

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2003-141**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MARATHON AND MARATHON RESORT DEVELOPMENT, INC., A FLORIDA CORPORATION, PIRATES COVE VILLAS CONDOMINIUM ASSOCIATION, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION REGARDING THE BUCCANEER RESORT REDEVELOPMENT PROJECT**

**WHEREAS**, Marathon Resort Development, Inc., a Florida corporation, and Pirates Cove Villas Condominium Association, Inc., a Florida not-for-profit corporation, are the owners of approximately 11.054 contiguous acres of land (the "Property") in the corporate limits of the City of Marathon, Florida (the "Owners"); and

**WHEREAS**, the Owners wish amend the existing development agreement to redevelop the Property as a resort destination with motel rooms and time share plan accommodations; and

**WHEREAS**, the Buccaneer Resort employs a number of persons who reside in the City of Marathon, Florida (the "City"), is an integral part of the economy of the City and the Middle Keys, attracts tourism to the City and the Middle Keys, and is a contributor to the economic success of the District 3 Tourist Development Area of Monroe County, including the City; and

**WHEREAS**, the City desires to encourage development and redevelopment of hotels and motels in the City to attract tourism, enhance the economy of the City for the benefit of its residents, and improve the good appearance of the City; and

**WHEREAS**, in the past number of years, the City has not enjoyed the same level of economic benefit from the tourist industry as other locales in the Lower and Upper Keys and is in need of redevelopment and enhancement of its tourist economic base to assist in the City's economic recovery, growth, and continued vitality; and

**WHEREAS**, the City has concluded that the direction for redevelopment and enhancement of the City's tourist base should be as a family attraction area; and

**WHEREAS**, the City has recognized that to attract family visitors, accommodations must be available that meet the special needs of families and offer affordable vacation options; and

**WHEREAS**, the City has further recognized that the special needs of families that would provide for their comfort and encourage longer visits include separate sleeping areas for children and adults, living space for games and other family pursuits, and the ability to prepare meals and dine in, to enable families to vacation for long periods of time; and

**WHEREAS**, the Property is on the Gulf of Mexico, and redevelopment of the Property as a resort destination with motel rooms and time share plan accommodations provides an opportunity for the type of redevelopment that will provide recreational facilities and resort

accommodations to attract families to the City for longer stays; and

**WHEREAS**, the City has determined that this Development Agreement is in the public interest and will further the health, safety and welfare of the residents of the City.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:**

**Section 1.** The Development Agreement between the City and Marathon Resort Development, Inc., a Florida corporation, and Pirates Cove Villas Condominium Association, Inc., a Florida not-for-profit corporation in substantially the form as the attached as Exhibit "A" is approved. The City Manager and City Attorney are authorized to finalize the terms and conditions of the Agreement and the Mayor is authorized to execute said Agreement on behalf of the City.

**Section 2.** This resolution shall become effective immediately upon its adoption.

**PASSED AND APPROVED** by the City Council of the city of Marathon, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2003.

**THE CITY OF MARATHON, FLORIDA**

\_\_\_\_\_  
**Randy Mearns, Mayor**

AYES: Bartus, Pinkus, Repetto, Worthington, Mearns  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

\_\_\_\_\_  
Cindy L. Ecklund  
City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:

\_\_\_\_\_  
City Attorney

**FIRST AMENDMENT TO  
DEVELOPMENT AGREEMENT FOR  
BUCCANEER RESORT AND PIRATES COVE VILLAS CONDOMINIUMS**

**THIS FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT** for Buccaneer Resort and Pirates Cove Villas Condominiums is entered into by and between MARATHON RESORT DEVELOPMENT, INC., a Florida corporation, PIRATES COVE VILLAS CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation (herein collectively referred to as "Owners"), and the CITY OF MARATHON, a Florida municipal corporation (herein referred to as "City"), pursuant to Sections 9.5-101 and 9.5-102 of the City Code, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2002), and is binding on the "Effective Date" set forth herein.

**WITNESSETH:**

**WHEREAS**, on May 16, 2003, the Owners and the City entered into the Development Agreement for Buccaneer Resort and Pirates Cove Condominiums (the "original Agreement"); and

**WHEREAS**, the original Agreement was approved by City Resolution No. 2003-060 and recorded on May 28, 2003, in the Public Records of Monroe County, Florida, in Public Records Book 1892 beginning at Page 98; and

**WHEREAS**, the Owners desire to amend the Development Agreement, including making minor changes in the square footage and project layout reflected on the Conceptual Site Plan, and providing for development of replacement units for the two remaining owners of individual timeshare units at the Pirates Cove Villas Condominiums; and

**WHEREAS**, the City held public hearings to accept and encourage public input with respect to the proposal contained in this First Amendment, and has considered such public input; and

