

**CITY OF MARATHON, FLORIDA
RESOLUTION 2009-12**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY PETER ROSASCO, D/B/A SUNDANCE RESORT AND MARINA, LLC 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 RESORT AND MARINA AT THE PROPERTIES LOCATED AT 2146 AND 2188 OVERSEAS HIGHWAY, GULF, NEAREST MILE MARKER 48, WHICH IS LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 2, PART BAY BOTTOM ADJACENT TO PART OF LOT 2, AND PART STATE ROAD 4A, KEY VACCAS, SECTION 9, TOWNSHIP 66, RANGE 32, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00102900-000000, 00102810-000000, AND 00102810-000100. THE DEVELOPMENT AGREEMENT FURTHER STIPULATES THE CONDITIONS AND REQUIREMENTS OF DEVELOPMENT, INCLUDING BUT NOT LIMITED TO, BUFFERS, BUILDING HEIGHTS, SETBACKS, AND OTHER REQUIREMENTS.

WHEREAS, on the 15th day of December, 2008, the City of Marathon (the “City”) Planning Commission (the “Commission”) and on the 13th and 27th day of January, 2009, the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by Peter Rosasco, d/b/a Sundance Resort and Marina, LLC (the “Applicant”), for a development agreement permit pursuant to Chapter 102, Article 8 of the City Code (the “Code”); and

WHEREAS, the purpose of the development agreement is to assure a developer that, upon receipt of his permits under this chapter, he may proceed in accordance with existing ordinances and regulations subject to the conditions of the development agreement at the property described in the application (the “Property”).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

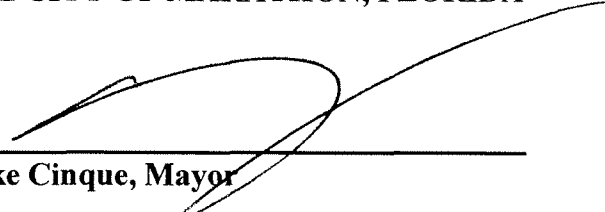
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves this Development Agreement, a copy of which is attached hereto as Exhibit "A", granting approvals to Peter Rosasco, d/b/a Sundance Resort and Marina, LLC for the development of 80 transient units, 18,657 square feet of commercial floor area, swimming pool and 34 slip marina as further described in the Agreement. The Director of Planning is authorized to sign the development order on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 27th day of January, 2009.

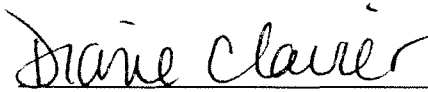
THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

AYES: Snead, Worthington, Ramsay, Cinque
NOES: None
ABSENT: None
ABSTAIN: Vasil


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

RE Nos. 00102900-000000;00102810-000000;00102810-000100

Doc# 1730142 02/10/2009 3:25PM
Filed & Recorded in Official Records of
MONROE COUNTY DANNY L. KOLHAGE

(Space Reserved for Recording)

Development Agreement for
Sundance Resort & Marina, LLC
Marathon, Florida

Doc# 1730142
Bk# 2399 Pg# 1475

This Development Agreement (“Agreement”) is entered into by and between the City of Marathon, a Florida Municipal Corporation (herein referred to as “City”), and Sundance Resort & Marina, LLC, a Florida limited liability company (herein referred to as “Owner”), pursuant to *Chapter 102, Article 8* of the Land Development Regulations of the City of Marathon (the City’s Land Development Regulations herein referred to as the “LDRs”), 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 at 2146 and 2188 Overseas Highway in Marathon, Florida at approximate mile marker 48, described in Exhibit A hereto (the “Property”).

Whereas, the Property consists of three parcels, with one parcel (RE No. 00102900-000000) being the site of the former Sundance Trailer Park from which all structures have been removed, another parcel (RE No. 00102810-000000) containing several derelict buildings formerly used as retail, warehousing and marina support, none of which are currently being used, and the third parcel (RE No. 00102810-000100) being bay bottom; 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 (MU), which land use designation and zoning allow for the uses proposed herein with conditional use approval; and

Whereas, the City has recognized existing development on the Property as hereinafter described in this Agreement pursuant to Letters of Understanding issued on June 17, 2005 and September 26, 2006; and

Whereas, Owner desires to re-develop the scarified Property with the construction of an 80 unit, 62,009 square foot Hampton Inn Hotel with 10,000 square feet of retail space, an 8,657 square foot restaurant and a marina consisting of 34 wet slips; and

Whereas, Owner will need to transfer additional transient units to the Property pursuant to Section 107.14 of the LDRs relating to the transfer of building rights from one property to another; and

Whereas, Owner will need to comply with the City's affordable housing requirement for transient uses, as set out in Section 104.25 of the LDRs, which 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 Planning Commission held a public hearing on the 15th day of December, 2008, to consider this Agreement, and recommended approval of this Agreement; and

Whereas, the City Council held public hearings on the 13th and 27th days of January, 2009, 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 property in the City, and will further the health, safety and welfare of the residents of the City.

