

**CITY OF MARATHON, FLORIDA
RESOLUTION 2006-088**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY HARRY W. CAPLAN FOR AN AMENDMENT TO A MAJOR CONDITIONAL USE PERMIT, PURSUANT TO SECTION 9.5-69 OF THE CITY OF MARATHON, AUTHORIZING THE REDEVELOPMENT OF A HOTEL, AT PROPERTY LOCATED AT 5000 OVERSEAS HIGHWAY, MILE MARKER 50, AND IS LEGALLY DESCRIBED AS LOTS 1 AND 2, PEARCES SUBDIVISION AND LOTS 1 – 5, BLOCK 2, VACA VILLAGE SUBDIVISION, KEY VACA, MONROE COUNTY, FLORIDA, RE# 00327180-000000

WHEREAS, on the 15th day of May, 2006, the City of Marathon (the “City”) Planning Commission (the “Commission”) and on the 13th day of June, 2006, the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by Harry W. Caplan (the “Applicant”), for an amendment to a major conditional use permit pursuant to Sections 9.5-69 of the City Code (the “Code”); and

WHEREAS, the purpose of the major conditional use permit is to allow the Applicant to redevelop a twenty-one (21) motel unit into eighteen (18) two (2) bedroom units with three (3) affordable/workforce housing units, a swimming pool, splash pool and hotel lobby (the “Proposed Use”) at the property described in the application (the “Property”).

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

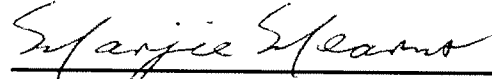
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves Development Order 2006-06, a copy of which is attached hereto as Exhibit “A”, granting an amendment to a major conditional use to Harry W. Caplan for the Proposed Use. The Director of Planning is authorized to sign the development order 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 11th day of July, 2006.

THE CITY OF MARATHON, FLORIDA



Marjie Mearns, Vice Mayor

AYES: Pinkus, Tempest, Worthington, Mearns
NOES: None
ABSENT: Bull
ABSTAIN: None

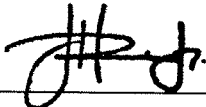
ATTEST:



Diane Clavier
City Clerk

(City Seal)

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



City Attorney

Prepared by and, after recording,
return to:

David deHaas
deHaas Consulting & Design
88975 Overseas Hwy.
Tavernier, Fl. 33070

Parcel ID Numbers 00327180-000000

Doc# 1600008 08/25/2006 11:50AM
Filed & Recorded in Official Records of
MONROE COUNTY DANNY L. KOLHAGE

Doc# 1600008
Bk# 2233 Pg# 1645

DEVELOPMENT AGREEMENT
FOR
SIDNEY'S @, MARATHON
F/K/A Sea Dell Motel

THIS AGREEMENT is entered into by and between Harry W. Caplan, (herein referred to as "Owner"), and the CITY OF MARATHON, a Florida municipal corporation (herein referred to as "City"), pursuant to Sections 9.5-101 and 9.5-102 of the City Code, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2004), and is binding on the "Effective Date" set forth herein.

WITNESSETH:

WHEREAS, Harry W. Caplan is the Owner of approximately one acre of land (herein referred to as "Property") in the corporate limits of the City of Marathon, Florida; and

WHEREAS, the redevelopment contemplated by the Owner will remove existing structures and reconstruct structures in compliance with all applicable FEMA regulations, Department of Environmental Regulation (DEP) regulations, Department of Health regulations (DOH), applicable building codes, the Comprehensive Plan ("Plan"), Land Development Regulations (LDR's) and the City Code; and

WHEREAS, as part of the Property redevelopment, the Owner will obtain all required permits for and construct a stormwater management system to serve the Property, providing a

Prepared by and, after recording,
return to:

Parcel ID Numbers 00327180-000000

**DEVELOPMENT AGREEMENT
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WITNESSETH:

WHEREAS, Harry W. Caplan is the Owner of approximately one acre of land (herein referred to as "Property") in the corporate limits of the City of Marathon, Florida; and

