

CITY COUNCIL AGENDA STATEMENT



**Meeting Date:** May 11, 2021  
**To:** Honorable Mayor and Council Members  
**From:** Brian Shea, Planning Director

**Agenda Item:** Consideration Of A Request For A Development Agreement, For Island Homes Of The Keys Inc, Pursuant To Chapter 102, Article 8 Of The City Of Marathon Land Development Regulations (“The Code”) Entitled “Development Agreement” For The Development Of A Single Family Home; Vacant Land; Which Is Legally Described As, Section 32, Township 65, Range 33, Government Lot 1 And Section 05, Township 66, Range 33, Part Of Government Lot 4, Formerly Known As Phase V (The Island) Seawatch At Marathon A Condominium, Marathon, Monroe County, Florida; Having Real Estate Number 00104135-000000, Nearest Mile Marker 53

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**CONDITIONS:**

- Modify the following sections of the Development Agreement as follows:
  - Correct Page 18 Exhibit C to state “DCA Agreement”, not “Site Plan,” per second whereas.
  - Correct Exhibit C to state “DCA Agreement,” and not “Site Plan,” per second whereas.
  - Remove “plus accessory structures” from the 10th whereas to be compliant with Table 103.15.1 of the LDRs, as well as the original agreement with DCA.
  - Update section as it pertains to site plan.
  - Update the dates to reflect the actual meetings prior to recordation.

**APPLICANT/OWNER:** Island Homes of the Keys Inc.

**AGENT:** Bart Smith, Smith Hawks

**LOCATION:** Vacant land, having Real Estate Number 00104135-000000.

**REQUEST:** Enter into a Development Agreement with the City of Marathon for redevelopment of the subject property.

**FUTURE LAND USE MAP DESIGNATION:** Conservation (C)

**ZONING MAP DESIGNATION:** Conservation Native Area (C-NA)

**LOT SIZE:** Approximately 13.3 acres

**SURROUNDING ZONING AND USES:**

	<u>Zoning</u>	<u>Use</u>
<b>North</b>	N/A	Gulf of Mexico
<b>East</b>	N/A	Gulf of Mexico
<b>South</b>	Residential High (RH)	Seawatch Condos
<b>West</b>	Residential Low (RL) and Residential High (RH)	Single Family residences and Indigo Reef

**EXISTING CONDITIONS:**

Currently, the property consists of the following:

- A vacant island with docking facilities.

**PROPOSED DEVELOPMENT**

The proposed redevelopment of this property will consist of the following:

1. Develop the property with a single-family residence.

**BACKGROUND:**

This is an application for a development agreement to develop a single-family residence on Seawatch Island. Previously the Department of Community Affairs (DCA), now the Department of Economic Opportunity (DEO) had entered into an agreement for the development of the island. A copy of which is attached as Exhibit A.

The City subsequently incorporated and changed the FLUM and Zoning designation of the property again. The applicant is now proposing a development agreement for the development of the property.

**ANALYSIS:**

**Comprehensive Plan**

The proposed development should meet the following criteria as set forth in the Comprehensive Plan. These elements are consistent with items 3 and 4 of the DCA agreement.

Policy 4-1.5.1 Establish Incentives to Conserve Sensitive Habitat

The City shall continue to maintain Land Development Regulations providing for protection of native vegetative communities and land clearing which mandate that new development preserve, at a minimum, all undisturbed wetlands, and ninety percent (90%) of high-quality tropical hammocks on the parcel being developed. These regulations shall further provide for the preservation and transplantation of plant species that have been designated as endangered, threatened or of special concern by a State or Federal agency. These regulations shall also apply to the City’s list of regionally important plant species. An incentive program shall be provided for the conservation of upland areas containing recognized sensitive plant communities and species.

*Policy 4-1.5.3 Provide for Open Space*

Upon the effective date of the Plan, the City shall provide for open space as a part of the requirements for all development and redevelopment. Open space areas shall be designated and treated in such a manner as to maintain the integrity whether the primary purpose is to serve as natural vegetative or wildlife habitat, or as cultivated landscaped space. No land shall be developed, used, or occupied such that the amount of open space on the parcel proposed for development is less than the open space ratios (OSR) listed below in Table 4-1, for each ecological community.

<b>TABLE 4-1 OPEN SPACE RATIOS</b>	
<b>Ecological Community</b>	<b>OSR</b>
Submerged Lands (Open Water)	1.00
Mangrove and Freshwater Wetlands	
Undisturbed	1.00
Disturbed	.90
Salt Marsh and Buttonwood Wetlands	
Undisturbed	1.00
Disturbed	.60
Beach Berm Complex	
Undisturbed	.95
Disturbed	.40
Offshore Island	.95
Hammocks	
Palm Hammock	.90
Cacti Hammock	.90
High Quality Hammock	.90
Moderate Quality Hammock	.70
Low Quality Hammock	.50
Disturbed	
Disturbed with Hammock	.40
Disturbed Saltmarsh Buttonwood Association	.30
Disturbed with exotics	.20
Scarified	.20

*Policy 4-1.5.5 Limit Clearing of Native Vegetation (Hardwood Hammock)*

The clearing of high-quality hammock is hereby limited to a 7,500 square foot footprint for the principal structure. Additionally, one driveway no wider than 18 feet per parcel is allowed in high quality hammock that is exempt from clearing requirements; however, in no case shall clearing exceed 10 percent of the entire site. The clearing of moderate quality hammock is hereby limited to 7,500 square feet or 30 percent, whichever is less. For all categories of hammock, a minimum clearing area of 3,000 square feet shall be allowed to provide reasonable use of property. The clearing of native vegetation is hereby limited to the immediate development area. The immediate development area shall include the area of approved clearing shown on the approved site plan. The immediate development area shall be fenced throughout the duration of construction. During construction, there shall be no disturbances of the ground surface and vegetation within required open space areas.

Policy 4-1.5.8      Require Clustering

Upon the effective date of the Plan, the City shall require development to minimize impacts on sensitive natural areas to the maximum extent feasible through the following clustering provisions. In the event development must be permitted, adverse impacts shall be mitigated by clustering.

Clustering requirements shall be as follows:

- a. Development which may impact sensitive natural resources may be required to utilize reduced construction ‘footprints’, modified construction techniques, innovative construction techniques, land use and development techniques which minimize negative environmental impacts or results, and the like;
- b. When a parcel proposed for development contains more than one (1) habitat type, development shall be:
  1. clustered on the least sensitive portion of the parcel, until the maximum allowable density is reached;
  2. if further development occurs, it shall be clustered on the next least sensitive portion of the parcel, until maximum allowable density is reached, etc.; and
  3. development permitted on the least sensitive portion(s) of a parcel shall be clustered within that portion(s) of the parcel.
  4. Modification of the development footprint to minimize the impact on existing native understory and canopy trees.

