

**CITY OF MARATHON, FLORIDA
RESOLUTION 2021-73**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST FOR A CONDITIONAL USE PERMIT AND A DEVELOPMENT AGREEMENT, FOR FLORIDIAN HOLDINGS, LLC, PURSUANT TO CHAPTER 102, ARTICLES 8 AND 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (“THE CODE”) ENTITLED “DEVELOPMENT AGREEMENT” AND “CONDITIONAL USE PERMITS” RESPECTIVELY FOR THE DEVELOPMENT OF A HOTEL; LOCATED AT AND AROUND 56243 OCEAN DRIVE; WHICH IS LEGALLY DESCRIBED AS BLOCK 1 LOTS 1-22, BLOCK 2 LOTS 1-20, LOT A, AND WATERWAY NUMBER 1, BLOCK 3 LOTS 1-3 AND LOTS 5-19, LOT A, AND PART OF WATERWAY NUMBER 2, BLOCK 4 LOTS 1-4, BLOCK 5 LOTS 1-7, LOT A, AND LOT B OF ECSTASY SUBDIVISION, AS WELL AS THE ENTIRETY OF VALHALLA ISLAND AMENDED PLAT OF ECSTASY SUBDIVISION BLOCK A, BAY BOTTOM ADJACENT TO TRACT A, AND PREVIOUSLY ABANDONED RIGHT OF WAY OF OCEAN DRIVE, SECTION 35, TOWNSHIP 65, RANGE 33, CRAWL KEY, MARATHON, MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBERS 00099750-000000, 00099760-000000, 00099760-000100, 00099760-000200, 00099760-000300, 00099760-000400, 00099760-000500, 00358250-000000, 00358260-000000, 00358270-000000, 00358280-000000, 00358290-000000, 00358300-000000, 00358310-000000, 00358320-000000, 00358330-000000, 00358340-000000, 00358350-000000, 00358360-000000, 00358370-000000, 00358380-000000, 00358390-000000, 00358400-000000, 00358410-000000, 00358420-000000, 00358430-000000, 00358440-000000, 00358450-000000, 00358460-000000, 00358470-000000, 00358480-000000, 00358490-000000, 00358500-000000, 00358510-000000, 00358520-000000, 00358530-000000, 00358540-000000, 00358550-000000, 00358560-000000, 00358570-000000, 00358580-000000, 00358590-000000, 00358600-000000, 00358610-000000, 00358620-000000, 00358630-000000, 00358640-000000, 00358650-000000, 00358660-000000, 00358661-000000, 00358710-000000, 00358720-000000, 00358730-000000, 00358740-000000, 00358750-000000, 00358760-000000, 00358770-000000, 00358780-000000, 00358790-000000, 00358800-000000, 00358810-000000, 00358820-000000, 00358830-000000, 00358840-000000, 00358850-000000, 00358851-000000, 00358860-000000, 00358870-000000, 00358880-000000, 00358890-000000, 00358900-000000, 00358910-000000, 00358910-000100, 00358930-000000, 00358940-000000, 00358950-000000, 00358960-000000, 00358970-000000, 00358980-

000000, 00358990-000000, 00358990-000200, 00359000-000000, 00359601-000000, 00359602-000000, 00359602-000100, 00360220-000200, 00360220-000400, 00360220-000500, 00360220-000700, 00360220-000800, 00360220-000900, 00360220-001000, 00360220-001100, 00360220-001200, 00360220-004400, 00360220-004500, 00360220-004600, 00360220-004700, 00360220-004800, 00360220-004900, 00360220-005000, 00360220-005200, 00360220-005300, 00360220-005400, 00360220-005500, 00360220-005600, 00360220-005700, 00360220-005800, 00360220-005900, AND 00358670-000000, NEAREST MILE MARKER 57.

WHEREAS, Floridian Holdings, LLC, (The “Applicant”) filed an Application on February 09, 2021 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 13 and 8 respectively of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant proposes to redevelop/expand the existing motel into up to 110 hotel/resort units, adding 64,554 square feet of commercial space which includes back of house support, food and beverage, arrival, housekeeping, etc.; and

WHEREAS, City staff reviewed the Applicant’s request for a Conditional Use Permit and 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 19th day of April, 2021, 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 8th day of June, 2021 and the 14th day of September, 2021, 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 hotels and motels in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

WHEREAS, the purpose of the Development Agreement is to security in his/her long term development plans and to insure the integration of certain land uses and structures within the City of Marathon, based on conditions imposed by the Council. Review is based primarily

on compatibility of the use with its proposed location and with surrounding land uses and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

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

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

Section 2. The Development Agreement between the City and Floridian Holdings LLC, a copy of which is attached hereto as Exhibit "A," is hereby approved. The Mayor is authorized to execute this Development Agreement on behalf of the City.

