

Sponsor: Chuck Lindsey

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2020-83**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST BY SEASONS, INC. (WITH APPROVAL OF THE OWNER, CRYSTAL COVE MARKET SITE, LLC) BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA FOR A DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 102, ARTICLES 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED “DEVELOPMENT AGREEMENT,” PROPOSING THE DEVELOPMENT OF TWENTY-SIX (26) TRANSIENT RESIDENCES (TWO & THREE BEDROOM) AND EIGHTEEN (18) ONE-BEDROOM HOTEL STYLE TRANSIENT UNITS WITH AMENITIES; SEEKING TO SEVER THE CONNECTION WITH THE CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT IDENTIFIED IN RESOLUTIONS 2019-55 AND 2016-72 (CRYSTAL COVE HOUSING PARTNERS, LP) IN FAVOR OF THE PROJECT AND AGREEMENTS PROPOSED HEREIN; FOR PROPERTY LOCATED AT 881 50<sup>TH</sup> STREET, GULF, MARATHON, FLORIDA, WHICH IS LEGALLY DESCRIBED AS LYING WITHIN TOWNSHIP 66S, SECTION 6, RANGE 32E; KEY VACA, MARATHON, FLORIDA; HAVING REAL ESTATE NUMBER 00327150-000100. NEAREST MILE MARKER 50 (49.75).**

**WHEREAS**, HTG Crystal Cove, LLLP (2016 Applicant) filed an Application on June 30, 2016 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 8 and 13 of the Code of Ordinances for the City of Marathon (“City Code”); and

**WHEREAS**, City staff reviewed the 2016 Applicant's request for a Development Agreement and determined that the 2016 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**, the Council duly considered the 2016 Applicant’s request and made a determination that the request for a Conditional Use Permit, 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 Conditional Use Permit 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; and

**WHEREAS**, the City granted the Conditional Use Permit pursuant to Resolution 2016-71; and

**WHEREAS**, the City approved a Development Agreement (2016 Development Agreement) between the 2016 Applicant and the City pursuant to Resolution 2016-72 to allow the development of twenty-eight (28) RV Park RV sites, forty-six (46) workforce and affordable housing residential units (commonly known as the Residences at Crystal Cove), 7,700 square feet of commercial floor area, including an access road and utilities easement to service the development and operation of the workforce and affordable housing residential units, commercial floor area, and RV Park RV sites;

**WHEREAS**, Crystal Cove Housing Partners, LP (2019 Applicant) made application to the City to revise the Conditional Use Permit to document a change in ownership and minor changes in conditions relating to the construction of the affordable housing units; and

**WHEREAS**, the City revised the Conditional Use Permit pursuant to Resolution 2019-55 which approved DEVELOPMENT ORDER #2016-07 REVISED (Revised Conditional Use Permit) pursuant to the 2019 Applicant's request; and

**WHEREAS**, due to the development of the twenty-eight (28) transient residential units (RV Park RV Sites) the City Code requires the development of six (6) workforce and affordable housing units which was satisfied by the approval the forty-six (46) workforce and affordable housing units by the Conditional Use Permit, the Revised Conditional Use Permit, and the 2016 Development Agreement.

**WHEREAS**, Seasons, Inc. (2020 Applicant) has acquired or shall acquire a portion of the property, along with certain allocable development entitlements previously owned by the 2016 Applicant and the 2019 Applicant. The 2020 Applicant proposes to construct twenty-six (26) transient residential units, eighteen hotel units, one thousand six hundred thirty-three (1,633) square feet of commercial floor area with associated storage area, twenty-eight (28) wet slips, swimming pool(s), a bath house, food truck service, and other accessory uses on the area designated by the 2016 Development Agreement for development as RV Park RV sites, as further identified by the site plan attached to the Revised Conditional Use Permit and Development Agreement; and

**WHEREAS**, The 2019 Applicant will continue to pursue the development of the currently approved construction of the forty-six (46) workforce and affordable housing residential units (commonly known as the Residences at Crystal Cove) on the property described in the 2016 Development Agreement and Revised Conditional Use Permit and Development Agreement as Elevated Affordable Housing; and