When a parcel proposed for development contains more than one (1) habitat type, all development shall be clustered on the least environmentally sensitive portions of the parcel. For the purpose of this policy, the relative sensitivity of separate habitat types shall be classified as shown below with Class I being the most sensitive and Class III being the least sensitive.

**Class I**

Saltmarsh and/or buttonwood association wetlands;  
Beach or berm;  
High quality hammock;  
Moderate quality hammock;  
Low quality hammock;

**Class II**

Disturbed beach or berm;  
Disturbed with salt marsh and/or buttonwood association wetlands (lawfully converted to disturbed uplands);  
Disturbed with hammock;

**Class III**

Disturbed; and  
Disturbed with exotics.

Development within the least sensitive habitat shall achieve the maximum density or intensity allowable and shall fully utilize the net buildable area of the habitat prior to expanding to the next least sensitive habitat type on the site. The OSR for Class I habitat types shall be implemented by

the developer/property owners execution of a Grant of Conservation Easement Agreement (GOCEA), stating the required amount of open space.

### **Affordable Housing**

The proposed redevelopment does not create any affordable housing. Conservation Native Area has the same 4-acre density requirement for both Affordable and Market Rate units.

### **Wastewater**

The property will have to connect to the sewer system. This is a completely isolate parcel from all public rights of way. The City cannot provide sewer service directly to the applicant. The applicant will have to connect through the Seawatch collection system and needs to work out an agreement with them in order to have the required sewer services needed for development.

### **Stormwater**

The property currently has no erosion control or stormwater management system. A stormwater management system will 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.

### **FEMA/Floodplain Management**

The island spans the AE 10, AE 11, VE 12, and VE 15 flood zones. Any development will have to meet the strictest criteria based upon which flood zone the proposed structure falls within. The preliminary flood zones place the island within the AE 9 and VE 13 flood zones. Most of the island is outside the Limit of Moderate Wave Action (LiMWA). Should the flood maps be adopted prior to permit issuance, the structure will have to be reviewed as under VE flood zone requirements if any of the structure is proposed within the LiMWA area.

### **Compliance with Bulk and Open Space Regulations**

#### Open Space

The previous agreement recognized the disturbed area which requires a 20 percent open space ratio. The previous agreement also stipulated that 3.16 acres of the palm hammock could be impacted. The agreement also states that the disturbed area and maximum of 3.16 acres of palm hammock are subject to environmental design criteria which include clustering and open space requirements. To incentivize development clustering in the disturbed area, staff is proposing to review TBR applications within this area as separate from the overall site in reference to the transfer process requirements.

#### Height

The land development regulations establish an overall building height of 42 feet. When plans are submitted they will have to show that the building does not exceed the 42-foot height limitation.

#### Setbacks

When plans are submitted they will have to show that the building complies with all front yard, side yard, and shoreline setbacks as required by the City of Marathon Land Development Regulations (LDRs).

Density

The application indicates that the island is 13.3 acres. The proposed densities comply with the Conservation FLUM and Conservation Native Area Zoning.

Use	Units/acre	Proposed # Units	Required Acreage/Dwelling Unit
Market Rate Dwelling Units	.25	1	4
Affordable/Workforce Dwelling Units	.25	0	0
Total Acreage Required			4
Total Acreage Provided			13.3

**RECOMMENDATION:**

Planning Staff recommends that the Planning Commission forward a recommendation of **CONDITIONAL APPROVAL** of the Development Agreement to City Council.

Conditions of Approval

- Modify the following sections of the Development Agreement as follows:
  - Correct Page 18 Exhibit C to state “DCA Agreement”, not “Site Plan,” per second whereas.
  - Correct Exhibit C to state “DCA Agreement,” and not “Site Plan,” per second whereas.
  - Remove “plus accessory structures” from the 10<sup>th</sup> whereas to be compliant with Table 103.15.1 of the LDRs, as well as the original agreement with DCA.
  - Update section as it pertains to site plan.
  - Update the dates to reflect the actual meetings prior to recordation.

Exhibit A

Exhibit B



**CITY OF MARATHON, FLORIDA  
RESOLUTION 2021-XX**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE DEVELOPMENT AGREEMENT, FOR ISLAND HOMES OF THE KEYS INC, PURSUANT TO CHAPTER 102, ARTICLE 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (“THE CODE”) ENTITLED “DEVELOPMENT AGREEMENT” FOR THE DEVELOPMENT OF A SINGLE FAMILY HOME; VACANT LAND; WHICH IS LEGALLY DESCRIBED AS, SECTION 32, TOWNSHIP 65, RANGE 33, GOVERNMENT LOT 1 AND SECTION 05, TOWNSHIP 66, RANGE 33, PART OF GOVERNMENT LOT 4, FORMERLY KNOWN AS PHASE V (THE ISLAND) SEAWATCH AT MARATHON A CONDOMINIUM, MARATHON, MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBER 00104135-000000, NEAREST MILE MARKER 53.**

**WHEREAS**, Island Homes of the Florida Keys INC filed an Application on December 14<sup>th</sup>, 2020 for approval of a Development Agreement (the “Agreement”) pursuant to Chapter 163, Florida Statutes and Chapter 102, Article 8, of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, on the 19<sup>th</sup> day of April 2021 the City of Marathon Planning Commission (the “Commission”) reviewed and recommended approval of the Agreement with several conditions; and

**WHEREAS**, on the 11<sup>th</sup> day of May 2021, the City Council (the “Council”) reviewed the Applicant’s proposal finding that that the Agreement was compliant with the terms of Chapter 163, Florida Statutes and the Chapter 102, Article 8 of the City LDR’s; and

**WHEREAS**, on the 8<sup>th</sup> day of June 2021, the City Council (the “Council”) reviewed the Applicant’s proposal finding that the Agreement was compliant with the terms of Chapter 163, Florida Statutes and the Chapter 102, Article 8 of the City LDR’s; and

**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 Agreement, an unsigned copy of which is attached hereto as Exhibit “A”, is hereby approved for signature and recordation and otherwise has complied with or must meet all conditions as set forth by Council.

**Section 3.** This resolution shall take effect immediately upon its review and approval by the Department of Economic Opportunity (DEO).

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8<sup>th</sup> DAY OF JUNE, 2021.**

**THE CITY OF MARATHON, FLORIDA**

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**Luis Gonzalez, 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

**EXHIBIT A**

DRAFT

7110  
11/11/71  
11/11/71

AGREEMENT

THIS AGREEMENT is entered into between ISLAND HOMES OF THE KEYS, INC., a New Jersey corporation; MONROE COUNTY, FLORIDA; and the DEPARTMENT OF COMMUNITY AFFAIRS, State of Florida (herein "DCA").