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14TH DAY OF SEPTEMBER, 2021.

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier
City Clerk

(City Seal)

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

Steven T. Williams, City Attorney

This instrument prepared by:

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

(Space reserved for recording)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into this _____ day of 2021, by and between the CITY OF MARATHON, FLORIDA (“Marathon”), a political subdivision of the State of Florida, and FLORIDIAN HOLDINGS, LLC (“Floridian Holdings” or the “Developer”), a foreign limited liability company authorized to do business in the State of Florida, 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 (2020), and is binding on the “Effective Date” set forth herein:

WITNESSETH:

The parties hereby agree as follows:

I. RECITALS

- A. Floridian Holdings is the owner of approximately 66 acres of land in the corporate limits of the City, located approximately at Mile Marker 56.7 on the South side of U.S. Highway No. 1, more particularly described in the legal description attached hereto as **Exhibit A** (the “Property”).
- B. Floridian Holdings wishes to redevelop the Property as a nature-based resort with up to 115 tourist housing dwelling units with up to 250 rooms and amenities ancillary to the resort, including restaurants and bars, commercial retail, marina, spas, conservation boardwalk, and swimming pools.
- C. As of the date of execution, Floridian Holdings has acquired 100 transient residential unit rights and 14 market-rate residential dwelling unit rights transferred to or recognized on the Property, as documented by the records summarized in **Exhibit B** (the “Development Rights”).
- D. All parties have the authority to enter into this Agreement pursuant to Florida Statutes, Chapter 163, and Floridian Holdings has sole and undivided ownership of the property.
- E. Section 163.3220, Florida Statutes, authorizes Marathon to enter into development agreements with land owners and/or governmental agencies to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision

of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.

- F. This Agreement, among other things, is intended to and shall constitute a Development Agreement between the parties, pursuant to the *Florida Local Government Development Agreement Act*, Section 163.3223, *et seq.*, Florida Statutes (the “Act”).
- G. The parties recognize that the public noticing and hearing procedure shall follow the requirements of Section 163.3225, Florida Statutes.
- H. Marathon finds that entering into this Agreement furthers the purposes, goals, objectives and policies of Marathon’s Comprehensive Plan, which contains goals and objectives that seek to direct development to areas with sufficient land area and traffic capacity, is compatible with surrounding uses, and has access to capital resources. The project is also consistent with the assigned land use designations and permitted density and intensity of use, as well as, bulk improvements are clustered in the least environmentally sensitive areas.
- I. Floridian Holdings and Marathon have 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 Marathon, 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.
- J. The City of Marathon Planning Commission has held a public hearing on April 19, 2021, to consider this Agreement, and the City Council held two public hearings on June 8, 2021 and September 14, 2021 to consider this Agreement

II. PURPOSE

The purpose of this Agreement is to allow Floridian Holdings to construct a low- impact, environmentally sensitive resort project. The resort will incorporate an environmental education and stewardship program for guests. This Agreement will allow for a reasonable use of the Property with an immersive natural and environmental experience for guests.

III. TERMS OF THE AGREEMENT

- A. Recitals. The recitals are part of this Agreement on which the parties have relied and are incorporated herein by reference. The parties recognize the binding effect of Florida Statutes, Section 163.3220 – 163.3243, as to the form and content of this Agreement.
- B. Legal Description and Ownership. The legal description for the Property owned by Floridian Holdings and subject to this Agreement is set forth in **Exhibit A** to the Agreement.

