

**CITY OF MARATHON, FLORIDA
RESOLUTION 2006-023**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A DEVELOPMENT AGREEMENT FOR THE MARATHON PARTNERS, LLC, FOR THE REDEVELOPMENT OF PROPERTY LOCATED AT 4590 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS LOTS 21, 24, 25, AND 26, TIPTON'S SUBDIVISION AND PART OF GOVERNMENT LOT 2 AND ADJACENT BAY BOTTOM AND ADJACENT PART OF US 1 STATE ROAD 5, SECTION 10, TOWNSHIP 66 SOUTH, RANGE 32 EAST, KEY VACCAS, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00103150-000000, 00327540-000000, 00327570-000000, 00327580-000000, AND 00327590-000000, PROVIDING FOR CONDITIONS AND REQUIREMENTS OF DEVELOPMENT, INCLUDING BUT NOT LIMITED TO, BUFFERS, BUILDING HEIGHTS, SETBACKS, AND OTHER REQUIREMENTS

WHEREAS, Marathon Partners, LLC (the "Applicant") is the Owner of approximately 282,042 square feet (6.47 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 (the "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 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, 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 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 February 6, 2006, 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 February 13, 2006 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.

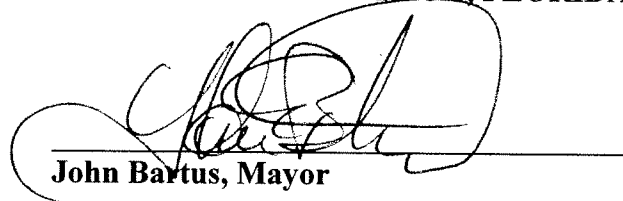
Section 2. The Development Agreement between the City and Marathon Partners, LLC, in substantially the form as the attached Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is hereby approved.

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 Bartus, Mayor

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

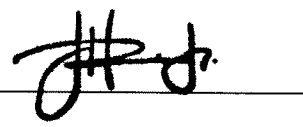
ATTEST:



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 J. Wolfe, Esquire
2955 Overseas Highway
Marathon, FL 33050
Telephone: (305) 743-9858

Parcel I.D. Nos.:
Marathon Harbor Resort and Marina (Banana
Bay Resort) 00103150-000000
Affordable/Workforce Dwelling Units:
00327450-000000, 00327590-000000,
00327580-000000, and 00327570-000000

Doc# 1572715 03/27/2006 11:46AM
Filed & Recorded in Official Records of
MONROE COUNTY DANNY L. KOLHAGE

Doc# 1572715
BK# 2195 Pg# 2218

DEVELOPMENT AGREEMENT FOR BANANA BAY RESORT

THIS AGREEMENT is entered into by and between MARATHON PARTNERS LLC, a Delaware limited liability company authorized to transact business in Florida (hereinafter referred to as "Owner"), and the CITY OF MARATHON, a Florida municipal corporation (herein referred to as "City"), pursuant to Sections 9.5-101 and 9.5-102 of the City Code, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2004), and is binding on the "Effective Date" set forth herein.

WITNESSETH:

WHEREAS, Owner is the owner of approximately 7.03 acres of contiguous uplands, located at 4590 Overseas Highway (herein referred to as "Property") in the corporate limits of the City of Marathon, Florida; and

WHEREAS, MARATHON KEY BEACH CLUB II ASSOCIATION, INC. (hereinafter referred to as "MKBC") has been granted certain rights of use with respect to the Property, including easements and cross-easements, as described in Section C.1.b. herein; and

WHEREAS, the Property, is legally described on the Survey, Exhibit A attached hereto, and is a fully developed site known as Banana Bay Resort,

WHEREAS, the redevelopment contemplated by Owner will remove certain existing structures and construct new structures in compliance with all applicable FEMA regulations, 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, shoreline stabilization, and landscape bufferyard criteria; and

WHEREAS, as part of the Property redevelopment, Owner will obtain all required permits for and will upgrade the existing wastewater treatment plant that currently serves the Property to AWT standards and the adjacent MKBC property and will meet the requirements of the City's Comprehensive Plan ("Comprehensive Plan"), and provide a substantial benefit to the public health and the environment; and

WHEREAS, as part of the Property redevelopment, Owner will obtain all required permits for and construct a stormwater management system to serve the Property, providing a substantial environmental benefit through retaining, detaining, treating, and managing stormwater runoff on the Property; and

WHEREAS, on January 11, 2005 the City enacted Ordinance 2004-017 amending Section 9.5-11(R-17) (Definition of Hotel or Motel) of the Code to provide that a hotel or motel room may include a room or suite of rooms with a maximum of three (3) bedrooms and two and one-half (2.5) bathrooms, limiting the size of a hotel or motel room not to exceed 1500 square feet and amending the Land Use District (Zoning) Regulations; and

WHEREAS, Owner desires to create a resort hotel condominium/homeowner's association

(hereafter "HOA") on the Property comprised of fifty-eight (58) two-bedroom, two and one half bathroom transient residential dwelling units located in eleven combined blocks of buildings; one four thousand (4,000) square foot commercial unit know as the Reception Building for the motel use containing lobby, meeting room, offices and Back of the House facilities, which shall contain an affordable/workforce dwelling unit on the second floor for the manager of the motel; one (1) six thousand (6,000) square foot commercial unit; thirty-four (34) boat slips;; one (1) common element swimming pool, a one thousand twenty-five (1,025) square foot commercial unit which shall be used as a recreation facility serving the pool; one five hundred fifty (550) square foot open air trellised area for out door functions, one (1) common element Jacuzzi; two (2) common element tennis courts; a common element boat ramp; common element parking; and limited common element boat storage areas, as shown on the Conceptual Site Plan submitted herein as Exhibit B; and

