

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2006-022**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A DEVELOPMENT AGREEMENT FOR SEAWARD, LLC, FOR THE REDEVELOPMENT OF PROPERTY LOCATED AT 8700 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 4, SECTION 1, TOWNSHIP 66 SOUTH, RANGE 32 EAST, KEY VACCAS, HAVING REAL ESTATE NUMBERS 00101050-000000, AND 00101050-000100, PROVIDING FOR CONDITIONS AND REQUIREMENTS OF DEVELOPMENT, INCLUDING BUT NOT LIMITED TO, BUFFERS, BUILDING HEIGHTS, SETBACKS, AND OTHER REQUIREMENTS**

**WHEREAS**, Seaward, LLC (the "Owner"), own approximately 202,847.911 square feet (4.657 acres) of upland property (the "Property") in the corporate limits of the City of Marathon, Florida; 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 redevelopment contemplated by the Owners will remove all existing structures and reconstruct structures in compliance with all applicable Federal Emergency Management Agency (FEMA) regulations, the Florida Department of Health (DOH) regulations, the Florida Department of Environmental Protection ("DEP") regulations, South Florida Water Management District ("SFWMD") regulations, applicable building codes and the City Code, including setback, open space, stormwater, and landscape bufferyard criteria; 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, 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 City has held public hearings to accept and encourage public input with respect to the proposal by the Owner contained in the proposed Development Agreement (the "Agreement"), and has considered such public input; and

**WHEREAS**, the Agreement 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 Agreement by publishing an advertisement in a newspaper of general circulation and readership in the City, posting the Property subject to this Agreement, and mailing notice to the persons and entities shown on the most recent Monroe County Tax Roll to be the Owner of property lying within 300 feet of the boundaries of the Property subject to the Agreement; and

**WHEREAS**, the City Planning Commission has held a public hearing on October 17, 2005, to consider the Agreement and recommended that the City Council conditionally approve the Agreement, and the City Council of the City has held a public hearing on November 8, 2005 to consider the Agreement; and

**WHEREAS**, the City has determined that the Agreement 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.

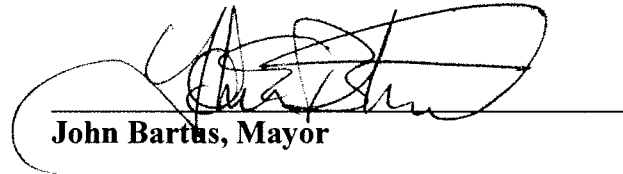
**Section 2.** The Development Agreement between the City and Seaward, LLC, in substantially the form as the attached Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is approved.

**Section 3.** The City Manager is authorized to execute 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 9th day of March, 2006.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**John Bartas, Mayor**

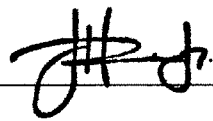
AYES: Bull, Mearns, Miller, Pinkus, Bartus  
NOES: None  
ABSENT: None  
ABSTAIN: None

**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

Parcel I.D. Nos.:  
RE# 0101050-000000  
RE# 0101050-000100

Doc# 1570839 03/14/2006 3:20PM  
Filed & Recorded in Official Records of  
MONROE COUNTY DANNY L. KOLHAGE

Doc# 1570839  
Bk# 2193 Pg# 984

*(Space reserved for recording)*

DEVELOPMENT AGREEMENT FOR  
**SEAWARD**  
MARATHON, FLORIDA

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the CITY OF MARATHON, a Florida municipal corporation (herein referred to as "City"), and SEAWARD, LLC (herein referred to as "Owner"), pursuant to Sections 9.5-101 and 9.5-102 of the Code of Ordinances for the City of Marathon, 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, the Owner is the owner of real property in the corporate limits of the City of Marathon, Florida ("Marathon"), on the ocean side of U.S. Highway 1 at approximately mile marker 51 and comprising approximately 2.304 acres of upland (the "Owner Property"). The Owner Property is more particularly described in Exhibit A (Improvement Location and Boundary Survey), attached hereto and incorporated herein by reference. The property is the southerly part of Lot 4 of KEY VACCAS and is zoned Mixed Use (MU) and designated Mixed Use Commercial (MC) on the Future Land Use Map ("FLUM"); and