**WHEREAS**, the purpose of this Amended Revised Development Order is to document a change in ownership; the replacement of the RV development with twenty-six (26) transient residential

units, eighteen (18) hotel units, one thousand six hundred thirty-three (1,633) square feet of commercial floor area with associated storage area, twenty-eight (28) wet slips, swimming pool(s), a bath house, food truck service, and other accessory uses; 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 14<sup>th</sup> day of July, 2020, 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 11<sup>th</sup> day of August, 2020 and the 13<sup>th</sup> day of October, 2020, 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. Further, the purpose of the Development Agreement is to “lock in” the approval of the project for a longer period to allow the approved development to occur over a greater period of time as defined therein.,

**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 A Development Agreement to Seasons 16 LLC which is 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 13<sup>TH</sup> DAY OF OCTOBER, 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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Steve Williams, City Attorney

**ATTACHMENT A**  
**Development Agreement**

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and between the City of Marathon (the “City”), a Florida municipal corporation, and Seasons, Inc., a Delaware Corporation (“Seasons” or the “Developer”), pursuant to Sections 102.29, 102.30, 102.31 and 102.32 of the Code of Ordinances for the City of Marathon (“City Code”), and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2018), and is binding on the “Effective Date” set forth herein as binding on the Effective Date set forth therein.

### WITNESSETH:

WHEREAS, Developer is the owner of approximately 2.3 acres of contiguous uplands and 0.98-acres of privately owned submerged lands located in the corporate limits of the City consisting of Parcel ID Number 00327150-000100 more particularly described in the legal description attached hereto as **Exhibit A**, (herein, the “Property”). A copy of the Warranty Deeds are attached hereto as **Exhibit B**;

WHEREAS, the Property, along with contiguous real property parcels was previously owned by HTG Crystal Cove Resort, LLLP, a Florida limited liability limited partnership and subject to the Development Agreement recorded on November 21, 2016 at Book 2826, Page 1950 of the Official Records of Monroe County, Florida. The Property was thereafter conveyed to Crystal Cove Market Site, LLC pursuant to the Special Warranty Deed recorded 12/28/2018 at Book 2942, Page 667 of the Official Records of Monroe County, Florida and subsequently conveyed to the Developer pursuant to the Special Warranty Deed recorded \_\_\_\_\_ at Book \_\_\_\_\_, Page \_\_\_\_\_ of the Official Records of Monroe County, Florida.

WHEREAS, the development of Property, along with contiguous parcels, is currently subject to City Resolution 2019-55 and Conditional Use Development Order #2016-07 Revised, which approved the development of twenty-eight (28) RV Park RV sites, forty-six (46) workforce and affordable housing residential units, and up to 7,700 square feet of commercial area;

WHEREAS, the City approved a Development Agreement (2016 Development Agreement) between the 2016 Applicant and the City pursuant to Resolution 2016-72 to allow the development of twenty-eight (28) RV Park RV sites, forty-six (46) workforce and affordable housing residential units (commonly known as the Residences at Crystal Cove), 7,700 square feet of commercial floor area, including an access road (with utilities) to service the development and operation of the workforce and affordable housing residential units, commercial floor area, and RV Park RV sites;

WHEREAS, in connection with the conveyance of the Property to the Developer thirty-four point four (34.4) Transient Transferable Building Rights, one (1) Market Rate Right, and one thousand six hundred and thirty-three (1,633) square feet of commercial floor area were conveyed to the Developer.;

WHEREAS, the Developer wishes to develop the Property with up to twenty-six (26) transient residential units, eighteen hotel units, one thousand six hundred thirty-three (1,633) square feet of commercial floor area with associated storage area, twenty-eight (28) wet slips, swimming pool(s), a bath house, food truck service, and other accessory uses ; and

WHEREAS, the upland land area on the Property is sufficient under the City Code to accommodate the redevelopment approved in this Agreement;

WHEREAS, the public notice was provided of the parties 'intent to consider entering into this Agreement by advertisement published in a newspaper of general circulation and readership in the City, 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;

WHEREAS, the City Planning Commission held an advertised public hearing on July 20, 2020, to consider this Agreement, and recommended approval to the City Council;

WHEREAS, the City Council held an advertised public hearings on August 11, 2020 and on \_\_\_\_\_, 2020, to consider this Agreement and the recommendation of the Planning

Commission, and to accept and encourage public input with respect to the proposal of the Developer contained in this Agreement, and has considered the Planning Commission recommendation, staff report, and public input; and

WHEREAS, the City has determined that this Agreement is in the public interest, is consistent with the City's Comprehensive Plan and LDRs, 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. **Definitions.** For the purposes of this Agreement, the following terms shall have the following meanings.