WHEREAS, the proposed redevelopment is permissible and appropriate for the City's Comprehensive Plan Future Land Use designation Mixed Use Commercial (MU) applicable to the Property, which allows mixed use development along with various types of residential and non-residential uses, and for the Mixed-Use Commercial Future Land Use designations in the City's Comprehensive Plan; and

WHEREAS, Owner seeks to memorialize seven (7) Conditional Redevelopment Units that result as a reduction of transient residential dwelling units from the sixty-five (65) one-bedroom units existing on the site to the proposed fifty-eight (58) two-bedroom transient residential dwelling units requested as part of this Agreement in accordance with the requirements of Ordinance 2004-017; and

WHEREAS, the Owner currently owns four (4) single-family residences located on parcels adjacent to the Property, as shown on the Survey, Exhibit A hereto, which shall be retained by the

Owner and not become part of the resort hotel property administered by the HOA (hereinafter, the “affordable/workforce dwelling unit Property”); and

WHEREAS, the Owner desires to provide housing for employees in the City of Marathon in the four (4) single-family residences located on the affordable/workforce dwelling unit Property, with the employees of the HOA having the right of first use of such affordable/workforce dwelling units; and

WHEREAS, the Owner desires to provide for an affordable/workforce dwelling rental unit to be located in the commercial unit lobby building of the resort-hotel for the use of the manager of the hotel, which affordable/workforce- dwelling rental unit shall be owned by the Owner.

WHEREAS, Owner desires to replace existing transient residential dwelling units and does not propose any increase in the total number of transient residential units on the Property; and

WHEREAS, Owner desires to replace the existing nine thousand six hundred eighty-six (9,122) square feet of commercial floor area and proposes to increase the total commercial floor area by one thousand nine hundred and three (1,903) square feet in order to accommodate a six thousand (6,000) square foot restaurant on the Property; and

WHEREAS, none of the transient or permanent residential dwelling units are 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 transient or permanent residential dwelling units above that existing on the site prior to the redevelopment of the Property; and

WHEREAS, the existing nine thousand one hundred twenty-two (9,122) square feet of commercial floor area is exempt from the NROGO System as it is replacement of lawfully established non-residential development; and

WHEREAS, the proposed one thousand nine hundred and three (1,903) square feet of commercial floor area is new non-residential development and will require an allocation of non-residential floor area; and

WHEREAS, the City has determined that the redevelopment of the Property will not adversely affect hurricane evacuation clearance time because the number of transient and permanent residential dwelling units on the Property will not increase beyond the number of transient and permanent residential dwelling 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 Owner has provided public notice of the parties' intent to consider entering into this 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 notices 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 this Agreement; and

WHEREAS, the City Planning Commission has held a public hearing on February 6, 2006, to consider this Agreement, and the City Council of the City has held a public hearing on February 13 2006 to consider this Agreement; and

WHEREAS, the City has determined that this Agreement is consistent with the local comprehensive plan, is in the public interest, and will further the health, safety, welfare, and goals 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:

A. **RECITALS.** The recitals set forth in the preceding “Whereas” clauses are incorporated herein and form a material part of this Agreement.

B. **DEFINITIONS.** For the purposes of this Agreement, the following terms shall have the following meanings. Terms not defined in this Agreement shall be as defined in the City Code, in Chapter 163, Florida Statutes, or, if not defined in the Code or Statute, shall be understood by their usual and customary meaning.

1. **“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 163.3220-163.3243, inclusive, Florida Statutes.

2. **“City Code”** shall refer to the Code of Ordinances of the City of Marathon in existence on the Effective Date of this Agreement.

3. **“Comprehensive Plan”** shall refer to the City’s Comprehensive Plan, effective July 7, 2005, as expressly provided herein.

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

5. **“Dwelling, Apartment”** shall refer to the dwelling unit type defined in Section 9.5-4 (D-24) of the City Code.

6. **“Dwelling Unit”** shall refer to a dwelling unit as defined in Section 9.5-4 (D-31) of the City Code.

7. **“Effective Date”** shall refer to the date this Agreement becomes effective, as set forth in Section C.29. of this Agreement.

8. **“Florida Department of Community Affairs”** and **“state land planning**

agency” shall mean and refer to the “state land planning agency” as defined in Chapter 163, Part II, Florida Statutes.

9. **“Home Owner Association” or “HOA”** means the association created pursuant to Chapter 718, Florida Statutes, for the operation and management of the resort hotel condominium and its common elements on the Property.

10. **“Land Use Plan”** shall mean the Future Land Use Element and Future Land Use Map of the City’s new Comprehensive Plan, as provided herein.

11. **“Land Development Regulations”** shall mean Chapter 9.5 of the City Code in existence on the Effective Date of this Agreement.

12. **“Owner”** shall refer to the Owner of the Property subject to this Agreement.

13. **“Property”** shall refer to the parcel of real property located in the City that is the subject of this Agreement as set forth in Section C.1.c. of this Agreement.

14. **“Public facilities”** means those facilities identified in Section 163.3221, Florida Statutes (2004), and as set forth in Section C.6. of this Agreement.

