

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2020-10**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST BY MARATHON LAND HOLDINGS 3, LLC (SERENITY COVE) FOR A DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 102, ARTICLE 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRs) ENTITLED “DEVELOPMENT AGREEMENT” PROPOSING THE DEVELOPMENT OF THREE UNDEVELOPED LOTS WITH THE DEVELOPMENT OF TOWNHOMES AND COMMERCIAL USES ON PROPERTY LOCATED AT 12550 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS TOWNSHIP 66, SECTION 5, RANGE 33; PT LOTS 3, FAT DEER KEY, MARATHON, FLORIDA; HAVING REAL ESTATE NUMBERS 00100280-000, 00100620-00000 AND 00100630-000000. NEAREST MILE MARKER 54.5.**

**WHEREAS**, Marathon Land Holdings 3, LLC (Serenity Cove) (The “Applicant”) filed an Application on September 13<sup>th</sup>, 2018 for a Development Agreement pursuant to Chapter 102, Article 8 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, the applicant has proposed the redevelopment of forty two (42) affordable rate apartments and 4,374 square feet of low intensity commercial space (75% FAR) on a site previously known as Longhorn Lodge Resort; and

**WHEREAS**, the 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 28<sup>th</sup> day January, 2019, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearing”) 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 14<sup>th</sup> day of January, 2020 and again on the 11<sup>th</sup> day of February, 2020, the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 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, is consistent with its policy to encourage the development of residential properties in 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 proper 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 proposed Development Agreement, a copy of which is attached hereto as Exhibit "A", granting development approval to Marathon Land Holdings 3, LLC (Serenity Cove), subject to the Conditions imposed.

**Section 3.** This Resolution shall take effect immediately upon execution.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 11<sup>th</sup> DAY OF FEBRUARY, 2020.**

**THE CITY OF MARATHON, FLORIDA**

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**Steve Cook, Mayor**

AYES:

NOES:

ABSENT:

ABSTAIN:

**ATTEST:**

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Diane Clavier, City Clerk

(City Seal)

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

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City Attorney

EXHIBIT "A"  
Development Agreement

Parcel I.D.:  
RE Nos. 00100280-000000, 00100620-000000, 00100630-000000  
(Space reserved for recording)

**DEVELOPMENT AGREEMENT FOR  
MARATHON LAND HOLDINGS 3 LLC  
MARATHON, FLORIDA**

**THIS DEVELOPMENT AGREEMENT** (“Agreement”) is entered into by and between the CITY OF MARATHON, FLORIDA, a Florida municipal corporation (herein referred to as “City”), and MARATHON LAND HOLDINGS 3 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, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes, and is binding on the Effective Date set forth herein.

WITNESSETH:

**WHEREAS**, Owner is the owner of real property located in Marathon, Monroe County, Florida, more particularly described in Exhibit “A” (legal description), attached hereto and incorporated herein by reference; and

**WHEREAS**, Owner has submitted and had approved two independent proposals or options for the property in question:

A Market Rate residential community comprised of seventeen (17) market rate residential units. This project consists of seventeen (17) market rate units and four thousand, one hundred (4,100) square feet of commercial space as well as a clubhouse and pool, repair of an existing boat ramp and dock; or

An Affordable residential community comprised of forty-two (42) affordable residential units. This project consists of forty-two (42) affordable units and four thousand, three hundred, seventy-four (4,374) square feet of commercial space as well as a clubhouse and pool, repair of an existing boat ramp and dock

**WHEREAS**, the Owner has entitlements on the project site for six (6) market rate residential units and 27,724 square feet of commercial space the result of a transfer from the Marriott Courtyard (RE No. 00102810-000000) site and previous demolition of market rate units there; and

**WHEREAS**, the Owner has not yet but shall comply with Chapter 107, Article 2, Section 18. C. at of before the time of project permitting; and

**WHEREAS**, the Owner must:  
Market Rate Project:

- Obtain and transfer eleven (11) market rate residential units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance.
- Obtain forty-two (42) affordable residential units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance.
- 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 MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.

