

**CITY OF MARATHON, FLORIDA
RESOLUTION 2006-004**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A SECOND AMENDMENT TO A DEVELOPMENT AGREEMENT BETWEEN MARATHON RESORT DEVELOPMENT, INC., AND PIRATES COVE VILLAGES CONDOMINIUM ASSOCIATION, INC., THE OWNERS OF THE PROPERTY, AND THE CITY OF MARATHON, FOR REDEVELOPMENT OF THE PROPERTY LOCATED AT 2600 OVERSEAS HIGHWAY, PRESENTLY KNOWN AS TRANQUILITY BAY RESORT, WHICH IS LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 1 AND PART OF OLD STATE ROAD 4-A, SECTION 9, TOWNSHIP 66 SOUTH, RANGE 32 EAST, KEY VACA, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00101990-000000, PROVIDING FOR CONDITIONS AND REQUIREMENTS OF DEVELOPMENT, INCLUDING BUT NOT LIMITED TO, BUFFERS, BUILDING HEIGHTS, SETBACKS, AND OTHER REQUIREMENTS

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

WHEREAS, the Property is a fully developed site with hotel units, amenities, and marina facilities; and

WHEREAS, the City Comprehensive Plan encourages redevelopment that results in the removal of cesspits, the replacement of substandard dwelling/transient units, the replacement of substandard on-site wastewater treatment, and the implementation of effective stormwater management plans; and

WHEREAS, the City Comprehensive Plan encourages redevelopment that results in the economic stability of the City and its residents; and

WHEREAS, the City needs redevelopment to protect the environment, its residents, its infrastructure and economy by redeveloping structures that are highly vulnerable in storm events,

are below the required base flood elevations and are uninsurable; and

WHEREAS, the Property offers the attractions of swimming, boating, and fishing that families enjoy, and Property redevelopment provides an opportunity for the type of development that will provide facilities to serve and attract family oriented tourism to the City; and

WHEREAS, the Property redevelopment will encourage owners of other properties to renovate or upgrade their sites, producing greater aesthetic and economic benefits to the City, and providing enhanced environmental and storm hazard protection; and

WHEREAS, the City has determined that the redevelopment will not adversely affect hurricane evacuation clearance time because the number of transient units on the redeveloped Property will not increase beyond the number of transient units previously existing on the Property; and

WHEREAS, the Property is a highly disturbed, fully developed upland site which does not contain wetlands, listed species habitat, or other environmentally sensitive habitat, and therefore is an appropriate and preferred site to support redevelopment; and

WHEREAS, the Second Amendment to the Development Agreement (the "Second Amendment") will permit the dormitory to be redeveloped as meeting space on the Property, the manager's apartment to be converted to two (2) on-site affordable dwelling units, and require affordable dwelling units to be constructed off-site in conjunction with the project; and

WHEREAS, the City has held public hearings to accept and encourage public input with respect to the proposal by the Owners contained in the proposed Second Amendment, and has considered such public input; and

WHEREAS, the Second Amendment is consistent with the Principles for Guiding Development for the Florida Keys Area of Critical State Concern; and

WHEREAS, the Owner has provided public notice of the parties' intent to consider entering into the Second Amendment by publishing an advertisement in a newspaper of general circulation and readership in the City, posting the Property subject to this Second 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 the Second Amendment; and

WHEREAS, the City Planning Commission has held a public hearing on November 21, 2005, to consider the Second Amendment and recommended that the City Council conditionally approve the Second Amendment, and the City Council of the City has held a public hearing on December 13, 2005 to consider the Second Amendment; and

WHEREAS, the City has determined that the Second Amendment is consistent with the City's Comprehensive Plan and Land Development Regulations, is in the public interest, and will further the health, safety, welfare, and goals of the residents of the City of Marathon.

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

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

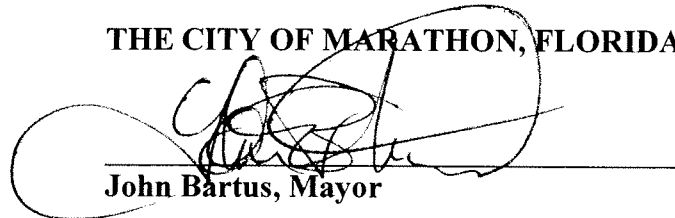
Section 2. The Second Amendment to the Development Agreement between the City and Marathon Resort Development, Inc., and Pirates Cove Villas Condominium Association, Inc., in substantially the form as the attached Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is hereby approved.

Section 3. The City Manager is authorized to execute the Second Amendment to the Development Agreement on behalf of the City.

Section 4. This resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 10th day of January, 2006.

THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

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

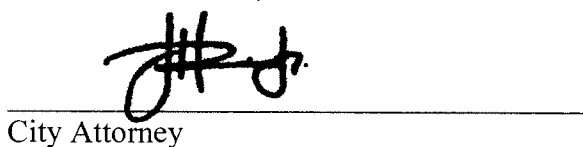
ATTEST:



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

This instrument prepared by:

John R. Allison, III, Esquire
The Allison Firm, P.A.
6803 Overseas Highway
Marathon, FL 33050

Doc# 1601892 09/07/2006 3:39PM
Filed & Recorded in Official Records of
MONROE COUNTY DANNY L. KOLHAGE ✕

Doc# 1601892
Bk# 2235 Pg# 2466 ✕

After recording return to:

City Clerk
City of Marathon
10045-55 Overseas Highway
Marathon, FL 33050

PARTIAL TERMINATION OF WORKFORCE HOUSING RESTRICTIONS

THIS PARTIAL TERMINATION OF WORKFORCE HOUSING RESTRICTIONS (this "Partial Termination") is made and entered into by MARATHON RESORT DEVELOPMENT, INC., a Florida corporation, whose principal mailing address is 6805 Overseas Highway, Marathon, Florida, 33050 (herein the "Declarant").

