

Sponsored by: Burnett

**CITY OF MARATHON, FLORIDA
RESOLUTION 2008-161**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY SH MARATHON, LTD FOR A DEVELOPMENT AGREEMENT, PURSUANT TO CHAPTER 102, ARTICLE 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “DEVELOPMENT AGREEMENT”, AUTHORIZING THE DEVELOPMENT OF A HOLIDAY INN EXPRESS AT THE PROPERTY LOCATED AT 13201 OVERSEAS HIGHWAY, OCEAN, NEAREST MILE MARKER 54, WHICH IS LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 2, FAT DEER KEY, SECTION 5, TOWNSHIP 66, RANGE 33, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00100260-000100, AND PROVIDING FOR CONDITIONS AND REQUIREMENTS OF DEVELOPMENT, INCLUDING, BUT NOT LIMITED TO, BUFFERS, BUILDING HEIGHTS, SETBACKS, AND OTHER REQUIREMENTS

WHEREAS, SH Marathon, LTD (the “Owner”) owns approximately 5.09 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 a Holiday Inn hotel containing 134 transient units and related amenities; 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 Owner 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 redevelopment will encourage owners of other properties to renovate or upgrade their sites, producing greater aesthetic and economic benefits to the City, providing enhanced environmental and storm hazard protection; and

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

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

WHEREAS, the City has held public hearings to accept and encourage public input with respect to the proposal by the Owner contained in the proposed Development Agreement (the “Agreement”), and has considered such public input; and

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

WHEREAS, the Owner has provided public notice of the parties’ intent to consider entering into the Agreement by publishing an advertisement in a newspaper of general circulation and readership in the City, posting the Property subject to this Agreement, and mailing notice to the persons and entities shown on the most recent Monroe County Tax Roll to be the owners 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 September 29, 2008, 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 14, 2008 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, THAT:

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


Section 2. The Development Agreement between the City and SH Marathon, LTD, in substantially the form attached hereto as 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 take effect immediately upon its adoption.

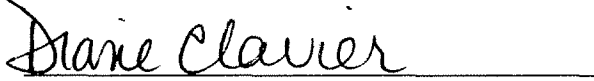
PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 28th day of October, 2008.

THE CITY OF MARATHON, FLORIDA


Edward P. Worthington, Mayor

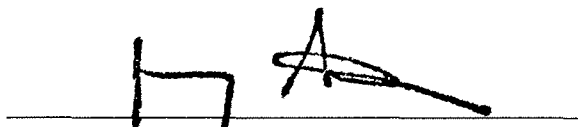
AYES: Vasil, Bull, Tempest, Worthington
NOES: None
ABSENT: Cinque
ABSTAIN: None

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

(Space Reserved for Recording)

Development Agreement for
Holiday Inn Express
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 SH Marathon, Ltd., 506 Fleming Street, Key West, FL 33040 (herein referred to as “Owner”), pursuant to *Chapter 102, Article 8* of the Land Development Regulations of the City of Marathon, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes, and is binding on the effective date as set forth herein.

Witnesseth:

Whereas, Owner is the owner of the real property located in Marathon, Florida, described in Exhibit “A” hereto, which is the location of the Holiday Inn Express; and

Whereas, said Holiday Inn Express consists of 134 transient hotel units and 6300 square feet of commercial uses, including a restaurant and bar, and, in addition, 3300 square feet of diveshop and watersport commercial uses, for a total of 9600 square feet of commercial uses, and a swimming pool, bulkhead, and dock, all of which suffered extensive hurricane damage in 2005 that rendered the Holiday Inn Express un-useable for commercial hotel use; and

Whereas, the real property described in Exhibit “A” is designated on the City’s Future Land Use Map (FLUM) as Mixed Use Commercial (MUC), and is zoned as Mixed Use, which land use designation and zoning allow the property to be used for transient rentals; and

Whereas, Owner desires to re-develop and restore the 134 transient uses, and 9600 square feet of commercial uses and supporting uses, in kind; and

Whereas, the City's affordable housing requirement for transient uses, as set out in Section 104.25 of the City of Marathon Land Development Regulations requires that new transient development provide affordable housing in an amount equal to 20% of the square footage of new transient development, unless the requirement is reduced pursuant to said Resolution; and

Whereas, the City Council of Marathon considered all the facts and circumstances of this case and determined, in review of City of Marathon Resolution 2008-125, that said facts and circumstances justify a reduction of the affordable housing requirement such that no affordable housing is required for the re-development authorized herein (subject to the conditions contained herein), with the exception of a one-time voluntary donation of two-thousand dollars (\$2000.00) into the City of Marathon's Affordable Housing Fund due at the time of the issuance of the first building permit; and

Whereas, the Marathon Planning Commission held a public hearing on the 29th day of September, 2008, to consider this agreement, and recommended approval of this agreement; and

Whereas, the City Council of Marathon held public hearings on the 14th day and 28th day of October, 2008, 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 of Marathon's Comprehensive Plan and Objective 1-3.4 of the City of Marathon's Comprehensive Plan;
- B. To secure the ability to: redevelop the site by replacing the existing 134 transient hotel units with 134 new transient hotel units and replacing in kind 9600 total square feet of commercial use with 9600 square feet of new commercial use and redeveloping the existing swimming pool on the site; and, maintaining the existing bulkhead, and dock;

III. Definitions.

For the purposes of this Agreement, all terms shall have the definitions as found in the City of Marathon's Land Development Regulations, Comprehensive Plan and in Chapter 163, Florida Statutes, or in other applicable Florida Statutes, and if not defined in the Code, Plan, or Statute, the term shall be understood by its usual and customary meaning.

