

**CITY OF MARATHON, FLORIDA
RESOLUTION 2007-90**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A DEVELOPMENT AGREEMENT FOR A MODIFICATION TO AN EXISTING DEVELOPMENT AGREEMENT BETWEEN THE CITY AND KEY COLONY BAY DEVELOPMENT, LLC FOR THE REDEVELOPMENT OF THE PROPERTY LOCATED AT 13351 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS PART OF LOT 1, SECTION 5, TOWNSHIP 66 SOUTH, RANGE 33 EAST, FAT DEER KEY, HAVING REAL ESTATE NUMBER 00100320-000000. THE DEVELOPMENT AGREEMENT FURTHER STIPULATES THE CONDITIONS AND REQUIREMENTS OF DEVELOPMENT, INCLUDING BUT NOT LIMITED TO, BUFFERS, BUILDING HEIGHTS, SETBACKS, AND OTHER REQUIREMENTS.

WHEREAS, Key Colony Bay Development, LLC acquired the property from Marathon Hotel Partners, LLC pursuant to a Special Warranty Deed dated December 10, 2006; and

WHEREAS, Key Colony Bay Development, LLC (the "Owner") owns approximately 4.399 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 Eighty (80) unit hotel units, a restaurant, an office, a pool, wooden sun deck, wooden observation deck; 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 June 26, 2007 and July 10, 2007 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 Key Colony Bay Development, 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 10th day of July, 2007.


THE CITY OF MARATHON, FLORIDA



Christopher M. Bull, Mayor

AYES: Cinque, Tempest, Vasil, Worthington, Bull
NOES: None
ABSENT: None
ABSTAIN: None


ATTEST:



Diane Clavier
City Clerk

(City Seal)

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



City Attorney

Parcel I.D. No.: 00100320-000000

Doc# 1660115
Bk# 2317 Pg# 2001

(Space reserved for recording)

**DEVELOPMENT AGREEMENT FOR
KEY COLONY BAY RESORT
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" or "Marathon"), and KEY COLONY BAY DEVELOPMENT, LLC, a Florida limited liability company (herein referred to as "Owner"), pursuant to Sections 9.5-101 and 9.5-102 of the Code of Ordinances for the City of Marathon, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2002), and is binding on the Effective Date set forth herein.

WITNESSETH:

WHEREAS, the Owner is the owner of real property in the corporate limits of the City of Marathon, Florida ("Marathon"), on the Ocean (south) side of highway U.S. 1 and comprising approximately 4.6 acres at approximately mile marker 54 (the "Property"). The Property currently is commonly known as Key Colony Bay Hotel and is more particularly described in Exhibit A attached hereto and incorporated herein by reference and shown on the Improvement Location and Boundary Survey of the Property, attached hereto as Exhibit B and incorporated herein by reference. The Property is presently zoned Sub Urban Commercial (SC); and

WHEREAS, the site of the Property has been a hotel in the City of Marathon, Florida for approximately 32 years; and

WHEREAS, the Property is a fully developed site that contains eighty (80) transient dwelling units and 8,025 square feet of commercial uses which have been determined to be lawfully established per Comprehensive Policy 1-3.4.3; and

WHEREAS, the commercial uses on the property include reception, office, lounge and restaurant, maintenance, vending and storage in the hotel building, water sports building; one (1) wood sun deck; one (1) wood observation deck; and one (1) swimming pool; and

WHEREAS, the Property contains many aging structures that are non-conforming to required codes and are below the required Federal Emergency Management Agency (FEMA) base flood elevations; and

WHEREAS, the Owner desires to upgrade and improve the Property by removing the wastewater treatment plant, installing an approved Advanced Wastewater Treatment Facility

with nutrient reduction and/or removal capability ("WTNR") or connecting to City sewer if available at time of construction, and bringing development on the property into compliance with setback, open space, buffer yard and other similar requirements in the City's Land Development Regulations; and

