

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2006-167**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A DEVELOPMENT AGREEMENT FOR SEASCAPE, LLC, FOR THE REDEVELOPMENT OF PROPERTY LOCATED AT 1075 75<sup>TH</sup> STREET, OCEAN, WHICH IS LEGALLY DESCRIBED AS 12 66 33 32 KEY VACA PT SW ¼ OF SW ¼ SEC 1 PT GOV LOT 1 SEC 12 AND 12 66 32 KEY VACA PT SE ¼ OF SW ¼ SEC 1 PT GOV LOT 1 SEC 12, HAVING REAL ESTATE NUMBERS 00101190-000000 AND 00103810-000000, PROVIDING FOR CONDITIONS AND REQUIREMENTS OF DEVELOPMENT, INCLUDING, BUT NOT LIMITED TO, BUFFERS, BUILDING HEIGHTS, SETBACKS, AND OTHER REQUIREMENTS**

**WHEREAS**, Seascape, LLC (the “Owner”) owns approximately 4.41 acres of upland (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 a single family home; 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 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 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 proposed Development Agreement (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 as required by state and local law; and

**WHEREAS**, the City Planning Commission has held a public hearing 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 October 10, 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 Seascapes, 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 14<sup>th</sup> day of November, 2006.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Christopher M. Bull, Mayor**

AYES: Mearns, Pinkus, Tempest, Worthington, Bull  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

*Diane Clavier*

\_\_\_\_\_  
Diane Clavier  
City Clerk

(City Seal)

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

*[Signature]*  
\_\_\_\_\_  
City Attorney

PREPARED By:  
CITY OF MARATHON  
10045-SS OVERSEAS Hwy  
MARATHON, FL 33050

Doc# 1629908 03/01/2007 9:00AM  
Filed & Recorded in Official Records of  
MONROE COUNTY DANNY L. KOLHAGE

Parcel I.D. Nos.:  
RE# 00101190-000000  
00103810-000000

Doc# 1629908  
Bk# 2275 Pg# 2150

*(Space reserved for recording)*

DEVELOPMENT AGREEMENT FOR  
**Seascope LLC**  
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 Seascope 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"), comprising approximately 4.22 acres of land (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 legally described as 12 66 33 32 Key Vaca PT SW ¼ of SW ¼ SEC 1 PT GOV LOT 1 SEC 12 and 12 66 32 Key Vaca PT SE ¼ of SW ¼ Sec 1 PT Gov Lot 1 Sec 12, Having Real Estate Number's 00101190-000000 and 00103810-000000, and is zoned Suburban Residential (SR) and designated Mixed Use Commercial (MUC) and Residential Medium (RM) on the Future Land Use Map ("FLUM"); and

WHEREAS, the site of the Property has been developed and in use as a motel and maintains a single family residence (SFR) on site in the City of Marathon, Florida for more than 50 years; and

WHEREAS, the Seascope Resort is a primarily cleared site with exotic vegetation; and

WHEREAS, the Owner desires to upgrade and improve the Property by demolishing the existing 11 unit motel and the single family unit and developing a 10 unit motel and the single family residence in condominium ownership; and

WHEREAS, the Owner desires to improve the Property by removing all invasive exotic

vegetation and bringing utilities (including stormwater treatment) and landscaping up to current code; and

WHEREAS, the Owner desires to redevelop 10 motel units and the SFR to be under condominium ownership. The units will consist of nine (9) two bedroom and two bathroom units of 1,500 square feet each and one (1) one bedroom one bath unit of 1,500 square feet. The Owner will provide covered parking/storage for the exclusive use of the residents with amenities that will include one (1) swimming pool and cabana as shown on the Site Plan submitted herein as Exhibit "B"; and

WHEREAS, the Owner seeks to memorialize one (1) Conditional Redevelopment Unit that resulted as a reduction of hotel units from the eleven (11) one-bedroom units existing on the site to the proposed nine (9) two-bedroom units and one (1) one bedroom unit requested as part of this Agreement in accordance with the requirements of Ordinance 2004-017; 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, the 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 September 18, 2006 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 October 10, 2006, to consider this Agreement; and

WHEREAS, the City has determined that this Agreement is in the public interest, is consistent with its policy to encourage the redevelopment of hotels and motels in Marathon, and will further the health, safety and welfare of the residents 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:

#### **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 and Objective 1-3.1 in Marathon's Comprehensive Plan.
- B. To secure the ability to construct 10 motel units as defined in Ordinance 2004-017 and to construct structures such as one (1) swimming pool and an associated support structure and to provide amenities and accessory uses consistent with the LDRs and the Comprehensive Plan and to replace the existing Single Family Residence with an approximate 5,000 square foot Single Family Residence;
- C. To bring the Property into compliance with environmental, infrastructure, setback, open space, buffer yard and other applicable LDRs; and
- D. To memorialize and track the one (1) Conditional Redevelopment Unit that results as a reduction of the eleven existing transient residential dwelling units and to allow for future authorization of the construction of said unit should the City demonstrate that significant reduction in Hurricane Clearance Time has been achieved for the mandatory evacuation of permanent residents and that other germane environmental land use issues have been addressed.

### 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" or "Code"** 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

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

**“Property”** shall refer the Owner 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.

**“SFWMD”** shall refer to the South Florida Water Management District.

**“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.**

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

##### **B. Duration of Agreement.**

The Owner shall have a period of one (1) year from the effective date of this Agreement to obtain the first building permit and three (3) years from the effective date of this Agreement to obtain all Certificate of Occupancies for buildings on the Property.