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 of the City's Comprehensive Plan;

- B. To secure the ability to redevelop the site replacing the 46 transient units previously existing on the property with 80 new transient hotel units and replacing the existing and formerly existing 35,724 square feet of commercial space with 18,657 square feet, consisting of 10,000 square feet of commercial space and an 8,657 square foot restaurant and redeveloping the Property in accordance with the terms and conditions hereof and other required approvals and permits referenced herein;

III. Definitions.

For the purposes of this Agreement, all terms shall have the definitions as found in the LDRs, 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.

Owner is the owner of the Property, which Property is the subject of this Agreement, as described in Exhibit A. 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 two (2) years from the Effective Date of this Agreement to obtain the building permits for the hotel and the restaurant and five (5) years from the Effective Date of this Agreement to obtain Certificates of Occupancy for the hotel and restaurant; a period of five (5) years from the Effective Date of this Agreement to obtain a building permit for the commercial space and seven (7) years from the Effective Date of this Agreement to obtain a Certificate of Occupancy for the commercial space; and a period of seven (7) years from the Effective Date of this Agreement to obtain a building permit for the marina and ten (10) years from the Effective Date of this Agreement to obtain a Certificate of Occupancy and/or Final Inspections for the marina.

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; provided, however, that delays in the adherence to the schedule of construction that are occasioned by Acts of God or circumstances outside the control of the City or Owner shall not be grounds for termination so long as the Owner demonstrates reasonable progress in the schedule of construction as shown in the Annual Report(s) due hereunder.

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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 C, and incorporated herein by reference. The permitted uses are as follows:

- i. Transient Units: 80 transient hotel units;
- ii. Commercial Floor Area: 18,657 square feet consisting of 8,657 square foot restaurant and 10,000 square foot building for retail shops; and,
- iii. Other: 34 slip marina facility.

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 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, it's 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: Legal Description
- Exhibit B: Boundary Survey
- Exhibit C: Conceptual Site Plan

4. Maximum Building Height shall be thirty-seven (37) feet, as provided in Section 107.40 of the LDRs, with the exception of any architectural features depicted on the conceptual site plan which will require approval by the Director.

5. The Owner shall execute a binding instrument combining the two upland parcels of the Property described above for the purposes of redevelopment authorized under this Agreement. The Owner shall provide the proposed binding instrument and an Opinion of Title in a form acceptable to the City within thirty (30) days after the execution of this Agreement. Within fifteen (15) days thereafter, the City shall advise the Owner if the proposed Unity of Title and Opinion of Title are acceptable as to form and substance. Subsequently, the 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 thirty (30) days after the date thereof. The Owner shall provide copies of the recorded instrument, showing the book and page where recorded, to the City at 9805 Overseas Highway, Marathon, Florida 33050 (or at such place as otherwise designated in writing by the City) and to the Florida Department of Community Affairs, Division of Community Planning, 2555 Shumard Oak Boulevard, Tallahassee FL 32399-2100 within a reasonable time after recordation.

6. 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. Wastewater and sewage collection and disposal shall be by connection to the City's sewer collection and treatment system if available at the time any buildings on the Property are ready for hookup. If the City system is not ready at such time, wastewater and sewage collection and disposal shall be via an onsite wastewater treatment facility 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.
5. Educational Facilities. The redevelopment of transient use as contemplated by this Agreement will not impact educational 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's 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 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 the City.

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.

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E. Affordable Housing.

Owner shall comply with the requirements of Section 104.25 by providing on-site or off-site employee housing living space in amount equal to a minimum of (a) twenty percent of the approved floor area in guest units plus (b) the amount required for the increased density bonus. This amount, as calculated in the Conditional Use Application filed concurrently with Application for approval of this Development Agreement, equals 9,283 square feet. Owner will meet this requirement by deed restricting units currently owned by Owner or units to be built for moderate income levels. Owner shall dedicate such units for moderate income affordable housing by filing a document acceptable in form and substance to the City in the Public Records of Monroe County, Florida, prior to the issuance of any Certificate of Occupancy for buildings on the Property. The deed restriction shall be effective for fifty (50) years from the date of recordation, and shall automatically renew for two (2) 50-year periods.