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.

Holiday Inn Express is the Owner of the Property, which Property is the subject of this Agreement, as described in Exhibit A, Improvement Location and Boundary Survey. There are no other legal or equitable owners of the subject property known to the parties to this Agreement.

B. Duration of Agreement.

The Owner shall have a period of eighteen (18) months 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 Certificates of Occupancy and/or Final Inspections for structures on the Property as shown on the Site Plan. This Agreement will be reviewed by the City Council two (2) years from the Effective Date to evaluate the progress made on the redevelopment. If the City Council finds that no building permits have been issued or significant progress has not been made (as determined by the City Council in its reasonable discretion), then the terms of this Agreement may be re-evaluated. In connection therewith, the parties hereto acknowledge that the City has waived any affordable housing requirement pursuant to Section 104.25(A)(4) of the City's Land Development Regulations. If the City Council finds that no building permits have been issued or significant progress has not been made two (2) years from the Effective Date, then the City Council shall be entitled hereunder to require compliance with Section 104.25(A)(4) of the LDRs prior to the issuance of any additional building permits and/or any Certificate of Occupancy.

This Agreement may be renewed or extended as provided herein. If the Owner has not complied with the terms of this section, this Agreement may 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 conceptual site plan attached hereto as Exhibit B, and incorporated herein by reference. The permitted uses are as follows:

- i. Transient Units: 134 transient hotel units;
- ii. Commercial Floor Area: 9600 square feet, including restaurant, bar, marina commercial and support facilities; and,
- iii. Other structures: redevelopment of the existing swimming pool on the site and maintenance of existing bulkhead and associated dock

2. For the duration of this Agreement, the Parties agree that any and all of the approved redevelopment 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 redevelopment 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 disaster, the 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:

- Exhibit A: Boundary Survey
- Exhibit B: Conceptual Site Plan

4. 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 and as defined by the LDRs.

5. The Owner shall execute and record in the public records of Monroe County a Declaration of Covenants 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 Units constructed on the property; and which shall require the occupants of all Transient Units on the property to comply with Hurricane Evacuation Requirements set forth in Policy 1-2.2.1 of the Future Land Use Element of City's Comprehensive Plan, in effect or as amended.

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. Owner shall provide wastewater and sewage collection and disposal via one (1) onsite WWTF supporting the Property which will be compliant with 2010 standards and as identified on Exhibit B (proposed site plan), approved by the Florida Department of Environmental Protection at the time of building permit application or by connecting to the City sewer if available at time of construction.

5. Educational Facilities. The redevelopment of transient use as contemplated by this Agreement will not impact education facilities.

6. Recreational Facilities. The Property includes onsite recreational facilities for visitors and guests of the property. Therefore, redevelopment of the property will have no impact on public recreation facilities.

7. 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.

8. Any increased impacts on Public Facilities or Public Services attributable to each unit of the development, and the cost of capital improvement to meet the associated increased 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 of Marathon Impact Fees required by the 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 reasonable impact fee ordinance adopted by the City within twenty-four (24) months after the Effective Date of the Agreement, providing such ordinance applies equally and uniformly to all redevelopment in Marathon.

9. Fire Protection. The Owner shall provide fire hydrants 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.

10. Affordable Housing. The Owner agrees to make a one-time voluntary donation of \$2000.00 into the City of Marathon's Affordable Housing Fund, due and payable on or before the issuance of the first building permit hereunder.

E. Local Development Permits.

The following is a list of all Development Permits approved or needed to be approved for the redevelopment 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 Plan approvals.
4. Building and related construction permits for all structures utilized for principal use or accessory use, 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 Stormwater runoff.

Nothing in this Agreement shall preclude the parties from applying additional conditions, by mutual agreement, during Final Site Plan review or permitting.

F. Finding of Consistency.

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

G. Redevelopment and Replacement of BPAS Exempt Units and Square Footage

The Parties acknowledge that there existed on the Property a total 134 transient hotel units and 9600 square feet of commercial space, all of which are lawfully established and BPAS exempt. The City acknowledges that, by the covenants and stipulations of this Agreement, the Owner may: redevelop 134 transient hotel units and 9600 square feet of commercial space.

H. Reservations or Dedications of Land for Public Purposes.

The parties anticipate that Owner may reserve or dedicate land for public purposes in connection with the Redevelopment, 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 may be requested by the City's Comprehensive Plan and City Code. Such reservations or rededications may include, by way of example, easements necessary for the provision of stormwater, utility, and wastewater services to the Property.