**WHEREAS**, the economic development afforded by this Agreement is in the best interest of both parties to this Agreement as well as the general public in the City of Marathon; and

**WHEREAS**, the City Council of Marathon held public hearings on the 14th day of October, 2014, the 28<sup>th</sup> day of October, 2014, and approved the Market Rate Development in Resolutions 2014-128 and 129; and

**WHEREAS**, the Planning Commission of Marathon held public hearings on the 28th day of January, 2019, determining that the proposed project was in compliance with the City's Comprehensive Plan and LDRs and sent a unanimous recommendation of approval to the City Council; and;

**WHEREAS**, the City Council of Marathon held public hearings on the 14th day of January, 2020 and again on the 11<sup>th</sup> day of February, 2020, and unanimously approved the affordable residential development; and

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

**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 Objective 1-3.4 in the City's Comprehensive Plan.
- B. To secure the ability to construct Owner's proposed development of either:
- Seventeen (17) market rate residential units, four thousand, one hundred (4,100) square feet of commercial space, and other amenities and accessories for the residents of the development, including pool and docking facilities. The approved project site plan is attached as Exhibit "C," the Conditional Use Permit as promulgated in City of Marathon Resolution 2014-128, and all other plans submitted as part of the Conditional Use / Development Agreement approval are incorporated herein by reference; OR
  - Forty-two (42) affordable residential units, four thousand, three hundred, seventy-four (4,374) square feet of commercial space, and other amenities and accessories for the residents of the development, including pool and docking facilities. The approved project site plan is attached as Exhibit "D," the Conditional Use Permit as promulgated in City of Marathon Resolution 2020-XXX, and all other plans submitted as part of the Conditional Use / Development Agreement approval are incorporated herein by reference.

## III. DEFINITIONS.

For the purposes of this Agreement, all terms shall have the definitions as found in the Land Development Regulations (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. Marathon Land Holdings 3 LLC, is the Owner of the Property, which Property is the subject of this Agreement, as described in Exhibit B, Boundary and Topographic Survey. There are no other legal or equitable owners of the subject property known to the parties to this Agreement.

B. Approvals.  
Both project below ae approved, but ONLY one OR the other of the following projects may be constructed at the discretion of the Owner:

- Market Rate Residential Project: Seventeen (17) market rate residential units, four thousand, one hundred (4,100) square feet of commercial space, and other amenities and accessories for the residents of the development, including pool and docking facilities.

The approved project site plan is attached as Exhibit “C,” the Conditional Use Permit as promulgated in City of Marathon Resolution 2014-128, and all other plans submitted as part of the Conditional Use / Development Agreement approval are incorporated herein by reference; OR

- Affordable Residential Project: Forty-two (42) affordable residential units, four thousand, three hundred, seventy-four (4,374) square feet of commercial space, and other amenities and accessories for the residents of the development, including pool and docking facilities. The approved project site plan is attached as Exhibit “D,” the Conditional Use Permit as promulgated in City of Marathon Resolution 2020-XXX, and all other plans submitted as part of the Conditional Use / Development Agreement approval are incorporated herein by reference.

Conditions imposed either through Resolutions 2014-128 or 2020-XXX apply to the actual development review and ultimate project permit approvals. Said Resolutions are attached and incorporated by reference.

C. Duration of Agreement and Submission of Permit Application. The duration of the Development Agreement shall be seven (7) years. The Owner may phase either project accordingly

**Market Rate Residential Project:**

The Owner may initiate construction utilizing the existing six (6) entitlements while the Owner seeks the additional eleven (11) market rate residential units for the remainder of the approved project.