WHEREAS, the City desires to encourage redevelopment of hotels and motels in the City to attract tourism, enhance the economy of Marathon for the benefit of its residents, improve the appearance of the City, enhance the City's ability to support needed improvements in infrastructure, and encourage other redevelopment efforts for the economic growth, prosperity and welfare of the residents of the City; and

WHEREAS, the desired improvements of the Property are consistent with the policy of the City to encourage redevelopment of hotels and motels in Marathon; and

WHEREAS, the City recognizes the changing trend in the leisure and hospitality industry is for larger hotel and motel suites to provide family accommodations that include separate sleeping areas for adults and children, additional living spaces, and food preparation facilities, all of which encourage visitors to stay for longer periods of time; 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 City 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 and amending the Land Use District (Zoning) Regulations; and

WHEREAS, the Owner desires to construct seventy-two (72), two-bedroom, two and one-half bath hotel suites of 1,500 square feet each (heated and cooled space) in accordance with the City's Ordinance 2004-017; and

WHEREAS, Owner seeks to memorialize eight (8) Conditional Redevelopment Units that result as a reduction of hotel units from the eighty (80) one-bedroom units existing on the site to the proposed seventy two (72) two-bedroom units requested as part of this Agreement in accordance with the requirements of Ordinance 2004-017; and

WHEREAS, the Owner desires to make a contribution for the provision of affordable housing in the City; and

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

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

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

WHEREAS, Owner has provided public notice of the parties intent to consider entering into this Agreement by advertisement published in a newspaper of general circulation and readership in Marathon, posting the Property subject to this Agreement, and mailed notice to the persons and entities shown on the most recent Monroe County Tax Roll to be the owners of property lying within 300 feet of the boundaries of the Property subject to this Agreement; and

WHEREAS, the Marathon Planning Commission held a public hearing on__February 20, 2007, 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__June 12 and June 26, 2007, 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 Key Colony Bay Hotel Property consistent with the City's Comprehensive Plan and Objective 1-3.3 of the City of Marathon Comprehensive Plan (effective date July 7, 2005, as amended).

B. To secure the ability to construct seventy-two (72) 1,500 square foot two bedroom suites as defined in Section 9.5-4(R-17)(d)2 of the City's LDRs as transient residential dwelling units and redevelop a portion of existing commercial square footage on the Property consistent with the LDRs and the Comprehensive Plan; and

C. To memorialize and track the eight (8) Conditional Redevelopment Units that result as a reduction of the eighty (80) existing transient residential dwelling units and to allow for future authorization of the construction of said units 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.

D. To reserve the 487 square feet of unused, but lawfully established, commercial square footage.

E. To secure the ability to further lessen the Property's environmental impacts by removing the existing wastewater treatment plant, installing a WTNR Facility or connecting to City sewer if available at time of construction, and bringing the development on the Property into compliance with setback, open space, bufferyard and other applicable LDRs.

F. To provide a donation to the City as specified herein for the construction of affordable and/or employee housing for the permanent residents of Marathon, as identified by the City Council, for the use and benefit of the citizens of Marathon.

III. DEFINITIONS.

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

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

"City Code", "Code" or "LDRs" shall refer to the Code of Ordinances of the City of Marathon.

"Comprehensive Plan" shall refer to the City of Marathon's Comprehensive Plan, and shall be deemed to include Future Land Use Element Objective 1-3.3 and implementing policies in the Comprehensive Plan effective July 7, 2005, as amended. Objective 1-3.3 provides that the City shall evaluate potential redevelopment areas. Implementing Policy 1-3.3.1 provides that redevelopment plans shall (a) prevent negative impacts on the coastal ecosystem by directing development away from environmentally sensitive lands and critical habitat; (b) revitalize existing commercial areas; (c) promote safe and efficient vehicular, bicycle and pedestrian movement; (d) prevent or minimize the City's cost to provide infrastructure; (e) mitigate incompatible commercial activity where commercial activity is adjacent to established residential neighborhoods; (f) enhance the unique character of the City's commercial land uses through incentives for bufferyards and landscaping; and (g) facilitate within the City the creation of aesthetically pleasing commercial spaces outdoors while limiting light industrial uses, outdoor storage and sales, and outdoor retail sales as an accessory use of land; and (h) provide for affordable/work force housing.