WHEREAS, Island Homes of the Keys, Inc., is the owner of an approximately 13.3-acre island within the development originally known as "Seawatch," the island portion of which is described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, the said real property is within the boundaries of the Florida Keys Area of Critical State Concern, as designated pursuant to Sections 380.05 and 380.0552, Florida Statutes; and

WHEREAS, the Department of Community Affairs is the state land planning agency under Chapter 380, Florida Statutes, the Florida Environmental Land and Water Management Act of 1972 (herein "the Act"), with the duty and responsibility for the general supervision of the administration and enforcement of the Act and all rules and regulations promulgated thereunder, including the Monroe County comprehensive plan and land development regulations; and

WHEREAS, the prior owner of the subject property received major development approval from Monroe County for a five-phase multi-family project known as "Seawatch" pursuant to Section 6-221, et seq., Monroe County Code (now repealed), the island portion of which was not developed under the major development approval; and

WHEREAS, the current corporate owner is successor in title to the original owners of the Seawatch development and as such owns the subject 13.3-acre island which is presently undeveloped except

SIGNED AGREEMENT

for 43 completed Seawatch condominium boat docks; and

WHEREAS, in preparing its Comprehensive Plan adopted by Ordinance No. 016-1993, on April 15, 1993, Monroe County approved a density designation of Residential-High for the island on its comprehensive plan future land use map; and

WHEREAS, pursuant to Section 380.0552(9), Florida Statutes, because of the Department's assessment of the environmental sensitivity of the island, the Department recommended and the Administration Commission published proposed administrative Rule No. 28-20.100(34)(f), F.A.C., which will change the future land use map designation of the island from Residential-High (RH) to Residential-Low (RL), thereby reducing density on the island; and

WHEREAS, the parties hereto wish to avoid potential litigation, including the uncertainty, expense and delay attendant thereto, regarding the future land use map designation and future development potential of the island, and it is in their best interests to do so; and

WHEREAS, pursuant to Section 380.032(3), Florida Statutes, the Department may enter into agreements with any landowner, developer, or governmental agency as may be necessary to effectuate the provisions and purposes of the Act or any rules promulgated thereunder; and

WHEREAS, the Department finds that this agreement is proper and necessary to effectuate the provisions and purposes of the Act and the Monroe County comprehensive plan adopted thereunder.

NOW, THEREFORE, in consideration of the mutual promises and

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covenants contained herein and the benefits accruing to each party, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The above recitals are incorporated herein and form a material part of this agreement.

2. Development Authorized. Notwithstanding the density regulations now or hereafter applicable to the subject property, a portion of the hammock acreage of the island and the approximately 1.38 acres of disturbed area of the island may be developed with a maximum of eight (8) single-family residences as provided in paragraph 3 below. Detached habitable space (e.g., bedroom additions, guest units, maid's quarters, and similar structures) are not allowed. Roads necessary for access to and on the island, if any, shall be developed pursuant to the Monroe County land development regulations in effect at the time of permitting. No development other than the existing boat docks, necessary access roads, and the residential units specifically authorized in this Agreement shall be allowed on the island.

3. Location of Residential Development. The map attached as Exhibit B hereto is an approximation of the habitat on the island. Pursuant to a field verification of the habitat conducted by Monroe County in connection with this agreement, the parties agree that the area designated as "hammock" on Exhibit B hereto consists of 7.49 acres of undisturbed palm hammock and .67 acres of berm. The land area which may be utilized for the maximum of eight (8) single-family residences shall be sited within the disturbed area

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and/or within a maximum of 3.16 acres of the palm hammock as follows: a maximum of seven (7) single-family residences may be sited in the palm hammock and one (1) single-family residence may be sited in the disturbed area. The area utilized for the single-family residences (or, if subdivided, each lot within the area utilized for the single-family residences) shall be contiguous, it being the parties' intent that development shall not be scattered but shall be confined within one portion of the island.

4. Grandfathered Density; Development Subject to Land Use Regulations.

The development authorized under this Agreement shall be deemed to be grandfathered for density only under the Monroe County comprehensive plan, including any amendments adopted by the Monroe County Board of County Commissioners or adopted by rule of the Administration Commission, now or hereafter in effect. Otherwise, the development authorized under this agreement shall be subject to all Monroe County land development regulations in effect at the time the Owner or its successor applies for a building permit or permits from Monroe County for such development, including but not limited to the County's rate of growth regulations and its environmental design criteria.

The Owner recognizes that the environmental design criteria include clustering and open space requirements. The Owner further recognizes that the disturbed area and the maximum of 3.16 acres of palm hammock which may be utilized under this agreement will be subject to those environmental design criteria. It is the

intent of the parties to preserve undisturbed in its natural state as much of the palm hammock vegetation on the island as possible while at the same time allowing some limited residential development on the island.

5. Land Use Designation Under Proposed Rule 28-20.100(34), F.A.C. In light of the parties' agreement regarding density in the preceding paragraphs of this agreement, the parties agree that the Administration Commission's proposed Rule 28-20.100(34), F.A.C., designating the future land use designation of the subject property as Residential Low (RL) shall remain unchanged. The Owners hereby waive any present or future challenge to the Residential Low land use designation.

6. Release; Costs and Attorney's Fees. The Owner waives any claim it has or may have against the Department or the Administration Commission arising out of the recommendation or publication of proposed administrative Rule 28-20.100(34), F.A.C. Each party shall bear its own costs and attorney's fees incurred in connection with this agreement.

7. Major Development Approval. The parties acknowledge and agree that the subject 13.3-acre island shall not be developed under the major development approval previously granted for the condominium development known as "Seawatch," and that the major development approval is deemed by all parties to be void and of no further force and effect as to the island.

8. Scope of Authority. This agreement affects the rights and obligations of the parties under the provisions of Chapter 380,



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Florida Statutes, relating to areas of critical state concern. It is not intended to influence or determine the authority or decisions of any other state or local government or agency in issuance of any other permits or approvals that might be required by state law or local ordinance for any development authorized by this Agreement.

9. Duplicate Originals. This Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.

10. Entirety of Agreement; Amendment. This Agreement constitutes the entire agreement of the parties. This Agreement may be modified or amended only by a separate written instrument signed by all parties hereto and recorded in the public records of Monroe County, Florida, as provided in paragraph 11 below.

