

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2022-131**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A REQUEST BY COCO VISTA COMMUNITY, LTD AND VC SEAVIEW, LTD. FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (“THE CODE”) ENTITLED “CONDITIONAL USE PERMITS”, AUTHORIZING THE DEVELOPMENT OF SIXTY-FOUR (64) AFFORDABLE HOUSING UNITS LOCATED AT 96 COCO PLUM DR. WHICH IS LEGALLY DESCRIBED AS BLOCK 7 LOT 9 COCO PLUM BEACH PB4-166 FAT DEER KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00363700-000000, BLOCK 7 LOT 11 AND ADJACENT CANAL COCO PLUM BEACH PB4-166 FAT DEER KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00363720-000000 AND BLOCK 7 LOT 10 AND ADJACENT CANAL COCO PLUM BEACH PB4-166 FAT DEER KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00363710-000000. NEAREST MILE MARKER 54.**

**WHEREAS;** COCO VISTA COMMUNITY, LTD. AND VC SEAVIEW, LTD. (The “Applicant”) filed an Application on August 31, 2022 for a Conditional Use Permit pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS;** previously Resolution 2018-72 was approved by City Council authorizing the conditional use for 64 units; and

**WHEREAS;** the Applicant has proposed the development of 64 affordable housing units; and

**WHEREAS;** the Applicant must obtain sixty-four (64) affordable residential allocations to be transferred via the Transfer of Building Rights (TBR’s), BPAS process, or any other legally established process, including statutory, prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY AFFORDABLE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.

**WHEREAS;** City staff reviewed the Applicant’s request for a Conditional Use Permit 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 17th day of October 2022, 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 Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS;** and on the 13th day of December, 2022 the City Council (the “Council”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS;** the City Council made a determination that the Applicant’s request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs and further, that the approval is in the public interest, is consistent with its policy to encourage redevelopment in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS;** the purpose of the Conditional Use Permit is to allow for the integration of certain land uses and structures within the City of Marathon, based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

**WHEREAS;** § 166.04151(1), Fla. Stat. (2022) provides “[n]otwithstanding any other provision of law, a municipality may adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing or linkage fee ordinances.”

**WHEREAS;** § 166.04151(5), Fla. Stat. (2022) states that § 166.04151(2), Fla. Stat. (2022) does not apply in an area of critical state concern, indicating by lack of inclusion that § 166.04151(1), Fla. Stat. (2022) does apply in an area of critical state concern.

**WHEREAS;** the City Council has the authority to approve this Resolution increasing the supply of affordable housing in the City of Marathon.

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

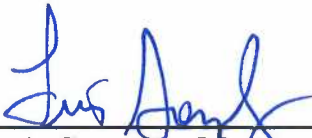
**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** The City Council hereby approves Development Order 2022-09, a copy of which is attached hereto as Exhibit “A”, granting a Conditional Use Permit to COCO VISTA COMMUNITY, LTD. AND VC SEAVIEW, LTD. subject to the Conditions imposed. 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 approval by the State Department of Economic Opportunity.


PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON,  
FLORIDA, THIS 13TH DAY OF DECEMBER, 2022.

THE CITY OF MARATHON, FLORIDA

  
\_\_\_\_\_  
Luis Gonzalez, Mayor

AYES: Landry, Smith, Still, Gonzalez  
NOES: Matlock  
ABSENT: None  
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:

  
\_\_\_\_\_  
Steven T. Williams, City Attorney



**CITY OF MARATHON, FLORIDA  
CONDITIONAL USE  
DEVELOPMENT ORDER # 2022-09**

**A DEVELOPMENT ORDER OF CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A REQUEST BY COCO VISTA COMMUNITY, LTD AND VC SEAVIEW, LTD. FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (“THE CODE”) ENTITLED “CONDITIONAL USE PERMITS”, AUTHORIZING THE DEVELOPMENT OF SIXTY-FOUR (64) AFFORDABLE HOUSING UNITS LOCATED AT 96 COCO PLUM DR. WHICH IS LEGALLY DESCRIBED AS BLOCK 7 LOT 9 COCO PLUM BEACH PB4-166 FAT DEER KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00363700-000000, BLOCK 7 LOT 11 AND ADJACENT CANAL COCO PLUM BEACH PB4-166 FAT DEER KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00363720-000000 AND BLOCK 7 LOT 10 AND ADJACENT CANAL COCO PLUM BEACH PB4-166 FAT DEER KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00363710-000000. NEAREST MILE MARKER 54.**

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**WHEREAS;** previously Resolution 2018-72 was approved by City Council authorizing the conditional use for 64 units; and

**WHEREAS;** the Applicant has proposed the development of 64 affordable housing units; and

**WHEREAS;** the Applicant must obtain sixty-four (64) affordable residential allocations to be transferred via the Transfer of Building Rights (TBR’s), BPAS process, or any other legally established process, including statutory, prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY AFFORDABLE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.