If the Owner chooses to develop a phased project, the Owner shall have a maximum of eighteen (18) months from the date of approval of this Agreement by the State Department of Economic Opportunity (DEO) to submit and have approved complete building plans to construct all existing residential entitlements. The Owner shall have a maximum of two (2) years from the date of approval of this Agreement by the State Department of Economic Opportunity (DEO) to initiate project construction. Further, the Owner shall have a maximum of three (3) years from the date of approval of this Agreement by the State Department of Economic Opportunity (DEO) to obtain the additional eleven (11) market rate residential units. Any combination of additional market rate residential units obtained and added to the total number of units proposed for initial phased construction, shall be considered as part of the phased construction plan. The Owner shall have a maximum of four (4) years from the date of approval of this Agreement by the State Department of Economic Opportunity (DEO) to initiate project construction of secondary project phases utilizing any or all of the additional eleven (11) market rate residential units.

Should the Owner choose to forestall any construction until the Owner has ALL seventeen (17) market rate residential units, then The Owner shall have a maximum of two (2) years from the date of approval of this Agreement by the State Department of Economic Opportunity (DEO) to obtain the additional eleven (11) market rate buildings rights. The Owner shall have an additional six (6) months to submit and have approved complete building plans to construct ALL seventeen (17) market rate units. The Owner shall have a maximum of three (3) years from the date of approval of this Agreement by the State Department of Economic Opportunity (DEO) to initiate project construction.

**Affordable Residential Project:**

The construction of the Affordable Residential is entirely dependent on obtaining affordable residential allocations from some government source within the Florida Keys which agrees to allocate the affordable residential units to the project.

With this dependency and the paucity of affordable allocations, the affordable residential project shall be initiated by the Owner as quickly as feasible after affordable residential allocations are made available.

The Owner shall have a maximum of twelve (12) months from the date that affordable residential allocations are made available to submit and have approved complete building plans to construct all approved residential units. The Owner shall have a maximum of six (6) additional months (18) months from the date that affordable residential allocations are made available to initiate project construction. The Owner shall have a maximum of three (3) years from the date that affordable residential allocations are made available to complete construction.

For either project approval, Should the owner not commence construction within three (3) years of the effective date of this Agreement, then this Agreement shall be null and void and any BPAS market rate allocations made to the Owner by the City shall revert to the City.

This Agreement may be renewed or extended by mutual agreement 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.

D. Building Right and Commercial Floor Area Allocations. The City recognizes that the subject property currently possesses six (6) market rate residential entitlements. The City recognizes that the project requires eleven (11) additional market rate residential building allocations (Market Rate Residential Project) or forty-two (42) affordable residential units (Affordable Residential Project) in order to complete either project approval. The Owner must obtain and transfer eleven (11) market rate units in excess of what the City has recognized as legally established on the property or obtain forty-two (43) affordable residential allocations, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. 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 MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.

Any market rate allocations transferred to the property from other parcels within the city shall require the transfer fee in accordance with Chapter 107, Article 2, 107.18. C prior to the issuance of any building permit. Should any BPAS allocations be provided by the City, transfer fees do not accrue to any such units when obtained through the BPAS allocation process



The City also recognizes that the subject property currently possesses twenty-seven thousand seven hundred and twenty-four (27,724) square feet of commercial space. Therefore the applicant does not need to apply through CBPAS for commercial floor area.

E. Density and Building Height. The property is located in a Mixed Use Zoning District as defined in the Land Development Regulations. Maximum building height permitted on the property is thirty-seven (37) feet.

F. Public Facilities, Concurrency, Impact Fees. The following identifies the public facilities that are required that will service the development of the Property: who shall provide the facilities; what new facilities, if any, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of development.

1. Potable Water. Domestic potable water is provided by the Florida Keys Aqueduct Authority.

2. Electric Service. Electric service is provided by Florida Keys Electric Service.

3. Solid Waste. Solid waste service is provided by Marathon Garbage Service or its successors and assigns, as determined by the City Council.

4. Fire Service. Fire service is provided by the Marathon Fire Department.

5. Wastewater, Sewage Collection and Disposal. Wastewater and sewage collection, treatment, and disposal shall be done by connection to the City sewer system.