F. Local Development Permits.

The following is a list of all Development Permits approved or needed to be obtained 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.
6. Any necessary Height Variance or other approvals for the architectural features.
7. Approval of transfer of 34 transient units to the Property.

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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 redevelopment permitted or proposed herein is consistent with and furthers the City's Comprehensive Plan, applicable LDRs and the Principles for Guiding Development set forth at Section 380.0552(7), Florida Statutes.

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

The Parties acknowledge that there existed on the Property a total 46 transient units and 35,724 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 46 transient hotel units and the requested 18,657 square feet of commercial space. City acknowledges that, as set forth in the June 17, 2005 Letter of Understanding, six (6) BPAS exempt single family dwelling units existed on the Property. Such six (6) BPAS exempt single family dwelling units and the remaining 17,067 square feet of BPAS exempt commercial space shall remain eligible for transfer off-site in compliance with Section 107.14 of the LDRs.

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 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.

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J. Mutual Cooperation.

City and Owner agree to cooperate fully 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 redevelopment shall be developed in accordance with all required permits and in accordance with all applicable provisions of the City's Comprehensive Plan and LDRs 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.

L. 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.

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 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.

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 163.3237, 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.

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 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.

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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 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:

Peter Rosasco
Sundance Resort & Marina, LLC
8085 Overseas Highway
Marathon, FL 33050
(305) 743-6586

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

John J. Wolfe, Esq.
John J. Wolfe, P.A.
2955 Overseas Highway
Marathon, FL 33050
(305) 743-9858

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

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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

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. Each Annual Report shall be presented to the Planning Commission by the Owner or authorized agent.

R. Enforcement.

In addition to any other remedies available at law, 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.

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, which consent 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.

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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 validity of the remaining provisions of this Agreement.

W. 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.

X. 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.

Y. Use of Singular and Plural.

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

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.

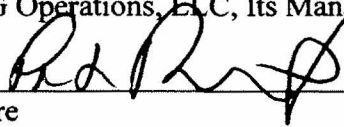
DD. Date of Agreement.

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:


OWNER
Sundance Resort & Marina, LLC
By: KIG Operations, LLC, Its Manager

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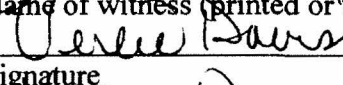


Signature
By: MEMBER

Peter Rosasco, Manager/Member

WITNESSES:


Signature
Ann J. Outlaw


Name of witness (printed or typed)


Signature
Verlie Davis

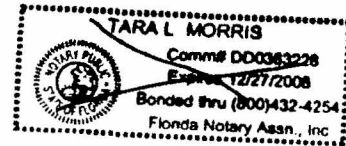
Name of witness (printed or typed)

STATE OF FLORIDA
COUNTY OF MONROE

The following instrument was acknowledged before me on this 3rd day of February, 2009, by Peter Rosasco as Manager/Member of KIG Operations, LLC, Manager of Sundance Resort & Marina, LLC, who is personally known to me or who produced _____ as identification, and who did/did not take an oath.




Notary Public, State of Florida At Large
My commission expires: 12/27/2012



On the 27th day of January, 2009, The City Council of the City of Marathon approved this Agreement by Resolution No. 2009-12

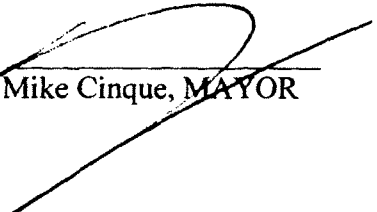
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ATTEST:



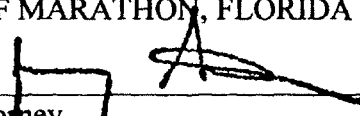
City Clerk

CITY OF MARATHON

By: 

Mike Cinque, MAYOR

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



City Attorney

PARCEL A:

Situated on Key Vaca in the County of Monroe and State of Florida and known as being a part of Government Lot 2, Section 9, T.66S., R.32E., and bounded and described as follows: Beginning on the northerly right-of-way line of Old State Road 4A a/k/a Old Overseas Highway; a/k/a Federal Highway; a/k/a Old Federal Highway at a point which bears West 300 feet from the North-South dividing line between Government Lots 1 and 2, Section 9, T.66S., R.32 E., said point being the Southeasterly corner of a tract of land conveyed to Iva Storm Davis by deed recorded in Official Record Book G-21, Page 417 of Monroe County, Public Records as described in paragraph one thereof; said point being also the intersection of said highway right-of-way line with the southerly prolongation of the easterly line of Davis Addition (Subdivision) as shown by plat recorded in Plat Book 2, Page 71 of Monroe County, Public Records; said point being also the southwesterly corner of a tract of land conveyed to Charles E. and Julia Forsythe by deed recorded in Book E-6, page 43 of Monroe County, Public Records;

Course 1:

Thence bear North parallel with the said dividing line between Government Lots 1 and 2, 778 feet to a point on the mean high water line within the northerly Florida Bayshore of Key Vaca;

Course 2:

Thence meander easterly and northerly along the said mean high water line within the northerly Florida Bay shore of Key Vaca 200 feet more or less, to a point thereon which bears East 100 feet from the terminus of 134.48 foot prolongation North of Course 1 hereof;

Course 3:

Thence bear South 46 feet to the mean high water within an easterly Florida Bay Shore of Key Vaca;

Course 4:

Thence meander southerly along the said mean high water line within said easterly Florida Bay shore of Key Vaca 45 feet, more or less, to a point thereon which bears South 44 feet from the terminus of Course 3 hereof;

Course 5:

Thence bear South 806.08 feet to a point on the said northerly right-of-way line of Old State Road 4-A, a/k/a aforesaid;

Course 6:

Thence bear southwesterly along the said northerly right-of-way line of Old State Road 4-A, a/k/a aforesaid, on the arc of a curve deflecting to the right 101.35 feet; having a radius of 2749.20 feet, the chord of which bears South 80 degrees 40' 57" west, 101.34 feet back to the Point of Beginning and containing 1.824 acres of land above mean high water.

PARCEL B:

Parcel #1

Part of Government Lot 2, Section 9, Township 66 South, Range 32 East, said part hereby conveyed being described by metes and bounds as follows:

COMMENCING at a point on the Northerly boundary of- the right of way of old Overseas Highway (formerly State Road 4-A) 200 feet Westerly from the intersection of the said Northerly boundary of said right-of-way of said old Overseas Highway with the dividing line between

PIR

Government Lots 1 and 2, Section 9, Township 66 South, Range 32 East, and running thence North 00 degrees 00 minutes 49 seconds West, and parallel with said dividing line, 790 feet, more or less, to the waters of the bay; thence North 89 degrees 59 minutes 11 seconds East, 100 feet, more or less, to the Westerly boundary of a parcel of land heretofore conveyed to Neal dePamphillip; thence along said Westerly boundary of said parcel of land 769.81 feet, more or less, to the Northern boundary of the old Overseas Highway (formerly State Road 4-A); thence in a Westerly direction along said Northerly boundary of said old Overseas Highway 100 feet, more or less, back to the Point of Beginning.

Together with any and all riparian rights pertaining thereto or in anywise connected therewith.

Parcel #2

Part of Government Lot 2, Section 9, Township 66 South, Range 32 East, said part hereby conveyed being described by metes and bounds as follows:

Commencing at a point on the Northerly boundary old Overseas Highway 200 feet in a Westerly direction from the intersection of the dividing line between Government Lots 1 and 2, Section 9, Township 66 South, Range 32 East, with said Northerly boundary line of said old Overseas Highway (formerly State Road 4-A); thence in a Southerly direction, and parallel with the aforesaid dividing line, 66 feet, more or less, to the Northerly boundary of the right-of-way of the present Overseas Highway (U.S. Highway No. 1); thence in an Easterly direction along said last mentioned boundary line 100 feet; thence in a Northerly direction and parallel with the aforesaid dividing line between Government Lots 1 and 2, 66 feet, more or less, to the Northerly boundary line of the old Overseas Highway (formerly State Road 4-A); thence in a Westerly direction 100 feet along said Northerly boundary line to the Point of Beginning.