Terms not defined in this Agreement shall be as defined in the City Code, in Chapter 163, Florida Statutes, or, if not defined in the Code or Statute, shall be understood by their usual and customary meaning.:

- A. *Agreement* shall refer to this Development Agreement, as the same may be subsequently amended, modified or supplemented pursuant to its terms and provisions and pursuant to the provisions of Sections 163.3220-163.3243, inclusive, Florida Statutes.
  
- B. *Building Permit Allocation System* or *BPAS Allocation* shall refer to those terms defined in Chapter 107, Article 1 of the City Code.
  
- C. *City Code* shall refer to the Code of Ordinances of the City of Marathon in existence on the Effective Date of this Agreement.



D. *Comprehensive Plan* shall refer to the City's Comprehensive Plan, effective July 5, 2005 and updated February 2013 as amended to the submittal date of this Agreement to the City

E. *Development* shall refer to the development of the Property for uses permitted by the Comprehensive Plan and the City Code, subject to the conditions, obligations, restrictions and terms contained in this Agreement.

F. *Dwelling Unit* shall refer to a dwelling unit as defined in Chapter 110, Article 3. - Defined Terms of the City Code: "A single unit providing complete and independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, cooking (meaning a food preparation area larger than a one (1) bin wet bar, that was intended or designed to be used for cooking or the preparation of food and a range, oven or utility connections for such) and sanitation. The term is applicable to both permanent and transient residential development."

G. *Effective Date* shall refer to the date this Agreement becomes effective, as set forth herein.

H. *Florida Department of Economic Opportunity (DEO) and state land planning agency* shall mean and refer to the "state land planning agency" as defined in Chapter 163, Part II, Florida Statutes.

I. *Land Development Regulations (LDRs)* shall mean Appendix A of Part II of the City Code in existence on the Effective Date of this Agreement.

J. *Property* shall refer to one or more of the parcels of real property located in the City that are subject to this Agreement (collectively one development parcel), including additional parcels

that may be acquired and subjected by the Developer to the terms and conditions of this Agreement through a subsequent amendment to this Agreement.

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

III. Purpose of the Agreement.

The purpose of this Agreement is to approve the development of up to twenty-six (26) transient residential units, eighteen (18) hotel units, one thousand six hundred thirty-three (1,633) square feet of commercial floor area with associated storage area, twenty-eight (28) wet slips, swimming pool(s), a bath house, food truck service, and other accessory uses.

IV. Terms of Agreement.

A. Legal Description; Ownership and Equitable Interests in the Properties.

Developer is the owner of that portion of the Property referenced by RE Nos. 00327150-000100, also known or described as part of 881 50<sup>th</sup> Street Gulf, Marathon, Florida. The Property is collectively described in the legal description attached as composite **Exhibit A** and incorporated herein.

B. Development Agreement Governing Property. This Agreement modifies the Conditional Use Development Order 2016-07 Revised with regard to the Property and adjacent easement area depicted on the Conceptual Site Plan attached as **Exhibit C**. The Property was previously approved for RV Park RV Sites in accordance with Conditional Use Approval Development Order 2016-07 Revised. The City recognizes that the Conceptual Site Plan includes ingress/egress and utility services to be located within an easement as depicted on the Conceptual Site Plan attached as Exhibit \_\_\_\_\_ located on the adjacent parcel, commonly known as the Residences at Crystal Cove.

C. Form of Ownership of Property. Condominium, cooperative, homeowners association or similar form of ownership of all or a portion of the Property, and the submission of the

Property to the condominium, cooperative, homeowners association or similar form of ownership (and recordation of a corresponding declaration of condominium, homeowners association or similar instrument), or the sale of individual transient residential units or boat slips therein shall not be prohibited or violative of the terms and provisions of this Agreement. The Agreement does not prohibit the conveyance of fee simple title to individual townhome units within the proposed resort condominium property.

D. Duration of Agreement; Renewal.

This Development Agreement shall remain in effect for a period of ten (10) years, commencing on the Effective Date set forth below. This Development Agreement may be renewed or extended as provided herein.