11. Covenant; Binding Effect; Recordation and Proof Thereof. This agreement is intended to and shall create a covenant running with the land. This agreement shall inure to the benefit of and be binding on Island Homes of the Keys, Inc., Monroe County, and the Department of Community Affairs, and their heirs, successors, and assigns, including subsequent purchasers of the subject property from Island Homes of the Keys, Inc. Within fourteen (14) days after the date of this Agreement, the Owner shall record this Agreement in the public records of Monroe County, Florida, or shall mail this Agreement to the Clerk for recording, and shall promptly thereafter furnish to the Department and Monroe County proof of recordation, including the book and page number where this

Agreement is recorded. Proof of recordation shall be directed to Mike McDaniel, Growth Management Administrator, Region II, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, FL 32399-2100, and Lorenzo Aghemo, Monroe County Planning Director, Monroe County Growth Management Division, Marathon Regional Service Center, 2796 Overseas Highway, Suite 400, Marathon, FL 33050, or such other persons as they shall designate in writing on behalf of their respective government entities.

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

IN WITNESS WHEREOF, the parties, by their duly authorized undersigned representatives, have executed this Agreement on the dates and year below written.

ISLAND HOMES OF THE KEYS, INC.  
a New Jersey corporation

(CORPORATE SEAL)

BY Anna L. Hotz  
Anna L. Hotz  
President

and  
BY Robert M. Rehbock  
Robert M. Rehbock  
Secretary

STATE OF FLORIDA  
COUNTY OF MONROE

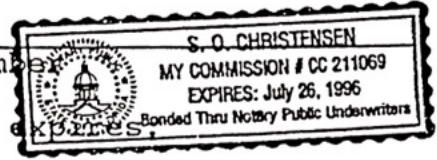
The foregoing instrument was acknowledged before me this 19th day of January, 1995, by Anna L. Hotz as President of Island Homes of the Keys, Inc., who is personally

known to me or who has produced as identification, and who did (did not) take an oath.

S.O. Christensen  
Notary Public

S.O. CHRISTENSEN  
Name (typed, printed or stamped)

Commission Number \_\_\_\_\_  
My commission expires \_\_\_\_\_



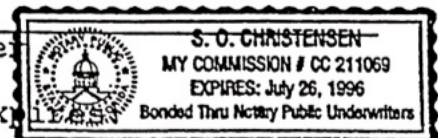
STATE OF FLORIDA  
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 19th day of January, 1995, by Robert M. Rehbock, as Secretary of Island Homes of the Keys, Inc., who is personally known to me or who has produced as identification, and who did (did not) take an oath.

S.O. Christensen  
Notary Public

S.O. CHRISTENSEN  
Name (typed, printed or stamped)

Commission Number \_\_\_\_\_  
My commission expires \_\_\_\_\_



MONROE COUNTY, FLORIDA

BY Shirley Freeman  
~~XXXXXXXXXXXX~~, Mayor  
Shirley Freeman

ATTEST:  
DANNY L. KOLHAGE, CLERK

By Ruth Duffantzen  
Deputy Clerk

DATE: February 21, 1995

STATE OF FLORIDA  
COUNTY OF MONROE

This instrument was acknowledged before me this 2nd day of March, 1995, by Shirley Freeman Mayor of Monroe County, who is personally known to me and who did not take an oath.

Ruth Ann Jantzen  
Notary Public

Notary Public  
RUTH ANN JANTZEN  
STATE OF FLORIDA  
My Comm Exp 12/30/95  
BONDED

Name (typed, printed or stamped)

CC 173022  
Commission Number

My commission expires:

DEPARTMENT OF COMMUNITY AFFAIRS,  
An Agency of the State of Florida

By Charles Pattison  
Charles Pattison

Director, Division of Resource  
Planning and Management

5/3/95  
Date

STATE OF FLORIDA  
COUNTY OF LEON

This instrument was acknowledged before me this 3rd day of May, 1995, by Charles Pattison, Director, Division of Resource Planning and Management, Department of Community Affairs, who is personally known to me and who did not take an oath.

Jane R. Bass  
Notary Public

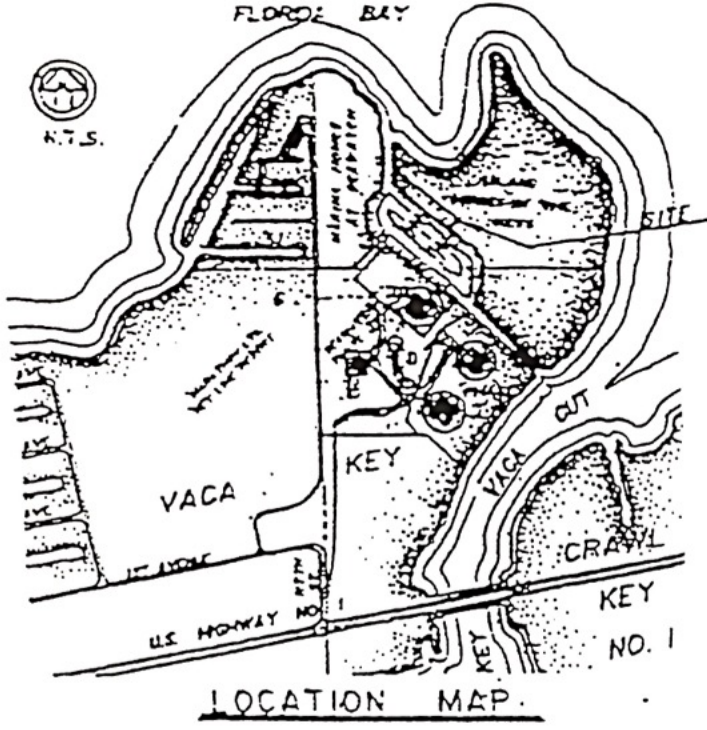
Jane R. Bass  
Name (typed, printed or stamped)

# CC 201689  
Commission Number

My commission expires

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
BY [Signature]  
Attorney's Office

JANE R. BASS  
MY COMMISSION EXPIRES  
JUNE 24, 1996  
#CC 201689  
NOTARY PUBLIC, STATE OF FLORIDA



LOCATION MAP.