- C. **Duration of Agreement.** This Agreement shall remain in effect for ten (10) years from the “Effective Date” as defined herein, and may be extended by mutual consent of the parties and approval at a public hearing, in accordance with Section 163.3229, Florida Statutes. For the duration of this Agreement, the parties agree that any development shall comply with and be controlled by this Agreement, applicable Marathon Ordinances, and Comprehensive Plan governing the development of land in effect on the date of execution of this Agreement, in accordance with Section 163.3220, Florida Statutes.
- D. **Exempt Development Rights.** The Development Rights owned by Floridian Holdings, described particularly in **Exhibit B** are vested and shall not expire. The Development Rights are exempt from Marathon’s Building Permit Allocation System (“BPAS”). Floridian Holdings additionally may transfer properly documented and acquired BPAS-exempt development rights off-site within the City of Marathon in accordance and compliance with any existing or subsequently adopted provision of the City Code.
- E. **Additional Development Rights.** Floridian Holdings may acquire additional building rights to transfer onto the Property pursuant to City Code Chapter 107, Article 2 so long as the additions comply with this Agreement, as may be amended, and the applicable density standards in the City Code.
- F. **Approval of Conceptual Site Plan and Revisions.** The development authorized by this Agreement is depicted on the Conceptual Site Plan (the “Conceptual Site Plan”), attached hereto as **Exhibit C**. The Conceptual Site Plan is hereby approved by Marathon, 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 Site Plan to accommodate: (1) to accommodate refinements to 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 set forth in this Agreement is not exceeded; (3) changes to the proposed lodge, pool, recreation area, marina, commercial retail, spa and other ancillary resort 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 bufferyard, parking and building height requirements established in City Code and such requirements shall not be varied unless Developer obtains a variance pursuant to applicable provisions of the City Code.
- G. **Permitted Uses.**
1. In accordance with this Agreement, the applicable Future Land Use Map categories, and permitted uses in Marathon’s Future Land Use Map

categories include commercial retail, offices, commercial fishing, attached residential dwelling units, hotels, resorts, marinas and accessory uses.

2. In accordance with this Agreement and the MU Land Use (Zoning) District, as set forth in Marathon's Code and in compliance with other provisions of the Code, the permitted uses in the MU Land Use (Zoning) District include commercial retail, offices, commercial fishing, attached residential dwelling units, hotels, resorts, marinas, and accessory uses.
3. The height of any new structure associated with the redevelopment of the Property shall not exceed 42 feet as measured from the crown of the roadway (U.S. 1) pursuant to Section 107.40.A of the City of Marathon Code. The Lodge and other new structures may have minor decorative architectural features as determined by the Director, mechanical equipment, skylights, flagpoles, air conditioner units, plumbing stacks, church steeples, ham radio antennas, and antenna supporting structures. Except for architectural features, all such structures shall be screened from view; screening is allowed only to the minimum height necessary. In no event shall any structure exceed 50' as measured from the crown of the road.
4. The Property currently has Mixed Use ("MU") and Conservation-Native Area ("C-NA") Land Use (Zoning) District designations and Mixed Use - Commercial ("MU-C") and Conservation Future Land Use Map designations.
5. In accordance with this Agreement and with the MU Land Use (Zoning) District, and in compliance with other provisions of the City Code, the permitted uses in the MU Land Use (Zoning) District include hotel rooms, resort with amenities, restaurants, pool and related accessory uses.
6. The Property shall be developed with up to 115 tourist housing dwelling units with up to 250 rooms and amenities ancillary to the resort, including restaurants and bars, marina, commercial retail, spas, conservation boardwalk, and swimming pools utilizing the Development Rights and additional development rights, which may be acquired.

H. Public Facilities. There are no impacts on public facilities since the number of hotel rooms are derived from pre-existing, lawfully established development rights transient rental transferable development rights.

1. The Florida Keys Aqueduct Authority provides domestic potable water to the Property.
2. The Florida Keys Electric Cooperative provides power to the Property.

3. Solid waste services are provided to the Property by a solid waste collection system franchise through Marathon.
 4. The Property is connected to central sewer maintained by Marathon.
 5. Fire service shall be provided by the Marathon Fire Department.
 6. Any increased impacts on public facilities or public services attributable to each unit of development, and the cost of capital improvements to meet the associated demand on such facilities or services, shall be assured by payment to Marathon, 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.
- I. Reservation or Dedication of Land. There is no reservation or dedication of land for public purposes contemplated by this Agreement.
- J. Development Allowed. The following specific criteria are those which will guide development of the Property, and are standards by which any further approvals shall be measured;
1. Provided such development can be designed and approved by all applicable codes, including but not limited to Marathon's Code and the Florida Building Code, Floridian Holdings is permitted to develop the following buildings, facilities and structures on the Property, pursuant to this Agreement:
 - a. **Density.** The maximum density is 115 tourist housing dwelling units with up to 250 rooms utilizing the Development Rights and any additional development rights acquired. Allowed resort accommodations may include a lodge, cottage or cabin units, and boats or tents.
 - b. **Intensity.** The maximum floor area for non-residential structures is 100,000 square feet.
 - c. Additional amenities ancillary and accessory to the hotel use include a gatehouse, lobby, offices, fitness center, spa, restaurants and bars, marina, dockmaster, commercial retail, maintenance and housekeeping facilities, gift shop, and water sports, as depicted on the Conceptual Plan submitted with and made a part of this Agreement.