WHEREAS, the redevelopment contemplated by the Owner will remove existing structures and reconstruct structures in compliance with all applicable FEMA regulations, Department of Environmental Regulation (DEP) regulations, Department of Health regulations (DOH), applicable building codes, the Comprehensive Plan ("Plan"), Land Development Regulations (LDR's) and the City Code; and

WHEREAS, as part of the Property redevelopment, the Owner will obtain all required permits for and construct a stormwater management system to serve the Property, providing a

substantial environmental benefit through retaining, detaining, treating and managing stormwater runoff and eliminating the untreated discharge of stormwater; and

WHEREAS, the proposed redevelopment is permissible and appropriate with the City's Comprehensive Plan Future Land Use designations of Mixed Use Commercial applicable to the Property, which allows Hotel/Motel Use; and

WHEREAS, the Property is zoned Suburban Commercial; and

WHEREAS, pursuant to City Code Ordinance 2004-017 (hotel/motel ordinance), the redevelopment and use of the Property as contemplated by the Owner is a conditional use within the Property's designated Land Use District of Suburban Commercial; and

WHEREAS, the City has determined that the redevelopment of the existing 21 transient units will not increase the number of transient units on the Property and therefore are exempt from the Rate of Growth Ordinance of the City (ROGO) and will not require residential ROGO allocations; and

WHEREAS, the City has determined that the redevelopment will not adversely affect hurricane evacuation clearance time as reflected in the traffic study as performed by Transport Analysis Professionals; and

WHEREAS, the redevelopment will not increase, but will instead reconstruct, as accessory uses, existing commercial floor area on the Property and therefore will not require Non-residential Rate of Growth Ordinance (NROGO) allocations; and

WHEREAS, the City has held public hearings to accept and encourage public input with respect to the proposal by the Owner contained in this Agreement, and has considered such public input; 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 notice to the persons and entities shown on the most recent Monroe County Tax Roll to be the owners of property lying within 300 feet of the boundaries of the Property subject to this Agreement; and

WHEREAS, the City Planning Commission has held a public hearing on May 15, 2006 to consider this Agreement, and the City Council of the City has held public hearings on June 13, 2006, to consider this Agreement; and

WHEREAS, the City has determined that this Agreement is consistent with the local comprehensive plan, is in the public interest, and will further the health, safety, welfare and goals 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 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. **“City Code”** shall refer to the Code of Ordinances of the City of Marathon in existence on the Effective Date of this Agreement.

3. **“Comprehensive Plan”** shall refer to the City’s Comprehensive Plan in existence on the Effective Date of this Agreement, except as otherwise expressly provided herein.

4. **“Development”** shall refer to the redevelopment of the Property for the uses permitted by the Land Use Plan and Land Development Regulations, subject to the conditions, obligations, restrictions and terms contained in this Agreement.

5. **“Transient Dwelling”** shall refer to the dwelling unit type defined in Section 9.5-4 (R-17) of the City Code and defined in Florida Statutes 509.013(4)(a).

6. **“Effective Date”** shall refer to the date this Agreement becomes effective, as set forth in Section C.29 of this Agreement.

7. **“Florida Department of Community Affairs” 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” or “LDRs”** shall mean Chapter 9.5 of the City Code in existence on the Effective Date of this Agreement.

9. **“Owner”** shall refer to the Owner of the Property subject to this Agreement.

10. **“Property”** shall refer to one or more of the parcels of real property located in the City that are the subject of this Agreement, the legal description of which is set forth as Exhibit A to this Agreement.

C. TERMS OF AGREEMENT.

1. Ownership, Legal Description, and Unity of Title.

a. **Ownership.** The Owner of the subject property f/k/a as Sea Dell Motel and to be known as Sidney’s @ Marathon, as of the date of execution of this Agreement, is Harry W. Caplan, whose address is P.O. Box 372888, Key Largo Florida, 33037. There are no other legal or equitable owners known to the parties of this Agreement.

b. **Legal Description.** The legal description of the Property is included in the survey and is attached hereto as Exhibit A.