**WHEREAS**, Owners have provided public notice of the parties' intent to consider entering into this First Amendment by publishing an advertisement in a newspaper of general circulation and readership in the City, posting the Property subject to this First Amendment, and mailing notice to the persons and entities shown on the most recent Monroe County Tax Roll to be the owners of property lying within 300 feet of the boundaries of the Property subject to this First Amendment; and

**WHEREAS**, the City Planning Commission held a public hearing on December 9, 2003, to consider this First Amendment, and the City Council of the City held a public hearing on December 23, 2003, to consider this First Amendment to the Development Agreement; and

**WHEREAS**, the City has determined that this First Amendment to the Development Agreement is in the public interest and will further the health, safety and welfare of the residents of the City of Marathon.

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Section 1.** The recitals set forth in the preceding "Whereas" clauses are incorporated herein and form a material part of this First Amendment to the Development Agreement.

**Section 2.** Section B. of the Development Agreement, entitled Definitions,

subsections 1., 4., and 6., are amended to read as follows:

1. "Agreement" shall refer to the original this Development Agreement and the First Amendment to the 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 163.3220-163.3243, inclusive, Florida Statutes.

4. "Development" shall refer to the development of the Property for the uses permitted by the existing Future Land Use Map ("FLUM") in the City's Transitional Comprehensive Plan and Land Use District Map, subject to the conditions, obligations, restrictions and terms contained in this Agreement.

6. "Hotel room" shall refer to a hotel room as defined in the City Code, as amended by City Ordinance No. 2003-08 as it relates to properties zoned DR (Destination Resort).

**Section 3.** Section C.1.b. of the Development Agreement is amended to reflect that the address of both Pirates Cove Villas Condominium Association, Inc., and Marathon Resort Associates, Inc., has been changed to 2600 Overseas Highway, Marathon, Florida, 33050.

**Section 4.** Section C.3. of the Development Agreement, entitled Existing Development; Preparation for Redevelopment, subsections b.1. and 2., are amended to read as follows:

1. ~~Areas designated "marina lease" and "existing lease area"~~ Submerged land lease areas on the Conceptual Site Plan to the northwest, north, and southeast of the proposed ~~restaurant building~~ waterfront bar.

2. Wood dock and walkways at the ~~"marina submerged land lease"~~ area on the northwest portion of the Property.

**Section 5.** Section C.4. of the Development Agreement, entitled Development Uses Permitted, subsection a., is amended to read as follows:

**a. Approval of Conceptual Site Plan; Minor Revisions; Final Site Plan; Land Condominium.** Redevelopment on the Property shall be limited to transient residential uses and time share plan accommodations, together with commercial, retail, nonresidential, and accessory structures and facilities, and

employee housing dormitory space, described in this Agreement and depicted on the Conceptual Site Plan for the Buccaneer Resort, ~~Sheets 1 and 2~~, revised ~~April 24, 2003~~, November 17, 2003, prepared by The Weiler Engineering Corporation of Port Charlotte, Florida, attached hereto as Exhibit C and incorporated herein. The Conceptual Site Plan is hereby approved by the City Council, and all subsequent site plans, site plan approvals and building permits shall substantially comply with the Conceptual Site Plan; provided, however, that the final site plan may deviate from the Conceptual Site Plan (1) to accommodate refinements to the development plan made by the Owners, including minor shifts of thirty-five (35) feet or less in the structures, roadways, pathways, and swimming pool configurations; (2) to change the type and number of residential units, so long as the maximum hotel density set forth in this Agreement is not exceeded; or (3) to accommodate modifications that are necessary to meet regulatory requirements. The setback requirements in Section 9.5-286 of the City Code shall not be varied. It is agreed that the Property may be submitted to condominium ownership as a land condominium, for which no further City review or approval is required.  
**Section 6.** Section C.4. of the Development Agreement, Development Uses

Permitted, subsection c., is amended to read as follows:

**c. Employee Housing; ROGO Allocation Awards.** To comply with Section 9.5-243(b) of the City Code, the Owners shall provide four thousand 4,000 square feet of employee housing on the Property. The City shall award two (2) affordable housing ROGO allocations to the Property for the purpose of providing the on-site employee housing. The remaining employee housing required by Section 9.5-243(b) shall be provided off site, and may be located or developed by the Owners individually or in conjunction with other persons or entities. The provision of required on-site employee housing shall be completed before the certificate of occupancy is issued for the first transient residential unit. For off-site employee housing, before issuance of the first certificate of occupancy for transient residential units, thirty-three percent (33%) of employee/affordable housing shall have the certificate of occupancy; before issuance of the certificate of occupancy for the twenty-seventh (27<sup>th</sup>) transient residential unit, sixty-six percent (66%) of employee/affordable housing shall have the certificate of occupancy; and before the issuance of the fifty-eighth (58%) transient residential unit, one hundred percent (100%) of the employee/affordable housing shall have the certificate of occupancy. The City acknowledges that all structures on the Property will be demolished in preparation for redevelopment, and that the Owners have an obligation to replace the four (4) condominium units for the time share owners identified in Section C.1.b of this Agreement. Therefore, notwithstanding the foregoing restrictions on the issuance of certificates of occupancy for transient residential units, the Owners are authorized to construct and receive certificates of occupancy for four (4)

condominium units for said time share unit owners prior to developing or obtaining certificates of occupancy for any on-site or off-site employee/affordable housing units.