"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.

“Home Owners Association” means the association created pursuant to Chapter 718, Florida Statutes, for the operation and management of the common elements of the Property.

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

“Property” or **“Key Colony Bay Property”** shall refer to one or more of the parcels of real property located in Marathon subject to this Agreement, as more specifically described in Exhibit A.

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

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

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

IV. STATUTORY AND CODE REQUIREMENTS.

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

A. Legal Description and Ownership.

Key Colony Bay Development, LLC, a Florida limited liability company is the sole owner of the Property. The Property that is the subject of this Agreement is described in Exhibit A, and shown on the boundary survey in Exhibit B.

B. Duration of Agreement.

This Agreement shall remain in effect for nine (9) years from its effective date as defined herein. It is the intention of the City and the Owner to promote rational and timely development of the Property to maximize best land use management practices consistent with the landowner's rights and commitments described herein.

C. Permitted Uses.

1. The development permitted on the Property shall consist of those uses set forth herein, as identified on the site plan dated December 4, 2006 and attached hereto as Exhibit C, and incorporated herein by reference. The permitted uses are as follows:

- a. Seventy-two (72) two-bedroom, 2.5 bathroom, 1,500 square feet of air conditioned space, transient residential dwelling units; inclusive of storage, housekeeping and engineering facilities, contained within the redeveloped Property. The units will be used for transient residential purposes. A deed restriction will be recorded in the Public Records of Monroe County restricting the Property to transient use only and prohibiting the placement of a homestead exemption on the transient units. A deed restriction shall also be recorded in the Public Records of Monroe County prohibiting live-aboards in the marina portion of the Property.
- b. A 2,760 square foot lobby and administration area;
- c. A 2,400 square foot restaurant;
- d. A 1,797 square foot spa; and,
- e. A 479 square foot fitness center.

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 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 reinitiate the prior approved use so long as such development is in compliance with this Agreement.

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

- a. Exhibit A: Legal Description of the Property
- b. Exhibit B: Improvement Location and Boundary Survey of the Property
- c. Exhibit C: Site Plan dated December 4, 2006.

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

D. Public Facilities

1. The Florida Keys Aqueduct Authority provides domestic potable water.

2. Electric service is provided by the Florida Keys Electric Co-Op.
3. Solid waste service is provided by Marathon Garbage Service.
4. Fire service is provided by the Marathon Fire Department.
5. Owner shall provide wastewater and sewage collection and disposal via one (1) onsite WTNR supporting the Property which will be compliant with 2010 standards and as identified on Exhibit C (proposed site plan), approved by the Florida Department of Environmental Protection at the time of building permit application or by connecting to City sewer if available at time of construction.
6. Educational Facilities. The transient, resort, and commercial development of the Property, as contemplated by this Agreement, does not impact educational facilities. The Property is currently served by the following schools operated by the Monroe County School Board: Marathon High School, Marathon Middle School and Stanley Switlik Elementary School.
7. Recreational Facilities. The Property includes recreational facilities for visitors and guests of the hotel currently on site and is being redeveloped at a lower density than existed on the site prior to the redevelopment. Therefore, redevelopment of the Property will have no impact on public recreation facilities.
8. Stormwater. A stormwater management system which meets all applicable local, state and federal requirements shall be constructed onsite as part of the site redevelopment. This system will retain, detain, and treat stormwater on the Property and therefore will provide a substantial benefit to water quality in the area. There shall be no direct discharge to the City of Marathon nearshore waters.
9. 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 City 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 the City.