2. Duration of Agreement, Agreement Renewal.

a. **Duration of Agreement.** ~~This Agreement shall remain in effect for a period of ten (10) years, commencing on the Effective Date set forth below.~~ The Owner shall have a period of one (1) year from the effective date of this Agreement to obtain the first building permit and three (3) years from the effective date of this Agreement to obtain all Certificates of Occupancy for buildings on the Property. If the Owner has not complied with this schedule for construction, this Agreement shall be subject to termination as provided herein.

b. **Agreement Renewal.** This Agreement may be renewed or extended as provided herein.

3. Existing Development; Preparation for Redevelopment.

a. **Existing Development.** The following development exists on the Property: twenty-one (21) transient dwelling units, a swimming pool, laundry, reservation area, and office, for a total of twenty-one (21) dwelling units.

b. **Redevelopment Preparation.** The Property will be prepared for redevelopment by permitted demolition and appropriate removal of all existing structures.

4. Plan Approval, including Densities and Intensities.

a. **Approval of Site Plan; Minor Revisions; Final Site Plan.** The redevelopment on the Property shall be eighteen (18) transient dwelling units, together with three (3) affordable/employee housing units, 200 square feet of commercial floor area, 1,000 square feet of lobby area that shall not generate any revenue, and accessory structures and facilities as described in this Agreement and depicted on the Site Plan for Sidney's @ Marathon (f/k/a Sea Dell Motel), dated February, 2006, which was prepared by deHaas Consulting and Design / Keys Engineering Services Inc., of Islamorada, Florida, and is attached hereto as Exhibit B. The Site Plan is hereby approved by the City, and all subsequent site plans, site plan approvals and building permits shall substantially comply with this Site Plan; provided, however, that the final site plan may deviate from the Site Plan to accommodate: (1) refinements to the development plan including minor shifts of five (5) feet or less in the structures, roadways, pathways, and swimming pool configuration; or (2) modifications that are necessary to meet regulatory requirements imposed by any other governmental entity. The setback, open space, landscape bufferyard, parking and building height requirements established in City Code shall not be varied.

b. Dwelling Units under this Agreement. Pursuant to Ordinance 2004-017 of the City Code, the twenty-one (21) transient dwelling units on the Property are exempt from the requirements of the City's ROGO. The Owner shall execute and record in the public records of Monroe County a Declaration of Covenant and Restrictions in a form acceptable to the City ensuring that it shall not seek and has no legal right to file for homestead exemption for the transient dwelling units redeveloped on the Properties; and which shall require the occupants of all transient dwelling units on the Properties to comply with the hurricane evacuation requirements set forth in Policy 1-2.2.1 of the Future Land Use Element of the City's Comprehensive Plan.

c. Density under this Agreement. Pursuant to Ordinance 2004-017 of the City Code and any applicable provisions in the City's Comprehensive Plan, Owner is entitled to redevelop, and will redevelop, eighteen (18) transient dwelling units and the three (3) affordable/workforce dwelling units on the Property. The three (3) affordable/workforce dwelling unit allocations shall be derived from the use of the Conditional Redevelopment Credits created by the reduction of the number of transient residential units.

d. Structures. The redevelopment depicted on the Site Plan, and listed below, is approved by this Agreement. Exhibit C, incorporated by reference herein, depicts the building schematics for the residential dwelling units.

e. Commercial Floor Area Approved Under This Agreement. Pursuant to City Code 9.5-124.3, the site contains 200 square feet of existing commercial floor area or non-residential development on the Property, without being subject to nonresidential ROGO requirements. The total commercial floor area redevelopment on the Property approved

by this Agreement equates to 200 square feet with 1,000 square feet of lobby area that shall not generate any revenue, as depicted on the Site Plan. This commercial redevelopment will be used as accessory uses to the dwelling unit redevelopment of the Property.

f. Accessory Uses. Accessory uses, to be developed as amenities ancillary to the dwelling units redevelopment on the Property, are for the use of Sidney's @ Marathon (f/k/a Sea Dell Motel), the Owner and guests. Signage shall be erected to indicate that accessory uses are for Sidney's @ Marathon, Owner and guests. Accessory uses to be developed or redeveloped on the Property consist of the office, reception and presentation area, swimming pool and storage areas.