RECITALS:

A. Declarant filed that certain Declaration of Covenants, Conditions, and Restrictions (the "Workforce Housing Restrictions"), as recorded in Official Records Book 2071, at Page 936, Public Records of Monroe County, Florida, which encumbered two parcels within the Pirates Cove Development, located in the City of Marathon, Monroe County, Florida (the "City"). The property (the "Workforce Parcels") encumbered by the Declaration was described in the Workforce Housing Restrictions is attached hereto as Composite Exhibit A.

B. The Pirates Cove Development is subject to the Development Agreement for Buccaneer Resort and Pirates Cove Villas Condominiums (the "Resort") recorded in the Public Records of Monroe County, Florida, in Official Records Book 1892, at Page 101 (herein the "Development Agreement"). Pursuant to the Development Agreement, the Workforce Parcels were restricted to employee housing as provided in the Development Agreement and Workforce Housing Restrictions.

C. The Development Agreement was amended that certain Second Amendment to Development Agreement ("Second Amendment") for Tranquility Bay, as recorded in Official Records Book 2185, at Page 1432, Public Records of Monroe County, Florida, and such amendment provided for the partial termination of the workforce housing restrictions as to the on-site property as provided in the Development Agreement and required that workforce housing be provided off-site (the "Off-Site Workforce Housing") as more particularly provided in the Second Amendment with the existing workforce housing limited to one parcel under the Workforce Housing Restrictions.

NOW, THEREFORE, the Declarant declares as follows:

1. **Restriction.** The restrictions provided under Sections 9.5-4(E-1) and 9.5-243(b)(1)p. of the City Code as more particularly set forth in the Development Agreement and Second Amendment are intended to apply only to the Off-Site Workforce Housing as provided in the Second Amendment and to that parcel described in Exhibit A, page 1 of 2. The Declaration of Covenants, Conditions and Restrictions as recorded in Official Records Book 2071, at Page 936, Public Records of Monroe County, Florida (i.e., the Workforce Housing Restrictions) is hereby terminated as to that parcel described in Composite Exhibit A, page 2 of 2 and of no further effect. The Declaration of Covenants, Conditions and Restrictions as recorded in Official Records Book 2071, at Page 936, Public Records of Monroe County, Florida (i.e., the Workforce Housing Restrictions) shall continue to be in full force and effect as to that parcel described in Composite Exhibit A, page 1 of 2.
2. **City Approval.** This Termination is hereby approved by the City of Marathon, Florida.
3. **Governing Law.** This Termination shall be subject to and governed by the laws of the State of Florida.
4. **Recordation.** This Termination shall be recorded by the Declarant, at its sole expense, in the Public Records of Monroe County, Florida, within ten (10) working days after approval of the same by the City. A copy of the recorded Termination showing the book and page where recorded shall be provided to the City Manager.

IN WITNESS WHEREOF, Declarant has caused these presents to be executed on the day and year below written.

Michele Eddy

Sheila Bahner

MARATHON RESORT DEVELOPMENT, INC.,
A Florida corporation

By *Elizabeth Newland* VP

Elizabeth Newland, Vice President

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 5th day of September, 2006, by Elizabeth Newland, as Vice President of Marathon Resort Development, Inc., a Florida corporation, who is personally known to me, and who did not take an oath.

Patte Boggs

Notary Public, State of Florida at Large
Printed Name:
My commission expires:



JOINDER AND CONSENT BY CITY

The City of Marathon hereby joins in and consents to the foregoing Partial Termination of Workforce House Restrictions.

CITY OF MARATHON

September 5, 2006

By Chris Bull
CHRIS BULL, Mayor

Attest:

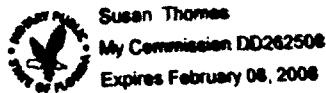
Diane Clavier
City Clerk

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 5 day of September, 2006, by Chris Bull, as Mayor of the City of Marathon, and Diane Clavier, as City Clerk of the City of Marathon, who are personally known to me or who produced _____ as identification, and who did/did not take an oath.

Susan Thomas
Notary Public, State of Florida at Large
Printed Name:
My commission expires:

09.05.06



Composite Exhibit "A"
(1 of 2)

Doc# 1601892
Bk# 2235 Pg# 2469

SURVEYOR'S NOTES:

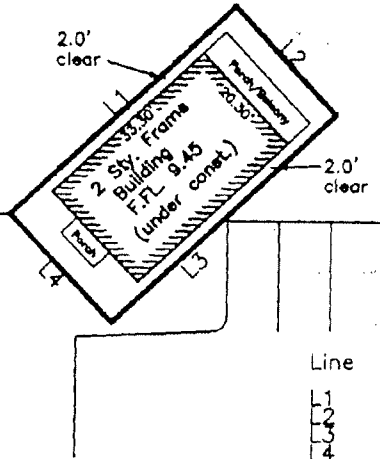
North arrow based on assumed median
3.4 denotes existing elevation
Elevations based on N.G.V.D. 1929 Datum
Bench Mark No.: W-273 Elevation: 5.31

Abbreviations:

Sty. = Story F.F.L. = Finish Floor Elevation
R/W = Right-of-Way cov'd. = Covered
N.T.S. = Not to Scale wd. = Wood
Elev. = Elevation Bal. = Balcony
B.M. = Bench Mark

P.O.C. = Point of Commence
P.O.B. = Point of Beginning

Field Work performed on: 10/22/04



LINE TABLE

Line	Bearing	Distance
L1	N.46°45'07"E.	49.90'
L2	S.43°14'53"E.	24.30'
L3	S.46°45'07"W.	49.90'
L4	N.43°14'53"W.	24.30'

LEGAL DESCRIPTION:

A parcel of land lying and being in Government Lot 1, Section 9, Township 66 South, Range 32 feet East, Monroe County, Florida and being more particularly described as follows:

COMMENCE at the intersection of the west line of Government Lot 1, Section 9, Township 66 South, Range 32 feet East, Tallahassee Meridian, Monroe County, Florida and the Northerly right of way line of Old State Highway 4A, as existing May 5, 1958; thence along a curve concave to the North and in a Easterly direction, said curve having for its elements a central angle of 0°58'21" and a radius of 2749.20 feet for 46.66 feet to a point of tangency; thence N 74°21'20" E along the said Northerly right of way line of said Old State Highway 4A for 498.25 feet; thence North for 160.22 feet; thence East for 41.28 feet to the Point of Beginning; thence N.46°45'07"E., a distance of 49.90 feet; thence S.43°14'53"E., a distance of 24.30 feet; thence S.46°45'07"W., a distance of 49.90 feet; thence N.43°14'53"W., a distance of 24.30 feet to the Point of Beginning. Parcel contains 1213 square feet or 0.03 acres, more or less.