WHEREAS, the Owner is the owner of real property in the corporate limits of Marathon, on the ocean side of U.S. Highway 1 at approximately mile marker 54 and comprising approximately 2.35 acres of upland (the Resort Property). The Resort Property is more particularly described in Exhibit A. The Resort Property is immediately adjacent to the Owner Property and is the northerly part of Lot 4 of KEY VACCAS. The Resort Property is zoned Mixed Use (MU) and designated Mixed Use Commercial (MC) on the FLUM; and

WHEREAS, the Seaward Property is a developed site that contains fifteen (15) hotel rooms located in three (3) buildings; two (2) permanent residential dwellings; office, and maintenance buildings; one (1) swimming pool; existing wooden dock, and several outdoor recreation facilities. These structures are as shown on the Survey submitted as Exhibit A; and

WHEREAS, Owner desires to create a condominium/homeowner's association (hereafter HOA) on the Property comprised of five (5) three bedroom two and one-half bathroom transient residential motel suites, eight (8) two bedroom and two and one-half bathroom transient residential motel suites, one lobby/office for the motel use, one (1) swimming pool, two (2) structures containing covered parking/storage for the exclusive use of the owners of the transient residential units, two (2) permanent single-family residential units with two (2) swimming pools, three (3) employee/workforce housing permanent residential units, and one (1) four thousand three hundred sixty (4,360) square foot medium intensity commercial unit, as shown on the Conceptual Site Plan submitted herein as Exhibit "B"; and

WHEREAS, Owner seeks to memorialize two (2) Conditional Redevelopment Units that result as a reduction of motel units from the fifteen (15) one-bedroom units existing on the site to the proposed thirteen (13) two and three bedroom motel suites requested as part of this Agreement; and

WHEREAS, the Owner desires to provide three (3) workforce housing apartments, which shall be permanent residential condominium/HOA units located on the Property; and

WHEREAS, the Owners desires to renovate the three existing concrete block structures that currently house the motel rooms as shown on the Site Plan to be designated as affordable/workforce housing; and

WHEREAS, the two (2) permanent single family residential dwelling condominium/HOA units are not subject to the ROGO System as these are replacement units subject to Section 9.5-123(f) of the City Code in that redevelopment or replacement of the units does not increase the number of residential dwelling units above that existing on the site prior to the redevelopment of the Property; and

WHEREAS, the medium intensity commercial retail use does not replace existing floor area and shall be subject to the Non-residential Rate of Growth Ordinance (NROGO) pursuant to City Code. The Site Plan, as designed, accommodates enough parking for a medium intensity commercial retail use or a restaurant use to be established in this structure; and

WHEREAS, Marathon has held public hearings to accept and encourage public input with respect to the proposal of Owner contained in this Agreement, and has considered such public input; and

WHEREAS, Owner has provided public notice of the parties intent to consider entering into this Agreement by advertisement published in a newspaper of general circulation and readership in Marathon, posting the Property subject to this Agreement, and mailed 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 Marathon Planning Commission held a public hearing on October 17, 2005, to consider this Agreement, and recommended approval of this Agreement with conditions, which conditions have been addressed herein; and

WHEREAS, the City Council of Marathon held a public hearing on February 13, 2006, to consider this Agreement; and

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:

### **I. RECITALS.**

The foregoing Recitals are a part of this Agreement on which the parties have relied and are incorporated into this Agreement by reference.

### **II. PURPOSES OF AGREEMENT.**

The purposes of this Agreement are as follows:

- A. To encourage redevelopment of the Property consistent with the City's Comprehensive Plan.
- B. To secure the ability to construct five (5) three bedroom two and one-half bathroom transient residential motel suites, eight (8) two bedroom and two and one-half bathroom transient residential motel suites as defined in Section 9.5-4(R-17)(d)2 of the City's LDRs as transient residential dwelling units and to construct structures such as one lobby/office for the motel use, one (1) swimming pool, two (2) covered parking/storage structures to provide amenities and accessory uses consistent with the LDRs and the Comprehensive Plan; and
- C. To memorialize and track the two (2) Conditional Redevelopment Units that result as a reduction of the fifteen (15) existing transient residential dwelling units and to use the two (2) Conditional Redevelopment Units on-site to meet the affordable/workforce housing requirement.
- D. To memorialize Owner's as-of-right ability to construct two (2) ROGO exempt market rate permanent residential dwelling units as defined in Section 9.5-268 of the City's LDR as permanent residential condominium dwelling units on the Property including accessory uses consistent with the LDR and the Comprehensive Plan.
- E. To secure the ability to further lessen the Property's environmental impacts by removing existing cesspits, installing a WTNR Facility, and bringing the development on the Property into compliance with setback, open space, bufferyard and other applicable LDR.
- F. To secure the construction of four thousand three hundred sixty square feet medium intensity commercial retail floor area as a commercial condominium unit on the Property, as below described.