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

a. Building Height. Pursuant to Future Land Use Element Policy 1-3.2.5, buildings shall not exceed a maximum of thirty-seven (37) feet in height, measured from the centerline crown of U.S. 1 adjacent to the Properties or from the existing grade, whichever is higher.

b. Floor area Ratios . The following floor area ratios (FAR) shall apply to the Property:

Hotel Lobby/Sales Offices	0.40 FAR
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c. Setbacks. Pursuant to Sections 9.5-281 and 9.5-286 of the City Code, setbacks shall be as follows:

1. From the right of way of U.S. Highway 1: twenty-five (25) feet.

2. From the side (adjacent to road) property lines: ten (10) feet.
3. From the rear property line: ten (10) feet.

d. Utilities, Lighting, and Signage. Utilities, lighting, and signage shall comply with all applicable requirements of the City Code, Section 9.5-395. The Owner shall install all utilities underground and shall screen all utility facilities. The Owner shall utilize shaded light sources to illuminate all signs, facades, buildings, parking and loading areas, and shall arrange such lighting to eliminate glare to parcels lying outside the Property. No intermittent or flashing lights or flashing signs shall be allowed.

e. Landscaping. The Owner shall utilize best installation and maintenance practices for landscaping throughout the Property, and shall guarantee one hundred percent (100%) survival of all owner-installed plants for one (1) year. Eighty percent (80%) of all required plants installed shall be Florida Keys native plants that are suitable for the site conditions and are a species typical of the Middle Keys. The Owner shall remove all invasive exotic plants on the Property. The Owner shall provide, a Class “C” Major Street Buffer yard in accordance with Section 9.5-378 of the City Code. The Owner shall provide a Class “C” and Class “D” District Boundary Buffer, where applicable.

f. Parking. The redevelopment shall comply with the parking criteria as required by Section 9.5-351 of the City Code. The Owner shall provide no fewer than one (1) parking spaces per transient dwelling unit, requiring 18 spaces and 1 and ½ parking spaces for the affordable/employee housing units, requiring 5 spaces, for a total of 23 parking spaces

g. Entrance Street Improvements. Owner shall provide the following entrance street improvements:

(i) Owner shall remove direct access from U.S. Highway One, and obtain access from adjoining side streets, as depicted in the Site Plan and as approved by the City Engineer to ensure appropriate location of curb cuts and vehicular stacking along 50th Court and 50th Street Gulf;

(ii) The installation and maintenance of landscaping continuously across frontage on U.S. Highway One;

(iii) Owner shall provide adequate traffic circulation and other features as approved by the City Engineer and Fire Marshal; and

(iv) Owner shall install a traffic calming device at each exit from the property onto the adjacent side streets.

h. Internal Infrastructure. The roads, landscaping and other internal, Owner-provided infrastructure serving each transient unit shall be completed before a certificate of occupancy may be issued for the unit. The Owner shall be responsible for all maintenance and repair of internal infrastructure.

i. Fire Safety. The Owner shall provide fire hydrants and other such fire protection facilities as required by the Life Safety Code administered by the City Fire Department. Fire sprinklers will be installed in all dwelling units.

j. Open Space Ratio. Pursuant to City Code Sections 9.5-343, 9.5-262, and 9.5-267, a minimum of 20% open space is required. The Owner will maintain a minimum of 20% open space.

k. Wind Load. The Owner shall construct all structures on the Property, including doors, windows, and cladding, to withstand the mile per hour peak winds as specified in the Florida Building Code, 2004 Edition.

l. Energy Efficiency. The Owner shall construct all residential structures in conformance with the specifications of the State of Florida Energy Efficiency Code for Building Construction (State Energy Code).

m. Schematics. All redeveloped residential units constructed on the Property shall adhere to one of the architectural styles and one of the representative floor plans depicted in the schematics attached as Composite Exhibit C, incorporated by reference herein.