- d. Onsite valet parking. The number of parking spaces accounts for shared use of guest parking spaces. Parking may also be accommodated in offsite valet or employee lots.
 - e. A copy of the preliminary design data, parking calculations and density/intensity table is attached as **Exhibit D**.
- K. Employee Housing. Floridian Holdings will provide off-site employee housing equal to 20% of the approved floor area in guest units consistent with applicable City of Marathon's Land Development Regulations.
- L. Employee Housing Definitions. *Employee housing* means residential dwelling units that meet the following requirements:
1. All applicable requirements of the United States Department of Housing and Urban Development minimum property standards as to room sizes, fixtures, landscaping and building materials, when not in conflict with applicable laws of Marathon; and
 2. A dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of that amount which represents either 50 percent (very low income) or 80 percent (low income) or 100 percent (median income) or 120 percent (moderate income) of the monthly median adjusted household income for Marathon.
 3. *Affordable housing owner occupied, low income*, means a dwelling unit occupied only by a household whose total household income does not exceed 80 percent of the median monthly household income for Marathon.
 4. *Affordable housing owner occupied, median income*, means a dwelling unit occupied only by a household whose total household income does not exceed 100 percent of the median monthly household income for Marathon.
 5. *Affordable housing owner occupied, moderate income*, means a dwelling unit occupied only by a household whose total household income does not exceed 120 percent of the median monthly household income for Marathon.
 6. *Affordable rental housing, low income*, means a dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of the amount that represents 80 percent of the monthly median adjusted household income for Marathon.
 7. *Affordable rental housing, median income*, means a dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of the

amount that represents 100 percent of the monthly adjusted median household income for Marathon.

8. *Affordable renting housing, moderate income*, means a dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of the amount that represents 120 percent of the monthly median adjusted household income for Marathon.
 9. *Median income, rental rates and qualifying incomes table*, means eligibility requirements compiled each year by the Planning Department based upon the median annual household income published for Marathon on an annual basis by the U.S. Department of Housing and Urban Development and similar information for median and moderate income levels from the Florida Housing Finance Corporation. Affordable housing eligibility requirements for each household will be based upon median annual household income adjusted by family size, as set forth by the U.S. Department of Housing and Urban Development and the Florida Housing Finance Corporation. Marathon shall rely upon this information to determine maximum rental rates and maximum household income eligible for affordable housing rental or purchase.
 10. *Monthly median household income* means the median annual household income for Marathon, divided by 12.
- M. Abandonment of Banana Boulevard. Floridian Holdings has submitted an application to abandon the Banana Boulevard right-of-way. Thereafter, Marathon shall transfer its ownership of Banana Boulevard to the centerline of said right-of-way to Floridian Holdings.
- N. Abandonment of Rights-of-Way. Floridian Holdings has submitted an application to abandon all rights-of-way in Ecstasy Section "A" subdivision including First Street South, Second Street South and unnamed alleyways.
- O. Conceptual Plan Approval. Marathon does hereby accept the Conceptual Site Plan, a copy of which is attached as **Exhibit C**. The development shall be consistent with all applicable codes, including but not limited to, Marathon's Comprehensive Plan and Code.
- P. Findings of Consistency. By entering into this Agreement, Marathon finds that the development permitted or proposed herein is consistent with its Comprehensive Plan and Code.

IV. BREACH, AMENDMENT, ENFORCEMENT AND TERMINATION

- A. **Material Breach:** A material breach by the parties is the failure of any party to comply with the terms of this Agreement after notice as provided herein.