C. TERMS OF AGREEMENT.

1. **Ownership; Interest of Marathon Key Beach Club II Association, Inc.; and Legal Description**

a. **Ownership.** The Owner of the Property as of the date of execution of this Agreement is Marathon Partners LLC, 45 W. Prospect Avenue, Suite 1500, Cleveland, Ohio 44115.

There are no other legal or equitable owners of the Property known to the parties of this Agreement provided, however, that MKBC has been granted certain rights of use, easements and cross easements as described in the following paragraph b.

The Owner shall provide an Opinion of Title in a form acceptable to the City contemporaneous with the execution of this Development Agreement.

b. Use/Easement Agreements with Marathon Key Beach Club II Association, Inc. Pursuant to the provisions of a certain Settlement Agreement, attached to Order Ratifying Settlement Agreement entered in Marathon Key Beach Club II Association, Inc. v. Frank Manson, et al, Under Case No. 85-10349-CA-17 in the Circuit Court, Monroe County, Florida, recorded in Official Records Book 1142, Page 593 (hereinafter, "Settlement Agreement"), MKBC has the right to the use of certain of the amenities and facilities located on the Property, and has been granted certain easements and cross easements with respect to the Property pursuant to the terms and conditions set forth therein.

c. Legal Description. The legal description of the Property subject to this Agreement is included in the Survey attached hereto as Exhibit A. The term "Property" as used in this Agreement shall mean and refer to the property described in Exhibit A.

2. Duration of Agreement, Agreement Renewal.

a. Duration of Agreement. This Agreement shall remain in effect for a period of ten (10) years, commencing on the Effective Date set forth below.

b. Agreement Renewal. This Agreement may be renewed or extended as provided herein.

3. Existing Development; Preparation for Redevelopment.

a. Existing Development. The following development exists on the Property: Banana Bay Resort, with sixty-five (65) one-bedroom hotel rooms, one (1) four thousand four hundred forty-five (4,445) square foot lobby with meeting rooms and offices, one (1) single-family residence, one (1) three thousand nine hundred and eighty (3,980) square foot restaurant, one

(1) seven hundred twelve (712) square foot Tiki Bar, swimming pool, one (1) one hundred (100) square foot Tiki Bar located poolside, Jacuzzi, two (2) tennis courts, marina with forty-three (43) dock slips, parking areas, three (3) buildings for storage and bathhouse uses totaling four hundred and forty-nine (449) square feet, and other amenities, as shown on the Survey attached as Exhibit A hereto. The Property also contains four (4) detached single-family dwelling units, pool, parking and storage building, located on adjacent parcels as shown on the Survey.

b. **Redevelopment Preparation.** The Property will be prepared for redevelopment by permitted demolition and appropriate removal of certain existing structures.

4. **Plan Approval, including Densities and Intensities.**

a. **Approval of Conceptual Site Plan; Minor Revisions; Final Site Plan.** The Property shall be redeveloped and operated as a resort hotel consisting of fifty-eight (58) transient residential dwelling units, together with eleven thousand twenty-five (11,025) square feet of commercial floor area, thirty four (34) boat slips, and five (5) affordable/workforce dwelling units, as described in this Agreement and depicted on the Conceptual Site Plan for Banana Bay, dated October 14, 2005, which was prepared by MBI-K2M Architecture, located in Key West, Florida, and is attached hereto as Exhibit B. The Conceptual Site Plan is hereby approved by the City, and any subsequent site plans, site plan approvals and building permits shall substantially comply with this Conceptual Site Plan; provided, however, that the final site plan may deviate from the Conceptual Site Plan to accommodate: (1) refinements to the development plan including minor shifts in location of five (5) feet or less in the structures, roadways, pathways, and swimming pool configurations; (2) changes to the building type or number of residential units, so long as the density set forth in this Agreement is not exceeded; (3) changes to the proposed six thousand (6,000) square foot restaurant so long as the density and intensity set forth in the Agreement is not exceeded; (4) modifications that

are necessary to meet regulatory requirements imposed by any other governmental entity; or (5) the removal of one of the two tennis courts as shown on the alternate site plan being submitted herewith and replacement with additional parking, including boat trailer parking to accommodate the concerns of MKBC. The site plan, and the alternate site plan, meets all applicable setback, open space, landscape bufferyard, parking and building height requirements established in City Code and such requirements shall not be varied unless Owner obtains a variance pursuant to applicable provisions of the City Code.

b. Form of Ownership. The Property shall be redeveloped and operated as a resort hotel. Condominium, cooperative, or similar form of ownership of all or a portion of the properties; and the submission of the properties to the condominium, cooperative, or similar form of ownership (and recordation of a corresponding declaration of condominium or similar instrument) or the sale of individual transient residential dwelling units therein shall not be prohibited or violative of the terms and provisions of this agreement. However, the submission of the any wet slip to the condominium form of ownership or conveyed by lots, parcels or metes and bounds, said wet slip must first be subdivided and platted in accordance with Section 9.5-81 of the City Code.

c. Exempt Dwelling Units under this Agreement. Pursuant to Section 9.5-123(f)(1) of the City Code, the fifty-eight (58) transient residential dwelling units and five (5) affordable/workforce residential dwelling units on the Property are exempt from the requirements of the City's residential ROGO.

