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**CITY OF MARATHON, FLORIDA  
RESOLUTION 2005-163**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE TERMINATION OF THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MARATHON, AND SEAVIEW COMMONS, LLC; AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT**

**WHEREAS**, the City of Marathon, Florida (the "City") and Seaview Commons, LLC, (the "Developer") entered into that certain Development Agreement (the "Development Agreement") dated as of April 13, 2004; and

**WHEREAS**, the Developer has requested a release and termination of the Development Agreement; and

**WHEREAS**, the City has agreed to terminate the Development Agreement and release the Developer from all future obligations under the Development Agreement.

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

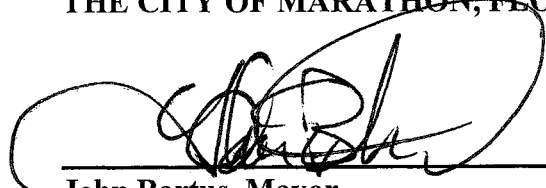
**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** The Termination of Development Agreement between the City and the Developer, in substantially the form as the attached Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is hereby approved.

**Section 3.** This resolution shall take effect immediately upon its adoption.

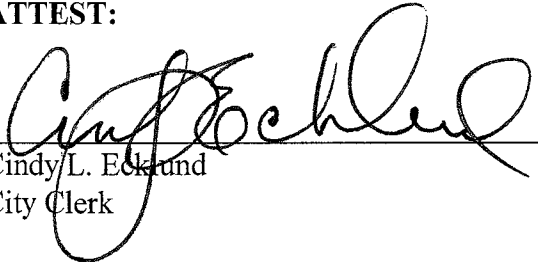
**PASSED AND APPROVED** by the City Council of the City of Marathon, Florida, this 22<sup>nd</sup> day of November, 2005.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**John Bartus, Mayor**

AYES: Bull, Mearns, Miller, Pinkus, Bartus  
NOES: None  
ABSENT: None  
ABSTAIN: None

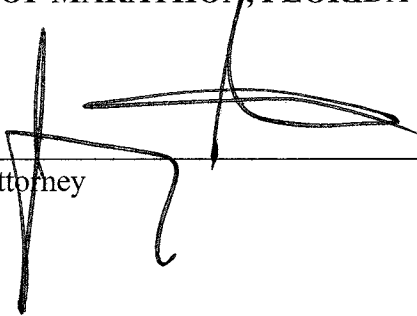
**ATTEST:**



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

**TERMINATION OF  
DEVELOPMENT AGREEMENT**

THIS TERMINATION OF DEVELOPMENT AGREEMENT (the "Termination") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between the City of Marathon, Florida (the "City"), a Florida municipal corporation and Seaview Commons, LLC. (the "Developer"), a Florida Limited Liability Corporation (the City and the Developer are collectively referred to as the "Parties").

**RECITALS**

A. The City and the Developer entered into that certain Development Agreement (the "Development Agreement") dated as of April 13, 2004. All capitalized terms in this Termination shall have the same meaning as in the Development Agreement unless otherwise provided herein.

B. The Parties wish to mutually terminate the Development Agreement as hereinafter set forth.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

1. The Recitals hereinabove contained are true and correct and are made a part hereof.

2. Pursuant to the Development Agreement and Section 163.3237, *Florida Statutes*, the Parties hereby mutually consent to the cancellation of the Development Agreement as of the date above.

3. This Termination shall be binding upon, and shall inure to the benefit of, the respective successors and assigns of the parties hereto.

4. The City, on behalf of itself and its officers, agents, servants, employees, and invitees, hereby releases and forever discharges the Developer, their officers, agents, servants, employees, successors, and assigns from any and all liabilities, claims, and damages of any kind or nature which City, its officers, agents, servants, invitees, and employees, and their respective successors or assigns now has or at any time shall have against the Developer, their officers, agents, servants, employees, successors, and assigns as a result of any matter, cause, or thing whatsoever occurring on or prior to the date of this Termination arising out of or in connection with the Development Agreement.

5. The Developer, on behalf of themselves and their officers, agents, servants, employees, and invitees, hereby releases and forever discharges the City, its officers, agents, servants, employees, successors, and assigns from any and all liabilities, claims, and damages of any kind or nature which the Developer, their officers, agents, servants, invitees, and employees, and their respective successors or assigns now has or at any time shall have against City, its officers, agents, servants, employees, successors, and assigns as a result of any matter, cause, or thing whatsoever occurring on or prior to the date of this Termination arising out of or in connection with the Development Agreement.

6. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING, DEFENSE OR COUNTERCLAIM BASED ON THIS TERMINATION, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS TERMINATION, THE DEVELOPMENT AGREEMENT, OR ANY DOCUMENT EXECUTED IN CONNECTION THEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE CITY, PESCAYO AND DEVELOPER ENTERING INTO THE SUBJECT TRANSACTION.

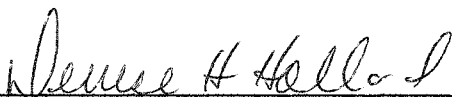
IN WITNESS WHEREOF the parties hereto have executed this Termination as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

WITNESS:

OWNER:

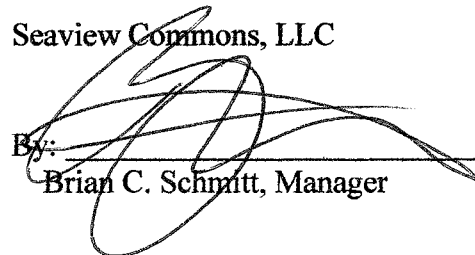
Seaview Commons, LLC

  
\_\_\_\_\_

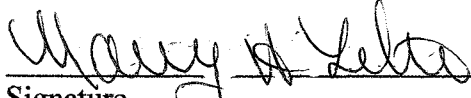
Signature

Name of Witness (printed or typed)

DENISE H HOILAND

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

Brian C. Schmitt, Manager

  
\_\_\_\_\_

Signature

Name of Witness (printed or typed)

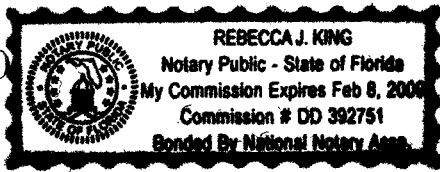
Nancy H. Lillie

NOTARIZATION

STATE OF FLORIDA  
COUNTY OF MONROE

The foregoing Termination was acknowledged before me on this 17<sup>th</sup> day of November 2005, by BRIAN C. SCHMITT, and the respective witnesses, DENISE HOWARD and NADY KILBE either personally known to me or produced Florida drivers licenses as identification.

(SEAL)



Rebecca King  
Notary Public

Name (typed, printed or stamped):  
My commission expires:  
On the 17<sup>th</sup> day of November, 2005.

The City Council of the City of Marathon approved this Agreement by Resolution No. 2005-163.

11/22/05  
Date

CITY OF MARATHON  
By: [Signature]  
John Bartus, Mayor

ATTEST:  
[Signature]  
Cindy L. Ecklund, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:  
[Signature]  
John R. Herin, Jr. City Attorney  
Jimmy Morales