E. 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, and the City Code as to the form and content of this Agreement and in accordance therewith set forth and agree to the terms of this Agreement.

F. Vested Development. Thirty-four point four (34.4) transient residential units, one (1) market rate residential unit, and one thousand six hundred and thirty-three (1,633) square feet of commercial floor area are vested on the Property, which said vested development rights shall not expire.

G. Permitted Uses; Approval of Conceptual Site Plan, including Densities and Intensities.

1. Development Authorized. The residential and commercial development authorized by this Agreement is summarized in the following table and more fully described below:

<b>Development Authorized</b>	<b># of Slips</b>	<b># of Units</b>	<b>Square Feet</b>
Transient Residential Units		26	
Non-residential/commercial floor area			1,633
Wet Slips	28		
Hotel Units		18	

2.

The Applicant is entitled to the thirty-four point four (34.4) transient residential units (TRUs) that currently exist on site. These units are to be used pursuant to the Transfer of Building Rights (TBR's) process established in Chapter 107, Article 2, in accordance with the following table.

<b>Location</b>	<b>Unit Type (Room Factor)</b>	<b>Number</b>	<b>TRU's Calculated</b>
Units 1-18	Three bedroom (0.85)	18	21.2
Units 19-22	Two bedroom (0.90)	4	4.4
Units 23-26	Three bedroom (0.85)	4	4.7
Motel	One bedroom (1.0)	18	18.0
	Total:	44	48.3

Pursuant to Section 107.18.C, Affordable Housing Program Fund, the Applicant may apply any existing transfer fee credits on file with the City at the time of Building Permit issuance.

3. Exempt Dwelling Units under this Agreement. Pursuant to City Code, the thirty-four point four (34.4) transient residential units and one (1) market rate residential unit vested on the Property are exempt from the requirements of the City's Building Permit Allocations System (BPAS) as transient and market rate residential units, respectively and the one thousand six hundred thirty-three (1,633) square feet of vested commercial floor area is exempt from the

requirements of the City's Building Permit Allocations System (BPAS). Any of the aforementioned vested development rights which Developer elects not to develop on the Property are capable of transference pursuant to City Code Section 107.13, *et seq.*

4. Approval of Conceptual Site Plan; Minor Revisions; Final Site Plan. The development authorized by this Agreement is depicted on the Conceptual Site Plan prepared by Weiler Engineering Corporation (the "Conceptual Site Plan"), attached hereto as **Exhibit C**. The Conceptual Site Plan is hereby approved by the City, and any subsequent site plans, site plan approvals and building permits shall substantially comply with the Conceptual Site Plan; provided, however, that the Final Site plan submitted for building permits may deviate from the Conceptual Site Plan to accommodate: (1) to refine the development plan made by the Developer, including configuration of structures, roadways, pathways, and swimming pool(s); (2) to change the type and number of residential dwelling units, so long as the maximum density and BPAS entitlements as set forth in this Agreement is not exceeded; (3) changes to the proposed pool, recreation and accessory uses so long as the density and intensity set forth in the Agreement is not exceeded or (4) to accommodate modifications that are necessary to meet regulatory requirements. The Conceptual Site Plan meets all applicable setback, open space, landscape buffer yard, parking and building height requirements established in City Code or otherwise approved by variance and such requirements shall not be varied unless Developer obtains a variance pursuant to applicable provisions of the City Code.

5. Transient Residential Units. The following transient residential development is authorized on the Property, as shown on the Conceptual Site Plan:

a. Twenty-six (26) transient residential units. Provided, however, that the Developer may elect to develop fewer than twenty-six (26) transient residential units on the

Property. The difference between the thirty-four point four (34.4) vested residential dwelling units, and the actual number of residential dwelling units constructed and ultimately certified for occupancy on site, are recognized as vested residential dwelling units and BPAS-exempt dwelling unit allocations attributed to the Property for density and allocation purposes. Vested dwelling units may be developed on site at any time during the effectiveness of this Agreement, or may be transferred off-site in accordance with any existing or subsequently adopted City ordinance authorizing a transfer of dwelling units or dwelling unit allocations. These transfers may also be permitted administratively wherever this is lawful, suitable, and in furtherance of this Agreement.

b. Eighteen (18) Hotel units.

c. Accessory uses including twenty-eight (28) wet slips, swimming pool(s), bath house, detached storage and parking structures appurtenant to designated residential units.