n. Permits from Other Regulatory Entities. 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.

o. Compliance with Suburban Commercial (SC) District Requirements. The proposed redevelopment complies with the Conditional Use permitting requirements in the Suburban Commercial (SC) land use district as provided in the City Code and in applicable Comprehensive Plan provisions.

p. Storm water Management. The development shall comply with the storm water management criteria in City Code Section 9.5-293 and as approved by the South Florida Water Management District (SFWMD). The redevelopment will meet all applicable

federal, state, regional, and local stormwater management requirements, including any applicable requirements pursuant to the National Pollutant Discharge Elimination System (NPDES) permit issued by the Florida Department of Environmental Protection for the City of Marathon in February 2005, prohibiting direct discharges into Outstanding Florida Waters.

q. Affordable Housing. The Owner agrees to provide three (3) affordable/workforce dwelling units. The Owner shall obtain a Certificate of Occupancy on the affordable/workforce dwelling units prior to or concurrent with receiving the first Certificate of Occupancy of the transient units.

The Owner shall enter into an agreement, in a form acceptable to the City Attorney, with the Middle Keys Community Land Trust (MKCLT) or other similar organization to provide services for both the initial and annual income qualifications of tenants of the affordable/workforce housing as well as income qualifications for purchasers of any affordable/workforce housing that may be offered for sale. This agreement shall be in place and approved by the City prior to the issuance of a Certificate of Occupancy (CO) for the affordable/working force housing units. The affordable/workforce housing deed restriction shall be for a minimum of fifty-years and may be renewable for a minimum of two fifty-year periods.

r. Cost Recovery Fees. The Owner shall pay any outstanding cost recovery fees within sixty (60) days of receipt of final invoice from the City.

s. 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.

6. **Public Utilities; 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 the 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. **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.

f. **Wastewater.** Wastewater treatment shall be provided by the construction of a new advanced wastewater treatment ("AWT") plant approved by DEP and which shall be owned by the Owner. The treatment plant shall meet the AWT nutrient removal standards as specified by DEP and shall be completed before a certificate of occupancy may be issued for any residential or transient residential dwelling unit. The Owner shall be responsible for the design, installation, inspection and testing of the complete wastewater collection system serving the Property which shall include all component parts of the wastewater collection

system. Upon completion of the Cities wastewater system servicing this property, the Owner shall connect system in accordance with all applicable provisions of the City Code, ordinances and rules and regulations.

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

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, or 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. Owner agrees to pay impact fees pursuant to any applicable impact fee ordinances adopted within twenty four (24) months of the date of execution of this Agreement. Any impact fees required to be paid by Owner pursuant to any such impact fee ordinances will be offset by the dollar amount paid by Owner toward the provision of any improvements which are the subject of said impact fee ordinances.

i. Traffic Study. Prior to issuance of building permits for structures on the Property, Owner agrees to conduct the appropriate traffic study to assess the project's vehicle traffic impacts on U.S. Highway 1. If the traffic study demonstrates that redevelopment of the Sidney's @ Marathon, (f/k/a Sea Dell Motel) will result in significant traffic impacts above those generated by the development currently existing on the Property, Owner will mitigate its fair share of the increased traffic impacts resulting from redevelopment of the Sidney's @ Marathon.

7. **Reservations or Dedications of Land for Public Purposes.** The parties anticipate that the Owner may reserve or dedicate land for public purposes in connection with the redevelopment authorized by this Agreement, but are currently unaware of the specifics of such reservation(s) or dedication(s). Such reservations or dedications may include, by way of example, easements necessary for the provision of storm water, utility, and wastewater services to the Property.

8. **All Local Permits Approved or Needed.**

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

1. **Final Site Plan.** Final site plan approval by the City building official, fire marshal, and planning staff confirming compliance with this Agreement and applicable City Code requirements.

2. **Conditional Use.** A Conditional Use Approval shall be received from the City of Marathon, prior to the receipt of building permits.