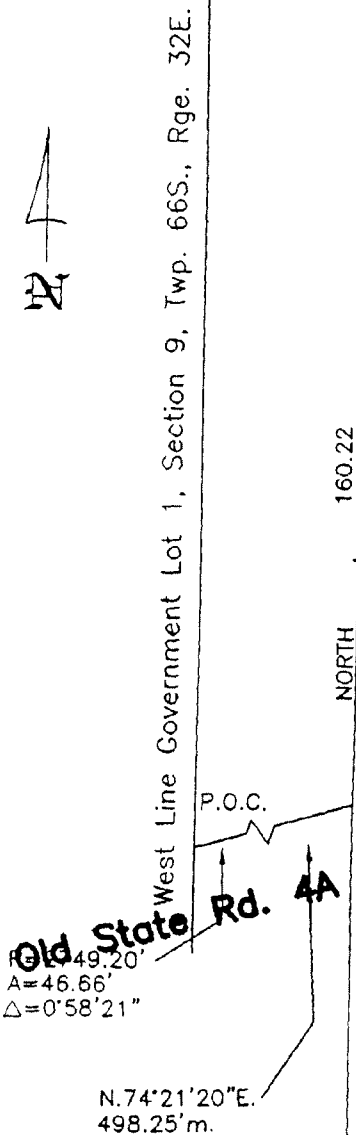
CERTIFICATION made to:

The Allison Firm, P.A.
Attorneys' Title Insurance Fund, Inc.
Orion bank
Liebler, Gonzalez & Portuondo, P.A.

CERTIFICATION:

I HEREBY CERTIFY that the attached Location Survey is true and correct to the best of my knowledge and belief; that it meets the minimum technical standards adopted by the Florida Board of Land Surveyors, Chapter 61G17-6, Florida Statute Section 472.027, and the American Land Title Association, and that there are no visible encroachments unless shown hereon.

FREDERICK H. HILDEBRAND
Professional Land Surveyor & Mapper No. 2749
Professional Engineer No. 36810
State of Florida



Composite Exhibit "A"
(2 of 2)

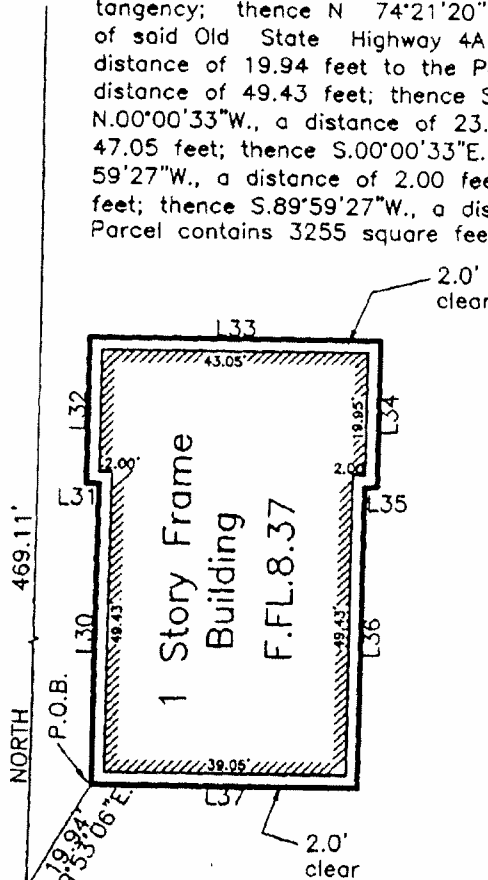


LEGAL DESCRIPTION:

A parcel of land lying and being in Government Lot 1, Section 9, Township 66 South, Range 32 feet east, Monroe County, Florida and being more particularly described as follows:

COMMENCE at the intersection of the west line of Government Lot 1, Section 9, Township 66 South, Range 32 feet East, Tallahassee Meridian, Monroe County, Florida and the Northerly right of way line of Old State Highway 4A, as existing May 5, 1958; thence along a curve concave to the North and in a easterly direction, said curve having for its elements a central angle of 0°58'21" and a radius of 2749.20 feet for 46.66 feet to a point of tangency; thence N 74°21'20" E along the said Northerly right of way line of said Old State Highway 4A for 498.25 feet; thence N 29°53'06" E for a distance of 19.94 feet to the Point of Beginning; thence N.00°00'33"W., a distance of 49.43 feet; thence S.89°59'27"W., a distance of 2.00 feet; thence N.00°00'33"W., a distance of 23.95 feet; thence N.89°59'27"E., a distance of 47.05 feet; thence S.00°00'33"E., a distance of 23.95 feet; thence S.89°59'27"W., a distance of 2.00 feet; thence S.00°00'33"E., a distance of 49.43 feet; thence S.89°59'27"W., a distance of 43.05 feet to the Point of Beginning. Parcel contains 3255 square feet or 0.07 acres, more or less.

West Line Government Lot 1, Section 9, Twp. 66S., Rge. 32E.