6. Commercial Floor Area Approved Under This Agreement. Developer is permitted to redevelop a total of one thousand six hundred and thirty-three (1,633) square feet of commercial floor area as depicted on the Conceptual Site Plan. Provided, however, that the Developer may elect to develop fewer than one thousand six hundred and thirty-three (1,633) square feet of commercial floor area on the Property. The difference between the one thousand six hundred and thirty-three (1,633) square feet of vested commercial floor area and the commercial actual floor area constructed and ultimately certified for occupancy on site, are recognized as vested commercial floor area and BPAS-exempt allocations attributed to the Property for density and allocation purposes. Vested commercial floor area may be developed on site at any time during the effectiveness of this Agreement, or may be transferred off-site in accordance with any existing or subsequently adopted City ordinance authorizing a transfer of

commercial floor area allocations. These transfers may also be permitted administratively wherever this is lawful, suitable, and in furtherance of this Agreement.

7. Additional Nonresidential Development Authorized by Agreement. The following non-residential development is authorized on the Property, as shown on the Conceptual Site Plan:

- a. Accessory structures supporting the approved commercial floor area.
- b. Food truck service.
- c. Ancillary and accessory facilities and structures (including, but not limited to, garbage and pool/spa equipment).
- d. The Developer will be permitted to construct an “on site” commercial sign along U.S. Highway 1 subject to the Developer’s easement rights.

8. Permits from Other Regulatory Entities. Other agency permits may be required as provided by applicable law prior to the City’s issuance of building permits for redevelopment of the Property. The Developer shall obtain all necessary permits from other local, regional, State and federal regulatory entities and provide copies of each to the City within a reasonable time after such permits are issued.

9. Development Controlled by Agreement, Comprehensive Plan and Code. For the duration of this Agreement, the parties agree that any and all of the approved development shall adhere to, conform to, and be controlled by this Agreement, the exhibits attached hereto and incorporated by reference, the City LDRs and the Comprehensive Plan governing the development of the Property on the effective date of this Agreement. In the event that all or a portion of the existing or authorized development subject to this Agreement should be destroyed by storm, fire,

or other common disaster, the Developer, its grantees, successors, or assigns shall have the absolute right to rebuild or repair the affected structure(s) and reinitiate the prior approved use so long as such development is in compliance with this Agreement. The Developer may, at its discretion, elect to apply subsequently-adopted ordinances in lieu of current regulations with respect to particular aspects of the redevelopment authorized by this Agreement.

10. Applicable Density, Intensity and Building Heights. Density and intensity shall be as provided in this Agreement. The height of any new structure associated with the redevelopment of the Property shall not exceed 42 feet, except as provided by City Code, as amended. For purposes of determination of grade of the Property, grade for all structures the highest existing onsite grade is 7.3 feet NGVD resulting in a maximum building height of 49.3 feet NGVD, except those exceptions provided for in Section 107.41 of the City Code.

H. Additional Development Conditions.

The following additional conditions, terms, restrictions, and other requirements have been determined by the City of Marathon to be necessary for the public health, safety, and welfare of its citizens.

1. Setbacks and Buffers:

a. Buffers. Residential High landscape buffer adjacent to 50th Street pursuant to an alternative landscape plan administratively approved on March 11, 2020.

b. Setbacks. Setbacks shall be as follows:

(1) The City acknowledges that there is no undisturbed or unaltered shoreline on the Property. Pursuant to an administrative variance granted under the City Code the Shoreline: fifteen (15) feet.

(2) Front: ten (10) feet.



- (3) Side: ten (10) feet.
- (4) Rear: ten (10) feet.
- (5) Between on-site structures: Internal setbacks shall not be required other than as determined by the City's Fire Marshall.

2. Variances. The parties acknowledge that it may be necessary for the Developer to seek additional variances in order to develop the housing in the location depicted on the Conceptual Site Plan. Nothing in this Agreement shall be deemed to discourage or prohibit such a variance.

3. Utilities, Lighting and Signage. Utilities, lighting, and signage shall comply with all applicable requirements of the City Code, including the waterfront lighting criteria in the City Code. However, as referenced, the Developer will be permitted an "on-site" sign along US 1 identifying and benefitting the development.