3. **Building Permits.** Building permits will be issued for each building as well as for the pool facilities, and other individual structures. An overall Site Plan, as approved by the City of Marathon, will address landscaping, parking, paths, setback, open space and other associated items.

b. **Review.** No further review or discretionary review will be required by the City, it being agreed that the redevelopment, as depicted on the approved Site Plan attached hereto, requires only the above development approvals so long as the final site plan substantially complies with the Site Plan approved under this Agreement.

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.

9. **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.

10. **Development to Comply with Permits and City Transitional 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 Comprehensive Plan and City Code in effect on the date of execution of this Agreement. No certificate of occupancy for an individual building shall be issued until the City approves all plans for that building and the Owner has complied with all conditions in the permit issued by the City and other regulatory entities for that building.

11. **Finding of Consistency.** The City of Marathon finds that the redevelopment authorized herein is consistent with the Comprehensive Plan and Land Development Regulations in effect on the date of execution of this Agreement.

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

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

13. Governing Laws.

a. Controlling Regulations. For the duration of this Agreement, all approved redevelopment 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. Subsequently Adopted Laws and Policies. Pursuant to Section 163.3233, Florida Statutes (2004), the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that: (a) the new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent development of the land uses, intensities, or densities set forth in this Agreement; (b) the new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they shall apply to the redevelopment that is subject to this Agreement; (c) the City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or (d) the Agreement is based on substantially inaccurate information supplied by the Owner. Redevelopment of the Property shall not be subject to any moratoria or other restrictions on redevelopment, which may be established or otherwise imposed in any manner or at any time by the City. Nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

c. **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.

14. 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 (2004), 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 (2004), 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 (2004): 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 their successor(s) in interest following a breach of this Agreement by the City, upon written notice to the City as provided in this Agreement.

d. Revocation by City. Pursuant to Section 163.3235, Florida Statutes (2004), 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 by the Owner to comply with the terms of this Agreement.

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

15. 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 redevelopment 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 redevelopment 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.

16. 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:

Harry Caplan
P.O. Box 372888
Key Largo, Florida, 33037
Cell Phone 216-509-4400
With a copy by regular U.S. Mail to:

TO THE CITY:

Mike Puto, City Manager
City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050
Telephone: (305) 743-0033

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

John R. Herin, Jr., Esquire
Stearns, Weaver, Miller, Weissler, Aldaheff, & Sitterson, P.A.
Museum Tower, 150 West Flagler Street
Miami, Florida 33130
Telephone: (305) 789-3200

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

18. Conflicts. In the event of a conflict between the provisions of this Agreement and the Code, the more restrictive shall control.

19. Enforcement. In accordance with Section 163.3243, Florida Statutes (2004), any party to this Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes (2004), 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 (2004).

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

21. Assignment. This Agreement may not be assigned without the written consent of the parties.

22. 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.

23. 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.

24. 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.

25. 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.

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

27. 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.

28. 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.

29. 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.

30. 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 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 recorded in the public records of Monroe County, Florida, and received by the state land planning agency.

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

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

Harry Caplan,

Date

July 25th 06

By
OWNER

STATE OF ~~FLORIDA~~ OHIO
COUNTY OF ~~DADE~~ Cuyahoga

The foregoing instrument was acknowledged before me on this 25th day of July 2006, by Harry W. Caplan as Owner of Sidney's @ Marathon, (f/k/a Sea Dell Motel) who is personally known to me or who produced _____ as identification, and who did/did not take an oath.



Notary Public, State of ~~Florida~~ Ohio

My commission expires: **NANCY JEAN RHOADES**
Notary Public, State of Ohio
My Commission Expires Mar. 7, 2011

CITY OF MARATHON

By

Christopher M. Bull
Christopher M. Bull, MAYOR

8/8/06
Date

ATTEST:

Diane Clavier

Diane Clavier
CITY CLERK

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

:

[Signature]
CITY ATTORNEY

EXHIBITS TO SIDNEY'S @ MARATHON
f/k/a Sea Dell Motel
DEVELOPMENT AGREEMENT