d. Density under this Agreement. Pursuant to Section 9.5-262 and Section 9.5-267 of the City Code applicable to the MU and Suburban Commercial (SC) districts, and applicable provisions in the Comprehensive Plan, Owner is entitled to redevelop, and will redevelop

a resort hotel consisting of fifty-eight (58) transient dwelling units and five (5) affordable/workforce dwelling units residential dwelling units on the Property.

e. **Conceptual Site Plan.** The redevelopment of the fifty-eight (58) transient residential dwelling units as a resort hotel and five (5) affordable/workforce dwelling units, as depicted on the Conceptual Site Plan, is approved by this Agreement. The Owner agrees to provide and maintain five (5) residential dwelling units as affordable/workforce dwelling units. The Owner shall execute a binding instrument, in a form acceptable to the City, ensuring that the five (5) affordable/workforce dwelling units are limited for use as affordable/workforce dwelling units and comply with the affordable/workforce dwelling unit criteria set forth in Sections 9.5-4(A-5) and 9.5-266 of the City Code, and as more fully addressed in Section C.5.p. of this Agreement. The remaining fifty-eight (58) transient residential dwelling units will be redeveloped as transient residential dwelling units as part of a resort hotel. The Owner shall execute and record in the public records of Monroe County a Declaration of Covenant and Restrictions in a form acceptable to the City ensuring that it shall not seek and has no legal right to file for homestead exemption for the transient residential dwelling units redeveloped on the properties; and which shall require the occupants of all transient residential dwelling units on the properties to comply with the hurricane evacuation requirements set forth in Policy 1-2.2.1 of the Future Land Use Element of the City's Comprehensive Plan.

f. **Structures.** The redevelopment depicted on the Conceptual Site Plan, and listed below, is approved by this Agreement. Exhibit C, incorporated by reference herein, depicts the building schematics for the resort hotel transient dwelling units.

58 hotel resort hotel transient dwelling units
5 affordable affordable/workforce residential dwelling units
Swimming pool and pool deck

Building serving the pool, including restrooms and storage
Jacuzzi
2 tennis courts or 1 tennis court and additional parking
Marina, including docks, finger piers, mooring piles, 34 boat slips
6,000 sq. ft. commercial space
4,000 sq. Lobby, meeting room, "back of house", laundry building
Sidewalks and retaining walls
Boat storage areas
Boat launching ramp
Roadways and parking
Utilities infrastructure
Advanced Wastewater Treatment plant
Stormwater management system

g. Commercial Floor Area Approved Under This Agreement.

Pursuant to City Code 9.5-124.3, the Owner is to reconstruct a total of nine thousand one hundred twenty-two (9,122) square feet of commercial floor area or non-residential development on the Property without being subject to nonresidential ROGO requirements. Total commercial floor area redevelopment on the Property approved by this Agreement is eleven thousand and twenty-five (11,025) square feet, as depicted on the Conceptual Site Plan. Five thousand twenty-five (5,025) square feet of this commercial redevelopment will be used as restaurant lobby, "back of house", laundry, office uses, meeting room and pool facility building or any combination thereof, and will only be used as accessory uses to the residential redevelopment of the Property, pursuant to the restrictions set forth in Section C.4.g., below. This leaves four thousand six hundred sixty-one (4,661) square feet of commercial floor area available for the six thousand (6,000) square foot restaurant. The Owner shall submit an NROGO application for the additional one thousand nine hundred three (1,903) square feet of commercial floor area Θ as may be allowed by the City Code.

h. Accessory Uses. Accessory uses, to be developed or redeveloped on the Property as part of the resort hotel are as follows: (i) Common element accessory uses consist of the pool and

pool deck, Jacuzzi, two (2) tennis courts (or one tennis court, and additional parking), boat storage areas, boat launching ramp, landscaping, street and parking areas, and all other areas of the resort hotel not part of a transient residential unit. The use of the accessory uses shall be limited to the guest of the resort hotel except as provided in Section C.1.b. above.

The marina and the dock slips will not be operated as a commercial marina. No liveaboards will be permitted. The Owner shall record in the public records of Monroe County, in a form acceptable to the City prohibiting the use of liveaboards on the Property.

5. **Development Conditions.** The following conditions, terms, restrictions, and other requirements have been determined by the City of Marathon to be necessary for the public health, safety, and welfare of its citizens:

a. **Building Height.** Buildings may be constructed to the maximum height allowed under the City's Comprehensive Plan.

b. **Setbacks.** The City acknowledges that there is no undisturbed or unaltered shoreline on the Property. Pursuant to City Code Section 9.5-286, a twenty (20) foot setback from the mean high water line ("MHWL") shall be required for all principal structures with the exception of the units as shown on the Site Plan and located on the open water section of the development. City Code Section 9.5-289 establishes provisions for a limited amount of non-enclosed detached outdoor recreational accessory structures that may be developed within the shoreline setback. Pursuant to City Code Section 9.5-281, both the SC and MU districts require a minimum twenty five (25) foot front yard setback, ten (10) foot side yard setback on one side property line with a combined total of fifteen (15) feet for both side yards. Owner shall comply with the applicable setbacks. Internal setbacks are not required other than for fire safety.

c. **Utilities, Lighting, and Signage.** Utilities, lighting, and signage

shall comply with all applicable requirements of the City Code, including the waterfront lighting criteria in City Code Section 9.5-395. The Owner shall install all utilities underground where practicable and shall screen all utility facilities. The Owner shall utilize shaded light sources to illuminate all signs, facades, buildings, parking and loading areas, and shall arrange such lighting to eliminate glare to parcels lying outside the Property. No intermittent or flashing lights or flashing signs shall be allowed.