**WHEREAS;** City staff reviewed the Applicant’s request for a Conditional Use Permit 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 17th day of October 2022, 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 Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS;** and on the 13th day of December, 2022 the City Council (the “Council”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS;** the City Council made a determination that the Applicant’s request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs and further, that the approval is in the public interest, is consistent with its policy to encourage redevelopment in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS;** the purpose of the Conditional Use Permit is to allow for the integration of certain land uses and structures within the City of Marathon, based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

**WHEREAS;** § 166.04151(1), Fla. Stat. (2022) provides “[n]otwithstanding any other provision of law, a municipality may adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing or linkage fee ordinances.”

**WHEREAS;** § 166.04151(5), Fla. Stat. (2022) states that § 166.04151(2), Fla. Stat. (2022) does not apply in an area of critical state concern, indicating by lack of inclusion that § 166.04151(1), Fla. Stat. (2022) does apply in an area of critical state concern.

**WHEREAS;** the City Council has the authority to approve this Resolution increasing the supply of affordable housing in the City of Marathon.

**FINDINGS OF FACT:**

1. The applicant will redevelop the project site as set out in the project site plan allowing the Applicant to construct sixty four (64) affordable residential units, to include an office and common areas (See Approved Site Plan – Exhibit A” and all Plans otherwise provided and approved, or approved as revised, as part of the Applicant’s submittal):
2. In accordance with Section 102.77 of the Code, the Commission and Council considered and determined the Applicant met the following criteria:
  - a. The proposed use is consistent with the Comprehensive Plan and LDRs;
  - b. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;
  - c. The proposed use shall not adversely affect the health, safety, and welfare of the public; and
  - d. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and

e. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:

1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
2. Off-street parking and loading areas where required, with particular attention to item 1 above;
3. The noise, glare or odor effects of the conditional use on surrounding properties;
4. Refuse and service areas, with particular reference to location, screening and Items 1 and 2 above;
5. Utilities, with reference to location and availability;
6. Screening and buffering with reference to type, dimensions and character;
7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
8. Required yards and other open space;
9. General compatibility with surrounding properties; and

### **CONDITIONS IMPOSED:**

Granting approval of the Application is subject to the following conditions:

#### Conditions of Approval

- 1) As part of the permit application, all conditions of the Fire Marshal must be met prior to permit issuance, and hydrants must be operational prior to buildings going vertical.
- 2) City approval is required for ADA compliant parking spaces prior to Building Permit Approval.
- 3) Bike racks must be shown on the final site plan and approved prior to Building Permit Approval.
- 4) City approval is required for the stormwater management system prior to Building Permit Approval.
- 5) Applicant must obtain all outside agency approvals prior permit issuance and prior to project initiation.
- 6) City approval of the final engineering and connection to the City Wastewater Utility will be required.
- 7) A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees. Since additional buffering was required and agreed to by the applicant, this additional buffering must also be reviewed and approved by the City prior to final project approval.
- 8) A Transplantation / Mitigation plan must be approved for any native trees destroyed as part of proposed construction. This Plan must be provided and approved prior to the initiation of site development.
- 9) If the redevelopment is found to have any effect on the Eastern Indigo Snake, then the prescribed

protection measures must be undertaken, and the information poster posted on site.