I. Mutual Cooperation.

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

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

The redevelopment shall be developed in accordance with all required permits and in accordance with all applicable provisions of the City's Comprehensive Plan and Land Development Regulations in effect on the effective date 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 the other regulatory entities for that building. The City agrees that any permits or certificates of occupancy to be issued by the City shall not be unreasonably withheld or delayed.

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

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

L. Laws Governing.

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 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.

2. 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.

Provided, 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 necessary to comply with the relevant state or Federal laws. However, this Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common law.

M. Amendment, Renewal and Termination.

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

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 163.3237, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirement 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 fifteen (15) 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.
3. This Agreement may be terminated by Owner or its successor(s) in interest following a breach of this Agreement by the City upon written notice to the City as provided in this Agreement.
4. Pursuant to Section 163.3235, Florida Statutes, this Agreement may be revoked or modified by the City if, on the basis of substantial competent evidence, the City finds there has been a failure by Owner to comply with the terms of this Agreement.
5. This Agreement may be terminated by mutual consent of the parties.

N. 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 shall be considered a material breach of this Agreement:

- (i) Failure to comply with the provisions of this Agreement;
- (ii) 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 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 ninety (90) days from the date of receipt of the notice to cure the breach, or negotiate an amendment to this Agreement. The following events shall be considered a material breach of this Agreement:

- (i) Failure to comply with the provisions of this Agreement;
- (ii) Failure to timely process any application for Site Plan approval or other development authorized by this Agreement.

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

4. Notwithstanding any other provisions of this Development Agreement to the contrary, neither party hereto shall be deemed to be in default under this Development Agreement where delay in the construction or performance of the obligations imposed by this Development Agreement are caused by war, revolution, labor strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions, embargoes, litigation (excluding litigation between the City and the Owner), tornadoes, hurricanes, tropical storms or other severe weather events, or any other causes beyond the control of such party. The time of performance hereunder, as well as the term of this Development Agreement, shall be extended for the period of any forced delays or delays caused or resulting from any of the foregoing causes. The Owner must submit evidence to the City's reasonable satisfaction of any such delay.

O. Notices.

All notices, demands, requests, or replies provided for or permitted by this Agreement, including notification of a change of address, shall be in writing to the addressees identified below, and may be delivered by anyone of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Services 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:

Robert Spottswood

Holiday Inn Express
506 Fleming Street
Key West, FL 33040

Doc# 1723650
Bk# 2392 Pg# 2207

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

Robert C. Apgar, Esq.
Greenberg Traurig, P.A.
101 E. College Ave.
Tallahassee, FL 32302
(850) 222-6891

TO THE CITY:

City Manager
City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

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

Jimmy Morales, Esq.
City Attorney, City of Marathon
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200 Miami, Florida 33130
(305) 789-3200

P. 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.

Q. Enforcement.

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

R. Binding Effect.

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

S. Assignment.

This Agreement may not be assigned without the written consent of the parties, which consent shall not be unreasonably withheld.

T. Drafting of Agreement.

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

U. Severability.

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

V. Applicable Laws.

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

W. Litigation/Attorneys 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 reasonable attorney's 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 THIS AGREEMENT.

X. Use of Singular and Plural.

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

Y. Duplicate Originals; Counterparts.

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

Z. Headings.

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

AA. Entirety of Agreement.

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

BB. Recording; Effective Date.

The Owner shall record this Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date the last party signs 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 at the Department of Community Affairs, Division of Community Planning, 2555 Shumard Oak Boulevard, Tallahassee FL 32399-2100 by hand delivery or 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 and received by the Owner or his agents. Owner shall also provide a copy of the recorded Agreement to the City at 9805 Overseas Highway, Marathon, Florida 33050, within the same time period. This Agreement shall become effective thirty (30) days after the date the State Land Planning Agency receives its copy pursuant to Section 163.3239, Florida Statutes.

CC. Date of Agreement.

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

[REST OF PAGE INTENTIONALLY LEFT BLANK]

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:

Martha A. Galbraith
Signature MARTHA A. GALBRAITH

Name of witness (printed or typed)

Luz M. Armendariz
Signature LUZ M. ARMENDARIZ

Name of witness (printed or typed)

OWNER

Holiday Inn Express

By: *[Signature]*

Name: R. SPOTTISWOOD

Manager/Member

*PRES. SH MARATHON, INC.
GENERAL PARTNER*

STATE OF FLORIDA
COUNTY OF MONROE

The following instrument was acknowledged before me on this 18th day of Dec., 2008, by ROBERT A. SPOTTISWOOD as Manager/Member of SH marathon, Ltd., who is personally known to me or who produced as identification, and who did/did not take an oath.



Martha A. Galbraith
Notary Public, State of Florida At Large
My commission expires: 12/1/2011

On the 29 day of October, 2008, The City Council of the City of Marathon approved this Agreement by Resolution No. 2008-161



Clavier

Clavier, City Clerk

CITY OF MARATHON
By: *Edward P. Worthington*

MAYOR Edward P. Worthington

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

[Signature]

Jimmy Morales, City Attorney