Description:

A parcel of land in Government Lot 1, Section 22, Township 65 South, Range 22 East and Government Lot 4, Section 5, Township 66 South, Range 22 East, on Key Vaca, Monroe County, Florida and being more particularly described as follows: COMMENCE at the Southwest corner of said Section 22; thence N.85°28'04"E., along the South line of said section 22 a distance of 736.96 feet to the face of a concrete seawall and the Point of Beginning; thence N.00°35'35"E., along the face of a concrete seawall a distance of 76.85 feet; thence N.45°10'02"W., along the face of a concrete seawall a distance of 347.94 feet; thence N.37°27'45"E., a distance of 7.06 feet along the face of a concrete seawall; thence N.40°24'06"W., along the face of a concrete seawall a distance of 754.85 feet; thence N.01°30'35"E., along the face of a concrete seawall a distance of 5.85 feet; thence N.00°45'18"E., along a channel a distance of 22.35 feet; thence N.00°37'22"E., along a channel a distance of 136.12 feet to the West right Water Line of the Bay of Florida; thence N.67°14'45"E., and measuring the said West right Water Line with the following thirty four (34) meters and bounds a distance of 25.44 feet; thence S.23°01'25"E., a distance of 53.78 feet; thence S.01°10'00"E., a distance of 25.66 feet; thence S.27°03'35"E., a distance of 31.21 feet; thence S.51°27'45"E., a distance of 23.62 feet; thence S.33°41'45"E., a distance of 76.77 feet; thence S.48°18'55"E., a distance of 46.47 feet; thence S.63°41'45"E., a distance of 82.72 feet; thence N.78°40'25"E., a distance of 64.28 feet; thence N.58°08'55"E., a distance of 43.22 feet; thence N.47°57'25"E., a distance of 102.82 feet; thence N.45°32'55"E., a distance of 57.44 feet; thence N.64°50'55"E., a distance of 91.65 feet; thence N.61°33'25"E., a distance of 88.54 feet; thence N.07°08'05"E., a distance of 98.22 feet; thence N.34°12'34"E., a distance of 46.12 feet; thence N.78°08'25"E., a distance of 46.92 feet; thence S.30°15'45"E., a distance of 43.88 feet; thence S.58°12'50"E., a distance of 142.34 feet; thence S.41°28'45"E., a distance of 72.32 feet; thence S.17°32'41"E., a distance of 72.36 feet; thence S.17°57'41"E., a distance of 98.32 feet; thence S.05°11'45"E., a distance of 75.85 feet; thence S.27°01'45"E., a distance of 42.74 feet; thence S.07°12'45"W., a distance of 64.74 feet; thence S.24°37'01"W., a distance of 76.11 feet; thence S.02°31'50"E., a distance of 98.64 feet; thence S.04°48'01"W., a distance of 30.44 feet; thence S.11°43'43"W., a distance of 60.42 feet; thence S.09°05'13"W., a distance of 92.45 feet; thence S.30°12'12"W., a distance of 75.11 feet; thence S.30°09'05"W., a distance of 107.65 feet; thence S.48°14'28"W., a distance of 82.87 feet; thence S.65°15'00"W., a distance of 5.82 feet to a channel; thence N.40°18'30"W., along the said channel a distance of 396.51 feet to a concrete seawall; thence N.40°28'01"E., along a concrete seawall a distance of 35.56 feet; thence S.45°28'01"W., along the face of a concrete seawall a distance of 35.56 feet; thence N.00°35'35"E., along the face of a concrete seawall for 131.15 feet to the Point of Beginning; containing 577,656.28 Square feet, or 13.2612 acres, more or less.

LINE TABLE

Line	Bearing	Distance
11	N.00°35'35"E.	76.85'
12	N.37°27'45"E.	7.06'
13	N.40°24'06"W.	754.85'
14	N.01°30'35"E.	5.85'
15	N.00°45'18"E.	22.35'
16	N.00°37'22"E.	136.12'
17	N.67°14'45"E.	25.44'
18	S.23°01'25"E.	53.78'
19	S.01°10'00"E.	25.66'
20	S.27°03'35"E.	31.21'
21	S.51°27'45"E.	23.62'
22	S.33°41'45"E.	76.77'
23	S.48°18'55"E.	46.47'
24	S.63°41'45"E.	82.72'
25	N.78°40'25"E.	64.28'
26	N.58°08'55"E.	43.22'
27	N.47°57'25"E.	102.82'
28	N.45°32'55"E.	57.44'
29	N.64°50'55"E.	91.65'
30	N.61°33'25"E.	88.54'
31	N.07°08'05"E.	98.22'
32	N.34°12'34"E.	46.12'
33	N.78°08'25"E.	46.92'
34	S.30°15'45"E.	43.88'
35	S.58°12'50"E.	142.34'
36	S.41°28'45"E.	72.32'
37	S.17°32'41"E.	72.36'
38	S.17°57'41"E.	98.32'
39	S.05°11'45"E.	75.85'
40	S.27°01'45"E.	42.74'
41	S.07°12'45"W.	64.74'
42	S.24°37'01"W.	76.11'
43	S.02°31'50"E.	98.64'
44	S.04°48'01"W.	30.44'
45	S.11°43'43"W.	60.42'
46	S.09°05'13"W.	92.45'
47	S.30°12'12"W.	75.11'
48	S.30°09'05"W.	107.65'
49	S.48°14'28"W.	82.87'
50	S.65°15'00"W.	5.82'
51	N.40°18'30"W.	396.51'
52	N.40°28'01"E.	35.56'
53	S.45°28'01"W.	35.56'
54	N.00°35'35"E.	131.15'