- 10) A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.
- 11) Sufficient parking for two spaces per unit and additional visitor parking.
- 12) City approval is required for ADA compliant parking spaces prior to Building Permit Approval.
- 13) City approval is required for bike racks prior to Building Permit Approval.
- 14) All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
- 15) Applicant must obtain all outside agency approvals, this includes but is not limited to SFWMD, FDOT, ACOE, and DEP.
- 16) Affordable Housing Deed Restrictions must be filed prior to building permit issuance. Said deed restrictions shall be provided in a form acceptable to the City and shall be filed with the Monroe County Clerk of Court and shall run with the land for a period of ninety-nine (99) years.
- 17) Dwelling units shall contain less than or equal to 1,800 square feet of habitable space. Occupancy of affordable housing units is limited to those meeting the following income requirements:
- 18) Very-low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 50 percent of the median adjusted gross annual income for households within the county;
- 19) Low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 80 percent of the median adjusted gross annual income for households within the county;
- 20) Median-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 100 percent of the median adjusted gross annual income for households within the county;
- 21) Moderate-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 120 percent of the median adjusted gross annual income for households within the county;
- 22) Middle-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 160 percent of the median adjusted gross annual income within the county;
- 23) For the purposes of this section, "adjusted gross income" means all wages, income from assets, regular cash or non-cash contributions or gifts from persons outside the household (that will be used to offset the purchase price of the dwelling unit), and such other resources and benefits as may be determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, less deductions allowable under Section 62 of the Internal Revenue Code. Income from assets is calculated at either the actual income from all assets or two (2%) percent of the value of all assets, whichever is greater. If total assets are less than \$5,000.00, no income is considered. Asset inclusions: Cash accounts (checking, savings, IRA, Money Market...), investments, retirement accounts, boats, RV's. Income exclusions: Personal property, automobiles;
- 24) The maximum sales price shall not exceed 300 percent of that amount which represents 160 percent of the median adjusted gross annual income for households within the county;
- 25) The monthly rent shall not exceed 30 percent of that amount which represents the income bracket of the household, i.e., very low, low, median, moderate or middle, divided by 12. In no case shall the monthly rent exceed 160 percent of the median adjusted gross annual income for households within the county, divided by 12; and
- 26) If the dwelling units utilize affordable housing BPAS allocations, the requirements of Subsection 107.06 shall also apply as appropriate.
- 27) Annual income qualification, lease, or employment verification, as applicable, by the City, or its designee, shall be limited to rental and employee housing dwelling units. Income verification for

owner occupied dwellings shall be performed and approved by the City or its designee prior to the sales closing and occupancy of the dwelling unit.

- 28) The Applicant must obtain sixty-four (64) affordable residential allocations to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process, including statutory, prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY AFFORDABLE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.
- 29) The Conditional Use Development Order will constitute the Certificate of Concurrence for the project. The determination will be valid for one year.

**VIOLATION OF CONDITIONS:**

The applicant understands and acknowledges that it must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicant or its successor or designee is in non-compliance with this Resolution or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

**CONCLUSIONS OF LAW:**

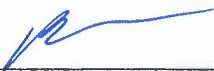
Based upon the above Findings of Fact, the Council does hereby make the following Conclusions of Law:

1. The Application has been processed in accordance with the applicable provisions of the City Code, and will not be detrimental to the community as a whole; and
2. In rendering its decision, as reflected in this Resolution, the Council has:
  - (a) Accorded procedural due process;
  - (b) Observed the essential requirements of the law;
  - (c) Supported its decision by substantial competent evidence of record; and
3. The Application for a conditional use is hereby GRANTED subject to the conditions specified herein.

**EFFECTIVE DATE:**

This development order shall not take effect for five (5) days following the date it is filed with the City Clerk, and during that time, the conditional use approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this development order until said appeal is resolved.

12/27/22  
Date

  
\_\_\_\_\_  
Brian Shea  
Director of Planning



This Development Order was filed in the Office of the City Clerk of this \_\_\_\_\_ day of \_\_\_\_\_, 2022.



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

**NOTICE**

Under the authority of Section 102.79(c) of the City of Marathon Land Development Regulations, this development order shall become null and void with no further notice required by the City, unless a business license has been issued for the use or a complete building permit application for site preparation and building construction with revised plans as required herein is submitted to the City of Marathon Building Official within one (1) year from the date of conditional use approval, or the date when the Department of Economic Opportunity waives its appeal and all required certificates of occupancy are procured with three (3) years of the date of this development order is approved by the City Council.

In addition, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Economic Opportunity. During that forty-five days, the Florida Department of Economic Opportunity may appeal this instrument to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

**CERTIFICATE OF SERVICE**

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to Smith Hawks, PL (Bart Smith/AJ Davila), 138 Simonton Street, Key West, FL 33040, this 27 day of Dec, 2022.



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

# EXHIBIT "A"