LINE TABLE

Line	Bearing	Distance
L30	N.00°00'33"W.	49.43'
L31	S.89°59'27"W.	2.00'
L32	N.00°00'33"W.	23.95'
L33	N.89°59'27"E.	47.05'
L34	S.00°00'33"E.	23.95'
L35	S.89°59'27"W.	2.00'
L36	S.00°00'33"E.	49.43'
L37	S.89°59'27"W.	43.05'

SURVEYOR'S NOTES:

North arrow based on assumed meridian
3.4 denotes existing elevation
Elevations based on N.G.V.D. 1929 Datum
Bench Mark No.: W-273 Elevation: 5.31

Abbreviations:

Sty. = Story
R/W = Right-of-Way
N.T.S. = Not to Scale
Elev. = Elevation
B.M. = Bench Mark

F.F.L. = Finish Floor Elevation
cov'd. = Covered
wd. = Wood
Bal. = Balcony

P.O.C. = Point of Commence

P.O.B. = Point of Beginning

Field Work performed on: 10/22/04

CERTIFICATION made to:

The Allison Firm, P.A.
Attorneys' Title Insurance Fund, Inc.
Orion bank
Lieber, Gonzalez & Portuondo, P.A.

CERTIFICATION:

I HEREBY CERTIFY that the attached Location Survey is true and correct to the best of my knowledge and belief; that it meets the minimum technical standards adopted by the Florida Board of Land Surveyors, Chapter 61G17-6, Florida Statute Section 472.027, and the American Land Title Association, and that there are no visible encroachments unless shown hereon.

FREDERICK H. HILDEBRANDT
Professional Land Surveyor & Mapper No. 2749
Professional Engineer No. 36810
State of Florida

MONROE COUNTY
OFFICIAL RECORDS

R=2749.20'
A=46.66'
Δ=0°58'21"

N.74°21'20"E.
498.25'm.

MONROE COUNTY
OFFICIAL RECORDS



This instrument prepared by, and after recording return to:

Sherry A. Spiers, Esq.
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301
Telephone: (850) 222-6891

Parcel I.D. Nos.:

(Space reserved for recording)

**SECOND AMENDMENT TO
DEVELOPMENT AGREEMENT FOR TRANQUILITY BAY**

THIS SECOND AMENDMENT to the Development Agreement for Tranquility Bay, formerly known as the Buccaneer Resort and Pirates Cove Villas Condominiums, is entered into by and between MARATHON RESORT DEVELOPMENT, INC., a Florida corporation, and PIRATES COVE VILLAS CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation (collectively, the “Owners”), and the CITY OF MARATHON, a Florida municipal corporation (the “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 (2004).

WITNESSETH:

WHEREAS, on May 16, 2003, the City and Owners entered into a Development Agreement for the redevelopment of approximately 11.054 contiguous acres in the City known as the Buccaneer Resort and Pirates Cove Villas Condominium properties, now known as Tranquility Bay (“Tranquility Bay” or the “Resort”), which said property is located at 2600

Overseas Highway and is legally described by metes and bounds as shown on Exhibits “A” and “B” attached to the Development Agreement, recorded in the public records of Monroe County, Florida, in Official Records Book 1892 beginning at page 98 (the “Property”); and

WHEREAS, on January 9, 2004, the City and Owners entered into the First Amendment to Development Agreement to clarify terms and conditions related to the proposed redevelopment, which said First Amendment is recorded in the public records of Monroe County, Florida, in Official Records Book 1971 beginning at page 2260; and

WHEREAS, the Development Agreement included a requirement that the Owners provide 4,000 square feet of on-site affordable/work force housing at the Resort; and

WHEREAS, pursuant to the Development Agreement, the Owners constructed on-site affordable/work force housing in the form of a 2,810 square foot affordable/work force housing dormitory and a 1,300 square foot three-bedroom affordable/work force residence; and

WHEREAS, the on-site affordable/work force housing dormitory includes shared cooking facilities and amenities which afford less privacy to occupants than private dwellings, and which therefore have proven to provide a less than optimal housing experience for residents; and

WHEREAS, in order to enhance the affordable/work force housing provided by the Owners, and provide economic benefits to the Resort, the Owners wish to redevelop the dormitory structure and residence and provide an additional amenity for Resort guests, as follows: replace the 2,810 square feet of dormitory housing with four (4) off-site affordable/work force housing apartments of the same cumulative size as the dormitory housing structure; redevelop the three-bedroom, 1,300 square foot on-site affordable/work force housing

residence into two (2) on-site one-bedroom affordable/work force housing apartments of the same cumulative size as the three bedroom affordable/work force housing residence; and redevelop the 2,810 square foot dormitory structure into 2,810 square feet of conference/meeting space for Resort guests; and

WHEREAS, the development described in the preceding “Whereas” clause will provide six (6) individual on site and off site affordable/workforce housing units; and

WHEREAS, the City awarded two (2) ROGO affordable housing allocations to the Property for the existing 4,000+ square feet of affordable/work force housing; and

WHEREAS, the Owners have provided public notice of the parties’ intent to consider entering into this Second Amendment to the Development Agreement by publishing an advertisement in a newspaper of general circulation and readership in the City, posting the Property subject to this Second Amended Development Agreement, 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 Agreement; and

WHEREAS, the City has held public hearings to accept and encourage public input with respect to the proposal of Owners contained in this Second Amendment to Development Agreement, and has considered such public input; and

WHEREAS, the City Planning Commission has held a public hearing on November 21, 2005 to consider this Second Amendment to the Development Agreement, and the City Council of the City has held a public hearing on December 13, 2005 to consider this Second Amendment to the Development Agreement; and

WHEREAS, the City has determined that this Second 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. Recitals. The recitals set forth in the preceding “Whereas” clauses are incorporated herein and form a material part of this Agreement.

Section 2. Amendments to Development Agreement. The City Commission hereby approves the following amendments to the Development Agreement (deletions are struck through; additions are underlined):

1. The Development Agreement is amended, where appropriate, to reflect that the name of the Property is “Pirates Cove Development.”