### **III. DEFINITIONS.**

For the purposes of this Agreement the following terms shall have the following definitions. Terms not defined in this Agreement shall be as defined in the City Code, Chapter 163, Florida

Statutes, or, if not defined in the Code or statute, shall be understood by their usual and customary meaning.

**“Agreement”** shall refer to this Development Agreement, as the same may be subsequently amended, modified or supplemented pursuant to its terms and provisions and pursuant to the provisions of Sections 163.3220, et. seq., Florida Statutes.

**“City Code”, “Code” or “LDRs”** shall refer to the Code of Ordinances of the City of Marathon.

**“Comprehensive Plan”** shall refer to Marathon’s Comprehensive Plan,—**“Conditional Redevelopment Units”** means the current number of existing units on the hotel or motel site minus the units developed utilizing the formula set forth in Land Development Regulations Section 9-5.4 (R-17)(d).

**“Development”** shall refer to the development of the Property for uses permitted by the Future Land Use Map in the Comprehensive Plan, subject to the conditions, obligations, restrictions and terms contained in this Agreement.

**“Effective Date”** shall refer to the date this Agreement becomes effective, as set forth herein.

**“Condominium Association”** means the condominium association created pursuant to Chapter 718, Florida Statutes, for the operation and management of the common elements of the Property submitted to condominium ownership

**“Homeowners Association (HOA)”** means the homeowners association created pursuant to Chapter 720, Florida Statutes, for the operation and management of the houses to be created on the Property.

**“LDR”** shall refer to the City of Marathon’s Land Development Regulations.

**“Property”** shall refer the Owner Property and the Resort Property located in Marathon which is the subject of this Agreement.

**“Public Facilities”** shall refer to those facilities that are specifically described in Section 163.3221, Florida Statutes, and as set forth in this Agreement.

**“ROGO”** shall refer to Rate of Growth Ordinance set forth in the Land Development Regulations.

**“State land planning agency”** shall refer to the State of Florida Department of Community Affairs, or any successor State agency.

#### **IV. STATUTORY AND CODE REQUIREMENTS.**

The parties recognize the binding effect of the Florida Local Government Development Agreement Act, Sections 163.3221, *et seq.*, Florida Statutes, as to the form and content of this Agreement and in accordance therewith set forth and agree to the following:

**A. Legal Description and Ownership.**

Seaward, LLC (Owner) is the owner of the Owner Property and the Resort Property, which Property is the subject to this Agreement. The Owner Property and the Resort Property are described in Exhibit A hereto, Improvement Location and Boundary Survey.

**B. Duration of Agreement.**

This Agreement shall remain in effect for ten (10) years from its effective date as defined herein. It is the intention of the City and the Owner to promote rational and timely development of the Property to maximize best land use management practices consistent with the landowner's rights and commitments described herein.

**C. Permitted Uses.**

1. The development permitted on the Property shall consist of those uses set forth herein, as identified on the conceptual site plan attached hereto as Exhibit B, and incorporated herein by reference. The permitted uses on the Property are as follows:

**The Property.** The Property shall consist of the Owner Property and the Resort Property as herein described. The Property shall be submitted to the condominium/HOA form of ownership to include thirteen (13) transient residential units with appurtenant parking space; two (2) permanent residential dwelling units, including dock slip appurtenant thereto; three (3) affordable/workforce housing units and one (1) commercial retail unit. The balance of the Property shall be common elements, including limited common elements reserved for the exclusive use of certain units, which shall be owned, operated and maintained by a condominium/HOA association. The Property shall contain:

- a. Eight (8) two-bedroom and five (5) three-bedroom transient residential condominium/HOA units ("TR Units") contained within new structures. The TR Units shall be used for transient residential purposes. The Owner shall place a deed restriction restricting the property to transient use only and prohibiting the placement of a homestead exemption on the transient units.
- b. Thirteen (13) parking spaces located in two (2) newly constructed covered parking structures. Each TR Unit shall have the exclusive use of one (1) covered parking space which shall be appurtenant to and part of the unit.
- c. Twenty-four (24) limited common element parking spaces which shall be reserved for the exclusive use of the TR Units.
- d. Newly constructed pool, with deck and bathhouse, which shall be a limited common element reserved for the exclusive use of the TR Units.
- e. Two (2) newly constructed permanent residential condominium/HOA units ("PR Units"). The swimming pool near each PR Unit, as shown on the Exhibit B, shall be a part of the PR Unit.



- f. Fifteen (15) boat slips on the Property as shown on Exhibit B hereto. Each PR Unit will have use of one (1) boat slip on the Property, which use shall be appurtenant to and a part of the PR Unit. The remaining thirteen (13) boat slips shall be limited common elements reserved for the exclusive use of the TR Units. A deed restriction prohibiting the use of live-aboards shall be placed on the property.
  - g. Newly constructed dock serving the boat slips that are appurtenant to the PR Units and shall be a limited common element reserved for the exclusive use of the PR Units.
  - h. Existing dock near the TR Units which shall be a limited common element reserved for the exclusive use of the TR Units.
  - i. One existing (1) concrete building, two (2) existing residential dwelling units, portion of one (1) existing concrete building, maintenance sheds and the existing swimming pool on the Property will be demolished.
  - j. The existing concrete building partially demolished will be renovated and modified, with the two (2) existing apartments therein to become the two (2) affordable/workforce housing condominium units for the use of employees on the Property or citizens of the City of Marathon who qualify for affordable/workforce housing. The two (2) Conditional Redevelopment Units will be used as allocations to provide the required on-site affordable/workforce.
  - k. The other existing concrete building will be renovated, modified and expanded to contain the lobby/motel office, which will contain a drop-off, lobby area and administrative office; and the one (1) existing apartment therein to become one (1) affordable/workforce housing condominium unit for the use of the on-site manager of the Property.
  - l. One (1) newly constructed building shall be a commercial condominium unit (4,360 square feet).
  - m. Seventy-one (71) parking spaces on the Property which shall be limited common elements reserved for the exclusive use of the commercial units and the employee/workforce housing units.
  - n. The common elements on the Property shall consist of all areas and facilities that are not units, including open and landscaped area, docks, parking, swimming pool and bathhouse, and sewage treatment plant, which shall be owned, operated and maintained by the condominium association/HOA.
2. For the duration of this Agreement, the parties agree that any and all of the approved development shall adhere to, conform to, and be controlled by this Agreement, the exhibits attached hereto and incorporated by reference, the Marathon LDR and the Comprehensive Plan governing the development of the subject property on the effective date of this Agreement. In the event that all or a portion of the existing or authorized development subject to this Agreement should be destroyed by storm, fire, or other common disaster, Owner, its grantees, successors, or

assigns shall have the absolute right to rebuild or repair the affected structure(s) and reinstate the prior approved use so long as such development is in compliance with this Agreement.

3. The following documents are attached hereto and incorporated by reference, showing the Property boundary and existing and proposed uses:

- a. Exhibit A: Improvement Location and Boundary Survey
- b. Exhibit B: Conceptual Site Plan<sup>†</sup>
- c. Exhibit C: Table of Densities and Intensities

4. Applicable Density, Intensity and Building Heights. Density and intensity shall be as provided in this Agreement and as shown on the Table of Densities and Intensities attached as Exhibit C hereto. Maximum building height shall be thirty-seven (37) feet, as provided in Future Land Use Element Policy 1-3.2.5. in the City's Comprehensive Plan.