- B. Notice: Upon any party's material breach of the terms and conditions of this Agreement, the non-breaching party shall serve written notice of the breach upon the breaching party pursuant to the procedure established in this Agreement and shall provide the opportunity, within ninety (90) days of the date such notice is served, to propose a method of fulfilling the Agreement's terms and conditions or curing the breach. The breaching party shall be provided an additional ninety (90) days to cure the material breach or to negotiate an amendment to this Agreement within a reasonable time, as mutually agreed to by the parties. This Agreement is not subject to arbitration and must be amended in accordance with the statutory requirements.
- C. Amendment or Termination: The parties hereto shall at all times adhere to the terms and conditions of this Agreement. Amendment, termination, extension, or revocation of this Agreement shall be made in accordance with the notification and procedural requirements set forth herein.
1. Amendments to this Agreement shall subject parties to the laws and policies in effect at the time of the amendment only if the conditions of Section 163.3233(2), Florida Statutes, are met.
 2. No modifications, extensions, amendments, or alterations of the terms or conditions contained herein shall be effective unless contained in a written document approved and executed by the parties.
 3. Amendment, extension or termination shall require at least two (2) public hearings. Hearings shall be held pursuant to an application filed with Marathon by the party seeking to amend and terminate this Agreement, along with the requisite filing fee. Notice of public hearings shall be in accordance with Marathon's Land Development Ordinances and Florida Statutes.
- D. Enforcement:
1. Marathon may utilize appropriate code compliance remedies to cure any breach after notice and an opportunity to cure as provided herein.
 2. Nothing contained herein shall limit any other powers, rights, or remedies that either party has, or may have in the future, to enforce the terms of this Agreement.

V. GENERAL TERMS

- A. Binding Effect of Agreement. The covenants, agreements, and obligations herein contained, except as herein otherwise specifically provided, shall extend to, bind

and inure to the benefit of the parties hereto and their respective personal representatives, successors and assigns.

- B. State and Federal Law. If the State or Federal laws enacted after the effective date of this Agreement preclude either 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.
- C. Compliance with other Laws. The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the parties of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restrictions.
- D. Reservation of Rights. This Agreement shall not affect any rights, which may have accrued to any party to this Agreement under applicable law. The parties reserve any and all such rights. All approvals referenced in this Agreement are subordinate to compliance with all applicable laws, codes, and land development regulations and permits, except to the extent otherwise provided for in this Agreement.
- E. No Permit. This Agreement is not and shall not be construed as a Development Permit, Development Approval or authorization to commence development, nor shall it relieve the parties other than Marathon of the obligations to obtain necessary Development Approvals that are required under applicable law and under and pursuant to the terms of this Agreement and Marathon's Ordinance.
- F. Good Faith; Further Assurances, No Cost. The parties to this Agreement have negotiated in good faith. It is the intent and agreement of the parties that they shall cooperate with each other in good faith to effectuate the purposes and intent of, and to satisfy their obligations under, this Agreement in order to secure themselves the mutual benefits created under this Agreement. The parties agree to execute such further documents as may be reasonably necessary to effectuate the provisions of this Agreement, provided that the foregoing shall in no way be deemed to inhibit, restrict or require the exercise of Marathon's police power or actions of Marathon when acting in a quasi-judicial capacity. Wherever in this Agreement a provision requires cooperation, good faith or similar effort to be undertaken at no cost to a party, the party cooperating, reviewing or undertaking the effort shall, nonetheless, attend meetings, hearings, or proceedings and execute documents, and shall incur the costs, inclusive of the expense of its counsel.
- G. Successors and Assigns. This Agreement shall constitute a covenant remaining with the land, which shall be binding upon the parties hereto, their successors-in-interest, heirs, assigns, and personal representatives.
- H. 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 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 deemed effective upon receipt. For purposes of notice, demand, request, or replies:

The address of the City of Marathon shall be:

City of Marathon Manager
9805 Overseas Highway
Marathon, FL 33050

with copy to:

City Attorney
9805 Overseas Highway
Marathon, FL 33050

The address of Floridian Holdings shall be:

Floridian Holdings, LLC
2500 East Kearney St
Springfield, MO 65898
Attn: Tim Mahoney

with copy to

Barton Smith, Esq.
SMITH HAWKS, PL
138 Simonton Street
Key West, FL 33040

It is the responsibility of the parties to promptly notify all other parties of any changes in name or address for receipt of notice, demand, request, or replies.

- I. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, riot, civil commotion, fire or other casualty and other causes beyond the reasonable control of the party obligated to perform, excluding the financial inability of such party to perform and excluding delays resulting from appeals or rehearing, shall excuse the performance by such party for a period equal to any such period of prevention, delay or stoppage. In order to avail itself of this force majeure provision, the party invoking the same shall provide the other party with written notice that shall consist of recitation of all events that constitute force majeure events under this section, together with the beginning and ending dates of such events.
- J. Construction. This Agreement shall be construed in accordance with the laws of the State of Florida. The parties of this Agreement have participated fully in the negotiation and preparation hereof; and, accordingly, this Agreement shall not be

more strictly construed against any one of the parties hereto. In construing this Agreement, the use of any gender shall include every other and all genders, and captions and section and paragraph headings shall be disregarded. All of the exhibits attached to this Agreement are incorporated in, and made part, this Agreement.