d. Landscaping. The Owner shall utilize best installation and maintenance practices for landscaping throughout the Property, and shall guarantee one hundred percent (100%) survival of all owner-installed plants for one (1) year after receipt of a final certificate of occupancy. Seventy percent (70%) of all required plants installed shall be Florida Keys native plants that are suitable for the site conditions and are a species typical of the Middle Keys. The Owner shall remove all Category I invasive exotic plants on the Property. The Owner shall provide a Class "C" Major Street buffer in accordance with Section 9.5-378 of the City Code. The Owner shall provide, where applicable, Class "A" and a Class C landscaping for all parking areas in accordance with Section 9.5-361 of the City Code. The Owner shall provide a Class "C" landscape district boundary buffer where the MU district abuts the URM district on the eastern property lines.

e. Parking. The redevelopment shall comply with the parking criteria as required by Section 9.5-351 of the City Code. The Owner shall provide one (1) common element parking space per resort hotel transient dwelling unit located beneath the units (for a total of fifty eight (58) parking spaces); .67 common element parking spaces per boat slip (for a total of twenty-three (23) parking spaces located on the Property); two (2) common element parking spaces for the affordable/workforce dwelling unit on the resort hotel property (for a total of two (2) parking spaces); and fifteen (15) common element parking spaces per one thousand square feet of restaurant

floor area (for a total of ninety (90) parking spaces). The total number of parking spaces on the Property is one hundred seventy-three (173). There will be three (3) parking spaces specifically for the storage of boat trailers and one loading zone. No other parking spaces will be provided on the Property. In addition, two (2) parking spaces per affordable/work force dwelling units are located on the property adjacent to the resort hotel and owned by Owner (for a total of eight parking spaces).

f. Offsite Improvements.

There is a sewage treatment facility located on the MKBC property that serves the Property which is the plant that will be upgraded. The Settlement Agreement provides for the perpetual non-exclusive right of the owners of the Property to use the sewage treatment system on the terms and conditions set forth therein.

g. Internal Infrastructure. The underground infrastructure, water and sewer serving the transient residential dwelling units and residential dwelling units and commercial units shall be completed before a certificate of occupancy may be issued for the unit.

h. Fire Safety. The Owner shall provide fire wells and other such fire protection facilities as required by the Life Safety Code administered by the City Fire Department. Fire sprinklers will be installed as required by City Code.

i. Open Space Ratio. Pursuant to City Code Sections 9.5-343, 9.5-262, and 9.5-267, a minimum of 20% open space is required. The Owner will maintain a minimum of 20% open space on the Property.

j. Wind Load. The Owner shall construct all structures on the Property, including doors, windows, and cladding, to withstand the mile per hour peak winds as

specified in the 2004 Florida Building Code.

k. Energy Efficiency. The Owner shall construct all residential and commercial structures in conformance with the specifications of the State of Florida Energy Efficiency Code for Building Construction (State Energy Code).

l. Schematics. All redeveloped residential units constructed on the Property shall adhere to one of the architectural styles and one of the representative floor plans depicted in the schematics in Exhibit C, incorporated by reference herein. The redeveloped Commercial units shall adhere to the floor plans included in the schematics in Exhibit C hereto.

m. Permits from Other Regulatory Entities. Other agency permits may be required as provided by applicable law prior to the City's issuance of building permits for redevelopment of the Property. The Owner shall obtain all necessary permits from other local, regional, State and federal regulatory entities and provide copies of each to the City within a reasonable time after such permits are issued. A log of the permits and approvals required for the Project and the status of each is incorporated herein as Exhibit D.

o. Stormwater Management. The development shall comply with the stormwater management criteria in City Code Section 9.5-293 and as approved by the SFWMD. The development will meet all applicable federal, state, regional, and local stormwater management requirements, including any applicable requirements pursuant to the National Pollutant Discharge Elimination System (NPDES) permit issued by the Florida Department of Environmental Protection for the City of Marathon in February 2005 prohibiting direct discharges into Outstanding Florida Waters.

p. Affordable/Workforce Dwelling Units.

(i) Owner shall provide a total of six (6) affordable/workforce dwelling units in the following manner: one (1) affordable/workforce dwelling unit on the Property, four (4) affordable/workforce dwelling units on property adjacent to the Property as shown on the Survey and a cash payment of \$100,000, or one (1) affordable/workforce dwelling unit on site and a cash-in-lieu payment of \$600,000. These deed restrictions shall be recorded in the public records of Monroe County and shall be effective for fifty (50) years from the date of the certificate of occupancy, and shall automatically renew for two (2) 50-year periods. Owner will enter into an agreement with the Middle Keys Community Land Trust ("MKCLT") or similar entity 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 these units. The certificates of occupancy for these five (5) affordable/workforce dwelling units shall be obtained prior to or contemporaneously with the certificates of occupancy for the first transient residential units constructed on the Property.

q. Additional Conditions by Mutual Agreement. Nothing in this Agreement shall preclude the parties from applying additional conditions, by mutual written consent, during the final permitting approval process.

6. Public Utilities; Concurrency, Impact Fees. The following identifies the public facilities that are required and that will service the development authorized by this Agreement; who shall provide the facilities; what new facilities, if any, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of development.

a. Potable Water. Domestic potable water is provided by the Florida Keys Aqueduct Authority.

b. Electric Service. Electric service is provided by Florida Keys Electric

Cooperative.