6. Public Recreational Facilities. Public recreational facilities shall be addressed through impact fees, if any.

7. Stormwater Management. A stormwater management system that meets all applicable local, state, and federal requirements shall be constructed on site as part of the site development of the Property. 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. In connection with the Owner's development of the Property, 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.

9. Concurrency. All public facilities, with the exception of Wastewater, identified above are available as of the date of this Agreement, and capacity for each is projected to be available concurrent with the impacts of development. Wastewater capacity is available through the Central Sewer system for the City of Marathon.

10. Impact Fees. Any increased impacts on public facilities or public services attributable to each unit developed on the Property, and the cost of capital improvements 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 applicable City of Marathon impact fees required by ordinance then in effect, as well as by payment by Owner of any applicable utility system development fees. Owner agrees to pay impact fees pursuant to any applicable impact fee ordinances adopted within twenty-four (24) months of the Effective Date of this Agreement, provided such ordinance applies equally and uniformly to all redevelopment in the City of Marathon.

City shall grant developer a credit for impact fees for the six (6) units for which rights previously existed on the site.

G. Reservations or Dedications of Land for Public Purposes. The parties anticipate that Owner may reserve or dedicate land for public purposes in connection with the development of the Property, 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 dedications may include, by way of example, easements necessary for the provision of stormwater, utility and wastewater services to the Property.

H. Local Development Permits. The following City development approvals are required for the development of the Property.

1. This Development Agreement.
2. Conditional Use Approval.
3. 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.
4. Local Permits for Stormwater Runoff and connection to the City's Sewer System. Nothing in this Agreement shall preclude the parties from applying conditions in addition to Federal, State and regional permits, by mutual agreement, during final site plan review or permitting.

I. Finding of Consistency. By entering into this Agreement, the City finds that the development permitted or proposed herein is consistent with and furthers the Comprehensive Plan, applicable LDRs and the Principles for Guiding Development set forth in Section 380.0552(7), Florida Statutes.

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:

a. The new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent development of the land uses, intensities, or densities set forth in this Agreement;

b. The new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they shall apply to the development that is subject to this Agreement;

c. The City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or

d. The Agreement is based on substantially accurate 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:

a. Failure to comply with the provisions of this Agreement;

b. 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:

a. Failure to comply with the provisions of this Agreement;

b. 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:

Manager  
Marathon Land Holdings 3 LLC  
4651 Sheridan St. #480  
Hollywood, FL 33021  
(954) 392-8788 ext. 319

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

Thomas D. Wright, Esq.  
Law Offices of Thomas D. Wright  
P. O. Box 500309  
9711 Overseas Highway  
Marathon, FL 33050  
(305) 743-8118

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, 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.

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.

B.B. 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.

C.C. 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 Economic Opportunity, 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.

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

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

WITNESSES:

OWNER  
Marathon Land Holdings 3, LLC

\_\_\_\_\_  
Wit. #1 - Signature

By: \_\_\_\_\_  
Jorge Cepero  
Its Agent

\_\_\_\_\_  
Printed Name of Wit. #1

\_\_\_\_\_  
Wit. #2 – Signature

By: \_\_\_\_\_  
John F. Weir  
Its Manager

\_\_\_\_\_  
Printed Name of Wit. #2

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Jorge Cepero, as Agent of Marathon Land Holdings 3, 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  
My commission expires:

On the 11<sup>th</sup> day of February, 2020, The City Council of the City of Marathon approved this Agreement by Resolution No. \_\_\_\_\_.

ATTEST:

CITY OF MARATHON



\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor, Steve Cook

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

\_\_\_\_\_  
City Attorney

**EXHIBIT “A”**

**Legal Description**

**EXHIBIT “B”**  
**Survey**

**EXHIBIT “C**  
**Resolution 2014-128**

**EXHIBIT "D"**  
**Resolution 2020-XXX**

# EXHIBIT "E"

## Market Rate Residential Project Site Plan