2. Section C.3.a. of the Development Agreement, entitled “Transient Residential Development and Amenities on the Property,” is amended to read as follows:

a. Transient Residential Development and Amenities on the Property. Ninety-six (96) dwelling units were lawfully authorized and existed at Tranquility Bay. Nine (9) Tranquility Bay units consisting of seventeen (17) bedrooms have been extinguished for the use and benefit of the Hawk’s Cay Expansion DRI in Monroe County pursuant to City of Marathon Resolution No. 2003-31, leaving a total of eighty-seven (87) ROGO-exempt transient residential units on the Property that may be renovated or redeveloped on the Property as provided in this Agreement. Amenities on the Property that serve the transient residential development include a swimming pool and tennis courts.

3. Section C.4.a. of the Development Agreement, entitled “Approval of Conceptual Site Plan; Minor Revisions; Land Condominium,” is amended to read as follows:

a. Approval of Conceptual Site Plan; Minor Revisions; 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 affordable/workforce housing described in this Development Agreement and depicted on the Conceptual Site Plan for Tranquility Bay, revised October 21, 2005, prepared by The Weiler Engineering Corporation of Port Charlotte, Florida, attached hereto as Exhibit “A” 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.

4. Section C.4.c. of the Development Agreement, entitled “Affordable/work force Housing; ROGO Allocation Awards,” as amended by the First Amendment to Development Agreement, is hereby further amended to read as follows:

c. **Affordable/Work Force Housing; ROGO Allocation Awards.** To comply with Section 9.5-243(b)o. of the City Code, the Owners shall provide four thousand 4,000 square feet of affordable/work force housing (consisting of six (6) on-site and off-site affordable/work force housing apartments). The City shall award affordable housing ROGO allocations to the Property for the purpose of providing the on-site and off-site affordable/work force housing. The affordable/work force housing

required by Section 9.5-243(b)o. of the City Code shall be provided on and off site as follows:

Tranquility Bay Affordable/Work Force Housing			
Location	Square Footage Required	Square Footage Provided	Location
Affordable/Work Force Housing On-Site at Tranquility Bay			
Square footage specified in Development Agreement	1325		
Manager's Unit		1325	On-site at Tranquility Bay
Subtotal	1325	1325	
Affordable/Work Force Off-Site			
(SF based on 10% of approved floor area)	7260		
Overseas Unit #4		933	Overseas Village, Marathon
Overseas Unit #5A		933	Overseas Village, Marathon
Overseas Unit 4A		933	Overseas Village, Marathon
Overseas unit 5		1320	Overseas Village, Marathon
50 th Street Gulf		1340	50 th Street Gulf, Marathon
Affordable Work Force	2810	2810	Location To Be Determined
Subtotal	7260	8269	
Project Total	9450	9594	

The off-site affordable/work force housing may be located or developed by the Owners individually or in conjunction with other persons or entities. The provision of required affordable/workforce housing shall be completed on or before one year of the effective date of this Agreement. The Owner shall place a deed restriction on the affordable/work force housing units which shall restrict the use of the units to affordable housing as defined in the City Code for fifty (50) years from the date of recordation, and which shall automatically renew for two (2) 50-year periods. The restriction shall be recorded in the public records of Monroe County, Florida. The Owner will enter into an agreement with the Middle Keys Community Land Trust ("MKCLT") or similar entity, at the Owner's discretion, to perform income qualification evaluation for renters of units on an annual basis and for purchasers of the units at the time of sale of a unit. Such agreement must be approved by the City Attorney and executed by

the parties prior to issuance of certificates of occupancy for the affordable/work force housing units.

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 affordable/work force housing units.

Affordable/work force housing provided pursuant to Section 9.5-243(b)o. shall be defined and deed restricted as provided in Sections 9.5-4(E-1) and 9.5-266(4)(e) of the City Code. The Declaration of Covenants and Restrictions Regarding Density of The Buccaneer Resort, City of Marathon, Florida, executed by Marathon Resort Development, Inc., in February 2003 shall be amended as appropriate to reflect the terms and provisions of the Second Amendment to the Development Agreement. The amended Declaration shall be in a form acceptable to the City and shall be recorded by the Owners, at their expense, 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 to the City and to the state land planning agency within a reasonable time after recordation. All affordable/work force housing provided under the Agreement is limited to use as affordable/work force housing.

Marathon Resort Development, Inc. recorded a Declaration of Covenants, Conditions and Restrictions (the "Affordable Restrictions") in Official Records Book 2071 at Page 936, Public Records of Monroe County, Florida, wherein the employee dormitory was encumbered by affordable/workforce housing restrictions. Pursuant to the provisions of this Second Amendment, the parcel (the "Dormitory Parcel") described in Composite Exhibit A (Page 2 of 2) is being withdrawn as workforce housing and such structure is to be replaced by off-site housing as provided in this Second Amendment. Marathon Resort Development, Inc. is authorized to amend the Affordable

Restrictions to by deleting the Dormitory Parcel from any affordable/workforce housing restrictions.

5. Section C.4.e. of the Development Agreement, entitled “Guest Rooms and Amenities, Commercial, and Retail Square Footage, and Other Uses Approved Under This Agreement,” subsection 1., is amended as follows:

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:

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Guest Rooms And Amenities	Commercial Square Footage	Other Uses
87 guest rooms (as described in Section C.4.b. of this Agreement).	6,200-8,400 square foot reception, office and restaurant building.	4,000 square feet of on-site and off-site affordable/work force housing (consisting of six (6) affordable/work force apartments)
One main swimming pool (a maximum of 9,818 square feet)	One waterfront bar a maximum of 1,000 square feet.	
One kiddy pool (a maximum of 711 square feet).	One 2,000 square foot maintenance building and Homeowners Association office.	
Brick-colored pavers around the swimming pool.	200 square feet of retail space in reception area and waterfront bar.	
One gazebo of approximately 200-600 square feet in size 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.	One 500 square foot security office. 1,000 square feet of commercial uses. 2,810 square feet of meeting space.	
Six (6) foot wide concrete sidewalks throughout the Property.	600-800 square foot exercise building.	