- c. **Solid Waste.** Solid waste service is provided by Marathon Garbage Service or its successors and assigns, as determined by the City Council.
- d. **Fire Service.** Fire service is provided by the Marathon Fire Department.
- e. **Concurrency.** All public facilities identified above are available as of the date of this Agreement, and capacity for each is projected to be available concurrent with the impacts of development.
- f. **Wastewater.** Wastewater treatment shall be provided by the construction of a new advanced wastewater treatment ("AWT") plant approved by DEP or by improvements to the existing wastewater treatment plant as approved by DEP. The treatment plant shall meet the AWT nutrient removal standards as specified by DEP and shall be completed before a certificate of occupancy may be issued for any unit.
- g. **Public Recreational facilities.** Public recreational facilities shall be addressed through impact fees, if any.
- h. **Impact Fees.** 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 applicable City impact fees required by ordinance then in effect, as well as by payment by the Owner of any applicable utility system development fees. Owner agrees to pay impact fees pursuant to any applicable impact fee ordinances adopted within 24 months of the effective date of this Agreement. Any impact fees required to be paid by Owner pursuant to any such impact fee ordinances will be offset by the dollar

amount paid by Owner toward the provision of any improvements that are the subject of said impact fee ordinances.

i. **Traffic Study.** Prior to issuance of conditional use approval for structures on the Property, Owner agrees to conduct a Level III traffic study to assess the project's vehicle traffic impacts on U.S. 1. If the Level III traffic study demonstrates that redevelopment of the Property will result in traffic impacts above those generated by the development previously existing on the Property, as previously documented, Owner will mitigate its fair share of the increased traffic impacts resulting from redevelopment of the Property.

7. **Reservations or Dedications of Land for Public Purposes.** The parties anticipate that the Owner may reserve or dedicate land for public purposes in connection with the development authorized by this Agreement, but are currently unaware of the specifics of such reservation(s) or dedication(s). Such reservations or dedications may include, by way of example, easements necessary for the provision of stormwater, utility, and wastewater services to the Property.

8. **All Local Permits Approved or Needed.**

a. **Development Approvals.** The following City development approvals are needed for the development authorized by this Agreement:

1. **Conditional Use Approval.** Conceptual site plan approval by the City Council and planning staff confirming compliance with this Agreement and applicable City Code requirements.

2. **Site Plan.** Final site plan application and approval by the City building official, fire marshal, and planning staff confirming compliance with this Agreement and applicable City Code requirements.

3. **Building Permits.** As of right building permits will be issued,

as provided pursuant to the City Code, for each transient residential dwelling unit as well as for the boat dock units, pool facilities, commercial floor area, and other individual structures. An overall site permit will address landscaping, parking, paths, setback, open space and other associated items.

b. **Review.** No further review or discretionary review will be required by the City, it being agreed that the development, as depicted on the approved Conceptual Site Plan attached hereto, requires only the above development approvals so long as the final site plan substantially complies with the Conceptual Site Plan approved under this Agreement.

c. **Compliance.** Nothing in this Agreement shall be deemed to obviate the Owner's compliance with terms and provisions of each such identified approval.

d. **Completeness.** The parties acknowledge that the Owner has submitted all information necessary for review under the City Code.

9. **Mutual Cooperation.** The City agrees to cooperate with the Owner in a timely manner in providing and/or granting all permits, licenses, approvals, or consents necessary or appropriate to fully implement this Agreement. The City and the Owner agree to cooperate fully with and assist each other in the performance of the provisions of this Agreement.

10. **Development to Comply with Permits and City Comprehensive Plan and Code Provisions.** The development described in and authorized by this Agreement shall be constructed in accordance with all specified permit conditions, and in accordance with all applicable provisions of the City's Comprehensive Plan and City Code, as applicable. No certificate of occupancy for an individual building shall be issued until the City approves all plans for that building and the Owner has complied with all conditions in the permit issued by the City and other regulatory entities for that building.

11. **Finding of Consistency.** The City of Marathon finds that the development

authorized herein is consistent with the City's Comprehensive Plan and Land Development Regulations, as applicable.

12. Compliance with Permits, Terms, Conditions, and Restrictions not Identified Herein. The failure of this Agreement to address a particular permit requirement, condition, term, or restriction shall not relieve the Owner of the necessity of complying with the laws governing said permitting requirements, conditions, terms, or restrictions.

13. Governing Laws.

a. Controlling Regulations. For the duration of this Agreement, all approved development on the Property shall comply with and be controlled by this Agreement and by the provisions of the Comprehensive Plan and City Code, as applicable. The parties do not anticipate the application of subsequently adopted laws and policies to the Property except as expressly provided in this Agreement.

b. Subsequently Adopted Laws and Policies. Pursuant to Section 163.3233, Florida Statutes (2004), the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that: (a) 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; (b) the new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they apply to the development that is subject to this Agreement; (c) the local government demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or (d) the Agreement is based on substantially inaccurate information supplied by the Owner. Redevelopment of the Property shall not be subject to any moratoria or other restrictions on redevelopment, including the redevelopment of existing mobile home parks, which

may be established or otherwise imposed in any manner or at any time by the City. Nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

c. **State or Federal Laws.** If State or federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this Agreement, this Agreement 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 or statutory law.