CERTIFICATION

A





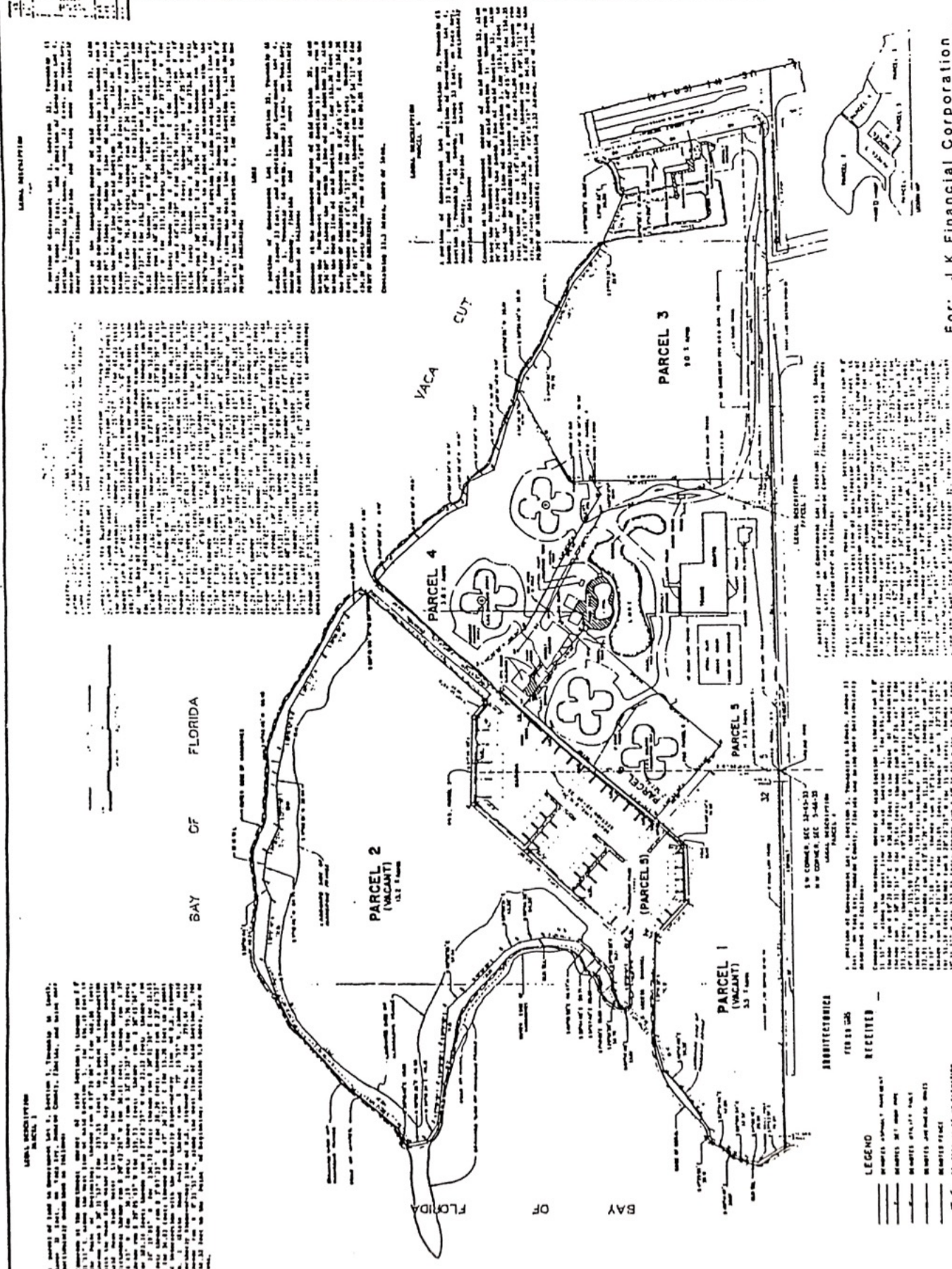




**APRILL & ASSOCIATES, INC.**  
 ENGINEERS PLANNERS SURVEYORS  
 8801 EAST EVANACHEE STREET SUITE 101  
 PHOENIX, ARIZONA 85028  
 PHONE: (602) 981-1711

THIS SURVEY WAS MADE IN ACCORDANCE WITH THE PROVISIONS OF THE SURVEYING ACT OF 1908, AS AMENDED, AND THE RULES AND REGULATIONS THEREUNDER, AND THE SURVEYING ACT OF 1933, AS AMENDED, AND THE RULES AND REGULATIONS THEREUNDER, AND THE SURVEYING ACT OF 1941, AS AMENDED, AND THE RULES AND REGULATIONS THEREUNDER.

APRILL & ASSOCIATES, INC.  
 ENGINEERS PLANNERS SURVEYORS  
 8801 EAST EVANACHEE STREET SUITE 101  
 PHOENIX, ARIZONA 85028  
 PHONE: (602) 981-1711



For: J K Financial Corporation

**LEGEND**

- BOUNDARY
- EASEMENT
- ...

**ABBREVIATIONS**

FEB 28 1968  
 RECEIVED

**LEGAL DESCRIPTION**

PARCEL 1 (VACANT) 3.3 ACRES  
 PARCEL 2 (VACANT) 13.7 ACRES  
 PARCEL 3 10.1 ACRES  
 PARCEL 4 3.4 ACRES  
 PARCEL 5 3.1 ACRES

**LEGAL DESCRIPTION**

PARCEL 1 (VACANT) 3.3 ACRES  
 PARCEL 2 (VACANT) 13.7 ACRES  
 PARCEL 3 10.1 ACRES  
 PARCEL 4 3.4 ACRES  
 PARCEL 5 3.1 ACRES

*This instrument prepared by:*

Barton W. Smith, Esq.  
SMITH HAWKS  
138 Simonton Street  
Key West, Florida 33040

Parcel ID No: 00104135-000000

*(Space reserved for recording)*

---

## **DEVELOPMENT AGREEMENT FOR SEAWATCH**

**THIS AGREEMENT** is entered into by and between ISLAND HOMES OF THE KEYS, INC., a New Jersey corporation (herein, the “Owner”) and the CITY OF MARATHON, a Florida municipal corporation (herein, the “City”), pursuant to Sections 102.29, 102.30, 102.31 and 102.32 of the City Code, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2011), and is binding on the “Effective Date” set forth herein.

### **WITNESSETH:**

**WHEREAS**, Owner is the owner of approximately 13.3 acres of contiguous uplands in the corporate limits of the City consisting of a vacant island, RE Number 00104135-000000, part of the development originally known as “Seawatch”, at Mile Marker 50 on Vaca Key more particularly described in the legal description attached hereto as **Exhibit A**, (“Property”). A copy of the Warranty Deed is attached hereto as **Exhibit B**; and

**WHEREAS**, the Property is currently subject to the 1995 agreement governing the development of the Property pursuant to Section 380.032(3), Florida Statutes (the “Agreement”) by and between the Florida Department of Community Affairs (“DCA”) and Monroe County, Florida (“Monroe County”) attached hereto and incorporated herein as **Exhibit C**; and

**WHEREAS**, the Agreement relates to the permissible development of a 13.3 acre island as single-family residences. As of the date of execution of the Agreement, development of the Property was governed by Monroe County Code (the “County Code”), and is now governed by the City of Marathon Code (the “Marathon Code”); and

**WHEREAS**, the Agreement provides that the Property “may be developed with a maximum of eight (8) single-family residences” and acted to “grandfather” the density of the Property at eight (8) units. See Agreement, Sec. 1, 3. The Agreement provides that apart from the “grandfathered” density, development of the Property “shall be subject to all Monroe County land development regulations in effect at the time the Owner or its successor applies for a building permit or permits from Monroe County for such development, including but not limited to the County’s rate of growth regulations and its environmental design criteria.”; and

**WHEREAS**, the Agreement provides that “the maximum of eight (8) single family residences shall be sited within the disturbed area and/or within a maximum of 3.16 acres of the palm hammock...” See Agreement, Sec 3, 4.

**WHEREAS**, subsequent to the Agreement’s approval, the City incorporated and adopted its own code, including a Building Permit Allocation System (“BPAS”) which differs from the Rate of Growth System previously in effect when the Agreement was approved.