#### D. Public Facilities

1. The Florida Keys Aqueduct Authority provides domestic potable water.
2. Electric service is provided by the Florida Keys Electric Co-Op.
3. Solid waste service is provided by Marathon Garbage Service.
4. Wastewater and sewage collection and disposal on the Property shall be by one (1) onsite WTNR as identified on Exhibit B (proposed site plan), approved by the Florida Department of Environmental Protection at the time of building permit application. The WTNR plant shall be constructed or upgraded to meet 2010 standards.
5. Educational Facilities. The transient, residential and commercial development of the Property, as contemplated by this Agreement, does not impact upon educational facilities. The Property is currently served by the following schools operated by the Monroe County School Board: Marathon High School, Marathon Middle School and Stanley Switlik Elementary School.
6. Recreational Facilities. The Property includes recreational facilities for owners, visitors and guests of the Property and is being redeveloped at the same density as existed on the site prior to the redevelopment. Therefore, redevelopment of the Property will have no impact on public recreation facilities.
7. Any increased impacts on public facilities or public services attributable to each unit of the development, and the cost of capital improvements to meet the associated demand on such facilities or services, shall be assured by payment to the City, concurrent with the issuance of the building permits for each unit, of any Marathon impact fees required by Ordinance then in effect, as well as by payment by Owner of any applicable utility system development fees. In addition, Owner agrees to be subject to any impact fee ordinance adopted by the City within ~~six (6)~~ twenty-four (24) months after the Effective Date of this Agreement if such ordinance applies equally and uniformly to all redevelopment in Marathon.

E. Affordable Housing.

Owner shall place an Affordable Housing Deed Restriction specified by the City Code on the three (3) employee housing units for a minimum of 50 years which shall be automatically renewed for two additional fifty year periods. The employee housing units shall be Property employee occupied, homesteaded (as applicable) residential units with a prohibition against the use of these units as vacation rental units. The affordable/workforce housing units shall be required to obtain a CO prior to or concurrent with the issuance of a CO for the transient dwelling units. The two (2) Conditional Redevelopment Units will be used as allocations to provide the required on-site affordable/workforce.

The developer will enter into an agreement with the Middle Keys Community Land Trust (MKCLT) or other similar organization to provide services for both the initial and annual income qualifications of tenants of the affordable/workforce housing as well as income qualifications for purchasers of any affordable/workforce housing that may be offered for sale. This agreement shall be in place and approved by the City prior to the issuance of a CO for the affordable/working force housing units.

F. Local Development Permits.

The following is a list of all development permits approved or needed to be approved for the development of the Property as specified and requested in this Agreement:

1. This Development Agreement.
2. Minor Conditional Use application.
3. The final site plan, landscape plan, drainage plan, building elevations and floor plans.
4. Building and related construction permits for all main and accessory structures, land clearing, and landscaping. At any time any building permit is applied for, Owner shall demonstrate compliance with all applicable Federal, state and municipal disabled-access regulations in effect at the time of application.
5. Federal, state, regional, and local permits for storm-water runoff and dredge and fill activities, when necessary and if required.
6. Nothing in this Agreement shall preclude the parties from applying additional conditions, by mutual agreement, during final site plan review or permitting.

F. Finding of Consistency.

By entering into this Agreement, the City finds that the development permitted or proposed herein is consistent with and furthers the Comprehensive Plan (as defined herein), applicable LDR and the Principles for Guiding Development set forth at Section 380.0552(7), Florida Statutes.

G. Redevelopment and Replacement of ROGO-Exempt Residential Units.

The parties acknowledge that there existed on the Property a total of two (2) single-family residences that are ROGO-exempt pursuant to Section 9.5-123(f)(1) of the City Code.

H. Reservations or Dedications of Land for Public Purposes.

The parties anticipate that Owner may reserve or dedicate land for public purposes in connection with the development authorized by this Agreement, but is currently unaware of the specifics of such reservation(s) or dedication(s). Reservations and dedications for public purposes in connection with this Agreement will be as required by the City's Comprehensive Plan and City Code. Such reservations or dedications may include, by way of example, easements necessary for the provision of stormwater, utility, and wastewater services to the Property.

I. Mutual Cooperation.

City and Owner agree to cooperate fully with and assist each other in the performance of the provisions of this Agreement.

J. Development to Comply with Permits and City Comprehensive Plan and Code Provisions.

The development described in and authorized by this Agreement shall be developed in accordance with all required permits, and in accordance with all applicable provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Agreement. No certificate of occupancy for an individual building shall be issued until all plans for that building are approved by the City and Owner has complied with all conditions in permits issued by the City and other regulatory entities for that building.

