

**CITY OF MARATHON, FLORIDA
RESOLUTION 2018-47**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A REQUEST BY IMBY INC. FOR A DEVELOPMENT AGREEMENT, PURSUANT TO CHAPTER 102, ARTICLE 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (“THE CODE”) ENTITLED “DEVELOPMENT AGREEMENT”, AUTHORIZING THE DEVELOPMENT OF ELEVEN (11) AFFORDABLE UNITS ON PROPERTY LOCATED AT 7931 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS LOTS 29 & 30, ATLANTIC SHORES SUBDIVISION, KEY VACA, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00347290-000000. NEAREST MILE MARKER 51.5.

WHEREAS, IMBY, Inc. (The “Applicant”) filed an Application on March 16, 2018 for a Development Agreement pursuant to Chapter 102, Articles 8 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS, the Applicant desires to redevelop the property with seven (7) studio efficiencies, by converting seven existing transient units and requests assistance from the City of Marathon to acquire eleven (11) Affordable Residential Allocations to be used to convert the seven (7) transient units and construct the four (4) new three bedroom/two bath units; and

WHEREAS, the Applicant proposes to accomplish the project in three (3) phases:

- Phase 1 – Acquire Affordable Allocations and refurbish the seven hotel rooms as affordable housing units to be thus deed restricted as affordable (99 years). Refurbishment to be accomplished within six (6) months of acquiring allocations;
- Phase 2 – Construct four (4) three bedroom residential units to be deed restricted as affordable (99 years). To be accomplished within twenty-four (24) months of acquiring allocations;
- Phase 3 – Raise the roof on the seven (7) affordable units refurbished and deed restricted in Phase 1 in order to add a second floor living space. Phase 3 shall be accomplished within thirty-six (36) months of acquiring allocations.

WHEREAS, the City Council of Marathon deems that the average size of approximately 361 square feet (Range 330 to 408 square feet) for the seven hotel rooms being converted to affordable housing units is an acceptable variance to the minimum square foot provisions for affordable housing units pursuant to Section 104.13 and Sections 107.03, Table 107.03.1 in consideration of the Applicant’s agreement to carry out Phase 3 as noted immediately above; and

WHEREAS, City staff reviewed the Applicant's request for a Development Agreement determining that the Applicant's project proposal was in compliance with the City's Comprehensive Plan and Land Development Regulations (LDRs) and further that there was no substantial impact on the City's Level of Service (LOS); and

WHEREAS, on the 16th day of April, 2018, the City of Marathon Planning Commission (the "Commission") conducted a properly advertised public hearing (the "Public Hearings") regarding the request submitted by the Applicant, for a Development Agreement pursuant to Chapter 102, Article 8 of the LDRs; and

WHEREAS, and on the 24th day of April, 2018 and the 8th and 22nd days of May, 2018, the City Council (the "Council") conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by the Applicant, for a Development Agreement pursuant to Chapter 102, Article 8 of the LDRs; and

WHEREAS; the City Council made a determination that the Applicant's request for a Development Agreement, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City's Comprehensive Plan and LDRs and further, that the approval is in the public interest, is consistent with its policy to encourage the redevelopment of properties within the City of Marathon and will further the health, safety and welfare of the residents of Marathon; and

WHEREAS, the purpose of the Development Agreement is to allow for the integration of certain land uses and structures within the City of Marathon, based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

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 the Development Agreement, attached hereto as "Exhibit A."

Section 3. This resolution shall take effect immediately upon its adoption by the City of Marathon and after review and approval by the Department of Economic Opportunity pursuant to Chapters 163 and 380, *Florida Statutes*.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 22ND DAY OF MAY, 2018.

THE CITY OF MARATHON, FLORIDA



Michelle Coldiron, Mayor

AYES: Cook, Bartus, Senmartin, Zieg, Coldiron
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:



David Migut, City Attorney

EXHIBIT A
DEVELOPMENT AGREEMENT

Parcel I.D. AK No. 1425109
RE No. 00347290-000000

(Space Reserved for Recording)

Development Agreement for
IMBY, Inc.
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 IMBY, Inc, a Florida Corporation of 490 52nd Street Gulf, Marathon, Florida 33050 (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, IMBY, Inc, is the Owner of the Real Property (“Property”) in the corporate limits of the City of Marathon, Florida, located at 7931 Overseas Highway, Marathon, Florida, and more particularly described on Exhibit A, Improvement Location and Boundary Survey.