- K. Omission. The parties hereto recognize and agree that the failure of this Agreement to address a particular permit, condition, terms or restriction shall not relieve either party of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction notwithstanding any such omission.
- L. Jurisdiction and Governing Law. The parties hereto agree that any and all suits or actions at law shall be brought in Monroe County, Florida and no other jurisdiction. This Agreement shall be construed and interpreted under the laws of the State of Florida.
- M. Attorney's Fees and Costs. The parties agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, as an award against the non-prevailing party, and shall include attorney's fees, court costs, in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and unusual and customary procedures required by the Circuit Court of Monroe County.
- N. Time is of the Essence. Time shall be of the essence for each and every provision of this Agreement.
- O. Entire Agreement. This Agreement, together with the documents referenced herein, constitute the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements, representations, or warranties other than as set forth herein. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought and subject to the requirements for the amendment of development agreements in the Act.
- P. Counterparts. This Agreement may be executed in one or more counterparts, and by different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all which taken together constitute one and the same Agreement.
- Q. Recording. The City of Marathon shall record this Agreement with the Clerk of Court of Monroe County within fourteen (14) days following signature by all parties. Floridian Holdings agrees that it shall be responsible for all recording fees and other related fees and costs related to the recording and delivery of this Agreement as described in this section. The provisions hereof shall remain in full

force and effect during the term provided herein and shall be binding upon all successors-in-interest of the parties to this Agreement.

- R. **Conflicting Resolutions.** All resolutions or parts thereof in conflict with the provisions of this Agreement and its resolution are hereby repealed to the extent of such conflict.
- S. **Severability.** If any part of this Agreement is contrary to, prohibited by, or deemed invalid under any applicable law or regulation, such provisions shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid; however, the remainder of the Agreement shall not be invalidated thereby and shall be given full force and effect as if the contrary, prohibited, or invalid provisions were never a part hereof.
- T. **Effective Date.** The “Effective Date” of this Agreement shall be forty-five (45) days after it is rendered to the Department of Economic Opportunity or upon the conclusion of any appeal, whichever is later.

[Signature Pages to Follow]

THE CITY OF MARATHON, FLORIDA

By: _____
LUIS GONZALEZ, MAYOR

ATTEST

By: _____
DIANE CLAVIER, CITY CLERK

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

STEVE WILLIAMS, CITY ATTORNEY

Exhibit A

Legal Description

Exhibit B

Development Rights

VALHALLA DEVELOPMENT RIGHTS							
	Sender	Receiver	No. of TBR		Documentation	Sender Site Identifier	
			Transient	Market			
1	Grassy Key Holdings	Grassy Key Holdings	18		Determination of Building Rights dated October 23, 2013	VBR 2013-0037 (Valhalla)	
2	Floridian	Floridian Holdings	9		Resolution 2009-100	MRBPAS 1 - 9	
3	James Edmunds	Floridian Holdings	4		Resolution 2009-101	70098	
4	Key RV/Mobile Home Association	Grassy Key Holdings	9		Deed of Transfer	130031	
5	Michael Adkins	Grassy Key Holdings	2		Deed of Transfer	130030 and 130032	
6	Gregory Coldiron	Grassy Key Holdings	1		Deed of Transfer	130037	
7	Michael Adkins	Grassy Key Holdings	2		Deed of Transfer	170023 and 170024	
8	Keys RV Rentals	Grassy Key Holdings	1		Deed of Transfer	170025	
9	Ginger Lot	Grassy Key Holdings	6		Deed of Transfer	170017 - 170022	
10	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130015	
11	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130017	
12	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130018	
13	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130019	
14	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130020	
15	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130021	
16	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130022	
17	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130023	
18	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130024	

19	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130025	
20	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130026	
21	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130027	
22	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130028	
23	Grassy Key Holdings	Grassy Key Holdings	1		Affidavit	130029	
24	IPGP Food & Services	Grassy Key Holdings	9		Deed of Transfer	120033	
25	Hidden Harbor Marina Environmental Project	Grassy Key Holdings	10		Warranty Deed of Transfer	120036	
26	Lightfoot Real Estate Holdings	Grassy Key Holdings	12		Deed of Transfer	DP 2018-0176	
27	Thunderbolt Real Estate Holdings	Grassy Key Holdings	8	1	Affidavit	TBR 2019-0141	
28	Thunderbolt Real Estate Holdings	Grassy Key Holdings	8		Affidavit	160048	
		Total	100	14			