4. Landscaping. The Developer shall utilize the best practices of landscaping throughout the development.

5. Internal Infrastructure. The roads, landscaping, and other internal Developer-provided infrastructure serving residential dwelling units shall be completed before a certificate of occupancy may be issued for the dwelling unit(s) served.

6. Fire Safety. The Developer shall provide such fire walls for the fee simple transient residential units and other fire protection facilities for commercial square footage and hotel transient residential units as required by the Life Safety Code administered by the City Fire Department.

7. Open Space Ratio. Pursuant to Section 106.16 of the City Code, the Developer shall maintain a minimum twenty percent (20%) open space ratio on the Property.

8. Stormwater Management. The development shall comply with the stormwater management criteria in City Code, Chapter 107, Article 11, and shall meet all applicable federal, state, and regional stormwater management requirements.

9. Additional Conditions by Mutual Consent. Nothing in this Agreement shall preclude the parties from applying additional conditions by mutual agreement during final site plan review or permitting.

I. Public facilities; Concurrency, Impact Fees. The following identifies the public facilities that are required and that will service the development authorized by this Agreement; 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 Cooperative.

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. Wastewater mains collection and treatment is provided by the City of Marathon.

6. Recreational Facilities. The Property includes recreational facilities for residents and guests, including swimming and boating opportunities. Therefore, redevelopment of the Property will have no impact on public recreation facilities.

7. Concurrency. All public facilities 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.

8. Impact Fees. Impact fee credits of \_\_\_\_\_ square feet shall be attributed to the development previously on site. The Developer shall be responsible for any increased impacts on public facilities or public services attributable to each unit of the development, and the cost of capital improvements to meet the associated demand on such facilities or services, shall be assured by payment to the City, concurrent with the issuance of the building permits for each unit, of any applicable City impact fees required by ordinance then in effect, as well as by payment by the Developer of any applicable utility system development fees.

J. All Local Development Permits Approved or Needed.

1. Development Approvals. The following is a list of all development permits approved or needed to be approved for the development of the Property as specified and requested in this Agreement:

a. Conditional Use Approval. Conditional Use approval by the City Council confirming compliance with this Agreement and applicable City Code requirements.

b. Site Plan. If required by the City, final site plan application and approval by the City building official, fire marshal, and planning staff confirming compliance with this Agreement and applicable City Code requirements.

c. Building Permits. As of right building permits will be issued, as provided pursuant to the City Code.

d. Development Agreement. This Development Agreement.

K. Finding of Consistency. The City of Marathon finds that the development authorized herein is consistent with the City's Comprehensive Plan and Land Development Regulations, as applicable.

L. Reservations or Dedications of Land for Public Purposes.

There is no reservation or dedication of land for public purposes contemplated by this Agreement.

M. Mutual Cooperation. The City and the Developer agree to cooperate fully with and assist each other in the performance of the provisions of this Agreement.

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

The development described in and authorized by this Agreement shall be developed in accordance with all required permits, and in accordance with all applicable provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Agreement. No certificate of occupancy for an individual building shall be issued until all plans for that building are approved by the City and the Developer has complied with all conditions in permits issued by the City and other regulatory entities for that building.

O. Compliance With Permits, Terms, Conditions, and Restrictions Not Identified Herein. The

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

P. Governing Laws.

1. Controlling Regulations. For the duration of this Agreement, all approved development on the Property shall comply with and be controlled by this Agreement and by the provisions of the Comprehensive Plan and City Code, as applicable. The parties do not anticipate the application of subsequently adopted laws and policies to the Property except as expressly provided in this Agreement.

2. State or Federal Laws. If State or federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this Agreement, this Agreement shall be modified as is necessary to comply with the relevant state or federal laws. However, this Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common or statutory law.

Q. Amendment, Renewal, and Termination. This Agreement may be amended, renewed, or terminated as follows:

1. Amendments. 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; an instrument in writing signed by the parties or their successors shall accomplish an amendment under this provision.

2. Renewal. As provided in Section 163.3229, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the following public hearing requirements in Section 163.3225, Florida Statutes: 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 Monroe

County, Florida, and shall be mailed to all affected property owners within 300 feet of the Property 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. Termination by Developer. This Agreement may be terminated by the Developer or its successor(s) in interest following a breach of this Agreement, upon written notice to the City as provided in this Agreement.