**WHEREAS**, it was the intent of the signatories of the Agreement to permit the development of the property as eight single family market rate residential dwelling units with seven units situated in the palm hammock and one unit located in the disturbed area along the Western portion of the Property.

**WHEREAS**, the Parties recognize that the ability to fulfill the intent and purpose of the Agreement are limited due to the dwelling units to be located in palm hammock and limitations on allocating to palm hammock unless provided in this Agreement which provides certainty to both the City and Owner as to the development to occur at the Property; and

**WHEREAS**, in order to partially fulfill the intent of the Agreement, it is the Parties intent to allowing a driveway cleared along with clearing an unfragmented area made up of approximately 2.25 acres of the Property’s 13.3 acres as well as clear a walking path to the Eastern side of the Property, as permitted by the Agreement; and

**WHEREAS**, it is the Parties intent to utilize grandfathered density, as provided in the Agreement, to develop the Property as one (1) single family dwelling unit, not to exceed nine thousand five hundred square foot (9,500 sq. ft.), ~~plus accessory structures~~, to be located as depicted on the attached site plan, pursuant to the Marathon Code setback and bufferyard requirements; and

**WHEREAS**, it is the intent of the Parties to forfeit any remaining grandfathered density not utilized to develop the Property; and

**WHEREAS**, in order to protect the development rights of the Property and the economic viability of the land; and to preempt the possibility of a governmental taking of the Property under the doctrine of inverse condemnation, the Owner agrees to : 1) acquire and transfer one (1) existing residential development right pursuant to Article 2, Section 107.13 of the Land Development Regulations but without any restriction on the habitat type of the sender or receiver site, in order to develop one (1) single family dwelling unit on the Property or (2) apply for and obtain one residential BPAS permit through the BPAS allocation system as defined in Chapter 107, Article 1 of the City Code; and

**WHEREAS**, the proposed development is permissible and appropriate for the City's Comprehensive Plan Future Land Use designation, Conservation Native Area (CNA) applicable to the Property, which allows single family dwelling units; and

**WHEREAS**, the Owner has provided public notice of the parties' intent to consider entering into this Agreement by publishing an advertisement in a newspaper of general circulation and readership in the City, posting the Property subject to this Agreement, and mailing notices to the property owners lying within 300 feet of the boundaries of the Property subject to this Agreement; and

**WHEREAS**, the City Planning Commission has held a public hearing on ~~March 15, 2021~~, to consider this Agreement, and the City Council held two public hearings on ~~April 13, 2021~~ and ~~May 11, 2021~~ to consider this Agreement; and

**WHEREAS**, the City has determined that this Agreement is in the public interest and will further the health, safety, welfare, of the residents of the City 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:

**A. RECITALS.** The recitals set forth in the preceding “Whereas” clauses are incorporated herein and form a material part of this Agreement.

**B. 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.

**1. “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.

**2. “Building Permit Allocation System” or “BPAS Allocation** shall refer to those terms defined in Chapter 107, Article 1 of the City Code.

**3. “City Code”** shall refer to the Code of Ordinances of the City of Marathon in existence on the Effective Date of this Agreement.

**4. “Comprehensive Plan”** shall refer to the City’s Comprehensive Plan, effective July 5, 2005, as amended to the submittal date of this Agreement to the City.

5. **“ Dwelling Unit ”** shall refer to a dwelling unit as defined in Chapter 110, Article 3. - Defined Terms of the City Code.

6. **“ Effective Date ”** shall refer to the date this Agreement becomes effective, as set forth in this Agreement.

7. **“ 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.

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

9. **“ Owner ”** shall refer to the owner of the Property identified in the first paragraph of this Agreement.

10. **“ Property ”** shall refer to the parcel of real property located in the City that is the subject of this Agreement as described on **Exhibit A** attached hereto and made a part hereof.

11. **“ Public facilities ”** means those facilities identified in Section 163.3221, Florida Statutes (2011), and as set forth in this Agreement.

## **C. TERMS OF AGREEMENT.**

**1. Legal Description; Ownership and Equitable Interests in the Property.** The legal description of the Property subject to this Agreement is attached hereto as **Exhibit A** and is incorporated herein, along with **Exhibit B**, Warranty Deed, and **Exhibit C**, DCA Agreement ~~Redacted Purchase and Sale Agreement~~.

### **2. Duration of Agreement, Agreement Renewal.**

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

### 3. Plan Approval, including Densities and Intensities.

**a. Approval of Conceptual Site Plan; Minor Revisions; Final Site Plan.** The Property shall be redeveloped by allowing the area, ~~as depicted on the Site Plan for Seawatch dated \_\_\_\_\_ attached hereto as Exhibit C,~~ to be cleared without fragmentation, ~~along with a driveway and walking path (“Cleared Land”)~~, developed as a Single Family Dwelling Unit, not to exceed nine thousand five hundred square foot (9,500 sq. ft.) ~~plus additional structures including a guest cottage, garage, pool etc., all of which shall be attached as a portion of the principal structure’s foot print, but which shall be in addition to the nine thousand five hundred square foot (9,500 sq. ft.) primary residence,~~ all of which must be setback a minimum of twenty feet (20 ft.) from any edge of the Cleared Land. ~~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 this Site Plan; provided, however, that the Final Site plan submitted for building permits may deviate from the Conceptual Site Plan to accommodate refinements to the development plan including shifts in location of the Single Family Dwelling Unit, roadways, pathways, and swimming pool configurations or placement anywhere within the Cleared Land, subject to all setback and bufferyard requirements.~~ The Final Site Plan will meet all applicable setback, open space, landscape bufferyard, clustering, parking, and building height requirements established in City Code and such requirements shall not be varied unless Owner obtains a variance pursuant to applicable provisions of the City Code.

**b. Building Height.** 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.

**c. BPAS Allocation.** The Property shall: 1) acquire and transfer one (1) existing residential development right pursuant to Article 2, Section 107.13 of the Land Development Regulations but without any restriction on the habitat type of the sender or receiver site, in order to develop one (1) single family dwelling unit on the Property or (2) apply for and

obtain one residential BPAS permit through the BPAS allocation system as defined in Chapter 107, Article 1 of the City Code. The purpose and intent of the Agreement is to allow the transference of one existing residential unit from any land located within the City to the Property, ~~regardless of habitat restrictions on transference contained with the City Code~~ by reviewing the disturbed area as separate from the hammock area.

**c. 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 Owner 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.

**d. Additional Conditions by Mutual Agreement.** Nothing in this Agreement shall preclude the parties from applying additional conditions, by mutual written consent, during the final permitting approval process, without requiring an amendment to this development agreement.