14. **Amendments, Renewal, Revocation and Termination.** This Agreement may be amended, renewed, or terminated as follows:

a. **Amendments.** As provided in Section 163.3237, Florida Statutes (2004), this Agreement may be amended by mutual consent of the parties to this Agreement or by their successors in interest; an instrument in writing signed by the parties or their successors shall accomplish an amendment under this provision.

b. **Renewal.** As provided in Section 163.3229, Florida Statutes (2004), this Agreement may be renewed by the mutual consent of the parties, subject to the following public hearing requirements in Section 163.3225, Florida Statutes (2004): 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 Monroe County, Florida, 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. **Termination by Owner.** This Agreement may be terminated by the 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. **Revocation by City.** Pursuant to Section 163.3235, Florida Statutes (2004), this Agreement may be revoked by the City if the City finds, on the basis of competent substantial evidence, that there has been a failure to comply with the terms of this Agreement.

e. **Termination by Mutual Consent.** This Agreement may be terminated by mutual consent of the parties.

15. Breach of Agreement and Cure Provisions.

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

b. **Written Notice on the City.** If the Owner concludes that there has been a material breach in the terms and conditions of this Agreement, the Owner shall serve written notice on the City, identifying the term or condition the Owner contends has been materially

breached and providing the City 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: (a) failure to comply with the provisions of this Agreement, or (b) failure to timely process any application for site plan approval or other development approval required to be issued by the City for the development authorized by this Agreement.

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

d. **Waiver of Breach.** If either party waives a material breach in this Agreement by the other party, such a waiver shall not be deemed a waiver of any subsequent breach.

16. **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 any one of the following methods: (a) personal delivery; (b) deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; or (c) 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 OWNER:

Robert Boykin
Marathon Partners LLC
Guild Hall Building
Suite 1500
45 W. Prospect Avenue
Cleveland, Ohio 44115
Telephone: (216) 430-1200

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

John J. Wolfe, Esquire
2955 Overseas Highway
Marathon, FL 33050
Telephone: (305) 743-9858

TO THE CITY:

Mike Puto, City Manager
City of Marathon
10045-55 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, Aldaheff, & Sitterson, P.A.
Museum Tower, 150 West Flagler Street
Miami, Florida 33130
Telephone: (305) 789-3200

17. Annual Report. On the anniversary date of the Effective Date of this Agreement, the Owner shall provide to the City 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.

18. Enforcement. In accordance with Section 163.3243, Florida Statutes (2004), any party to this Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes (2004), 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 (2004).

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

20. **Assignment.** This Agreement may not be assigned without the written consent of the parties.

21. **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.

22. **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.

23. **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.

24. **Litigation; Attorney's Fees; Venue; Waiver of Right to Jury Trial.** In the event of any litigation arising out of this Agreement between the City and Owner, 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.

25. **Use of Singular and Plural.** Where the context requires, the singular includes the plural, and the plural includes the singular.

26. **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.

27. **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.

28. **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.

29. **Recording; Effective Date.** The Owner shall record this Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date of execution 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. The 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 received by the state land planning agency.

30. **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, by their duly authorized representatives, have set their hands and seals on the dates below written.

Marathon Partners LLC,
a Delaware limited liability company

By: Marathon Partners Manager LLC

By: [Signature]
Richard C. Conti, Vice President

3/22/06
Date

STATE OF ~~FLORIDA~~ OHIO
COUNTY OF ~~MONROE~~ CUYAHOGA

The foregoing instrument was acknowledged before me on this 22nd day of March 2006, by Richard C Conti as Vice President of Marathon Partners Manager LLC, who is personally known to me or who produced _____ as identification, and who did/did not take an oath.

[Signature]
Notary Public, State of ~~Florida~~ At Large
Ohio
My commission expires: 12/3/2006

CITY OF MARATHON
By [Signature]
JOHN BARTUS, MAYOR

03/13/06
Date

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

EXHIBITS TO BANANA BAY RESORT DEVELOPMENT AGREEMENT

- EXHIBIT A: LEGAL DESCRIPTION/SURVEY**
- EXHIBIT B: SITE PLAN**
- EXHIBIT C: BUILDING SCHEMATICS**
- EXHIBIT D: PERMITS AND APPROVALS LOG**

EXHIBIT A

LEGAL DESCRIPTION

Legal description: Marathon Harbor Resort and Marina

A PART OF GOVERNMENT LOT 2 OF SECTION 10, TOWNSHIP 66 SOUTH, RANGE 32 EAST, TOGETHER WITH A PARCEL OF BAY BOTTOM LAND IN THE BAY OF FLORIDA AT KEY VACA, MONROE COUNTY, FLORIDA, NORTH OF AND ADJACENT TO GOVERNMENT LOT 2, SECTION 10, TOWNSHIP 66 SOUTH, RANGE 32 EAST, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE FROM THE POINT WHERE GOVERNMENT LOTS 2 AND 3 OF SECTION 10 INTERSECT WITH THE NORTHERLY RIGHT OF WAY LINE OF OVERSEAS HIGHWAY; THENCE N.74°21'04"e., A DISTANCE OF 627.81 FEET FOR A POINT OF BEGINNING; THENCE NORTH, LEAVING SAID NORTHERLY RIGHT OF WAY LINE OF OVERSEAS HIGHWAY AND ALONG THE WEST LINE OF MEAD SUBDIVISION, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 115, PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, A DISTANCE OF 212.60 FEET; THENCE EAST, LEAVING SAID WEST RIGHT OF WAY OF MEAD SUBDIVISION, A DISTANCE OF 96.28 FEET; THENCE N.00°00'5"E., A DISTANCE OF 188.16 FEET; THENCE N.26°09'52"E., A DISTANCE OF 45.34 FEET; THENCE EAST, A DISTANCE OF 32.51 FEET; THENCE NORTH A DISTANCE OF 70.65 FEET; THENCE WEST, A DISTANCE OF 38.78 FEET; THENCE N.00°00'03"E., A DISTANCE OF 90.36 FEET; THENCE S.71°51'45"E., A DISTANCE OF 41.76 FEET; THENCE NORTH 230.00 FEET; THENCE WEST, A DISTANCE OF 81.43 FEET; THENCE NORTH 20.00 FEET; THENCE WEST, A DISTANCE OF 120.00 FEET; THENCE NORTH 425.78 FEET; THENCE EAST, A DISTANCE OF 403.14 FEET; THENCE S.00°00'29"W., A DISTANCE OF 1245.94 FEET; THENCE S.74°21'30"W., A DISTANCE OF 418.46 FEET; THENCE N.00°33'33"W. A DISTANCE OF 41.54 FEET TO POINT OF BEGINNING.