E. Affordable Housing.

Owner shall provide eight (8) affordable/workforce housing units, pay a total of \$800,000 to the City for affordable housing, or a combination thereof. The dwelling units are required to have a certificate of occupancy prior to or concurrent with the issuance of a certificate of occupancy for the transient dwelling units, if applicable. Deed restrictions, limiting the use to affordable residential dwelling units for any such units shall be recorded in the public records of Monroe County and shall be effective for fifty (50) years from the date of recordation, and shall

automatically renew for two (2) 50-year periods. The affordable housing contribution (either cash payment or delivery of housing units) is required to be made upon the issuance of the first demolition permit in connection with the development on the Property or within twelve (12) months from the effective date of this Agreement, whichever occurs first. If applicable, Owner will enter into an agreement with the Middle Keys Community Land Trust ("MKCLT") or similar entity for any affordable/workforce housing units 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.

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. Major Conditional Use approval;
3. Application for, 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 management 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, applicable LDRs and the Principles for Guiding Development set forth at Section 380.0552(7), Florida Statutes.

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

The City acknowledges that, by the covenants and stipulations of this Agreement, Owner may redevelop seventy-two (72) ROGO-exempt two bedroom 2.5 bath, 1,500 square foot transient residential dwelling units on site. Furthermore, eight (8) ROGO-exempt Conditional Redevelopment Units are 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 are 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 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 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.

1. 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 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.

2. Pursuant to Section 163.3233, Florida Statutes, the City may apply subsequently adopt 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 shall apply to the development that is subject to this Agreement;
- c. the City 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.

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

3. 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:

1. 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.
2. 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 Key Colony Bay Hotel, the population densities, and the building intensities and height and shall specify a place where a copy of the Agreement can be obtained.
3. 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.
4. 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, in all material respects, with the terms of this Agreement.
5. This Agreement may be terminated by mutual consent of the parties.

O. Breach of Agreement and Cure Provisions.

1. 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, in all material respects; 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.

2. 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.

3. 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.

4. 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 any 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:

Key Colony Bay Development, LLC
c/o The Peebles Corporation
Attention: Stuart K. Hoffman
550 Biltmore Way, #970

Coral Gables, Florida 33143
Telephone: (305) 442-4342

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

Michael J. Marrero, Esquire
Bercow and Radell, P.A.
200 S. Biscayne Boulevard, Suite 850
Miami, Florida 33131
Telephone: (305) 377-6238

TO THE CITY:

Michael 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:

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

Q. Annual Report.

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

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 not be assigned without the written consent of the parties.

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 or as soon thereafter as Owner has received the Agreement back from recording. 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.

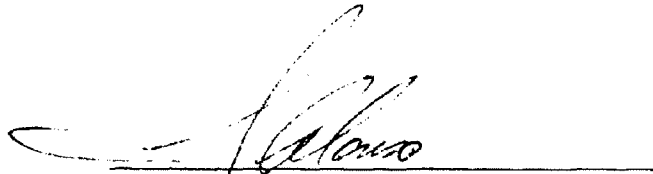
IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year below written. Signed, sealed, and delivered in the presence of:

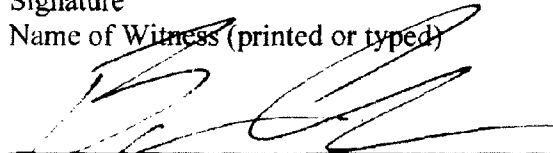
WITNESS:

OWNER:

KEY COLONY BAY DEVELOPMENT, LLC

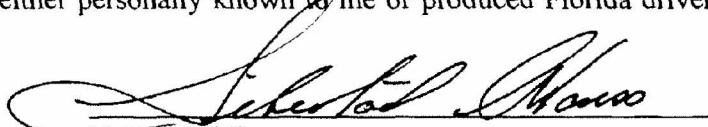
By  Authorized Agent


Signature
Name of Witness (printed or typed)

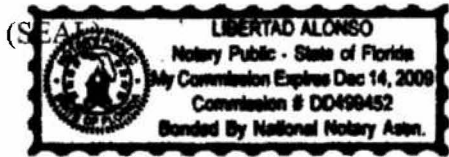

Signature
Name of Witness (printed or typed)

STATE OF FLORIDA COUNTY OF MONROE

The foregoing Agreement was acknowledged before me on this 23 day of July 2007, by _____, and the respective witnesses, _____ and _____ either personally known to me or produced Florida drivers licenses as identification.