Employee housing provided pursuant to Section 9.5-243(b) shall be deed restricted as required by the City Code. The Owners shall prepare the deed restrictions in a form acceptable to the City and shall record same in the public records of Monroe County, Florida, within a reasonable time after the forms have been accepted by the City. Copies of the recorded instruments showing the book and page where recorded shall be provided the City and to the state planning agency within a reasonable time after recordation. All employee housing provided under the Agreement is limited to use as employee housing.

**Section 7.** Section C.4. of the Development Agreement, Development Uses

Permitted, subsection e., is amended to read as follows:

**e. Guest Rooms and Amenities, Commercial, and Retail Square Footage, and Other Uses Approved Under This Agreement.**

1. The following Guest Rooms and Amenities, commercial, and retail square footage, and other uses, as depicted on the Conceptual Site Plan, excluding shoreline development addressed below, are approved under this Agreement:

Guest Rooms and Amenities	Commercial Square Footage	Other Uses
87 guest rooms (as described in Section C.4.b. of this Agreement)	One <del>4,800</del> <u>6,200-8,400</u> square foot reception, <u>office</u> and <u>breakfast restaurant</u> building	4,000 square foot employee housing dormitory space
<del>One 1,600 square foot cart depot (for golf carts for guests to use on site and for luggage carts for use by guests)</del>	<del>One 1,995 square foot restaurant and lounge near the shoreline. One waterfront bar a maximum of 1,000 square feet</del>	
One main swimming pool (a maximum of 9,818 square feet)	One <del>2,000</del> <u>4,000</u> square foot maintenance building <u>and Homeowners Association office</u>	

One kiddie pool (a maximum of 711 square feet)	<del>One (1) 1,627</del> <u>200</u> square feet of retail space in reception area and waterfront bar	
Brick-colored pavers around the swimming pool	<del>288 square feet of hotel storage space.</del> <u>1,000 square feet of commercial uses</u>	
One gazebo of approximately <del>200-600</del> <u>625</u> square feet in size <del>to the west of the aquarium and snorkel area,</del> to be used as a shaded observation area (replaces an existing one-story structure). Structure shall be set back at least ten (10) feet from mean high water.	<u>One 500 square foot security office</u>	
Six (6) foot wide concrete sidewalks throughout the Property.	<u>600-800 square foot exercise building</u>	

2. In addition, the Owners may construct a fence or portions thereof a maximum of six (6) feet in height along the rear and side property lines and along the front of the Property. Any fence that exceeds 4 feet in height along the front of the Property shall be located outside the 25-foot front yard setback as required by the City Code. Pillar caps and design features that exceed the heights of the fences may be added.

3. 2. The City acknowledges that the Owners are vested for a total of twenty-one thousand three hundred fifty-four (21,354) square feet of commercial or nonresidential development. Total commercial development on the Property approved under this Agreement is ~~twelve thousand seven hundred ten (12,710) square feet~~ a maximum of thirteen thousand nine hundred (13,900) square feet, depending on the developed sizes of the reception building, the waterfront bar, and the exercise building, leaving a minimum of ~~eight thousand six hundred forty four (8,644)~~ seven thousand four hundred fifty-four (7,454) square feet of vested commercial development remaining. Total commercial development on the Property pursuant to this Agreement ~~or~~ and subsequently-requested development approvals shall not exceed the 21,354 square feet for



which the Owners are vested, except as may be allowed by the City Code.

**Section 8.** Section C.4.f. of the Development Agreement, entitled Future Shoreline

Development Approved Under this Agreement, is amended to add the following:

6. One (1) fishing pier in the dock lease area on the northwest portion of the Property.
7. Aquarium and snorkeling basin with artificial reef in northwest portion of Property.

**Section 9.** Section C.5. of the Development Agreement, entitled Additional

Development Conditions, subsection j., is amended to read as follows:

**j. Old S.R. 4A Right-of-Way.** ~~If the request of Marathon Resort Development, Inc., for the City to abandon~~ If the Owners obtain title to that portion of the Old S.R. 4A right-of-way that crosses Parcels 101991, 101992, 101993, and 101930.003 adjacent to ~~on the Property is granted,~~ as reflected on the Conceptual Site Plan, that portion of the Old S.R. 4A right-of-way acquired shall be used only for plant material, signage, lighting, parking, and stormwater retention.