* * *

3. 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 a maximum of sixteen thousand seven hundred ten

(16,710) square feet, depending on the developed sizes of the reception building, the waterfront bar, and the exercise building, leaving a minimum of four thousand six hundred forty-four (4,644) square feet of vested commercial development remaining. Total commercial development on the Property pursuant to this Agreement or 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.

6. Section C.16. of the Development Agreement, entitled "Notices," is amended to reflect the following address changes:

16. Notices. All notices, demands, requests, or replies provided for or permitted by this Development Agreement, including notification of a change of address, shall be in writing to the addressees identified below, and may be delivered by any one of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; or (c) by deposit with an overnight express delivery service with a signed receipt required. Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

TO THE OWNERS:

Marathon Resort Development, Inc.
6805 Overseas Highway
Marathon, FL 33050
Telephone: (305) 743-2810

Pirates Cove I Condominium Association, Inc.
6805 Overseas Highway
Marathon, FL 33050
Telephone: (305) 743-2810

With a copy by regular U.S. Mail to:

Sherry A. Spiers, Esquire
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301
or
P. O. Drawer 1838
Tallahassee, FL 32302
Telephone: (850) 222-6891

TO THE CITY:

City Manager
City of Marathon
10045-65 Overseas Highway
Marathon, Florida 33050
Telephone: (305) 743-0033

With a copy by regular U.S. Mail to:

John R. Herin, Jr., Esquire
Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, FL 33130
Telephone: (305) 789-3200

7. Revised Exhibit "E" attached hereto is approved and is incorporated into the Development Agreement by this reference.

Section 3. Remainder Unchanged. Except as specifically provided herein, the provisions of the Development Agreement, as amended through the First Amendment to Development Agreement, shall remain unchanged.

Section 4. Finding of Consistency. The City finds that the development authorized herein is consistent with the City's Comprehensive Plan and land development regulations.

Section 5. Drafting; Rules of Construction. The parties acknowledge that they jointly participated in the drafting of this Second Amendment to Development Agreement, and that no term or provision of this Second Amendment shall be construed in favor of or against either party based on drafting.

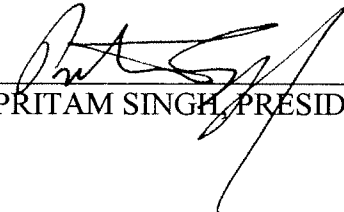
Section 6. Recording and Effective Date. The Owners shall record this Second Amendment to Development Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date of this Agreement. A copy of the recorded Second Amendment showing the date, page and book where recorded 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 Second Amendment to the Development Agreement to the City within the same time period. This Second Amendment to the Development Agreement shall become effective thirty (30) days after the date this Second Amendment to the Development Agreement is recorded in the public records of Monroe County, Florida, and received by the state land planning agency.

Section 7. Date of Second Amendment to Development Agreement. The date of this Second Amendment to the Development Agreement is the date the last party signs and acknowledges this Agreement.

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

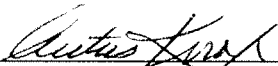
MARATHON RESORT DEVELOPMENT, INC.,
a Florida corporation

Date 1/20/06

By 
PRITAM SINGH, PRESIDENT

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me on this 20 day of JANUARY 2006 by PRITAM SINGH, 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.

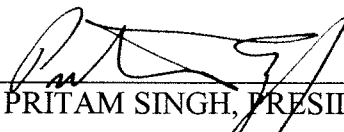

Notary Public, State of Florida At Large
My commission expires:



AUTUS KNOX
MY COMMISSION # DD 186534
EXPIRES: May 18, 2007
Bonded Thru Budget Notary Services

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

Date 1/20/06


By 
PRITAM SINGH, PRESIDENT

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me on this 20 day of JANUARY 2006 by PRITAM SINGH, 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.

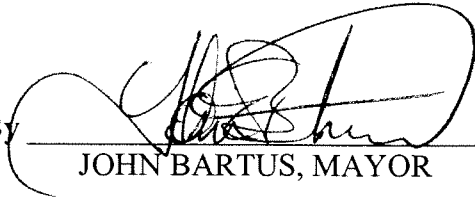


AUTUS KNOX
MY COMMISSION # DD 186534
EXPIRES: May 18, 2007
Bonded Thru Budget Notary Services


Notary Public, State of Florida At Large
My commission expires:

CITY OF MARATHON

01/27/06
Date

By 
JOHN BARTUS, MAYOR

ATTEST:


CITY CLERK

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


CITY ATTORNEY

EXHIBIT E (Amended)