Notary Public



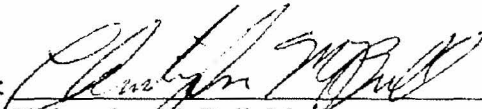
Name (typed, printed or stamped):
My commission expires:
On the 14 day of December, 2007.

The City Council of the City of Marathon approved this Agreement by Resolution No. 2007-90.

CITY OF MARATHON

7-11-07

Date

By: 

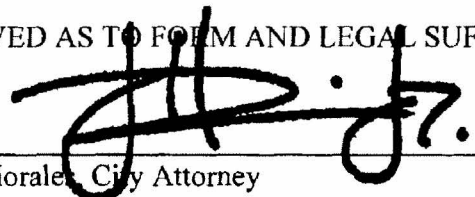
Christopher M. Bull, Mayor

ATTEST:



Diane Clavier, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



Jimmy Morales, City Attorney

EXHIBITS TO KEY COLONY BAY RESORT DEVELOPMENT AGREEMENT

Exhibit A: Legal Description of the Property

Exhibit B: Improvement Location and Boundary Survey of the Property

Exhibit C: Site Plan

Exhibit A

Part of Lot 1, Section 5, Township 66 South, Range 33 East, Fat Deer Key,

LEGAL DESCRIPTION AS SUBMITTED BY CLIENT:
OFFICIAL RECORDS BOOK 343, PAGE 500
EXHIBIT "A"

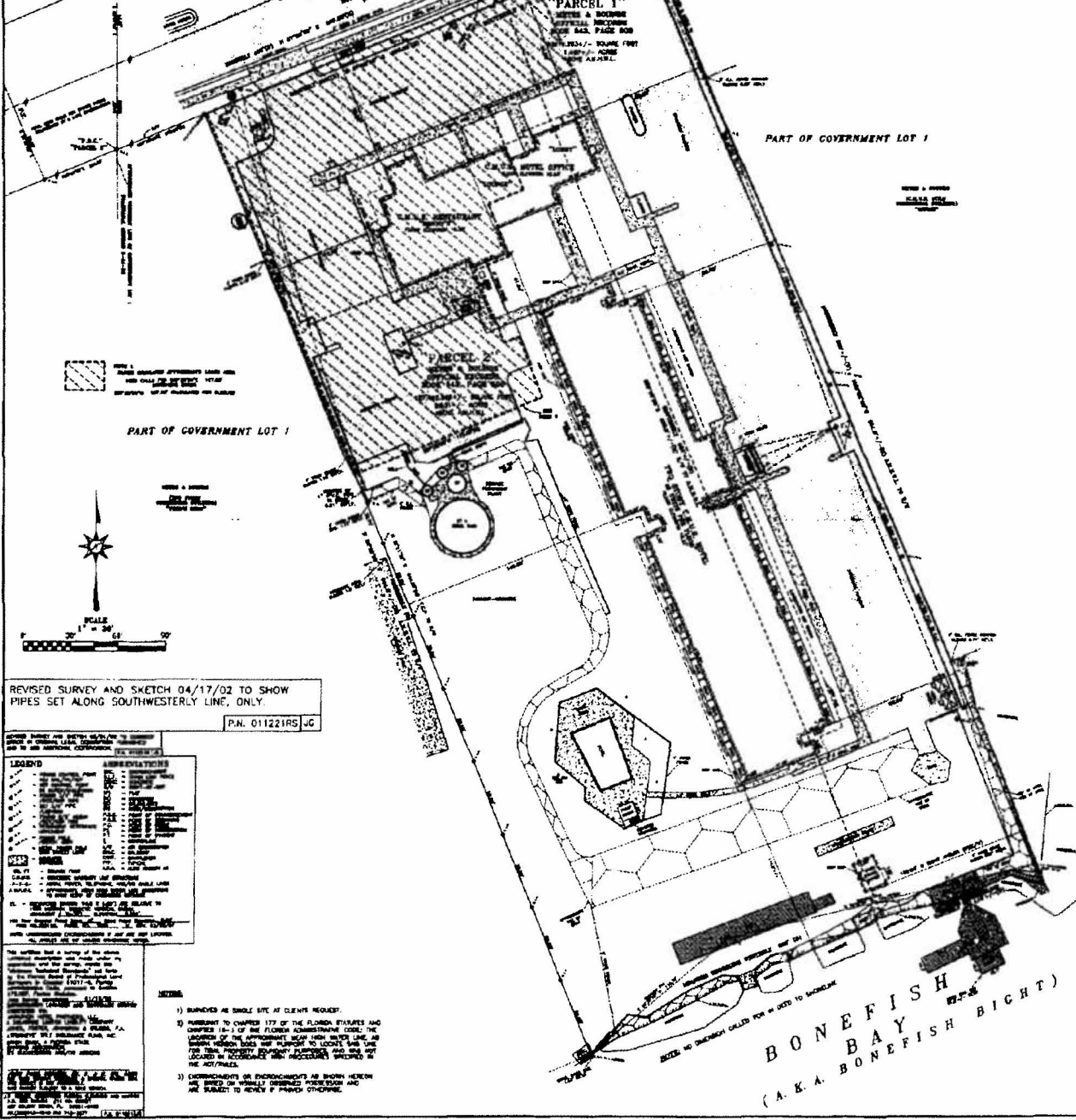
REVISION OF BOUNDARY SURVEY
CITY OF MIAMI