K. Compliance With Permits, Terms, Conditions, and Restrictions Not Identified Herein.

The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve Owner of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

L. Laws Governing.

a. For the duration of this Agreement, all approved development of the Property shall comply with and be controlled by this Agreement and provisions of the City's Comprehensive Plan (as defined herein) and City Code in effect on the date of execution of this Agreement, inclusive of text changes and rezoning approved by the City Council on the date of the City's approval of this Agreement, if any. 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.

b. Pursuant to Section 163.3233, Florida Statutes, the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that:

i. The new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent development of the land uses, intensities, or densities set forth in this Agreement;

ii. The new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they shall apply to the development that is subject to this Agreement;

iii. The City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or

iv. The Agreement is based on substantially inaccurate information supplied by Owner.

However, nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

c. If state or Federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this Agreement, it shall be modified as is necessary to comply with the relevant state or Federal laws. However, this Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common law.

#### M. Amendment, Renewal, and Termination.

This Agreement may be amended, renewed, or terminated as follows:

a. As provided in Section 163.3237, Florida Statutes, this Agreement may be amended by mutual consent of the parties to this Agreement or by their successors in interest. Amendment under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.

b. As provided in Section 163.3229, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirements in Section 163.3225, Florida Statutes and applicable LDR. The City shall conduct at least two (2) public hearings, one of which may be held by the local planning agency at the option of the City. Notice of intent to consider renewal of the Agreement shall be advertised approximately seven (7) days before each public hearing in a newspaper of general circulation and readership in Marathon, and shall be mailed to all affected property owners before the first public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing. The notice shall specify the location of the land subject to the Agreement, the development uses on the Property, the population densities, and the building intensities and height and shall specify a place where a copy of the Agreement can be obtained.

c. This Agreement may be terminated by Owner or its successor(s) in interest following a breach of this Agreement upon written notice to the City as provided in this Agreement.

d. Pursuant to Section 163.3235, Florida Statutes, this Agreement may be revoked by the City if, on the basis of competent substantial evidence, there has been a failure by Owner to comply with the terms of this Agreement.

e. This Agreement may be terminated by mutual consent of the parties.

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Bk# 2193 Pg# 994

N. Breach of Agreement and Cure Provisions.

a. If the City concludes that there has been a material breach in this Agreement by Owner, prior to revoking this Agreement, the City shall serve written notice on Owner identifying the term or condition the City contends has been materially breached and providing Owner with ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Agreement. Each of the following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of Owner, shall be considered a material breach of this Agreement: (1) failure to comply with the provisions of this Agreement; and (2) failure to comply with terms and conditions of permits issued by the City or other regulatory entity for the development authorized by this Agreement.

b. If Owner concludes that there has been a material breach in the terms and conditions of this Agreement by the City, Owner shall serve written notice on the City identifying the term or condition Owner contends has been materially breached and providing the City with thirty (30) days from the date of receipt of the notice to cure the breach. The following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the City, shall be considered a material breach of this Agreement: failure to comply with the provisions of this Agreement; failure to timely process any application for site plan approval or other development approval required to be issued by the City for the development/redevelopment authorized by this Agreement.

c. If a material breach in this Agreement occurs and is not cured within the time periods provided above, the party that provided notice of the breach may elect to terminate this Agreement or may seek to enforce this Agreement as provided herein.

d. If either party waives a material breach in this Agreement, such a waiver shall not be deemed a waiver of any subsequent breach.

O. Notices.

All notices, demands, requests, or replies provided for or permitted by this Agreement, including notification of a change of address, shall be in writing to the addressees identified below, and may be delivered by anyone 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 OWNER:

Seaward, LLC  
11100 Overseas Highway  
Marathon, Florida 33050  
Telephone: (305) 743-5181

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

Mr. Thomas D Wright, Esquire  
9711 Overseas Highway, Suite 5  
Marathon, Florida 33050  
Telephone: (305) 743-8118

Doc# 1570839  
Bk# 2193 Pg# 995

TO THE CITY:

Mike Puto, 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  
City Attorney  
Stearns, Weaver, Miller, Weissler Alhadeff & Sitterson, P .A.  
150 West Flagler Street, Suite 2200 Miami, Florida 33133  
Telephone: (305) 789-3427

P. Annual Report.

On the anniversary date of the Effective Date of this Agreement, Owner shall provide the City with a report identifying (a) the amount of development authorized by this Agreement that has been completed, (b) the amount of development authorized by this Agreement that remains to be completed, and (c) any changes to the plan of development that have occurred during the one (1) year period from the Effective Date of this Agreement or from the date of the last annual report.