**Section 10.** The floor plan attached to this First Amendment is hereby approved as an architectural style and representative floor plan for the three-bedroom units on the Property, and is incorporated into this First Amendment by reference. The architectural styles and representative floor plans approved under the original Development Agreement are referenced in Section C.4.m. entitled Schematics and included in Composite Exhibit D to that Agreement.

**Section 11.** Section C.13. of the Development Agreement, entitled Laws Governing, subsection a., is amended to read as follows:

a. For the duration of this Development Agreement, all approved development of the Property shall comply with and be controlled by this Development Agreement, as amended, and provisions of the City's Transitional Comprehensive Plan and City Code in effect on the date of execution of ~~this the~~ original Development Agreement. The parties do not anticipate that the City will

apply subsequently-adopted laws and policies to the Property, except as expressly provided in this Agreement and any subsequent amendment to this Agreement.

**Section 12.** Section C.16. of the Development Agreement, entitled Notices, is amended to reflect the following addresses of the Owners:

Marathon Resort Development, Inc.  
2600 Overseas Highway  
Marathon, FL 33050  
~~1010 Kennedy Drive, 4<sup>th</sup> Floor~~  
~~Key West, FL 33040~~  
Telephone: (305) 296-5601

Pirates Cove Villas Condominium Association, Inc.  
2600 Overseas Highway  
Marathon, FL 33050  
~~1010 Kennedy Drive, 4<sup>th</sup> Floor~~  
~~Key West, FL 33040~~  
Telephone: (305) 296-5601

**Section 13.** Revised Exhibit E to the Development Agreement is hereby approved, and is attached hereto and incorporated herein by reference.

**Section 14.** **Finding of Consistency.** The City of Marathon finds that the development authorized herein is consistent with the City's Transitional Comprehensive Plan and land development regulations in effect on the date of execution of this First Amendment to the Development Agreement.

**Section 15.** **Drafting; Rules of Construction.** The parties acknowledge that they jointly participated in the drafting of this First Amendment to Development Agreement and that no term or provision of this First Amendment shall be construed in favor of or against either party based solely on the drafting of the First Amendment.

**Section 16.** **Duplicate Originals; Counterparts.** This First Amendment to

Development Agreement may be executed in any number of originals and in counterparts, all of which evidence one agreement. Copies or counterparts of this First Amendment with facsimile signatures shall be deemed original counterparts for all purposes; however, each party shall promptly furnish documents with original signatures upon request. Only one original is required to be produced for any purpose.

**Section 17. Recording and Effective Date.** The Owners shall record this First Amendment to Development Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date of this Agreement. A copy of the recorded First Amendment showing the date, page and book where recorded shall be submitted to the state land planning agency by hand delivery, U. S. mail, registered or certified United States mail, or by a delivery service that provides a signed receipt showing the date of delivery, within fourteen (14) days after the Agreement is recorded. The Owners shall also provide a copy of the recorded First Amendment to the City within the same time period. This First Amendment to Development Agreement shall become effective thirty (30) days after the date this First Amendment is recorded in the public records of Monroe County, Florida, and received by the state land planning agency.

**Section 18. Date of First Amendment to Development Agreement.** The date of this First Amendment to Development Agreement is the date the last party signs and acknowledges this First Amendment.

**IN WITNESS WHEREOF**, the parties hereto, by their duly authorized representatives, have set their hands and seals on the dates below written.

MARATHON RESORT DEVELOPMENT, INC.,

a Florida corporation,

\_\_\_\_\_  
Date

By \_\_\_\_\_  
JOHN R. ALLISON, III, PRESIDENT

STATE OF FLORIDA  
COUNTY OF DADE

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, by JOHN R. ALLISON, III, as President of Marathon Resort Development, Inc., who is personally known to me or who produced \_\_\_\_\_ as identification, and who did/did not take an oath.

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

My commission expires:

PIRATES COVE VILLAS CONDOMINIUM  
ASSOCIATION, INC., a Florida not-for-profit  
Corporation

\_\_\_\_\_  
Date

By \_\_\_\_\_  
JOHN R. ALLISON, III., President

STATE OF FLORIDA  
COUNTY OF DADE

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, by JOHN R. ALLISON, III, as President of Pirates Cove Villas Condominium Association, Inc., who is personally known to me or who produced \_\_\_\_\_ as identification, and who did/did not take an oath.

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

My commission expires:

CITY OF MARATHON

\_\_\_\_\_  
Date

By \_\_\_\_\_  
RANDY MEARNS, MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

\_\_\_\_\_  
CITY ATTORNEY