Beginning at a point where the centerline of U.S. Hwy 1 (Overseas Highway) intersects the North-South section line between fractional sections 4 and 5 Township 58 S. R. 33 E. 04 of the land herein described being in Government Lot 1 of said Fractional Section 5 of Monroe County, Florida; thence Westerly along said centerline of said Highway 80 feet to a point, said point being on the Southern right-of-way line of said highway and being the Point of Beginning of the Parcel herein described; thence continuing Southerly, at right angles to said centerline 330 feet or less, to the shoreline of Biscayne Bay, which here forms the Southern boundary of this property herein described; thence Westerly measuring said shoreline 110 ft. more or less, to a point, said point being in a line 100 ft. Easterly and measured at right angles to the first southerly course of this traverse; thence Northerly along to said first southerly course 820 ft. more or less, to a point, said point being in the said Southern right-of-way line of said highway; thence Southerly along said right-of-way line 100 ft. to the Point of Beginning; PARCEL 2.

Beginning at a point on or near the Westerly line of Government Lot 1, Sec. 5, Township 58 South, Range 33 East, said point being on the Southern boundary of U.S. Highway No. 1 (Overseas Highway) and being marked by a 100-foot offset nail and bubble cap in the center of said Highway and offset steel pins on the other side thereof; thence Easterly along the said Southern boundary of said highway 100 feet to a point, said point being marked by a 100-foot offset nail and bubble cap in the center of said highway and offset steel pins on the other side thereof; said point also being the point of beginning of the property hereafter described; thence Southerly perpendicular to said said course to the Western boundary of Biscayne Bay; thence measuring the shoreline of said Biscayne Bay in a westerly direction to a point which is 200 feet from the said said course, measured at right angles; thence Northerly parallel to a westerly Southerly course to a point on the Southern boundary of said U.S. Highway No. 1; thence Easterly along the said Southern boundary of said Highway 200 feet to a point of beginning, lying and being in Monroe County, Florida.

SUBJECT TO AN EASEMENT OVER THE ABOVE TWO PARCELS AS DESCRIBED IN OFFICIAL RECORDS BOOK 800, PAGE 1303.

ALSO SUBJECT TO A LEASE AS DESCRIBED IN OFFICIAL RECORDS BOOK 1222, PAGE 1923, (SEE ATTACHMENT).