Q. Enforcement.

In accordance with Section 163.3243, Florida Statutes, any party to this Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes, or the State Land Planning Agency may file an action for injunctive relief in the circuit court of Monroe County, Florida, to enforce the terms of this Agreement or to challenge the compliance of this Agreement with the provisions of Sections 163.3220-163.3243, Florida Statutes.

R. Binding Effect.

This Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns, and personal representatives.

S. Assignment.

This Agreement may be assigned to entities controlled by Schmitt without the written consent of the parties, or to other third parties with written consent, which shall not be unreasonably withheld.

**Doc# 1570839**  
**Bk# 2193 Pg# 996**

**T. Drafting of Agreement.**

The parties acknowledge that they jointly participated in the drafting of this Agreement and that no term or provision of this Agreement shall be construed in favor of or against either party based solely on the drafting of the Agreement.

**U. Severability.**

In the event any provision, paragraph or section of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the enforceability or the validity of the remaining provisions of this Agreement.

**V. Applicable Law.**

This Agreement was drafted and delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida.

**W. Litigation/Attorney's Fees; Venue; Waiver of Right to Jury Trial.**

As between the City and Owner, in the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorney's fees. This includes, but is not limited to, reimbursement for such reasonable attorneys' fees and costs incurred with respect to any appellate, bankruptcy, post-judgment, or trial proceedings related to this Agreement. Venue for any legal proceeding arising out of this Agreement shall be in Monroe County, Florida. The parties to this Agreement waive the right to a jury trial in any litigation arising out of or initiated under this Agreement.

**X. Use of Singular and Plural.**

Where the context requires, the singular includes the plural, and the plural includes the singular.

**Y. Duplicate Originals; Counterparts.**

This Agreement may be executed in any number of originals and in counterparts, all of which evidence one agreement. Only one original is required to be produced for any purpose.

**Z. Headings.**

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

**AA. Entirety of Agreement.**



This Agreement incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, or understandings regarding the matters contained herein. The parties agree that there are no commitments, agreements, or understandings concerning the subjects covered by this Agreement that are not contained in or incorporated into this document and, accordingly, no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether written or oral. This Agreement contains the entire and exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing signed by the parties.

Doc# 1570839  
Bk# 2193 Pg# 997

BB. Recording; Effective Date.

Owner shall record this Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date of this Agreement. A copy of the recorded Agreement showing the date, page and book where recorded shall be submitted to the State Land Planning Agency by hand delivery, 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. Owner shall also provide a copy of the recorded Agreement to the City within the same time period. This Agreement shall become effective thirty (30) days after the date it is recorded in the public records of Monroe County, Florida, and received by the State Land Planning Agency.

CC. Date of Agreement.

The date of this Agreement is the date the last party signs and acknowledges this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year below written. Signed, sealed, and delivered in the presence of:

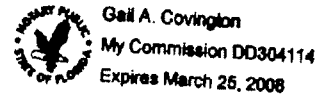
WITNESSES:

Gail Covington  
Signature  
GAIL COVINGTON  
Name of Witness (printed or typed)

S. Bergh  
Signature  
Elizabeth Bergh  
Name of Witness (printed or typed)

OWNER:  
SEAWARD LLC.

By: Brian C. Schmitt



STATE OF FLORIDA  
COUNTY OF MONROE

The foregoing instrument was acknowledged before me on this 13 day of March 2006, by BRIAN C. SCHMITT, and the respective witnesses, who is personally known to me or produced Florida drivers licenses as identification.

*Sail Cozette*  
Notary Public, State of Florida At Large

My commission expires:

On the 9<sup>th</sup> day of March, 2005,  
The City Council of the City of  
Marathon approved this Agreement by Resolution No. 2006-022

03/13/06  
Date

CITY OF MARATHON  
By *[Signature]*  
JOHN BARTUS, MAYOR

ATTEST:  
*[Signature]*  
CITY CLERK

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

*[Signature]*  
CITY ATTORNEY