Parcel #3

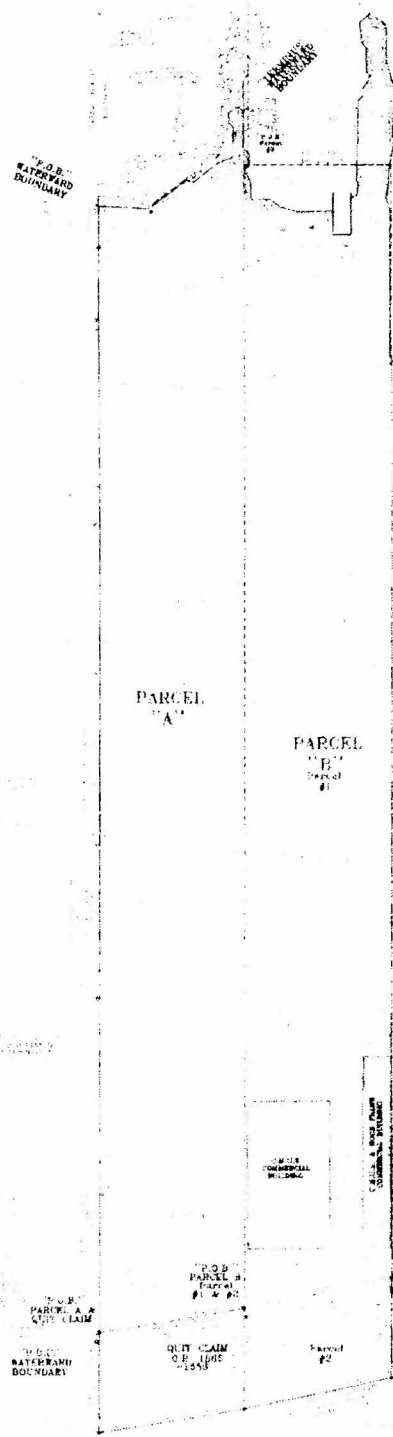
A tract of baybottom land in the Bay of Florida, and jetties, lying North of and adjacent to a part of Government Lot 2, Section 9, Township 66 South, Range 32 East, at Marathon, Key Vaca, Monroe County, Florida, and being more particularly described by metes and bounds as follows: Commencing at the intersection of the Northerly right-of-way line of old State Highway 4-A and the East line of Government Lot 2 of said Section 9; thence Southwesterly along said Northerly right-of-way line, a distance of 202.14 feet; thence North 00 degrees 00 minutes 49 seconds West, 790 feet to a point in the Mean High Water Mark of the Bay of Florida, the point of beginning of the tract of bay bottom land hereinafter described; thence, from said Point of Beginning, continue North 00 degrees 00 minutes 49 seconds West a distance of 425 feet; thence North 89 degrees 59 minutes 11 seconds East 100 feet; thence South 00 degrees 00 minutes 49 seconds East to a point; thence South 89 degrees 59 minutes 11 seconds West a distance of 100 feet, more or less, back to the Point of Beginning.

PIA



BAY OF FLORIDA

PARCEL
 "B"
 Parcel #3
 RASBUTTON



OBSTRUCTIONS NOTES

1. THERE IS NO MONUMENTATION FOR THE LINE FOR THE LAST LINE OF SAID ADJUTANT PLAT BOOK 2 PAGE 11. THE WEST BOUNDARY LINE OF THIS SURVEY WAS BORNED FROM AS THE WEST LINE OF OBSERVED MONUMENTATION AS SHOWN AS VISIBLE BY JOHN A. POLSONE REGISTERED FLORIDA LAND SURVEYOR #2514 LAST DATED 11/15/78. HAVING BEEN USED FOR THE DEDUCTION OF THE LEGAL FOR PARCEL "A" TO THE EAST LINE OF SURVEY BY DE. DAILY AS FOLLOWS BY DEPTAL RECORDS BOOK #12 PAGE 252
2. THE CALLS FOR THE NORTHERLY BOUNDARY STATE MONUMENT AS SHOWN HEREON WAS A LOG AT THE NW CORNER CORNER OF ADJUTANT'S C&L WHICH APPEARED TO HAVE BEEN CREATED BY THE ADJUTANT'S SURVEY
3. THE BOUNDARY (PARCEL #3) AS SHOWN HEREON DOES APPROXIMATELY 200 FEET EAST OF THE WHITE LINE INDICATED HEREON IN ADJUTANT'S BORNED WATER MONUMENT. HOWEVER IT IS THE DIVISION OF SAID AS SHOWN ON RECEIPT ISSUED BY SAID ADJUTANT REGISTERED FLORIDA SURVEYOR AND HADDER PARTS PARCEL # 3 IS IN LINE AND SHOULD BE EXTRACTED



SCALE
 1" = 40'

U.S. HIGHWAY NO. 1100

John A. Polsone