REVISED SURVEY AND SKETCH 04/17/02 TO SHOW
PIPES SET ALONG SOUTHWESTERLY LINE, ONLY.
P.N. 011221RS JG

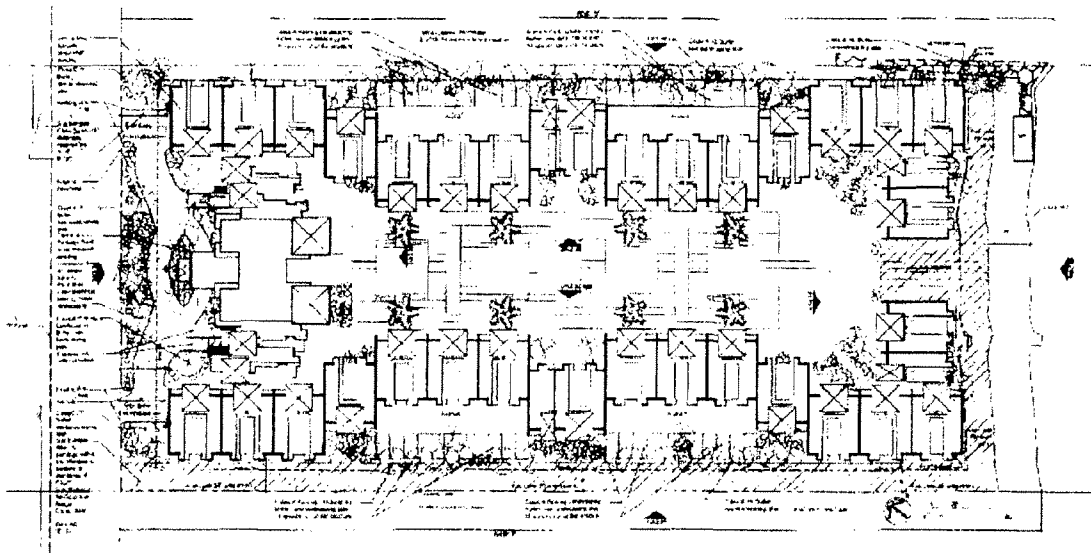
LEGEND

SYMBOL	DESCRIPTION
(Symbol)	Right of Way Line
(Symbol)	Survey Line
(Symbol)	Property Line
(Symbol)	Boundary Line
(Symbol)	Centerline
(Symbol)	Offset Line
(Symbol)	Point of Beginning
(Symbol)	Corner Mark
(Symbol)	Survey Station
(Symbol)	Survey Point
(Symbol)	Survey Nail
(Symbol)	Survey Bubble
(Symbol)	Survey Pin
(Symbol)	Survey Stake
(Symbol)	Survey Flag
(Symbol)	Survey Chain
(Symbol)	Survey Tape
(Symbol)	Survey Instrument
(Symbol)	Survey Equipment
(Symbol)	Survey Tools
(Symbol)	Survey Materials
(Symbol)	Survey Supplies
(Symbol)	Survey Consumables
(Symbol)	Survey Accessories
(Symbol)	Survey Additions
(Symbol)	Survey Extras
(Symbol)	Survey Misc.
(Symbol)	Survey Other
(Symbol)	Survey Unknown

NOTES:

- 1) BOUNDARIES AS SHOWN ARE SUBJECT TO CHANGE.
- 2) SUBJECT TO CHAPTER 177 OF THE FLORIDA STATUTES AND CHAPTERS (A-1) OF THE FLORIDA ADMINISTRATIVE CODE. THE SURVEYOR'S OFFICE SHALL BE RESPONSIBLE FOR LOCATING THE BOUNDARIES OF THE PROPERTY AND FOR LOCATING THE POINTS OF BEGINNING AND THE POINTS OF INTERSECTION OF THE BOUNDARIES.
- 3) ENCROACHMENTS OR ENCROACHMENTS AS SHOWN HEREON ARE BASED ON VISUAL OBSERVATION AND ARE SUBJECT TO CHECK BY PARTY CHECKING.

BONEFISH BAY
(A.K.A. BONEFISH BIGHT)



Site Plan