WHEREAS, the Property is designated under the future land use map as Mixed Use Commercial (MUC) and Zoned Mixed Use (MU); and which land use designation and zoning allow the property to be used for affordable residential development; and

WHEREAS, Policy 1-3.1.4 of the City’s Comprehensive Plan provides that the Mixed Use Commercial Land Use category is to provide for the establishment of Mixed Use development patterns; and

WHEREAS, Chapter 103, Section 103.09, Mixed Use Districts, of the Land Development Regulations provides for a mix of land uses, and Affordable Housing to serve the community at large; and

WHEREAS, the City issued a Determination of Building Rights for the Property on May 25th, 2017, which establishes seven (7) transient transferable units and one market rate residential unit which are exempt from BPAS; and

WHEREAS, the Owner desires to redevelop the property with seven (7) studio efficiencies, by converting seven existing transient units and requests assistance from the City of Marathon to acquire eleven (11) Affordable Residential Allocations to be used to convert the seven (7) transient units and construct the four (4) new three bedroom/two bath units; and

WHEREAS, the Applicant proposes to accomplish the project in three (3) phases:

- Phase 1 – Acquire Affordable Allocations and refurbish the seven hotel rooms as affordable housing units to be thus deed restricted as affordable (99 years). Refurbishment to be accomplished within six (6) months of acquiring allocations;
- Phase 2 – Construct four (4) three bedroom residential units to be deed restricted as affordable (99 years). To be accomplished within twenty-four (24) months of acquiring allocations;
- Phase 3 – Raise the roof on the seven (7) affordable units refurbished and deed restricted in Phase 1 in order to add a second floor living space. Phase 3 shall be accomplished within thirty-six (36) months of acquiring allocations.

•
WHEREAS, the City Council of Marathon deems that the average size of approximately 361 square feet (Range 330 to 408 square feet) for the seven hotel rooms being converted to affordable housing units is an acceptable variance to the minimum square foot provisions for affordable housing units pursuant to Section 104.13 and Sections 107.03, Table 107.03.1 in consideration of the Applicant's agreement to carry out Phase 3 as noted immediately above; and

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

WHEREAS, the Owner has provided public notice of the party's 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 the 16th day of April 2018, 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 the 24th day of April and on the 8th and 22nd days of May 2018, 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 redevelop the property with seven (7) studio efficiencies, by converting seven existing transient units and requests assistance from the City of Marathon to acquire eleven (11) Affordable Residential Allocations to be used to convert the seven (7) transient units and construct the four (4) new three bedroom/two bath units.

C. To accomplish the project in three (3) phases:

- Phase 1 – Acquire Affordable Allocations and refurbish the seven hotel rooms as affordable housing units to be thus deed restricted as affordable (99 years). Refurbishment to be accomplished within six (6) months of acquiring allocations;

- Phase 2 – Construct four (4) three bedroom residential units to be deed restricted as affordable (99 years). To be accomplished within twenty-four (24) months acquiring allocations;
- Phase 3 – Raise the roof on the seven (7) affordable units refurbished and deed restricted in Phase 1 in order to add a second floor living space. Phase 3 shall be accomplished within thirty-six (36) months of acquiring allocations.

D. To allow the average size of approximately 361 square feet (Range 330 to 408 square feet) for the seven hotel rooms being converted to affordable housing units with the proviso that the size of the units will thereafter be increased pursuant to conditions in Phase 3.

E. To maintain the Property in compliance with Environmental Quality Standards, Setbacks, Open Space, Buffer Yard and other applicable LDRs; And

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, 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 accordance therewith set forth and agree to the following:

A. Legal Description and Ownership.

IMBY, Inc. a Florida Corporation 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 duration of the Agreement shall be seven years.

