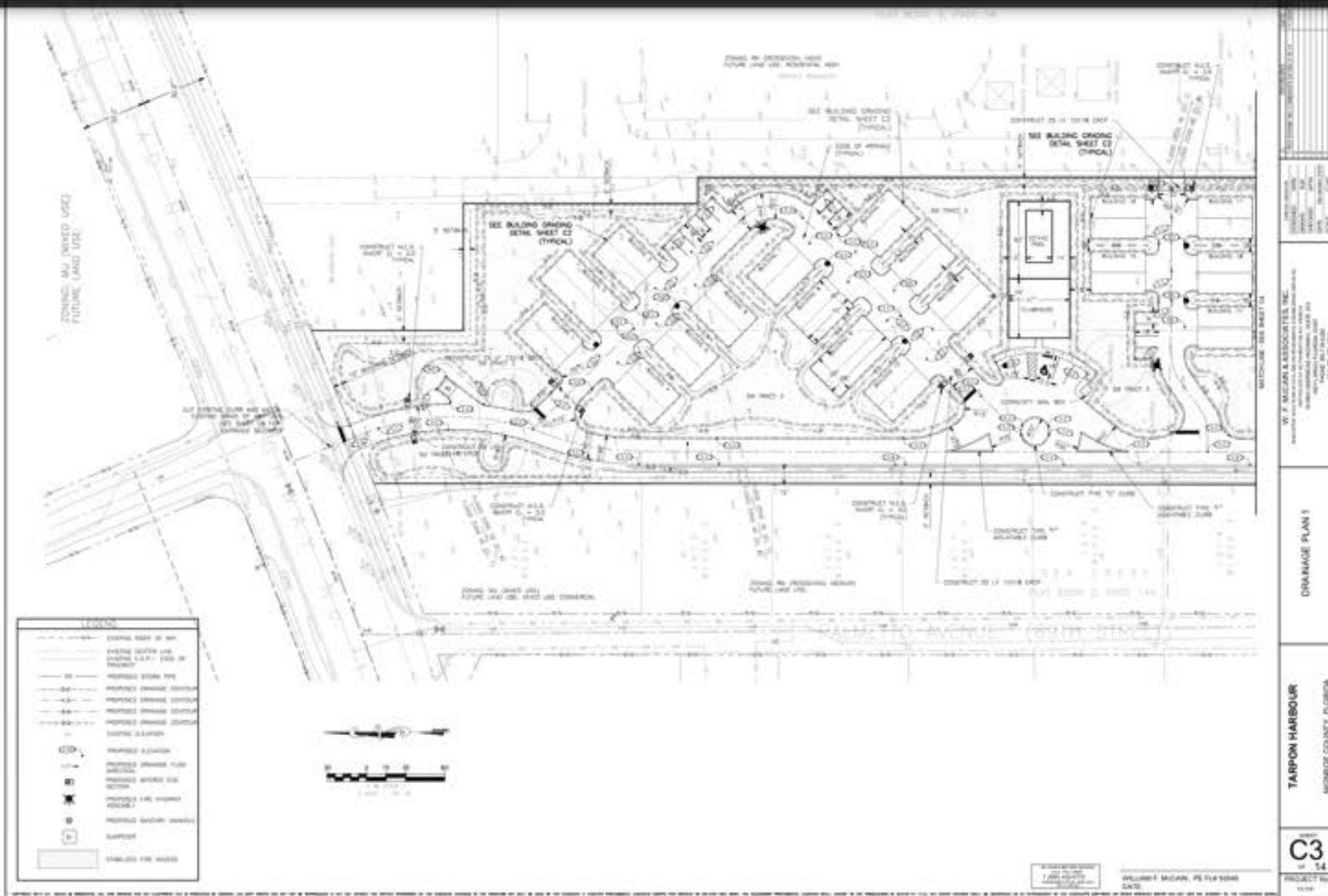
- Little Palm Cottages, LLC – Developer
- Pabian Properties, LLC – Builder

Project Time Frame

Project involves three phases. Phase I involves eight buildings that began set-up on site from 1/28/14 to 2/6/14. Interior finish work on these 16 dwellings will conclude on 2/10/14. Phase II also involves eight building with set-up starting 2/25/14 and concluding 3/6/14. Interior Gold Key Care finish work will be finished 3/11/14. Final Phase III, eight buildings will begin set-up on 3/25/14 and conclude with

Tarpon Harbour
 Marathon
 106 Units

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< All Photos

Vaca Key

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