TABLE SHOWING COMPLIANCE WITH SECTION 9.5-243(b)(1),
CITY OF MARATHON CODE, DESTINATION RESORT DISTRICT

City Code Requirement	Project Compliance
Restaurant facilities on or adjacent to premises that will accommodate no less than one-third of all hotel guests at maximum occupancy at a single serving. (9.5-243(b)(1)g.).	On-site restaurant that meets occupancy requirement.
At least 2 satellite eating and drinking facilities, each accommodating at least 25 persons. (9.5-243(b)(1)h.).	Bar/lounge in reception, office and restaurant building; waterfront bar.
A separate meeting/conference and entertainment area which can also function as a banquet facility. (9.5-243(b)(1)i.).	In reception, office and restaurant building; 2,810 s.f. of meeting space.
A lobby which provides 24-hour telephone and reservation service. (9.5-243(b)(1)j.).	In reception, office and restaurant building.
Active and passive recreation land-based activities are available, with a minimum of tennis courts (1/25 units) or racquetball courts (1/25 units), or a spa/exercise room (no less than 500 square feet). (9.5-243(b)(1)k.).	Exercise building.
At least 2 additional active recreation land-based activities are available. (9.5-243(b)(1)k.).	Observation area at aquarium, artificial reef and snorkel basin, northwest corner of property; shaded observation area (gazebo); game area in reception, office and restaurant building.
One additional passive recreational facility is available. (9.5-243(b)(1)k.).	Seaside nature trail/boardwalks along shoreline.
Active and passive water-oriented recreational facilities are available, a minimum of a swimming pool, or swimming areas, at the rate of 7 square feet of water surface (excluding hot tubs and Jacuzzi) per hotel room (this requirement may be converted to linear feet of shoreline swimming area at a ratio of 1 linear foot of beach per 7 square feet of required water surface). (9.5-243(b)(1)l.).	Swimming pool; swimming area waterward of sand beach; aquarium and snorkeling basin with artificial reef; two 15' x 15' floating swimming platforms; fishing pier.
Access to U.S. 1 is by way of an existing curb cut, a signalized intersection, or a curb cut that	Existing curb cut/entrance.

is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet. (9.5-243(b)(1)m.).	
Shuttle transport services to airports and tourist attractions. (9.5-243(b)(1)n.)	Will be provided.
Affordable/work force housing living space in an amount equal to 10% of the approved floor area in guest rooms – dormitory, studio, one-bedroom, two bedrooms, and shall be in addition to the approved hotel density and shall be used exclusively by persons qualifying under the affordable/work force housing provisions elsewhere in this chapter. (9.5-243(b)(1)o.).	Will be provided on site and off site.
Commercial retail is provided at a minimum of 200 square feet to include convenience retail, food sales and gifts in one or more sites, excluding restaurants. Commercial retail may consist of dive shops, boat rentals, gift shops, barber/beauty services, travel agencies, provided that there is no extension signage advertising these amenities to the general public. (9.5-243(b)(1)q.).	Kayak rental; ship’s store in reception, office and restaurant building.

This instrument prepared by:

John Allison, III, Esquire
The Allison Law Firm
6803 Overseas Highway
Marathon, FL 33050

Doc# 1487410 12/29/2004 10:37AM
Filed & Recorded in Official Records of
MONROE COUNTY DANNY L. KOLHAGE

Doc# 1487410
Bk# 2071 Pg# 936

After recording return to:

City Clerk
City of Marathon
10045-55 Overseas Highway
Marathon, FL 33050

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") is made and entered into by MARATHON RESORT DEVELOPMENT, INC., a Florida corporation, whose principal mailing address is 6805 Overseas Highway, Marathon, Florida, 33050 (herein the "Declarant").

RECITALS:

1. Declarant is the fee simple title owner of a parcel of real property (the "Property") located in the City of Marathon, Monroe County, Florida (the "City") on which the former Buccaneer Resort is located, which said Property is more particularly described in the legal description attached to and incorporated into the Development Agreement for Buccaneer Resort and Pirates Cove Villas Condominiums (the "Resort") recorded in the Public Records of Monroe County, Florida, in Official Records Book 1892 beginning at Page 101 (herein the "Development Agreement").
2. Pursuant to the Development Agreement, for the purpose of providing 4,000 square feet of employee housing on the Property, Declarant is a recipient of two (2) affordable housing residential unit allocations pursuant to the City's Rate of Growth Ordinance ("ROGO").
3. Pursuant to the Development Agreement, on-site employee housing units were to be developed in one (1) two-story dormitory building and one (1) one-story dormitory building (the "Employee Housing Units") in the southwest corner of the Property, as identified on the Conceptual Site Plan dated November 17, 2003, attached to the Development Agreement and recorded in the Public Records of Monroe County, Florida, as identified above.
4. Declarant has constructed the Employee Housing Units on portions of the Property described in Composite Exhibit A attached to this Declaration (the "Employee Housing Sites"), as required by the Development Agreement. Declarant desires to subject the Employee Housing Sites and the aforementioned dormitory buildings in which the employee housing units described herein and in paragraph 3 of these Recitals are located to the restrictions, covenants, and conditions hereinafter set forth, each and all of which are for the benefit of such buildings

and units and are to be used only by employees working for the Resort, including employees for any provider of services, commercial and retail uses permitted by the Development Agreement that work at the Resort.

NOW, THEREFORE, the Declarant declares that the Employee Housing Sites and the buildings in which the Employee Housing Units on the Property are located, as described in paragraphs 3 and 4 of the Recitals, shall be held and conveyed subject to the following restrictions, covenants, and conditions, which shall run with the title to the Employee Housing Sites and buildings and be binding on all parties having any right, title or interest in the Employee Housing Sites and the buildings or any part thereof, their heirs, successors and assigns.

1. **Restriction.** Declarant hereby covenants, agrees and certifies, insofar as the rights, powers, interests and authority of the Declarant are concerned, that the Employee Housing Sites and the buildings described in paragraphs 3 and 4 of the above Recitals shall be developed and used as employee housing of the Resort defined according to Sections 9.5-4(E-1) and 9.5-243(b)(1)p. of the City Code as follows:

A "dormitory" for providing employee housing means a structure or part of a structure with multiple bedrooms, shared bathrooms in a number sufficient to serve the number of residents, and common living area(s) (e.g., common living rooms, television rooms, or other similar rooms for social activities). Every 2,000 square feet of interior heated and cooled dormitory space shall be limited to no more than five (5) bedrooms, no more than two (2) common living areas, one (1) or more bathrooms, and one (1) full kitchen. Dormitory bedrooms are to be used by individual employees who each derive at least seventy (70) percent of his/her income from gainful employment in the City and whose adjusted gross annual income does not exceed one hundred twenty (120) percent of the median household income for the City as determined by the U.S. Census or the Florida Statistical Abstract and shall be at a cost no greater than thirty (30) percent of the individual employee's annual income. Each dormitory building must also meet all applicable requirements of the U.S. Department of Housing and Urban Development minimum room sizes, fixtures, landscaping, and building materials, where not in conflict with applicable laws of the City.