This Agreement may be renewed or extended as provided herein. If the Owner has not complied with the schedule for construction, this Agreement shall be subject to termination as provided herein.

##### **C. Permitted Uses.**

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

permitted uses on the Property are as follows:

The Property. The Property shall consist of the Owner Property as herein described. The Property shall be submitted in the condominium form of ownership to include 10 motel units and 1 SFR with appurtenant parking spaces; 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 association. The Property shall contain:

- a. Nine (9) two bedroom and two bathroom hotel units and one (1) one bedroom one bathroom hotel unit (approximately 1500 square feet per unit)
- b. One Single-Family Residence
- c. A pool and associated support structure
- d. Hotel Lobby

There shall be no commercial development or activity on this Property except to the extent otherwise permitted as of right under the LDRs and the Comprehensive Plan. The single family residence on the Property shall not be eligible for use as a vacation rental.

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 LDRs 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 as part of the Major Conditional Use Application and incorporated by reference, showing the Property boundary and existing and proposed uses:

- ✓ Improvement Location and Boundary Survey
- ✓ Site Plan
- ✓ 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.

5. The Owner shall execute a binding instrument combining the upland parcels described in Exhibit A for the purposes of redevelopment authorized this Agreement. The Owner shall provide the proposed binding instrument, and accompanying Opinion of Title in a form acceptable to the City within twenty-eight (28) days after the execution of the Development Agreement. Within fifteen (15) days thereafter the City shall advise the Owner if the proposed Unity of Title and accompanying Opinion of Title are acceptable as to form and substance.



Subsequently Owner shall revise the Unity of Title and Opinion of Title (if necessary) and shall record the instrument in the public records of Monroe County, Florida, at its sole expense, within twenty-eight (28) days after the date thereof. The Owner shall provide copies of the recorded instrument, showing the book and page where recorded, to the City and to the Florida Department of Community Affairs Florida Keys Field Office within a reasonable time after recordation.

6. 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 they shall not seek and have no legal right to file for homestead exemption for the transient residential dwelling units redeveloped on the Property; and which shall require the occupants of all transient residential dwelling units on the Property to comply with the hurricane evacuation requirements set forth in Policy 1-2.2.1 of the City's Comprehensive Plan.

7. 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.

#### 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 existing facilities, approved by the Florida Department of Environmental Protection at the time of building permit application. The wastewater and sewage collection and disposal system shall be 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 educational facilities.

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 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 contribute \$400,000 to the Affordable Housing Trust Fund in lieu of developing three affordable housing units. This contribution is required prior to the issuance of the building permit.

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. Conditional Use Approval
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.

G. 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.

H. Redevelopment and Replacement of ROGO-Exempt Units.

The parties acknowledge that there existed on the Property a total of one (1) single-family unit that is ROGO-exempt pursuant to Section 9.5-123(f)(1) of the City Code. The City acknowledges that, by the covenants and stipulations of this Agreement, the Owner may

redevelop nine (9) ROGO-exempt two bedroom two bath, 1,500 square foot transient residential dwelling units and one (1) ROGO-exempt one bedroom, one bath, 1,500 square foot transient unit on site. Furthermore, one (1) ROGO-exempt Conditional Redevelopment Unit is hereby associated with this Property.

I. 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.

J. Mutual Cooperation.

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

K. 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.

L. 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.

M. 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 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.

#### N. 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 LDRs. 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.

O. 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.

P. 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:

Seascape LLC

c/o Robbie Browning  
2699 Lee Road, Suite 450  
Winter Park, Florida 32789

Doc# 1629908  
Bk# 2275 Pg# 2160

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

Franklin Greenman, P.A.  
Greenman & Manz  
5800 Overseas Highway  
Marathon, Florida 33050

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:

Jimmy Morales, Esquire  
City Attorney  
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P .A.  
150 West Flagler Street, Suite 2200 Miami, Florida 33133  
Telephone: (305) 789-3200

Q. Annual Report.

On each 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.

R. 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.

S. Binding Effect.

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

T. Assignment.

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

U. 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.

V. 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.

W. 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.

X. 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.

Y. Use of Singular and Plural.

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

Z. 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.

AA. 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.

BB. 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.

CC. 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.

DD. 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:

Kellie P. Bridwell  
Signature  
Kellie P. Bridwell  
Name of Witness (printed or typed)

Robert J. Hewitt  
Signature  
Robert J. Hewitt  
Name of Witness (printed or typed)

OWNER:

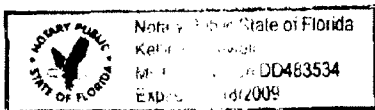
Seascape LLC

By: [Signature]

STATE OF FLORIDA  
COUNTY OF MONROE



The foregoing instrument was acknowledged before me on this 27<sup>th</sup> day of February, 2008, by Robert Brownings president of Seascope LLC, who is personally known to me or who produced personally known as identification, and who did/did not take an oath.



Shelbi P. Bridwell  
Notary Public, State of Florida At Large  
My commission expires:

On the 14 day of November, 2006, The City Council of the City of Marathon approved this Agreement by Resolution No. 2006-167

ATTEST:

Diane Clavier  
City Clerk

CITY OF MARATHON

By: Christopher M. Bull  
MAYOR

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

[Signature]  
CITY ATTORNEY