4. Revocation by City. Pursuant to Section 163.3235, Florida Statutes, this Agreement may be revoked by the City if the City finds, on the basis of competent substantial evidence, that there has been a failure to comply with the terms of this Agreement.

5. Termination by Mutual Consent. This Agreement may be terminated by mutual consent of the parties.

R. Breach of Agreement and Cure Provisions.

1. Written Notice on the Developer. If the City concludes that there has been a material breach in this Agreement by the Developer, prior to revoking this Agreement, the City shall serve written notice on the Developer identifying the term or condition the City contends has been materially breached and providing the Developer with ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Agreement. Each of the following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the Developer, shall be considered a material breach of this Agreement: (1) failure to

comply with the provisions of this Agreement; and (2) failure to comply with terms and conditions of permits issued by the City or other regulatory entity for the development authorized by this Agreement.

2. Written Notice on the City. If the Developer concludes that there has been a material breach in the terms and conditions of this Agreement by the City, the Developer shall serve written notice on the City identifying the term or condition the Developer contends has been materially breached and providing the City with thirty (30) days from the date of receipt of the notice to cure the breach. The following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the City, shall be considered a material breach of this Agreement: failure to comply with the provisions of this Agreement; failure to timely process any application for site plan approval or other development approval required to be issued by the City for the development/redevelopment authorized by this Agreement.

3. Option to Terminate. If a material breach in this Agreement occurs and is not cured within the time periods provided above, the party that provided notice of the breach may elect to terminate this Agreement or may seek to enforce this Agreement as provided herein.

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

S. Notices. All notices, demands, requests, or replies provided for or permitted by this Agreement, including notification of a change of address, shall be in writing to the addressees identified below, and may be delivered by any one of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; or (c) by deposit with an overnight express delivery service

with a signed receipt required. Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

To the Developer:

\_\_\_\_\_

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

\_\_\_\_\_

TO THE CITY:

Chuck Lindsey, City Manager  
City of Marathon  
10045-65 Overseas Highway  
Marathon, Florida 33050  
Telephone: (305) 743-0033

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

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

V. 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.



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

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

Y. Litigation; Attorney's Fees; Venue; Waiver of Right to Jury Trial. As between the City and the Developer, in the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorney's fees. This includes, but is not limited to, reimbursement for such reasonable attorneys' fees and costs incurred with respect to any appellate, bankruptcy, post-judgment, or trial proceedings related to this Agreement. Venue for any legal proceeding arising out of this Agreement shall be in Monroe County, Florida. The parties to this Agreement waive the right to a jury trial in any litigation arising out of or initiated under this Agreement.

Z. Use of Singular and Plural. Where the context requires, the singular includes the plural, and the plural includes the singular.

AA. 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.

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

CC. 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.

DD. Recording; Effective Date. The Developer shall record this Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date of this Agreement. A copy of the recorded Agreement showing the date, page and book where recorded shall be submitted to the Florida Department of Economic Opportunity (DEO) by hand delivery, registered or certified United States mail, or by a delivery service that provides a signed receipt showing the date of delivery, within fourteen (14) days after the Agreement is recorded. The Developer shall also provide a copy of the recorded Agreement to the City within the same time period. This Agreement shall become effective thirty (30) days after the date it is recorded in the public records of Monroe County, Florida, and received by the State Land Planning Agency.

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

FF. Redevelopment Timelines. Any redevelopment timelines related to the Property (described in Exhibit A) as provided for in any prior conditional use approval or the like are hereby terminated and are of no further form and effect.



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:

Seasons, Inc.  
a Florida corporation

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by [Name of Signatory] as representative for Seasons, Inc., a Florida corporation, who is personally known to me or who has produced [Type of Identification] as identification.

[Signature of Notary Public]  
[Name of person taking acknowledgement]

Commission No. \_\_\_\_\_  
Commission Expiration \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_, 2019, the City Council of the City of Marathon approved this Agreement by Resolution No. \_\_\_\_\_.

CITY OF MARATHON

By \_\_\_\_\_  
\_\_\_\_\_, MAYOR

ATTEST:

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

APPROVED AS TO FORM AND LEGAL

SUFFICIENCY:

\_\_\_\_\_  
Steven Williams, City Attorney

**EXHIBIT A**

**Legal Description**

**EXHIBIT B**

**Warranty Deeds**

**EXHIBIT C**  
**Conceptual Site Plan**