**4. 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.

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

**b. Electric Service.** Electric service is provided by Florida Keys Electric Cooperative.

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

**d. Fire Service.** Fire service is provided by the Marathon Fire Department.



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

**f. Public Recreational facilities.** Public recreational facilities shall be addressed through impact fees, if any.

**g. 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.

**h. Impact Fees.** 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 Owner of any applicable utility system development fees.

**5. Reservations or Dedications of Land for Public Purposes.** There is no reservation or dedication of land for public purposes contemplated by this Agreement.

**6. All Local Development Permits Approved or Needed.**

**a. Development Approvals.** The following City development approvals are needed for the development authorized by this Agreement:

**1. Site Plan.** 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.

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

**b. Review.** No further review or discretionary review will be required by the City, it being agreed that the development, as depicted on the approved Conceptual Site Plan attached hereto, requires only the above development approvals so long as the Final Site Plan substantially complies with the Conceptual Site Plan approved under this Agreement, excluding the potential deviations, as provided in Section 3 above.

**c. Compliance.** Nothing in this Agreement shall be deemed to obviate the Owner's compliance with terms and provisions of each such identified approval.

**d. Completeness.** The parties acknowledge that the Owner has submitted all information necessary for review under the City Code.

**7. Mutual Cooperation.** The City agrees to cooperate with the Owner in a timely manner in providing and/or granting all permits, licenses, approvals, or consents necessary or appropriate to fully implement this Agreement. The City and the Owner agree to cooperate fully with and assist each other in the performance of the provisions of this Agreement.

**8. Development to Comply with Permits and City Comprehensive Plan and Code Provisions.** The development described in and authorized by this Agreement shall be constructed in accordance with all specified permit conditions, and in accordance with all applicable provisions of the City's Comprehensive Plan and City Code, as applicable. No certificate of occupancy for an individual building shall be issued until the City has assured itself that, subsequent to approved plans; the Owner has complied with all conditions in the permits issued by the City and other regulatory entities for that building.

**9. 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.

**10. Compliance with Permits, Terms, Conditions, and Restrictions not identified herein.** The failure of this Agreement to address a particular permit requirement, condition, term, or

restriction shall not relieve the Owner of the necessity of complying with the laws governing said permitting requirements, conditions, terms, or restrictions.

## **11. Governing Laws.**

**a. 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.

**b. 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.

**12. Amendments, Renewal, Revocation and Termination.** This Agreement may be amended, renewed, or terminated as follows:

**a. 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.

**b. 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 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.

**c. Termination by Owner.** This Agreement may be terminated by the Owner or its successor(s) in interest following a breach of this Agreement, upon written notice to the City as provided in this Agreement.

**d. 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.

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

### **13. Breach of Agreement and Cure Provisions.**

**a. Written Notice on the Owner.** If the City concludes there has been a material breach of this Agreement, prior to revoking this Agreement the City shall serve written notice on the Owner, identifying the term or condition the City contends has been materially breached and providing the Owner ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to the Agreement. Each of the following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the Owner, shall be considered a material breach of this Agreement: (a) failure to comply with the provisions of this Agreement; or (b) failure to comply with terms and conditions of permits issued by the City of Marathon or other regulatory entity for the development authorized by this Agreement.

**b. Written Notice on the City.** If the Owner concludes that there has been a material breach in the terms and conditions of this Agreement, the Owner shall serve written notice on the City, identifying the term or condition the Owner contends has been materially breached and providing the City 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: (a) failure to comply with the provisions of this Agreement, or (b) failure to timely process any application for site plan approval or other development approval required to be issued by the City for the development authorized by this Agreement.

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

**d. Waiver of Breach.** If either party waives a material breach in this Agreement by the other party, such a waiver shall not be deemed a waiver of any subsequent breach.

**14. 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) personal delivery; (b) deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; or (c) 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 OWNER:**

Island Homes of The Keys, Inc.  
Steven Hotz and John Hotz  
PO Box 179  
Medford NJ 08055

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

Smith Hawks, PL  
138 Simonton Street  
Key West, Florida 33040  
Telephone: (305) 296-7227

**TO THE CITY:**

George Garrett, City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
Telephone: (305) 289-4111

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

Steven Williams, City Attorney  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 3350  
Telephone: (305) 289-4111

**15. 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.

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

**17. 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.~~

**17.18. 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.

**18.19. 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.

**19.20. Litigation; Attorney's Fees; Venue; Waiver of Right to Jury Trial.** In the event of any litigation arising out of this Agreement between the City and Owner, 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.

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

**21.22. 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.

**22.23. 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.

**23.24. 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.

**24.25. Recording; Effective Date.** The Owner shall record this Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date of execution of 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 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 Owner 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 received by the state land-planning agency.

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

**26.27. Reversion of Agreement.** If Owner is denied permits from South Florida Water Management District or Army Corp. of Engineers for the development contemplated herein, this Agreement shall be of no force or effect and all density rights forfeited under this Agreement shall be reinstated as if this Agreement has no force or effect.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**SIGNATURE PAGES TO FOLLOW]**



**IN WITNESS WHEREOF**, the parties hereto, by their duly authorized representatives,  
have set their hands and seals on the dates below written.

**ISLAND HOMES OF THE KEYS, INC,**  
a New Jersey corporation

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**STATE OF NEW JERSEY**  
**COUNTY OF BURLINGTON**

The foregoing instrument was acknowledged before me by means of  physical presence  
OR  online notarization on this \_\_\_\_\_ day of \_\_\_\_\_ 202\_\_,  
by \_\_\_\_\_ as \_\_\_\_\_ of ISLAND  
HOMES OF THE KEYS, INC, a New Jersey corporation who is  personally known to me OR  
 who produced \_\_\_\_\_ as identification, and  who did  
OR  did not take an oath.

\_\_\_\_\_  
Notary Public, State of New Jersey  
My commission expires: \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, the City Council of the City of Marathon approved this Agreement by Resolution No. \_\_\_\_\_.

**CITY OF MARATHON,**  
a Florida municipal corporation

By: \_\_\_\_\_  
Luis Gonzalez, Mayor

**ATTEST:**

\_\_\_\_\_  
Diane Clavier, City Clerk

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

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

**EXHIBITS TO SEAWATCH DEVELOPMENT AGREEMENT**

**EXHIBIT A: SURVEY AND LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT B: WARRANTY DEED**

**EXHIBIT C: ~~SITE PLAN~~ DCA AGREEMENT**

**EXHIBIT A**

**SURVEY AND LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT B**  
**WARRANTY DEED**

**EXHIBIT C**

**SITE PLAN - DCA AGREEMENT**