To Owner shall accomplish the project in three (3) phases:

- Phase 1 – Acquire Affordable Allocations and refurbish the seven hotel rooms as affordable housing units to be thus deed restricted as affordable housing units (99 years). Refurbishment to be accomplished within six (6) months of acquiring allocations;
- Phase 2 – Construct four (4) three bedroom residential units to be deed restricted as affordable (99 years). To be accomplished within twenty-four (24) months of acquiring allocations.
- Phase 3 – Raise the roof on the seven (7) affordable units refurbished and deed restricted in Phase 1 in order to add a second floor living space. Phase 3 shall be accomplished within thirty-six (36) months of acquiring allocations.

This Agreement may be renewed or extended as provided herein. If the Owner has not complied with the Schedule of Construction, 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. 7 initial efficiency affordable housing Deed Restricted units converted from seven existing transient units;
- ii. 4 three bed/2 bath Single Family Deed Restricted Affordable Units
- iii. Auxiliary structure for use as storage units and laundry facilities by tenants.

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, it's grantees, successors, or assigns shall have the absolute right to rebuild or repair the affected structure(s) and reinstate the prior approved use so long as such development is in compliance with this Agreement.

3. The following documents are attached hereto and incorporated by reference, showing the Property Boundary and Existing and Proposed Uses:

Exhibit A: Improvement Location and Boundary Survey
Exhibit B: Site Plan
Exhibit C: Warranty Deed

4. Applicable Density, Intensity and Building Heights. Density and Intensity shall be as provided in this Agreement and as shown in Article 3, Use and Intensity Tables 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 deed restrictions in a form acceptable to the City Attorney for a term of no less than ninety nine (99) years.

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 Keys Garbage Service.

4. Owner shall provide wastewater and Sewage Collection and Disposal by expanding its current connection to the City.

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. 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.

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.
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 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.

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

The Parties acknowledge that there existed on the Property a total of 7 transient units, one Market Rate Residential Unit, one (1) auxiliary structure that are lawfully established and BPAS exempt. And four (4) new affordable housing deed restricted single family units to be constructed. As part of the approval of this Conditional Use Permit and of the requested

Development Agreement, THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY AFFORDABLE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.

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.

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 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.

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 seven (7) days before each public hearing in a newspaper of general circulation and readership in Marathon, and shall be mailed to all affected property owners before the first public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing. The notice shall specify the location of the land subject to the Agreement, the development uses on the Property, the population densities, and the building intensities and height and shall specify a place where a copy of the Agreement can be obtained.

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, subject to subsection 5 below, 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, subject to subsection 5 below, 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.

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:
IMBY, Inc.
c/o Joshua Mothner

490 52nd Street Gulf
Marathon, Florida 33050
(305) 942-9519
josh@fundinthesun.com

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:

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

Q. Annual Report.

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

R. Enforcement.

In accordance with Section 163.3243, Florida Statutes, any party to this Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes, or the State Land Planning Agency may file an action for injunctive relief in the Circuit Court of Monroe County, Florida, to enforce the terms of this Agreement or to challenge the compliance of this Agreement with the provisions of 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, or to other third parties with written consent, which shall not be unreasonably withheld.

U. Drafting of Agreement.

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

V. Severability.

In the event any provision, paragraph or section of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the enforceability or 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 Department of Economic Opportunity, 107 East Madison Street, Tallahassee FL 32399 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 from the City, as required by Section 380.0552(9), Florida Statutes.

DD. Date of Agreement.

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

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

WITNESSES:

OWNER
IMBY, Inc.

By: [Signature]
Name of witness (printed or typed)

Signature [Signature]
Name: JOSHUA MOTHER
President

[Signature]
Signature
By: Tom Carden
Name of witness (printed or typed)

STATE OF FLORIDA
COUNTY OF MONROE

The following instrument was acknowledged before me on this 25th day of June, 2018, by Joshua Mother as President of IMBY, Inc., who is personally known to me or who produced as identification, and who did/did not take an oath.

[Signature]
Notary Public, State of Florida At Large
My commission expires: 10/30/21



On the 22 day of May, 2018, The City Council of the City of
Marathon approved this Agreement by Resolution No. 2018-47

ATTEST:

CITY OF MARATHON

Diane Clavier
Diane Clavier, City Clerk

By: Michelle Coldiron
Michelle Coldiron, MAYOR

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

David Migut
David Migut, City Attorney

MONROE COUNTY
OFFICIAL RECORDS