Affordable/Workforce Dwelling Unit Parcel.

ALSO: LOTS 21,24,25 AND 26, TIPTON'S SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 46, PUBLIC RECORDS OF MONROE COUNTY, FLORIDA.

ABOVE DESCRIBED PARCELS CONTAIN A SURVEYED AREA OF 446.053 SQUARE FEET OR 10.24 ACRES, MORE OR LESS.

ABOVE DESCRIBED PARCEL IS THE SAME PARCEL AS DESCRIBED IN TITLE COMMITMENT NUMBER 1064-597395, PROVIDED BY FIRST AMERICAN TITLE INSURANCE COMPANY.

SURVEY

The Survey is attached to the Amendment to Major Conditional Use Application filed contemporaneously herewith.

EXHIBIT B

SITE PLAN

The Site Plan was filed with the Amendment to Major Conditional Use Application filed contemporaneously herewith.

EXHIBIT C

BUILDING SCHEMATICS

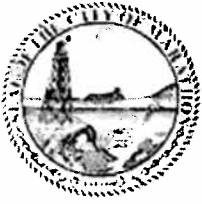
Building Schematics were filed as part of the Site Plan submitted with the Amendment to Major Conditional Use Application filed contemporaneously herewith.

EXHIBIT D

PERMITS AND APPROVALS LOG

Amendment to Conditional Use
Building Permits
FDEP Water Distribution System Permit
FDEP Sewer Collection System Permit
FDEP Stormwater Gravity Injection Well Permit
FDOT Driveway/Drainage Collection Permit
FDOT Utility Permit
FCAA Tapping Permit
SFWMD ERP Permit

MONROE COUNTY
OFFICIAL RECORDS



CITY OF MARATHON, FLORIDA

9805 Overseas Highway, Marathon, Florida 33050
Phone: (305) 743-0033 Fax: (305) 743-3667
www.ci.marathon.fl.us

February 06, 2009

Robert W. Boykin
Marathon Partners LLC
Guild Hall Building
Suite 1500
45 W. Prospect Avenue
Cleveland, Ohio 44115

Re: Property located at 4590 Overseas Highway, Marathon

Dear Mr. Boykin:

Reference is made to that certain Development Agreement, recorded as of March 27, 2006, between the City of Marathon (the "City") and Marathon Partners LLC ("MPLLC") in connection with the redevelopment of the above referenced property (the "Property").

MPLLC has indicated to the City that it has applied with the City for building permits to complete the remaining phases of the resort hotel project described in the Development Agreement (the "Project"). Given the current economic and market difficulties facing the Florida Keys and the rest of the country, MPLLC would prefer that those permits not be issued at this time. In the alternative, MPLLC has requested that it be given a reasonable extension of time to receive those permits within the remaining term of the Development Agreement.

The City hereby agrees that the City will not issue the remaining building permits in connection with the Project until such time as MPLLC requests in writing that the City issue such permits, such request to be delivered to the City not later than March 27, 2014. MPLLC shall receive a full credit for any permit and impact fees paid through the date hereof, such credit to be applied to the permit and impact fees that shall be due and payable at the time the permits are in fact issued. Furthermore, the building permits to be issued shall be subject to any changes in applicable building codes that are adopted subsequent to the date of the applications for such permits.

As consideration for this permit extension, MPLLC agrees to execute and deliver an easement, in form and substance satisfactory to the City, granting to the City, at no additional cost, the right to install wastewater sewer collection pipes and related infrastructure under a twenty foot wide strip of land running the width of the Property adjacent and parallel to the Overseas Highway. The easement shall be recorded in the property records of Monroe County and will run with the land.

If the foregoing accurately reflects your understanding, please indicate by executing below, at which point this letter shall become a valid and binding agreement between the parties regarding the subject matter hereof. This letter agreement shall be governed by the laws of the State of Florida.



CITY OF MARATHON, FLORIDA

9805 Overseas Highway, Marathon, Florida 33050
Phone: (305) 743-0033 Fax: (305) 743-3667
www.ci.marathon.fl.us

Sincerely,

City of Marathon, Florida

By: Clyde Burnett
Clyde Burnett
City Manager

Acknowledged and agreed this ___ day
of February, 2009:

Marathon Partners LLC,
a Delaware limited liability company

By: Marathon Partners Manager LLC

By: _____
Robert W. Boykin