Information on median household income for the City may be obtained from the City Manager's Office, City Hall, 10045-65 Overseas Highway, Marathon, Florida, 33050, telephone (305) 743-0033.

2. **City.** This Declaration is intended to benefit and run in favor of the City of

Marathon, Florida.

3. **Enforcement.** This Declaration may be enforced by the City at law or in equity or as a code compliance action against any party or person violating, or attempting to violate, any of the covenants and restrictions contained herein. The remedies available to the City shall include, but are not limited to, obtaining a court order requiring the Declarant or its successor or assigns to comply with the City's employee housing regulations in effect at the time of such order, and compelling the Employee Housing Sites' continuing compliance with the employee housing regulations until this Declaration has expired. The prevailing party in any action or suit pertaining to or arising out of this Declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, reasonable attorneys' fees and costs as well as attorneys' fees and cost incurred in enforcing this prevailing parties attorneys' fees provision. This enforcement provision shall be in addition to any other remedies available at law or in equity.
4. **Authorization for City to Withhold Permits and Inspections.** If the terms of this Declaration are not being complied with, in addition to any other remedies available at law or in equity, the City is hereby authorized after notice and an opportunity to cure, to withhold any permits regarding the Employee Housing Sites or any portion thereof, and to refuse to make any inspections or grant any approvals for the Employee Housing Sites or any portion thereof, until such time as the Declarant or its successor or assigns is in compliance with the covenants of this Declaration. The determination of non-compliance and to withhold permits, inspections, or approvals shall be by the Director of Planning and shall be subject to the appeal provision of the City's land development regulations.
5. **Term.** The restrictions, covenants, and conditions in this Declaration shall run with and bind the title to the Employee Housing Sites and the buildings referred to in paragraphs 3 and 4 of the Recitals for a term of twenty (20) years from the Effective Date of this Declaration.
6. **Modifications, Amendments and Releases.** This Declaration may only be modified, amended or released by a written instrument executed by the City Manager following approval by the City Council. All modifications, amendments and releases hereto shall be in writing and must be signed by the Declarant, its successors or assigns, and the City Manager. All amendments hereto shall be recorded in the Public Records of Monroe County, Florida, and shall not be valid until recorded.
7. **Paragraph Headings.** Paragraph headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way define, limit or describe the scope and intent of the particular paragraph to which they refer.

- 8. **Governing Law.** This Declaration and the enforcement of the rights and obligations established hereby shall be subject to and governed by the laws of the State of Florida.
- 9. **Recordation.** This Declaration shall be recorded by the Declarant, at its sole expense, in the Public Records of Monroe County, Florida, within ten (10) working days after approval of the same by the City. A copy of the recorded Declaration showing the book and page where recorded shall be provided to the City Manager.
- 10. **Effective Date.** This Declaration shall become effective as to each dormitory building after recordation in the Public Records of Monroe County, Florida, and upon the City's issuance of a certificate of occupancy for the particular buildings to which this Declaration applies.
- 11. **Severability.** Invalidation of any one of these covenants, by judgment of Court, shall not affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant has caused these presents to be executed on the day and year below written.

John R. ALANSON, III
Patti Boggs
 PATTI BOGGS
 December 28, 2004

MARATHON RESORT DEVELOPMENT, INC.,
 A Florida corporation
 By Elizabeth Newland
 Elizabeth Newland, Vice President

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 28th day of December, 2004, by Elizabeth Newland, as Vice President of Marathon Resort Development, Inc., a Florida corporation, who is personally known to me, and who did not take an oath.



John R. Allison, III
Commission # DD329824
Expires: JULY 19, 2008
AARONNOTARY.COM

Notary Public, State of Florida at Large
Printed Name:
My commission expires:

JOINDER, CONSENT, AND SUBORDINATION

The undersigned hereby certifies that ORION BANK, a Florida banking corporation, is the holder of a mortgage, lien or other encumbrance upon the above-described Property, and that the undersigned hereby joins in and consents to the foregoing instrument by the Owner thereof (the "Declarant") and agrees its mortgage interest in the subject property, to wit: a Receipt of Advance Under Mortgage Providing for Future Advance encumbering the property described in Schedule A from Marathon Resort Development, Inc. and Marathon Resort Associates, Inc. to Orion Bank, as recorded in Official Records Book 2013 at Page 1529; an Assignment of Leases, Rents and Profits from Marathon Resort Development, Inc. and Marathon Resort Associates, Inc. to Orion Bank, as recorded in Official Records Book 2013 at Page 1540, UCC-1 Financing Statement from Marathon Resort Development, Inc. to Orion Bank, as recorded in Official Records Book 2013 at Page 1555; UCC-1 Financing Statement from Marathon Resort Associates, Inc. to Orion Bank, as recorded in Official Records Book 2013 at Page 1570, all of the Public Records of Monroe County, Florida, shall be subordinated to the foregoing Declaration of Covenants, Conditions, and Restrictions (the "Declaration") for the 4,000 square feet of employee housing in two (2) dormitory buildings on the Employee Housing Sites as identified in the Declaration.

Signed, sealed, and delivered
in the presence of:

ORION BANK, a Florida banking corporation

Tammy Rabito
Print Name: Tammy Rabito
J. Henderson
Print Name: John Henderson

By [Signature]
Name: Jeffrey D. Smith
Its: Sr. Vice President

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF Monroe

The foregoing instrument was acknowledged before me this 23rd day of December, 2004, by Jeffrey D. Smith, as vice president of ORION BANK, a Florida banking corporation, who is personally known to me or who produced _____ as identification, and who did/did not take an oath.

Tammy Rabito
Notary Public, State of Florida at Large
Printed Name:
My commission expires:

