



**City of Marathon City Council Agenda**  
**Marathon Council Chambers, 9805 Overseas Hwy., Marathon**  
**Tuesday, May 28, 2019 5:30 P.M.**

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Roll Call**
4. **Approval of agenda and consent agenda** [Approval of Consent Agenda passes all routine items indicated by asterisk (\*). Consent Agenda items are not considered separately unless a council member so requests. In the event of such a request, the item is returned to the Regular Agenda.]

5. **City Council Items**

- \*A. Approval of Minutes .....1
- \* B. Permission to hold the 39<sup>th</sup> Annual Bridge Run on March 28, 2020.....12
  - C. Land Authority (Councilmember Zieg)
  - D. Increase of Maximum Building Height Discussion (Councilmember Senmartin)
  - E. Community Announcements .....13
  - F.

6. **City Manager Report**

- A. Five Year Service Award, Amanda Riley
- B. Draft Budget Calendar.....14
- C. Report on Breakout of Number of Temporary Placement Structures.....15
- D. Wastewater Utility Report.....20
- E.

7. **Citizens' comments on agenda items not scheduled for public hearing and items other than those appearing on the agenda** [Those who have signed in will be given the first opportunity to speak. Time is limited to 2 minutes per speaker and 30 minutes total time for this agenda item.] **TIME CERTAIN TO 6:30 PM OR AS SOON AS POSSIBLE THEREAFTER OR AT THE CONCLUSION OF ALL COUNCIL BUSINESS; WHICHEVER OCCURS FIRST.**

8. **Quasi Judicial Public Hearing** - Please be advised that the following items on the agenda are quasi-judicial in nature. If you wish to comment upon these items, please inform the Clerk by filling out the available sign-up form. An opportunity for persons to speak on the items will be made available after the applicant and staff has made their presentations on the items. All testimony, including public testimony and evidence, will be made under oath or affirmation. Additionally, each person who gives testimony may be subject to cross-examination. If you refuse either to be cross-examined or to be sworn, your testimony will not be considered. The general public will not be permitted to cross-examine witnesses, but the public may request the Council to ask questions of staff or witnesses on their behalf. Persons representing organizations must present evidence of their authority to speak for the organization. (Councilmember's to communicate ex parte communication.)

**A. Resolution 2019-46,** Approving A Request By Grassy Key Resort Group, LLC For A Conditional Use Permit, Pursuant To Chapter 102, Articles 13 Of The City Of Marathon Land Development Regulations (LDRS) Entitled “Conditional Use Permit” Seeking Authorization For The Redevelopment Of An Existing Hotel Resort And Commercial Uses On Property Located At 58070 And 58182 Overseas Highway, Which Is Legally Described As Township 65, Section 24, Range 33; Bk 36 Lots 1-2-3-4, Pt Lots 5-6 (Parcel A) And Westerly 15ft Unnamed St Adjacent Lot 1 Res B-C-C 8/11/61 And Adjacent Portion Of Flagler Street And Grassy Key Bay Bottom Adjacent Lots 1-2-3, Lot 12 And Pt Lot 13 In The Crains Subdivision, Grassy Key, Marathon, Florida: Having Real Estate Numbers 00370940-000000 And 00371060. Nearest Mile Marker 58.5. ....26

**B. Resolution 2019-47,** Approving A Request By Grassy Key Resort Group, LLC For A Development Agreement, Pursuant To Chapter 102, Articles 8 Of The City Of Marathon Land Development Regulations (LDRS) Entitled “Development Agreement” Seeking Authorization For The Redevelopment Of An Existing Hotel Resort And Commercial Uses On Property Located At 58070 And 58182 Overseas Highway, Which Is Legally Described As Township 65, Section 24, Range 33; Bk 36 Lots 1-2-3-4, Pt Lots 5-6 (Parcel A) And Westerly 15ft Unnamed St Adjacent Lot 1 Res B-C-C 8/11/61 And Adjacent Portion Of Flagler Street And Grassy Key Bay Bottom Adjacent Lots 1-2-3, Lot 12 And Pt Lot 13 In The Crains Subdivision, Grassy Key, Marathon, Florida: Having Real Estate Numbers 00370940-000000 And 00371060. Nearest Mile Marker 58.5. ....63

**C.** Consideration Of A Request For A Conditional Use Permit And Development Agreement For 1477 Overseas Highway LLC And Seasons Inc., Pursuant to Chapter 102, Articles 8 & 13 Of The City of Marathon Land Development Regulations (Code) Entitled “Conditional Use Permits” And “Development Agreements,” For The Redevelopment Of The Properties As An Affordable Mobile Home Park, Located at 1477 Overseas Highway And 263 15<sup>th</sup> Street, Which Are Legally Described As The North 150 Feet of Lot 1 and 2, Part of Lots 1 and 2, Block 2 , Parrish Subdivision, Marathon, Florida, Having Real Estate Numbers 00326770-000000 and 00326760-000000. Nearest Mile Marker 48.....79

**9. Ordinances for First Public Hearing**

**A. Ordinance 2019-10,** Amending The City’s Comprehensive Plan To Modify Or Add To Its Conservation And Coastal Element, Goals Objectives, And Policies To Comply With Florida Statute 163.3178(2)(F) “Peril of Flood”; Intending To Modify, “Purpose;” Goal 4-1, “Conserve, Manage, Use, And Protect Natural And Environmental Resources;” Policy 4-1.3.3, “Surface Water Management And Flood Damage Prevention;” And Objective 4-1.17, “Minimum Coastal Hazards;” And Intending To Add Policies To Include Policy 4-1.17.8, “Strategies For Responding To Sea Level Rise;” Policy 4-1.17.9, “Flood-Resistant Development Requirements;” Policy 4-1.17.10, “Extreme Weather Event Mitigation;” And Policy 4-1.17.11, “Best Practices And Mitigation Strategies;” And Finally, Intending To Modify Objective 4-1.22, “Reduce Exposure To Natural Hazards,” Policy 4-1.22.5, “Manage Redevelopment Activities; And Policy 4-1.22.8, “Regulate Redevelopment Of Non-Conforming Structures To The Required Base Flood Elevation;” Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity After The First Hearing By The City Council; And Providing For An Effective Date. ....119

**10 Resolutions for Adoption**

**\*A. Resolution 2019-48** Consideration Of A Request To The City Council Of The City Of Marathon, Florida To Release Funds In The Amount Of \$300,000 To First Tropical Getaways, Inc and Marathon Rentals, LLC; Said Funds Are Held By A Local Attorney Pursuant To Conditions And Requirements Promulgated In Resolutions 2015-123 and 2017-94; The Terms For The Release Of Said Funds Is Similarly Prescribed Under each Development Agreement; And Providing For An Effective Date.....154

**\*B. Resolution 2019-49** Authorizing A “Piggy-Back” Purchase Pursuant To The City’s Purchasing Policies And Procedures And Approving The Purchase of a 600 KW Trailer Mounted Emergency Generator, Under The Florida Sheriff’s Bid FSA18-VEH16.0 Specification #79 From Mid Florida Diesel, In An Amount Not To Exceed \$208,785.00; Authorizing The City Manager To Enter Into Agreements In Connection Therewith, And Expending Budgeted Funds; And Providing For An Effective Date.....181

**\*C. Resolution 2019-50** Authorizing A “Piggy-Back” Purchase Pursuant To The City’s Purchasing Policies And Procedures And Approving The Purchase of a Ford F250 Utility Body, Under The Florida Sheriff’s Bid 2019-120716-NAF From Alan Jay Fleet Sales, In An Amount Not To Exceed \$36,589.50; Authorizing The City Manager To Enter Into Agreements In Connection Therewith, Appropriating And Expending Budgeted Funds; And Providing For An Effective Date....187

**\*D. Resolution 2019-51,** Awarding contract for the Service Area 3 to 4 Influent Re-Pump Design and Construction Engineering Services and Area 3 Pre-Treatment Construction Engineering Services To Weiler Engineering Corporation.; Approving Contract in the Amount of \$110,770.00; Authorizing The City Manager To Execute The Contract, Appropriating and Expending Funds On Behalf Of The City; And Providing For An Effective Date. (This work qualifies and will be submitted for reimbursement through the LP44041 FDEP Grant when the project is complete. The Construction of this project may be eligible for future ACOE grant funding.).....198

**\*E. Resolution 2019-52** Approving A First Amendment To The Agreement Between The City Of Marathon And James (Jack) Bridges For Code Enforcement Special Magistrate Services And Providing For An Effective Date.....216

**\*F. Resolution 2019-53,** Revising Development Order 2016-12 To Include Administrative Revisions Concerning Changes In Ownership And Minor Changes In Conditions That Will More Accurately Reflect The True Conditions Of Upcoming Construction Approvals; For A Project Now Owned By Marathon Key Housing Partners, LP For A Conditional Use Permit Pursuant To Chapter 102, Article 13 Of The City Of Marathon Land Development Regulations (LDRs) Entitled “Conditional Use Permits”, Authorizing The Development Of Fifty-Five (55) Multifamily Affordable Housing Units On Properties Located At 4800 Overseas Highway, Which Are Legally Described As Part Of Lot 1 Formerly Overseas Highway, As Well As Part Of Lot 1, Part Of Lot 2, Part Of Lot 3, Part Of Lot 4, Part Of Lot 4 (Parcel A), & Adjacent Bay Bottom Of Thompson & Adams Subdivision, Key Vaca, Monroe County, Florida, Having Real Estate Numbers As Listed in the Resolution. Nearest Mile Marker 50.....229

**\*G Resolution 2019-54**, Approving The Second Amendment To The Interlocal Agreement (ILA) Between The City Of Marathon And Monroe County Transferring Affordable Housing Residential Dwelling Unit Allocations For An Approved Project In The Current Ownership Of Marathon Key Housing Partners LP; Said Ila Originally Approved Pursuant To City Resolution 2016-113 And Subsequently Amended Pursuant To Resolution 2019-27; The Subject Amendment Will Update Current Ownership In The Project And Add A Section Titled, “Owner’s Right To Transfer; Performance By Recognized Mortgagee;” Said Project To Be Located Between 4700 And 4800 Overseas Highway, Marathon, Florida On Properties Including Real Estate As Stated in the Resolution; Rescinding Resolution 2017-107; And Providing For An Effective Date. Nearest Mile Marker 50.....243

**\*H Resolution 2019-55**, Revising Development Order 2016-07 To Include Administrative Revisions Concerning Changes In Ownership And Minor Changes In Conditions That Will More Accurately Reflect The True Conditions Of Upcoming Construction Approvals; For A Project Now Owed By Crystal Cove Housing Partners, LP For A Conditional Use Permit Pursuant To Chapter 102, Articles 13 Of The City Of Marathon Land Development Regulations (LDRs) Entitled "Conditional Use Permits," Authorizing The Development Of A Twenty-Eight (28) Unit RV Park, Forty-Six Affordable Housing Units And 7,700 Square Feet Of Commercial Retail On Properties Located At And Adjacent To 4900 Overseas Highway; Real Estate Numbers 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, And 00328030-000000. Nearest Mile Marker 50.....258

**\*I Resolution 2019-56**, Approving The Second Amendment To The Interlocal Agreement (Ila) Between The City Of Marathon And Monroe County Transferring Affordable Housing Residential Dwelling Unit Allocations For An Approved Project In The Current Ownership Of Crystal Cove Housing Partners LP; Said Ila Originally Approved Pursuant To City Resolution 2016-125 And Subsequently Amended Pursuant To Resolution 2019-28; The Subject Amendment Will Update Of Current Ownership In The Project And Add A Section Titled, “Owner’s Right To Transfer; Performance By Recognized Mortgagee;” Project In The Ownership Of Crystal Cove Market Site LLC (Formerly HTG Crystal Cove), To Be Located 4900 Overseas Highway, Marathon, Florida On Properties Including Real Estate Numbers As Listed In The Resolution; Nearest Mile Marker 50; Rescinding Resolution 2017-106; And Providing For An Effective Date. ....269

**\*J. Resolution 2019-57**, Approving Minor Revisions To An Interlocal Agreement Between Monroe County And The City Of Marathon Transferring Affordable Housing Residential Allocation For A Project In The Name Of Multiple Corporations Including Callianasa Corp., Key Vaca LLC, Driftwood LLC, CB Schmitt Real Estate Company, Inc., And Twenty-Third Street, LLC, And Providing For An Effective Date.....284

**\*K. Resolution 2019-58**, Approving Minor Revisions To An Interlocal Agreement Between Monroe County And The City Of Marathon Transferring Affordable Housing Residential Allocation For A Project In The Names Of Seaward Landings LLC And Seaward Pointe LLC; And Providing For An Effective Date.....300

**\*L. Resolution 2019-59**, Approving The Release Of A Unity Of Title In The Name Of Jo-Jo’s Of The Florida Keys, LLC As Recorded With The Monroe County Clerk Of Courts, Book 2469, Page 2156; And Providing For An Effective Date.....310

11. **Citizens' comments** [2 minutes per individual - Each individual has one opportunity to speak.]
12. **Council comments**
13. **Adjournment**



The public hearings will commence at 5:30 p.m., or as soon thereafter as business permits, in the City Hall Council Chambers, 9805 Overseas Highway, Marathon, FL. All interested persons are invited to attend the meeting and participate in the discussion; or, written comments may be sent to the City of Marathon, c/o City Clerk, 9805 Overseas Hwy, Marathon, FL 33050. Pursuant to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made by the City Council with respect to any matter considered at such hearing or meeting, one will need a record of the proceedings and for such purpose that person may need to ensure that a verbatim record of the proceedings is made; such record includes the testimony and evidence upon which the appeal is to be based. ADA Assistance: Anyone needing special assistance at the City Council hearing due to disability should contact the City of Marathon City Attorney at (305) 289-4130 at least five days prior thereto. Please contact the City Clerk at [clavird@ci.marathon.fl.us](mailto:clavird@ci.marathon.fl.us) if you would like to receive any of the items on the agenda by email.

**CALL TO ORDER** - A Meeting of the City Council of Marathon, Florida was held on May 14, 2019 in the Marathon Council Chambers, 9805 Overseas Hwy., Marathon, Florida, Mayor Bartus called the meeting to order at 5:30 pm.

Vice Mayor Cook informed everyone it was Police Week and Mayor Bartus asked for a moment of silence

The Pledge of Allegiance was recited.

**ROLL CALL - There were present:**

Councilmember Luis Gonzalez

Councilmember Mark Senmartin

Councilmember Dr. Daniel Zieg

Vice Mayor Steven Cook

Mayor John Bartus, comprising a quorum

Also in attendance were:

City Manager, Chuck Lindsey

City Attorney, David Migut

City Clerk, Diane Clavier

Finance Director Jennifer Johnson

Planning Director George Garrett

Growth Management Director, Doug Lewis

Public Works Director, Carlos Solis

Utility Director, Dan Saus

Captain Don Hiller, Monroe County Sheriff's Office

Parks and Recreation Director, Jimmy Schmidt

Marina Director, Sean Cannon

Deputy Chief Eric Dunford

## **Approval of Agenda and Consent Agenda**

Senmartin added a Planning Discussion as item 5G and Building Workshop Discussion as item 5H. Lindsey added approval of an extension to the line of credit for First State Bank and removed item 8B on behalf of the applicant. Bartus pulled Resolution 2019-38 from the consent agenda.

**MOTION:** Zieg moved to approve the agenda as amended.

**SECOND:** Gonzalez

With no objection from the members of Council, Mayor Bartus declared the motion approved by unanimous consent.

## **City Council Items**

### **\* Approval of Minutes**

National Prevention Week Proclamation (Councilmember Senmartin) the Council presented the proclamation to the Students and Dr. Belotti who explained the events of the National Prevention week and the students gave statistics regarding the prevention week.

ABATE Motorcycle Safety Awareness Month Proclamation - the members of the local Abate accepted the proclamation from the Council and reminded everyone not to text while driving and look out for motorcyclists. The Mayor recognized former Councilmember Bill Kelly.

33<sup>rd</sup> Street Redevelopment Discussion (Councilmember Zieg) Zieg explained that it was a good time to address the 33<sup>rd</sup> Street redevelopment since the school construction is happening and provided Councilmembers with an illustration depicting a proposed senior center, event center that would be multi-purpose in nature as well as a recreation center and additional boat and trailer as well as vehicle parking. Zieg explained the second illustration had an elevated three story building which could house additional office space for County or City offices which would have parking underneath and provided access to the Aqueduct Authority from 33<sup>rd</sup> Street. Zieg explained this was only a conceptual drawing to consider. Zieg thanked Steve Hurley with DDAI and George Garrett for their assistance. Gonzalez explained he would like everyone to consider Station 16 to remain a hub for ambulances. Senmartin stated it looked like a nice plan, and had a lot going on but he would like to digest it and give better suggestions. Cook stated he was happy we were looking at this again. Lindsey commented that since the hurricane staff has worked with Kevin Wilson with the County to correct the property lines and real estate numbers. Neither the City nor the County have no intention of removing the senior center, and would like to incorporate the recreation center and additional parking for trailers. Zieg commented this was added to the agenda to discuss, and not to make any final decisions. Zieg commented Isa Bella was also a possible area for EMS vehicles.

Extending Temporary Trailer Permits for an Additional 90 Days – Senmartin commented that he was expecting a report as requested from some time ago. Lewis explained there was a lot of data to pull together, but he would have the report by the next meeting.

**MOTION:** Zieg moved to approve the 90 day extension  
**SECOND:** Cook

Bartus explained there are many still waiting for insurance and or FEMA funds.

With no objection from the members of Council, Mayor Bartus declared the motion approved by unanimous consent.

Community Announcements were read. Zieg reminded everyone that the Dragon Boat races would be held on June 1<sup>st</sup> at Sombrero Beach and more teams are needed.

Planning Discussion – Senmartin explained his concerns that changing our zoning to allow for more homes on properties could cause additional takings cases and he would like the Council if they were in agreement to task the planning director and attorney to work on a limited liability type of agreement or hold harmless agreement to protect the City from a takings case in the future. Zieg questioned if this would be attached to the property and recorded and would run with the land.

Migut explained we would need to have a City wide policy and he understood the point the Council wanted to get to but we were limited in what we could do, and if we could find a way to accomplish this in our Comprehensive Plan or Land Development Regulations it would be more likely to pass a legal challenge, he would look into this. Garrett commented that our current comprehensive plan policy is that we remain net neutral and the number of down zonings have been very limited and the number of up zonings we may see in the future are very few if any. Senmartin commented that the County has a program in place where they are buying rights from your lot, where the owner would retain ownership of the lot but would not ever be able to build on it. Senmartin also commented that a moratorium could be place so that we have time to research this and go thru the new flood map, census and evacuation model and short of doing that, he was trying to come up with another solution. Bartus stated a valid point was made, and the Council gave a head nod to look into a policy.

Building Workshop Discussion – Senmartin explained the Council discussed setting building policy and procedures regarding building and impact fees and he wanted to set a date for a workshop where all of the Council could be present. Lindsey suggested the workshop be specific so that the workshop be productive. Council set a date of June 4<sup>th</sup> at 5:30 pm.

### **City Manager Report**

Marina Report – Cannon gave an overview of his report.

Growth Management Report – Lewis explained there was a short window to collect sizable impact fees, and impact fee funding must be used for the study. Lewis explained he found out today that the County does not collect library, police and solid waste fees. We are in the middle of what other Keys municipalities charge, we need an audit and data to find out what we need to fund our department. Cook agreed, we need to do the study and have the data. Zieg commented that a number of structures on Overseas Highway need repairs and questioned where those businesses such as IHOP, Burger King, Pizza Hut, and Dion’s gas station at 62<sup>nd</sup> Street. Lewis explained the letter writing campaign and informed everyone Burger King was under contract, IHOP was 60 percent renovated, and all the

permits except Dion's are still current. Senmartin questioned what the parking status at 20<sup>th</sup> Street by the bridge was. Lewis explained MSCO asked for the no parking signs and staff was getting together to come up with a solution. Gonzalez suggested a no parking after dark rule.

Marathon Fire Rescue Department Report –Dunford informed everyone the department was averaging 200 calls a month. Senmartin commented on the legislation of medical teams being allowed to carry a firearm and questioned if Council was interested in taking advantage of this, he would insist on mandatory training. Dunford commented that it would be up to MSCO to set this up.

Washington DC Update – Lindsey gave an overview of the meetings and discussions that were had in Washington attended by Islamorada, Key Largo Wastewater and Mayor Bartus, Wastewater Director Dan Saus and Lindsey from Marathon

### **Citizens' Comments:**

Diane Scott –asked the law be enforced and that the seal be adopted

Hotel/Motel Association Hurricane Conference – Lindsey explained that he granted authorization to use the Chambers and then that found out that they charge \$10, however after discussing with them, they do this so that the people who RSVP actually show up and they are a nonprofit and recommended approval. The Council gave a head nod approval.

FCT Grant Discussion – Lindsey gave the background of the grant applications the City made to the Florida Communities Trust and informed the Council the City was ranked 6<sup>th</sup> for the Salty's property and the Quay property was ranked 8<sup>th</sup>. The acquisition of the grant does come with limitations and he wanted to have a discussion and encouraged Council to ask any questions. Bartus recalled when the County received FCT funding for the park phase I and that is why we have phase II for the events field because of the restrictions. Garrett explained the restrictions and the 40/60 match, and explained the revenue neutral limitation. Bartus commented that the City does not own Salty's and is not in negotiations to acquire Salty's. Bartus expressed his concerns on the restrictions. Cook questioned if we could mitigate some of the limitations by separating the marina portion on the property. Lindsey stated that he did not know the answer, but we could look into it. This could benefit Pigeon Key as well, and maybe the County may want to partner with us or there are other funding grant sources. Cook and Zieg commented that we could stay on the list for now as we do not have to make this decision today; it is important to keep our options open and in the meantime keep looking at other funding sources. Senmartin clarified that we do not have to take one for the other. Garrett confirmed that was the case. Senmartin commented that the Quay property is ours and we have already worked out a way to afford it. Salty's property would be great to acquire and questioned the capital improvement could offset it for thirty years. Garrett stated he is also having discussions with the land authority. Senmartin suggested cutting the Quay property loose. Council stated there is not a clear vision of use of the Quay property. Bartus agreed he would be leery accepting funds, but we could stay on the list for now. Council gave head nods to see funding from other streams.

Line of Credit Extension – Lindsey explained we needed to request an extension from First State Bank line of credit.

**MOTION:** Cook moved to approve the line of credit extension  
**SECOND:** Zieg

With no objection from the members of Council, Mayor Bartus declared the motion approved by unanimous consent.

**Quasi-Judicial Public Hearing:**

Consideration Of A Request By Grassy Key Resort Group, LLC For A Conditional Use Permit and Development Agreement Pursuant to Chapter 102, Articles 8 and 13 Of The City of Marathon Land Development Regulations (LDRs) Entitled “Development Agreement” And “Conditional Use Permits” Respectively, Seeking For The Redevelopment Of Hotel Resort And Commercial Uses On Property Located at 58182 Overseas Highway, Which Is Legally Described As Township 65, Section 24, Range 33; Block 36 Lots 1-2-3-4 And Part of Lots 5-6 (Parcel A) And Westerly 15FT Unnamed Street Adjacent Lot 1 Res B-C-C 8/11/61 And Adjacent Portion Of Flagler Street And Grassy Key Bay Bottom Adjacent Lots 1-2-3 in the Crain’s Subdivision, Grassy Key, Marathon, Florida; Having Real Estate Numbers 00370940-000000. Nearest Mile Marker 58.5.

The clerk swore in speakers. Council stated they had no ex parte communications.

Garrett explained the project and request for the conditional use.

Leslie Rhyne, agent for applicant commented that no zoning was required, the owners live and work in Marathon.

Senmartin questioned if there was any unpermitted work or open code cases on the property. Lewis confirmed there were no open code cases. Senmartin questioned if we were seeing this project and it was almost completed. Garrett explained the RV project is what requires a conditional use, it was not a finished project. Senmartin questioned if the parking was sufficient.

Mathew Sexton commented that there was adequate parking; 59 spaces and there was a valet service.

Mayor Bartus called for public comments; hearing none closed comments.

**MOTION:** Zieg moved to approve the conditional use  
**SECOND:** Cook

Vote of the Motion:

Yes: Zieg, Cook, Senmartin, Gonzalez, Bartus

No: None

Absent: None

Abstain: None

Vote on the Motion: 5 Yes, 0 No, 0 Absent, 0 Abstain

**MOTION:** Zieg moved to approve the Development Agreement  
**SECOND:** Cook

Vote of the Motion:

Yes: Zieg, Cook, Senmartin, Gonzalez, Bartus  
No: None  
Absent: None  
Abstain: None

Vote on the Motion: 5 Yes, 0 No, 0 Absent, 0 Abstain

### **Ordinances for First Public Hearing**

**Ordinance 2019-08**, Amending The Future Land Use Map From Residential Low (RL) To Residential Medium (RM) For The Property Described As Lots 5 Through 9, Block 58, Crain's Subdivision, Marathon, Monroe County, Florida, Having Real Estate Numbers As Stated In the Ordinance; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.

**Ordinance 2019-09**, Amending The Official Zoning Map From Residential Low (RL) To Residential Medium (RM) For The Property Described As Lots 5 Through 9, Block 58, Crain's Subdivision, Marathon, Monroe County, Florida, Having Real Estate Numbers As Stated in the Ordinance; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.

Garrett explained both ordinances.

John Wolfe, attorney/agent for the applicant explained why this was appropriate zoning and FLUM for the property and why it would not create a takings case.

Senmartin questioned if the land was cleared and if an after the fact permit was issued. Garrett informed everyone after Hurricane Irma a stop work order was issued, although we would have issued a permit because the property contained mostly exotics and the code case had been resolved.

Senmartin commented that RL is compatible, but MU was a standout. Garrett explained why it should be RM. Senmartin questioned if the applicant would enter into a hold harmless type of agreement. Wolfe stated they would not. Zieg asked Garrett to confirm that with the current zoning, one home could be built, with this up zoning, 13 market rate homes or 26 affordable units could be built on the property, and felt that the up-zoning would create potential takings cases. Garrett agreed.

Mayor Bartus called for public comments; hearing none closed comments.

**MOTION:** Zieg moved to deny the requested amendment.

Motion failed due to lack of a second.

**MOTION:** Bartus moved to approve Ordinance 2019-08  
**SECOND:** Senmartin

Vote of the Motion:

Yes: Bartus, Senmartin  
No: Cook, Gonzalez, Zieg,  
Absent: None  
Abstain: None

Vote on the Motion: 2 Yes, 3 No, 0 Absent, 0 Abstain

**MOTION:** Senmartin made a motion to reconsider Ordinance 2019-08

The motion was not considered since Senmartin was not one of voters who opposed.

Migut explained the options the Council could consider.

John Timinsky, owner of the property explained his plans for the property was to maximize the value as he is trying to sell the property and there was no interest.

Migut suggested the Council give staff direction via a motion.

Mayor Bartus called for public comments; hearing none closed comments.

**MOTION:** Zieg moved to approve Ordinance 2019-09  
**SECOND:** Senmartin

Vote of the Motion:

Yes: Senmartin, Bartus  
No: Zieg, Gonzalez, Cook  
Absent: None  
Abstain: None

Vote on the Motion: 2 Yes, 3 No, 0 Absent, 0 Abstain

### **Ordinances for Second Public Hearing and Enactment**

**Ordinance 2018-11**, Amending The Future Land Use Map And The Zoning Map From Residential Low (RL) to Mixed Use (MU) and Residential Low (RL) For Property Located At 10155 Overseas Highway, Marathon, Florida, Monroe County, Florida, Which Is Legally Described As Part of Govt Lot 2 And Bay Bottom South Of And Adj Part Govt Lot 2, Key Vaca, Having Real Estate Number 00104460-000000; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.



**Ordinance 2018-12**, Amending The Future Land Use Map From Residential Low (RL) To Mixed Use (MU) And Residential Low (RL) For Property Located At 10155 Overseas Highway, Marathon, Florida, Monroe County, Florida, Which Is Legally Described As Part Of Govt Lot 2 And Bay Bottom South Of And Adj Part Govt Lot 2, Key Vaca, Having Real Estate Number 00104460-000000; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.

Garrett explained the ordinances and informed everyone there had been no changes since first reading.

Senmartin informed everyone that at the last meeting he did abstain from voting because he was in a contract with the owner, but this no longer applies.

Mayor Bartus called for public comments; hearing none closed comments.

**MOTION:** Zieg moved to approve Ordinance 2018-11  
**SECOND:** Senmartin

Vote of the Motion:

Yes: Zieg, Senmartin, Gonzalez, Cook, Bartus  
No: None  
Absent: None  
Abstain: None

Vote on the Motion: 5 Yes, 0 No, 0 Absent, 0 Abstain

**MOTION:** Gonzalez moved to approve Ordinance 2018-12  
**SECOND:** Zieg

Vote of the Motion:

Yes: Gonzalez, Zieg, Senmartin, Cook, Bartus  
No: None  
Absent: None  
Abstain: None

Vote on the Motion: 5 Yes, 0 No, 0 Absent, 0 Abstain

**Ordinance 2019-03**, Amending The Future Land Use Map From Residential Medium (RM) To Mixed Use (MU) and Residential Medium (RM) For Part Of The Property Described As 222 99<sup>th</sup> ST. Ocean, Marathon, Monroe County, Florida, Having Real Estate Number 00352210-000000; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.

**Ordinance 2019-04**, Amending The Official Zoning Map From Residential Medium (RM) To Mixed Use (MU) and Residential Medium (RM) For Part Of The Property Described As 222 99<sup>th</sup> ST. Ocean, Marathon, Monroe County, Florida, Having Real Estate Number 00352210-000000; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.

Garrett informed everyone there were no changes since the last hearing.

Mayor Bartus called for public comments; hearing none closed comments.

**MOTION:** Zieg moved to approve Ordinance 2019-03  
**SECOND:** Gonzalez

Vote of the Motion:

Yes: Zieg, Gonzalez, Senmartin, Cook, Bartus  
No: None  
Absent: None  
Abstain: None

Vote on the Motion: 5 Yes, 0 No, 0 Absent, 0 Abstain

Mayor Bartus called for public comments; hearing none closed comments.

**MOTION:** Senmartin moved to approve Ordinance 2019-04  
**SECOND:** Gonzalez

Vote of the Motion:

Yes: Senmartin, Gonzalez, Zieg, Cook, Bartus  
No: None  
Absent: None  
Abstain: None

Vote on the Motion: 5 Yes, 0 No, 0 Absent, 0 Abstain

### **Resolutions for Adoption**

**Resolution 2019-38**, Providing Approval To Expend Additional Funds Through The First Time Home Buyer Loan Funding Program To Additional Qualified Applicants In An Amount Not To Exceed \$10,000.00 Per Applicant And No More Than Ten Additional Applicants Or \$100,000.00; Appropriating Funds; And Providing For An Effective Date.

Bartus explained the Resolution and the First Time Home Buyer Loan Program and was happy to see this successful program moving forward.

Bartus called for public comment; hearing none, closed public comments.

**MOTION:** Senmartin moved to approve Resolution 2019-38

**SECOND:** Gonzalez

With no objection from the members of Council, Mayor Bartus declared the motion approved by unanimous consent.

\***Resolution 2019-39**, Authorizing A “Sole-Source” Purchase Pursuant To The City’s Purchasing Policies And Procedures And Approving The Purchase of various Airvac (now the Aqseptance Group) vacuum collection system vacuum pits and appurtenances to provide sewer service connections for new construction, In An Amount Not To Exceed \$45,504.00; Authorizing The City Manager To Enter Into Agreements In Connection Therewith, Appropriating And Expending Budgeted Funds; And Providing For An Effective Date

\* **Resolution 2019-40**, Authorizing A “Sole-Source” Purchase Pursuant To The City’s Purchasing Policies And Procedures And Approving The Purchase of Odor Control System Upgrades from Syneco Systems, Inc. for upgrades in Service Area 3, Service Area 5, and Service Area 5 Remote Vacuum Station, In An Amount Not To Exceed \$222,797.25; Authorizing The City Manager To Enter Into Agreements In Connection Therewith, Appropriating And Expending Budgeted Funds; And Providing For An Effective Date

\* **Resolution 2019-41**, Awarding Contract For The Construction Of The Marathon Marina Dinghy Dock Project To Shoreline Foundation, Inc.; Approving Contract In The Amount Of \$413,307.00; Authorizing The City Manager To Execute The Contract And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date

\* **Resolution 2019-42**, Approving Amendment 1 To Extend Grant Agreement No. 2140 Between The City And The Monroe County Tourist Development Council For the Oceanfront Park Improvements, And Providing For An Effective Date

\* **Resolution 2019-43**, Approving Amendment Five Of The Inter-Local Agreement Between The City Of Marathon And Monroe County For Funding Of Ferry Service To Pigeon Key; Authorizing The City Manager To Execute The Inter-Local Agreement And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date

\* **Resolution 2019-44**, Approving A Contract for Service Area 3 Wastewater Pre-Treatment To Reynolds Construction of Florida, LLC In The Amount Of \$365,000.00; Authorizing The City Manager To Execute The Contract And Appropriate and Expend Funds On Behalf Of The City; And Providing For An Effective Date.

\* **Resolution 2019-45**, Approving A Contract Change Order #7 With Reynolds Construction For The Area 3 & 4 WWTP Upgrade Project In An Amount Not To Exceed \$368,876.97; Authorizing The City Manager To Execute The Contract Change Order #7 To Appropriate And Expend Funds On Behalf Of The City; And Providing For An Effective Date

**Citizens' Comments:**

Diane Scott – commented that dogs need to stay at their homes and not be allowed at the beach, or at the grocery store, she does not like dogs, although they have never done anything to her.

**Council Comments**

Gonzalez informed everyone that although the girls’ softball lost 10-7 in the regional finals, they still made the elite 8 and did a great job. Gonzalez thanked Jimmy Schmidt.

Zieg wished everyone a happy Mother’s Day and thanked Elizabeth Schut for identifying and assisting Public Works - Jim Griffith for repairing a portion of Coco Plum that was washed out during Irma. Zieg thanked Carlos Solis for continuing work on the tiki bus stop and gave a brief history of events that happened on this day.

Senmartin informed everyone the car show at the Quay property was successful and thanked Public Works Department for cleaning up the area. Senmartin informed everyone the car show was a fundraiser for the troops and \$1,600 was raised. Senmartin also informed everyone that the letter carriers collected 12,000 pounds of food that will go to the local food banks.

Cook thanked staff for keeping everyone informed and thanked Marathon Fire Rescue. Cook wished Mike Card a speedy recovery and thanked Monroe County Sherriff’s office. Cook reminded everyone to lower their flags in support of the police officers.

Bartus commented that it had been 20 months and four days ago we were hit by Hurricane Irma and \$244,000 FEMA reimbursement had been received, and we have a lot of the same concerns.

**ADJOURNMENT**

With no further business to come before the Council, Mayor Bartus adjourned the meeting at 8:07 pm by unanimous consent.

I certify the above represents an accurate summary of the regular Council meeting of May 14, 2019.

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

\_\_\_\_\_  
Date



Marathon Runners Club, Inc

P.O. Box 500110  
Marathon, FL 33050

April 15, 2019

**ATTN:** Diane Clavier  
clavierd@ci.marathon.fl.us  
305-743-0033

City of Marathon Mayor and Commissioners  
Marathon, FL 33050

Re: 39<sup>th</sup> Annual 7-Mile Bridge Run

Dear Mayor and Commissioners,

The Marathon Runners Club respectfully requests to be added to the agenda for the next scheduled meeting. We are requesting approval for the running of the 39<sup>th</sup> Annual 7-Mile Bridge Run for Saturday, March 28<sup>th</sup>, 2020, from 6:45 A.M. to 9:00 A.M. We are very proud to say that our local youth benefit in excess of \$1,000,000 from proceeds from the 7-Mile Bridge Run since it began in 1982. We appreciate the overwhelming response we receive from our annual event and thankful to participants, sponsors, volunteers and the continued support of our community.

We will be acquiring all the necessary permits, insurances and certificates which will be provided to you upon request at the completion of receipt.

We agree to pay for two firefighter/EMTs on an overtime basis as requested by the City.

We are anxious to hear from you following the outcome of your next meeting so we can proceed with planning next year's running event. Please acknowledge the approval of the 39<sup>th</sup> Annual 7-Mile Bridge Run by the commission by email to [gsayer@mykcs.com](mailto:gsayer@mykcs.com). Please send me the confirmation and the link of the approval/minutes which would make it easier to printout so we can present it to the DOT and other entities that require it.

Thank you, Mayor and Commissioners, in advance, for your time, consideration and continued support for this fine local event to benefit our local youth.

Sincerely,  
*Ginger Sayer*, Event Director  
[gsayer@mykcs.com](mailto:gsayer@mykcs.com)

<b><u>SUBJECT:</u></b>	<b><u>DATE:</u></b>	<b><u>TIME:</u></b>	<b><u>LOCATION</u></b>
Battle in the Bay Dragon Boat Festival	6/1	8:30am-2:00pm	Sombrero Beach
The Greatest Show	6/1	6:00pm	Marathon High School Performing Arts Center
Summer Camp	6/3-8/9	8:30am-5:00pm	Marathon Community Park
Building Fees Workshop	6/4	5:30pm	Council Chambers, 9805 Overseas Hwy.
Fishing Fun at Crane Point	6/7	5:45pm	Meet in the Parking Lot. Bait & Poles provided.
City Council Meeting	6/11	5:30pm	Council Chambers, 9805 Overseas Hwy.

**CITY OF MARATHON**  
**Millage/Budget Adoption Calendar**  
**Fiscal Year 19-20 - DRAFT**

**City Meetings & Workshops are indicated in BLACK**  
**TRIM Millage & Budget items are indicated in GREY**

Various	Internal Budget Reviews by Finance Director with Departments
<i>June 1</i>	<i>Tentative Property Appraisal Value Available from Property Appraiser's Office</i>
Various	Internal Budget reviews by City Manager and Finance Director with Departments
<i>July 1</i>	<i>Property Appraiser Certifies Assessed Property Values on Form DR 420</i>
July 1 – 9	Individual Internal Budget Meetings with City Manager, Finance Director and City Council Members to discuss the General Fund Budget.
<b>Tuesday, July 9</b>	<b><u>City Council Meeting &amp; FY19/20 General Fund Budget Discussion- 5:30PM</u></b> Council adopts proposed millage rate and selects dates, times and places for public hearings. Review of proposed General Fund budget.
<i>Wednesday, July 10</i>	<i>Submit DR-420 with proposed millage, dates, times, and places for public hearings to Property Appraiser (Due by Friday July 19<sup>th</sup>)</i>
<b>Tuesday, August 13</b>	<b><u>City Council Meeting &amp; FY19/20 Enterprise &amp; Other Funds Budget Discussion- 5:30PM</u></b>
<i>NOTE: First Public Hearing must be between September 3<sup>rd</sup> and September 18<sup>th</sup>, and can't conflict with Monroe County BOCC (Thursday September 5<sup>th</sup>, Friday September 20<sup>th</sup>) or Monroe County School Board Public Hearings (Tuesday July 30<sup>th</sup>, Tuesday September 10<sup>th</sup>).</i>	
<i>NOTE: Final Public Hearing must be with 15 days of first public hearing</i>	
<b>Thursday, September 12</b>	<b><u>Special Call Council Meeting - First Public Hearing FY19/20 Budget- City Hall - 5:05 PM</u></b> First Public hearing to adopt tentative budget and millage rate
<i>Monday, September 16</i>	<i>Advertisement of final public hearing</i>
<b>Thursday, September 19</b>	<b><u>Special Call Council Meeting - Final Public Hearing FY19/20 Budget- City Hall - 5:05 PM</u></b> Final Public hearing to adopt final budget and millage rate

# CITY OF MARATHON

## Memorandum



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**Meeting Date:** May 28, 2019

**To:** Honorable Mayor Bartus and City Council Members

**Through:** Chuck Lindsey, City Manager

**From:** Douglas Lewis, Growth Management Director/Building Official

**Subject:** Temporary Trailer Report

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There has been a steady decline of temporary trailers since its peak early last year of approximately 360. As of the first of March 2-19, our physical count was; 228 RVs throughout town, with only 65 having permits.

Our latest physical count in mid-May was; 64 RVs throughout town, and 29 with active permits. None of the 29 active permits are FEMA permits, as there are no FEMA trailers left in the City of Marathon.

We estimate that roughly half the remaining RVs without permits are working to rebuild their homes with the intent of eventually moving back in, so roughly 17 fall into the same “working towards rebuild” category as the active permits.

This leaves approximately 18 RVs (or 28% of the remaining 64 RVs) that are people that appear to have decided to live in RVs and have no current plan of rebuilding a home or living in an RV park.

Attached as Exhibit A is a breakdown by address of RVs that were counted in the initial sweep and if they have a permit or not as well as the follow-up action of whether they remain on the property in the more recent City sweep.



Address	RE #	Permit	Permit #	Sewer	Units on Property	Follow Up	Total RVs	Total permits
470 105th St	00332840-000100	Yes	P2017-1909		1	yes	228	65
575 105th St	00104441-000200	Yes	P2017-1042		2	yes - 3	64	29
936 105th St	00333090-000000	Yes	P2017-1063		1	no		
960 105th St	00333060-000000	No	N/A		1	no		
715 105th St	00332890-000000	No	N/A		1	no		
856 105th St	00332980-000000	No	N/A		1	no		
425 105th St	00332940-000000	No	N/A		1	no		
799 106th St	00104420-000000	Yes	P2017-1861		1			
630 107th St	00104240-000400	No	N/A		1	no		
357 109th St	00343580-000000	Yes	P2017-1558		1	no		
245 110th St	00343670-000000	Yes	P2017-1471		1	no		
183 110th St	00343640-000000	Yes	P2017-1168		1	no		
11188 5th Ave	00344320-000000	No	N/A		1	no		
547 111th St	00343980-000000	Yes	P2017-1494		1	no		
11329 5th St	00344800-000000	No	N/A		1	no		
11587 O/S Hwy	00346860-000000	No	N/A		1	no		
11563 4th Ave	00345850-000000	No	N/A		1	no		
587 116th St	00345860-000000	No	N/A		1	no		
11689 4th Ave	00346080-000000	No	N/A		1	no		
620 99th St	00351990-000000	Yes	P2017-1646		1	yes		
1065 100th St	00352180-000000	No	N/A		1	no		
1150 122nd St	00357930-000000	Yes	P2017-1524		1	yes		
455 122nd St	00358080-000000	No	N/A		1	no		
108 Avenue K	00365380-000000	No	N/A		1	no		
1400 Avenue H	00364660-000000	No	N/A		1	no		
240 Avenue G	00364470-000000	No	N/A		1	no		
141 Avenue G	00364570-000000	No	N/A		1	no		
131 Avenue G	00364580-000000	No	N/A		2	no		
25 Coco Plum	00363090-000000	No	N/A		1			
386 Orange Ave	00370380-000000	No	N/A		1			
284 Orange Ave	00370550-000000	No	N/A		1			
58130 Morton St	00370390-000000	No	N/A		1	yes		
347 Tropical Ave	00372980-000000	No	N/A		1	no		
371 Croton Ave	00372980-000000	No	N/A		1	no		
57622 O/S Hwy	00373875-000200	No	N/A		1	yes		
57930 O/S Hwy	00357930-000000	Yes	P2017-1524		1	yes		
1760 109th St	00334960-000000	No	N/A		1			
140 Brian	00331061-008000	No	N/A		1			
9700 Aviation	00331061-001500	No	N/A		1			
8025 Shark	00330530-000000	No	N/A		1			
7987 Shark	00330500-000000	Yes	P2017-1799		1			
8055 Tuna	00330860-000000	No	N/A		1	no		
7940 Porpoise	00330070-000000	No	N/A		1	no		
2132 Dolphin	00332440-000000	No	N/A		1	no		
347 Aviation	00101300-000000	No	N/A		1	no		
900 E 63rd	00339870-000000	No	N/A		1	no		
763 W 63rd	00338730-000400	No	N/A		1	no		
1350 W 63rd	00340070-000000	No	N/A		1	no		
6407 Oceanview	00341770-000000	Yes	P2017-1702		1	no		
6601 Oceanview	00341840-000000	No	N/A		1	no		
904 66th St	00341360-000000	No	N/A		1	no		
1921 Grouper	00331570-000000	No	N/A		1	no		
1536 Westward Ho	00326270-000000	No	N/A		1			
1150 Westward Ho	00326170-000000	No	N/A		1			
500 52nd St	00325630-000000	No	N/A		1	no		
1251 Westward Ho Ln	00325920-000000	Yes	P2017-1075		1			
5270 O/S Hwy	00325690-000000	No	N/A		4			
541 52nd St G	00325780-000000	Yes	P2017-1027		5	no		
14 47th St G	00327110-000400	No	N/A		1	no		
645 43rd St	00327730-000000	No	N/A		1	Yes		
4000 O/S Hwy	00337220-000000	No	N/A		1	no		
3988 O/S Hwy	00337770-000000	No	N/A		1	no		
3911 Louisa	00336730-000000	No	N/A		2	yes - 2		
3909 Louisa	00336720-000000	No	N/A		1	yes		
19 Kyle Way E	00319830-000000	No	N/A		1			
636 11th St	00320100-000000	Yes	P2017-1758		1			
1490 Oceanview Ave	00103910-000000	Yes	P2017-1245		1			
525 22nd St	00102830-000401	No	N/A		1	no		
394 23rd St	00320930-000000	No	N/A		1	no		
321 23rd St	00320730-000000	No	N/A		2	no		
897 24th St	00102200-000000	No	N/A		1	no		
502 24th St	00321150-000000	No	N/A		1	no		
715 26th St	00323360-000000	No	N/A		1	no		
349 27th St	00321400-000100	No	N/A		2	no		
503 27th St	00322910-000000	No	N/A		1	no		
1019 27th St	00323040-000000	No	N/A		1	no		

508 28th St	00321620-000000	Yes	P2017-1901		1		no											
487 29th St	00321970-000000	No	N/A		1		no											
544 30th St	00321860-000000	No	N/A		1		no											
599 30th St	00322140-000000	No	N/A		1		no											
273 51st St	00325040-000000	No	N/A		1													
5305 Ocean Terrace	00325170-000100	No	N/A		1													
9 Sombrero Blvd	00355181-000000	No	N/A		4													
101 Sombrero Blvd	00355370-000201	No	N/A		1													
2349 Sombrero Blvd	00355380-001200	No	N/A		1													
1497 Copa D'Oro	00356410-000000	No	N/A		1													
846 Copa D'Oro	00355610-000000	No	N/A		1													
980 Ocotillo Rd	00356870-000000	No	N/A		1													
856 Copa D'Oro	00355660-000000	No	N/A		1													
845 Copa D'Oro	00355600-000000	No	N/A		1													
111 Mockingbird	00355417-003000	No	N/A		1													
90 Sombrero Beach Rd	00355000-000000	No	N/A		1													
615 Sombrero Beach Rd	00104900-000603	No	N/A		2													
2003 Sombrero Beach Rd	00353160-000000	No	N/A		1													
2201 Sombrero Beach Rd	00353020-000000	No	N/A		1													
400 Corte Del Brisas	00352760-000000	No	N/A		1													
200 Treasure Rd	00105230-000000	No	N/A		1													
70 Tingler Ln	00105020-000000	Yes	P2017-2184		1													
12 Man-O-War	00354780-000100	Yes	P2017-1068		1													
11 Man-O-War	00354780-000000	Yes	P2017-1262		1													
9 Man-O-War	00354770-000000	Yes	P2017-2510		1													
Vacant Land 62nd	00338810-000000	No	N/A		2		no											
750 62nd St	00338800-000000	Yes	P2017-1717		1		no											
810 62nd St	00338780-000500	Yes	P2017-2236		1		no											
763 W 63rd St	00338730-000400	No	N/A		1		no											
901 W 63rd St	00338730-000300	No	N/A		1		no											
472 64th St	00340320-000000	No	N/A		1		storage											
474 64th St	00340330-000000	No	N/A		1		storage											
641 64th St	00340270-000000	No	N/A		1		no											
6503 65th St	00341480-000000	No	N/A		1		no											
6495 O/S Hwy	00340990-000000	No	N/A		2		no											
908 66th St	00341350-000000	No	N/A		1		no											
826 68th St	00339050-000000	No	N/A		1		no											
676 69th St	00339290-000000	No	N/A		1		yes											
742 69th St	00339300-000000	Yes	P2017-1536		1		no											
625 73rd St	00342080-000000	No	N/A		1		no											
Vacant Land 73rd	00342340-000000	No	N/A		1		no											
1320 73rd St	00342390-000000	No	N/A		1		no											
1360 73rd St	00342400-000000	No	N/A		1		yes											
209 74th St	00342760-000100	Yes	P2017-1170		1		no											
256 74th St	00342510-000200	Yes	P2017-1474		1		yes											
597 74th St	00342810-000000	Yes	P2017-1169		1		no											
725 74th St	00342820-000000	No	N/A		1		no											
1134 74th St	00342620-000000	No	N/A		1		no											
1217 74th St	00342880-000000	Yes	P2017-1244		1		yes											
1335 74th St	00342910-000000	Yes	P2017-1574		2		no											
1439 74th St	00342920-000000	No	N/A		1		no											
1551 74th St	00342930-000000	No	N/A		1		yes											
905 W 75th St	00103820-000000	No	N/A		1		no											
929 W 75th St	00342990-000000	No	N/A		1		no											
1024 W 75th St	00343300-000000	No	N/A		1		no											
1001 W 75th St	00343070-000000	Yes	P2017-1096		1		yes											
1170 W 75th St	00343190-000000	No	N/A		1		no											
1172 W 75th St	00343180-000000	Yes	P2017-1459		1		no											
1333 W 75th St	00343130-000000	No	N/A		1		no											
950 E 75th St	00343350-000000	No	N/A		1		no											
7551 Ocean Terrace	00342691-002800	No	N/A		1		no											
1109 76th St	00342961-001400	No	N/A		1		no											
580 79th St	00347260-000000	No	N/A		1		no											
690 79th St	00347250-000000	Yes	P2017-2105		1		no											
792 79th St	00347240-000000	Yes	P2017-1975		1		no											
1070 79th St	00347210-000000	No	N/A		1		no											
333 80th St	00101220-000000	No	N/A		2		no											
949 80th St	00347430-000000	Yes	P2017-1368		1		no											
420 81st St	00348200-000000	No	N/A		1		no											
8239 O/S Hwy	00348620-000000	No	N/A		1		no											
525 82nd St	00348570-000000	Yes	P2017-1211		1		yes											
566 82nd St	00348700-000000	Yes	P2017-1581		1		no											
680 82nd St	00348720-000000	No	N/A		1		no											
1039 82nd St	00348470-000000	Yes	P2017-1469		2		no											
1082 82nd St	00348790-000000	No	N/A		1		no											
356 83rd St	00347590-000000	Yes	P2017-1568		1		no											
515 83rd St	00348960-000000	Yes	P2017-1473		1		no											

710 83rd St	00347650-000100	Yes	P2017-1731		1	no				
950 83rd St	00347700-000000	Yes	P2017-2454		1	no				
1023 83rd St	00348870-000000	Yes	P2017-1854		1	no				
281 84th St	00347920-000000	No	N/A		1	no				
506 84th St	00348040-000000	Yes	P2017-1470		1	no				
651 84th St	00347850-000000	No	N/A		1	no				
883 84th St	00347820-000000	Yes	P2017-1987		1	no				
1037 84th St	00347760-000000	Yes	P2017-1344		1	no				
1043 84th St	00347770-000000	Yes	P2017-2378		1	no				
832 84th St	00348100-000000	Yes	P2017-1818		1	no				
620 85th St	00349110-000000	Yes	P2017-2066		1	no				
650 85th St	00349130-000000	Yes	P2017-1594		1	no				
748 85th St	00348090-000000	Yes	P2017-1103		2	yes 2				
860 85th St	00349160-000000	No	N/A		1	no				
624 86th St	00349230-000000	Yes	P2017-2095		1	no				
863 86th St	00349270-000000	No	N/A		1	no				
480 88th	00349490-000000	No	N/A		1	no				
279 89th St	00349360-000000	Yes	P2017-1232		1	yes				
440 89th St	00349820-000100	Yes	P2017-1182		1	no				
777 89th St	00349410-000000	Yes	P2017-1472		1	no				
Vacant Land 89th	00349640-000000	No	N/A		1	no				
541 91st St	00350620-000100	No	N/A		1	no				
537 91st St	00350570-000000	No	N/A		1	no				
494 90th St	00100960-000000	No	N/A		1	no				
580 90th St	00100920-000000	Yes	P2017-1716		1	yes				
724 90th St	00100970-000100	Yes	P2017-1512		1	no				
730 90th St	00100970-000200	No	N/A		1	no				
9051 O/S Hwy	00350490-000000	Yes	P2017-1620		1	no				
538 91st St	00350650-000000	No	N/A		1	yes				
536 91st St	00350660-000000	No	N/A		1	no				
701 91st St	00350630-000000	No	N/A		1	no				
995 91st Ct	00101020-000200	No	N/A		1	no				
1155 91st Ct	00101010-000000	No	N/A		2	no				
1240 91st Ct	00350290-000000	No	N/A		1	no				
934 92nd St	00350370-000000	Yes	P2017-1099		1	yes				
451 92nd St	00349970-000000	No	N/A		1	no				
297 92nd St	00349930-000000	Yes	P2017-1234		1	no				
250 92nd St	00350050-000000	No	N/A		1	no				
9200 O/S Hwy	00350020-000000	Yes	P2016-1224		1	no				
9499 O/S Hwy	00350780-000000	No	N/A		1	yes				
417 96th St	00351260-000000	Yes	P2017-1243		1	yes				
779 96th St	00351380-000000	No	N/A		1	no				
860 96th St	00351430-000000	No	N/A		1	yes				
932 96th St	00351450-000000	No	N/A		1	no				
1030 96th St	00351490-000000	No	N/A		1	no				
1029 96th St	00351480-000000	Yes	P2017-1482		2	yes-2				
999 98th St	00352410-000000	No	N/A		1	no				
200 62nd St	00338760-000000	No	N/A		3	no				
Vacant Land Margate	00329480-000000	Yes	P2017-2077		1	yes				31
10499 Overseas Hwy	00332650-000000	No	N/A		1	no				
599 E 105th St	00332840-000000	Yes	P2017-1652		1	yes				
58652 Overseas	00366860-000000	No	N/A		1	no				
8060 Tuna	00330620-000000	No	N/A		2	no-2				
8035 Tuna	00330870-000000	No	N/A		1	no				
1262 Marlin	00330790-000000	No	N/A		1	no				
459 Margate	00329300-000000	No	N/A		1	no				
7766 Aviation	00328510-000200	no	N/A		3	no-3				
922 65th St						yes				
1223 74th	00342890-000000	yes	P2017-1455		2	yes-2				
7931 Overseas	00347290-000000	yes	P2018-0498		1	yes				
320 84th	00348020-000000	yes	P2017-2439		1	yes				
977 84th	00347790-000000	yes	P2018-0754		1	yes				
234 84th	00347990-000000	no	N/A		1	yes				
1031 84th St	00347780-000000	no	N/A		1	yes				
750 90th St	00100970-000000	no	N/A		1	yes				
651 92nd St	00350010-000000	no	N/A		1	yes				
850 92nd	00350340-000000	yes	P2017-2102		1	yes				
854 92nd	00350350-000000	yes	P2018-0781		1	yes				
856 92nd St	00350360-000000	no	N/A		1	yes				
1006 Peter Jay	00333350-000000	Yes	P2017-1227		1	yes				
305 27th St	00321400-000000	Yes	P2019-0237		1	yes				
357 23rd St	00320810-000000	no	N/A		1	yes				
314 23rd St	00320890-000000	no	N/A		1	yes				
2801 Sombrero Blvd	00355380-000800	no	N/A		1	yes				
2050 Sombrero Beach Rd	00105080-000000	No	N/A		1	yes				
10 Man O War	00354770-000100	no	N/A		1	yes				
8 Man O War	00354760-000100	no	N/A		1	yes				


960 W 105th St Ocean	00333170-000000	no	N/A		1	yes				



## Utility Department Monthly Update

**MEETING DATE:** May 28, 2019

**TO:** Honorable Mayor and City Councilmembers

**FROM:** Daniel Saus, Utility Director 

**THROUGH:** Charles Lindsey, City Manager

**SUBJECT:** **May 2019 Utility Department Update**

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### A. Wastewater Treatment Plants

#### 1. General Issues

- a. The extremely high flows of the tourist season are gone. Flows are generally back to normal although high flows at the Service Area 3 plant persist. We are investigating but have not yet identified any specific issues.

#### 2. Odor Complaints / Mitigation

- a. We received no odor complaints for the wastewater treatment facilities in April.

#### 3. Effluent Quality Report/Plant Performance

The March 2019 wastewater facility performance chart is shown below because the January numbers are just being tabulated. The plant permits now require AWT compliance and the operations staff is doing an amazing job as reflected in our effluent quality as shown below. **(Effluent results are always a month behind due to sampling, shipping, & lab reporting)**

**City of Marathon Wastewater  
Treatment Plant Performance  
Data for:  
MARCH 2019**

Parameters:			CBOD mg/L		TSS mg/L		TN mg/L		TP mg/L	
WWTP	Permit (MGD)	MADF (MGD)	Monthly Average (6.25)	Annual Average (5.0)	Monthly Average (6.25)	Annual Average (5.0)	Monthly Average (3.75)	Annual Average (3.0)	Monthly Average (1.25)	Annual Average (1.0)
AREA 3	0.250	0.194	2.02	3.51	1.0	2.24	0.71	2.46	0.819	1.03
AREA 4	0.400	0.281	1.99	5.76	0.5	4.18	1.16	1.64	0.61	0.76
AREA 5	0.450	0.329	1.0	1.24	0.5	0.86	1.34	1.98	0.34	0.39
AREA 6	0.200	0.092	1.0	1.73	0.5	0.78	2.53	1.89	0.087	0.138
AREA 7	0.200	0.054	1.0	1.5	0.5	0.66	1.52	1.61	0.065	0.124

## B. Collection System

1. In May, we were caught up on the grease trap list and have full compliance at this time.
2. Our new technician assigned to the grinder pump system in Grassy Key has made tremendous progress and the system is now back to pre-storm condition.
3. Vacuum Station Salinities
  - a. January's vacuum station salinities were at as follows (in parts per thousand): SA3: 2.6; SA4: 1.9; SA5: 2.9; SA6: 0.9 and SA7: 1.1. This indicates a very little amount of saltwater intrusion into our system.
4. Wastewater System Connections
  - a. The City's wastewater system parcel connection rate is currently standing at approximately 99%. (Only customers that are in code or do not have a certificate of occupancy are not connected)
5. Code Compliance
  - a. There are currently 20 open code cases in process for failure to connect to the City's central wastewater system, code violations, or expired permits.

## 6. Call-Outs

a. From April 1st to April 30th there were 48 documented Call outs for the entire Collections System. Of these, 35 were system generated, typically low vacuum detected at one of our Vacuum Stations. These 35 call outs did not result in any inconvenience to our customers in any way as the problems were detected and remedied by Collections/Maintenance City Staff before these problems could become a nuisance to the homeowners or residents at these locations.

b. The other call outs were as follows:

i. 4-7-19: Backup Area 7. 85 Pelican Rd. Homeowner called the MOD phone for a backup at the residence. The Tech responded and found that neither pump would work in automatic in the Grinder Pump Station, but would manually. The Tech pumped the lift station down manually and had the Lift Station Tech inspect the next morning. The Tech serviced the pumps and put the station back into operation. No damage to property.

ii. 4-7-19: Backup Area 4. 103 Calle Ensueno. The Manager on Duty phone received a call from the resident about a backup at the property. The City Tech responded, inspected the equipment, and found everything to be in normal operation. Homeowner issue.

iii. 4-15-19: Forcemain Break Area 4 on Marathon High School private property: The City received a call from the Contractor working at the school that the fence company had drilled the forcemain leading from the lift station that services the school to the main that runs along Sombrero Bch Rd to Area 4 WWTP. The Tech shut down the valve leading to the forcemain from the lift station to keep water from back flowing onto school property. The construction company did a temporary repair to keep the school open, but it took a couple of days to get the appropriate parts to make a proper repair of the line. The Tech had to close the valve for two nights after school was out to insure that the temporary repair didn't malfunction and pump water on the property while no one was around to report it. The proper repair was made and the forcemain was put back into operation.

v. 4-15-19: Backup Area 7. 369 Avocado. The Tech received a call on the MOD phone about a backup at the residence. He responded and found the Grinder Pump Station not operating and full of water. He then proceeded to call for the pump truck to draw the water down until the Lift Station Tech could diagnose it the next morning. The Tech diagnosed the problem being both stators were bad and replaced both of them. He then put the station back on line. No damage to property.

v. 4-18-19: Backup Area 7 . 86 Pelican Rd. The MOD phone received a call from the resident about a backup at the property. The Technician responded and found both pumps to have failed. He replaced both pumps and put station back into operation. No damage to property.

vi. 4-18-19: Backup Area 4. 11 Sombrero Blvd. The MOD phone received a call from the resident about a backup and responded. When he arrived, he found that the property was being serviced by a private lift station. He helped the resident by checking the wet well of the private lift station to see if it was operating and it was. The problem was in the service lateral for that residence on private property.

vii. 4-19-19: Backup Area 5. 10777 O/S Hwy. Muffler Man. The MOD phone received a call from the business about a backup and the Tech responded. He found the City equipment in good working order and informed the appropriate person that the issue was on the business side of the sewer lateral. That they needed to call a plumber.

viii. 4-21-19: Backup Area 5. 11001 O/S Hwy. Citgo Gas Station. The MOD phone received a call from the business about a backup and the Tech responded. He inspected the equipment and found that the No-hub had come off the suction side of the vacuum pit. He replaced the No-hub with a Fernco fitting and placed the pit back into service. No damage to property.

ix. 4-24-19: Backup Area 4. 1153 Camino del Vientos. The MOD phone received a call from the resident about a backup and responded. When he inspected the vacuum pit, he found the unit to be overwhelmed with water. He manually fired the pit and it resolved the issue. No damage to property.

x. 4-27-19: Backup Area 4. 69 Tingler Ln. The MOD phone received a call from the resident about a backup and the Tech responded. He inspected the equipment and found the vacuum pit to be in good working order. The problem was on the homeowner's side.

xi. 4-27-19: Backup Area 4. 411 Sombrero Bch Rd. The MOD phone received a call from the resident about a backup and responded. He inspected the equipment and found that the No-hub had come off the suction side of the vacuum pit. He replaced the No-hub with a Fernco fitting and placed the pit back into service. No damage to property.

xii. 4-28-19: . 411 Sombrero Bch Rd. The MOD phone received a call from the resident about a backup and responded. He found the vacuum pit to be overwhelmed with water and manually fired the pit to evacuate the water. The next day the Techs went back to re-inspect the pit to determine what exactly happened to cause it to back up twice in two days. They took the vacuum pit completely apart and found a small hole in the hose that operates the firing mechanism keeping the unit from firing. I personally met with the property



manager to assure her that the problem would not be an ongoing problem. I inspected the vacuum pit and determined that it would be wise to pull the valve and reinstall it to a closer tolerance to keep the water hammer from pulling the Ferncos apart in the future. I informed the property manager to send the City the cleanup invoice and we would reimburse her for the cost. Damage was water on the floor only.

xiii. 4-29-19 Backup Area 5: 1365 Marlin Dr. The MOD phone received a call from the resident about a backup and the Tech responded. He inspected the equipment and found the vacuum pit to be in good working order. The problem was on the homeowner's side.

## 7. Odor Complaints / Mitigation

- a. We received one odor complaint in April for the collection system for the remote vacuum station located at the corner of US1 and Aviation Boulevard. We had changed the media 3 months ago and the expected life span is 1 year so it was a surprise. An odor control upgrade for this area was approved by City Council at the last council meeting and that equipment is currently on order.

## C. Service Plant upgrades & Construction

1. The Service Area 3 WWTP redundant filter upgrade project was approved and that equipment is currently on order. ACOE grant money is available for reimbursement
2. The Service Area 3 WWTP wastewater pre-treatment project was recently approved by Council and that contract has been signed and work is expected to start very shortly.
3. The Area 5 WWTP upgrades are still in progress. All of the MBR and AS tanks have been repaired and recoated on the inside and outside of tanks. New MBR membranes were installed in February and are working great. The change order to repair the influent equalization tank was approved at the last Council meeting and that work is in progress.
4. The design for the sludge facility at Area 6 is still in progress.

## D. Grants Update Summary

1. LP44041 17 Million dollar Grant – No major changes this month.
  - i. Finance is working on the next draw at this time.

2. Regarding the ACOE PCA (possible grant money for next year). The House E & W Appropriations Committee just released the report for the fiscal 2020 Energy-Water Appropriations bill. The bill will be marked up by the full committee on Tuesday and it contains \$100M for Army Corps Section 219! This is the most funding we have ever seen from the House side for the Section 219 program. We still need to see where the Senate comes down and how they hash out the difference later in the year but this is a great start for a chance at FY2020 funding from ACOE.

CITY COUNCIL AGENDA STATEMENT

**Meeting Date:** May 28, 2019  
**To:** Honorable Mayor and Council Members  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

**Agenda Item:** **Resolution 2019-46**, Consideration Of A Request By Grassy Key Resort Group, LLC For A Conditional Use Permit and Development Agreement Pursuant to Chapter 102, Articles 8 and 13 Of The City of Marathon Land Development Regulations (LDRs) Entitled “Development Agreement” And “Conditional Use Permits” Respectively, Seeking The Redevelopment Of A Hotel Resort And Commercial Uses On Property Located at 58070 and 58182 Overseas Highway, Which Is Legally Described As Township 65, Section 24, Range 33; Bk 36 Lts 1-2-3-4 And PT Lts 5-6 (Parcel A) And Wly 15FT Unnamed ST Adj Lot 1 Res B-C-C 8/11/61 And Adj Portion Of Flagler Street And Grassy Key Bay Bottom Adj Lts 1-2-3 in the Crains Subdivision, Grassy Key, Marathon, Florida; Having Real Estate Numbers 00370940-000000. Nearest Mile Marker 58.5.

**APPLICANT/ OWNER:** Grassy Key Resort Group, LLC

**AGENT:** Lesley Rhyne

**LOCATION:** The project site is located at 58070 and 58182 Overseas Highway at nearest Mile Marker 58. See Figure 1.

**Figure 1  
Project Site**



**REQUEST:** A Conditional Use Permit and Development Agreement for re-development of the subject property having the real estate numbers 00370940-000000 and 00371060-000000

**FUTURE LAND USE MAP DESIGNATION:**  
Mixed Use Commercial (MUC). See Figure 2.

**Figure 2**  
**Future Land Use Map**



**ZONING MAP DESIGNATION:**  
Mixed Use (MU). See Figure 3.

**Figure 3**



## Zoning Map



**LOT SIZES:**

00370940-000000	1.91 acres or 83,251 square feet of upland and 2.61 acres or 113,729 square feet of submerged land
00371060-000000	0.29 acres or 12,540 square feet of upland and 0.07 acres or 3,198 square feet of submerged lands
<b>TOTAL</b>	<b>2.20 acres of upland and 2.67 acres of submerged land</b>

**SURROUNDING ZONING AND USES:**

	<u><i>Zoning</i></u>	<u><i>Use</i></u>
<b>North</b>	Conservation-Native Area and Residential Conservation	Crain Subdivision, Grassy Key
<b>East</b>	Mixed Use and Residential Medium	Residential Homes and Vacant Lots
<b>South</b>	Atlantic Ocean	N/A
<b>West</b>	Mixed Use and Residential Medium	Crain Subdivision, Hideaway Café, White Sands Inn, and Rainbow Bend

**EXISTING CONDITIONS / PROPOSED REDEVELOPMENT:**

The project site consists of three previously contiguous developed lots now consolidated into one real estate number – 00370970-000000 and an additional nearby parcel – 00371060-000000. The Casa Del Sol Resort and the Yellowtail Inn parcel is currently developed and being rehabilitated after the storm. Bonefish Resort has been demolished after the storm.

The Applicant and owner desires to transfer ten (10) transient hotel/motel units to the proposed redevelopment project from the previous site of Bonefish Resort (RE No. 00371060-000000). Bonefish Resort (RE No.

00371060-000000) will be redeveloped with five (5) recreational vehicle pads (RV) for a period of time of at least five (5) year. At that time, the RV sites will either remain as developed or be consolidated into the larger resort located at 00370940-000000 in consideration of other uses allowed for the zoning district under the City's Comprehensive Plan.

**CURRENT CONDITIONS**

Transient Units: 23 Units (Casa Del Sol / Yellowtail)  
15 Unit Entitlements (Bonefish Resort)

Commercial Floor Area: 11,550 square feet Commercial uses

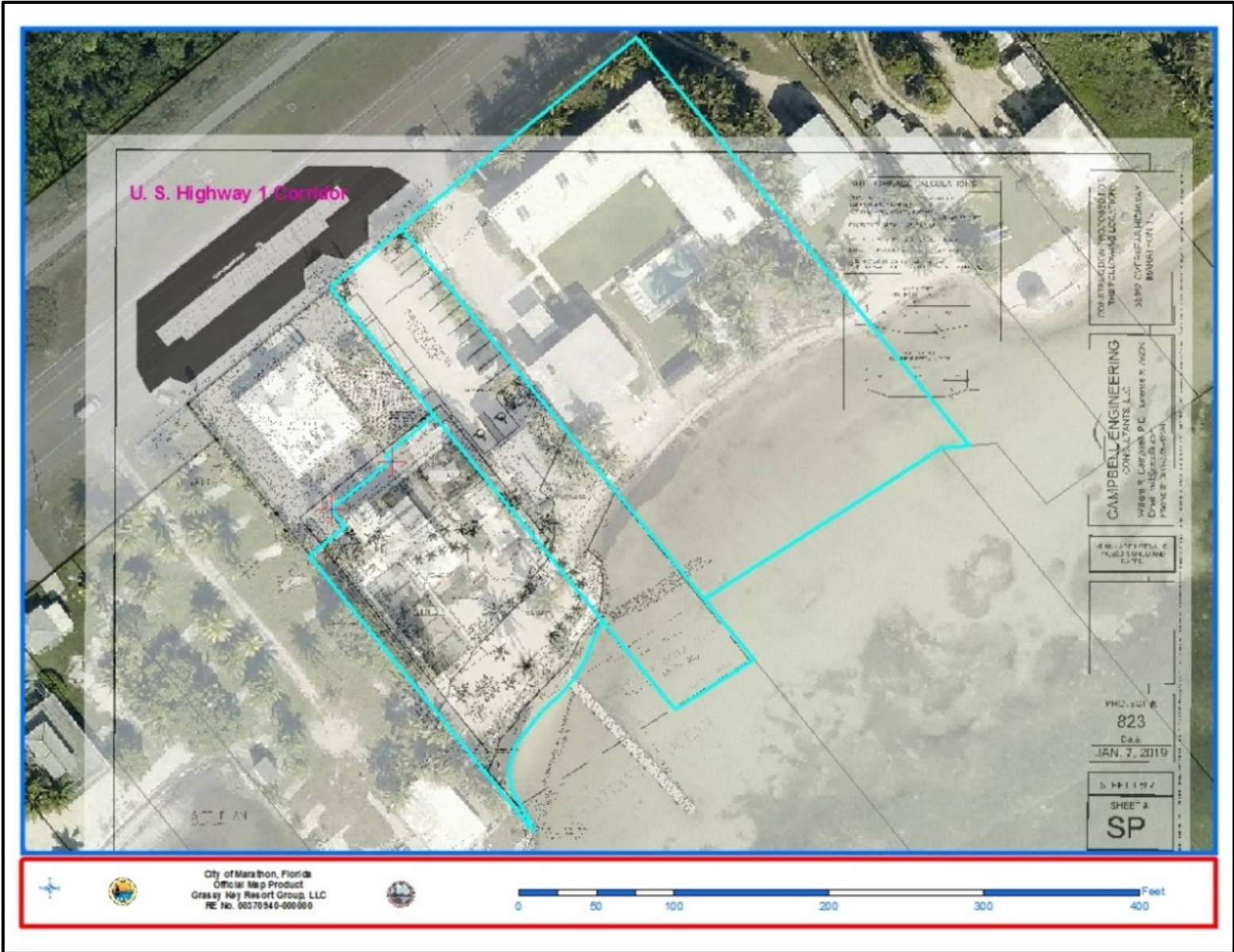
**PROPOSED REDEVELOPMENT:**

Transient Units: 33 Hotel Units (58182 Overseas Highway)  
5 RV Sites (58070 Overseas Highway)

Commercial Floor Area: 11,550 square feet Commercial uses

**See Figure 4 A & B for Site Plan layout.**

**Figure 4A  
Proposed Redevelopment Site Plan**





Proposed Site Plan  
Bonfish RV Sites





## **BACKGROUND:**

The Casa Del Sol, Yellowtail Resort, and Bonefish properties were purchased approximately one year prior to Hurricane Irma to become La Te Da By The Sea. Post Irma, the property languished as the owners of La Te Da determined to sell the property and entitlements. The combined properties at the time contained 38 transient residential units as hotel units with approximately 12,000 of commercial space. The proposed project is a simple redevelopment of La Te Da By The Sea with no net increase in transient residential units of commercial area. Ten transient residential unit entitlements will be transferred from the old Bonefish property (58070 Overseas Highway) to the Grassy Flats Resort site (58182 Overseas Highway) and will be redeveloped as hotel units. The five (5) transient entitlements that will remain at the old Bonefish site (58070 Overseas Highway) will be utilized as new RV sites. New commercial components will be included in the redevelopment of the Grassy Flats Resort site.

The combined, redeveloped project site will be known as Grassy Flats Resort and Beach Club.

**All condition of the Conditional Use approval will have to be met before any building permit will be approved.**

## **EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:**

The criteria for evaluating a Conditional Use Permit and Development Agreement Approval are outlined in Chapter 102, Articles 8 and 13, in the City of Marathon Land Development Regulations.

## **CRITERIA**

### **A. The proposed use is consistent with the Comprehensive Plan and LDRs;**

The proposed development project is located within the Mixed Use (MU) Zoning District. Per Chapter 103, Article 2, Section 103.09 of the Land Development Regulations, the district is designed to “accommodate a wide variety of commercial and retail activities that will result in the most efficient and attractive use of the City’s historic business district and the US1 Corridor, in an effort to recognize the role of US1 as the City of Marathon’s ‘Main Street.’ The MU district also provides for large-scale retail and commercial business opportunities in other areas, including larger shopping center, specialty shopping centers, individual multi-tenant commercial buildings, automotive services and sales, fast food restaurants, affordable housing uses, transient lodging and other retail establishments that serve the community at large”.

The proposed project consists of the redevelopment of existing commercial use within the Mixed Use Zoning District. Section 103.15, Table 103.15.2, “Uses By Zoning District,” establishes whether specific uses are allowed as of right, limited, accessory or conditional use permit. That table shows that Hotel/Motel/Resort lodging uses are allowed as Conditional Uses in the MU District. Conditional Use Permit review is intended to allow a broader view of the potential impacts of a project on adjacent uses and on City concurrency related resources such as road capacity, solid waste, sewer, and potable water availability.

Table 103.15.2 in the Land Development Regulations establishes constraints on density and intensity allowed in the MU district based on the types of uses proposed. Using the property area, the proposed use can have up to

(5-25 transient per acre – between 11-55 units) hotel units. Table 103.15.3 further qualifies the allowed range of intensities based on the intensity of retail use.

<b>Development Type</b>	<b>Existing</b>	<b>Proposed</b>	<b>Max Allowed</b>	<b>% Total Area Utilized</b>
Transient Units	38	38	55	69%*
Commercial Floor Area	11,550	11,550	17,825**	20%

Assumes that Transient Units have extinguished 60% of property for density/intensity calculations  
 Assumes that the Commercial Uses proposed are of “Medium Intensity” allowing a 60% FAR.  
 Remaining Area allowed for development (density, intensity, or combination) is approximately 0.44 acres.

The project as proposed meets the basic definition of development in the MU zoning district.

Therefore, with conditions, the request is *in compliance* with the requirements of these sections.

**B. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;**

The proposed project is located within the Mixed Use Commercial Future Land Use District. Policy 1-3.1.4 of the City of Marathon Comprehensive Plan states that the “principal purpose of the Mixed Use Commercial land use category is to provide for the establishment of mixed use development patterns and to recognize established mixed use development patterns within the City.” The proposed project includes redevelopment of an existing conditional use (Hotel, Motel, Resort) into a similar conditional use (Hotel, Motel, Resort), which is consistent with the Mixed Use classification.

The existing land use pattern in the project vicinity consists of mangroves to the North, Atlantic Ocean to the South, Residential homes to the east and west, and commercial and residential uses in between.

Otherwise, the redevelopment of the site will result in significant improvement to the site development quality, including upgraded landscaping, stormwater management, and architecture. The improvements are expected to have a positive benefit on the surrounding uses and the City of Marathon.

Therefore, the request is *in compliance* with the requirements of these sections.

**C. The proposed use shall not adversely affect the health, safety, and welfare of the public;**

The proposed conditional use is a redevelopment of an existing use which has not had any known impact to the health, safety and welfare of the public. No new impacts are expected to arise with the redevelopment. The infrastructure on the site will be upgraded and the site heavily landscaped, creating a substantial improvement to the sites.

Plans submitted with the project are suitable for the Conditional Use Approval as they relate to Chapter 107, Article 12, 100 Year Floodplain. Final review of floodplain compliance will occur as part of building permit issuance.

Therefore, the request is ***in compliance*** with the requirements of these sections.

**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:**

The existing conditions maps indicate the subject area is designated as Developed Land. A site inspection showed the current conditions as scarified with existing buildings and asphalt parking lot. Two of the parcels are designated as Turtle Nesting Beaches. Figure 6 shows the nesting beach areas in yellow. The structure that exist currently on site are within the turtle nesting beach setback. The applicant is proposing the new structures to be no further into the setback than the existing structures, and where possible to locate them further from the setbacks.

The area to include the new hotel development is not a turtle nesting beach. The remaining area is located directly landward of the designated turtle nesting beach this includes, the old Yellowtail Resort Building, the Casa Del Sol Resort structure, the pool and pool deck and a tiki structure. Pursuant to P2018-2251 (Site Work), P2019-0017 (Exterior remodel), P2019-0325 (repair dock) development waterward of these structures is limited to a vegetated berm and walkover which has been permitted and is currently in place. All other redevelopment within the area designated as turtle nesting beaches must comply with Chapter 14, Article II of the Code of Ordinances.

**Figure 6  
Turtle Nesting Beach Map**



Further improvements to water quality are expected to arise from stormwater improvements to the site, which should provide up-to-date treatment and eliminate any existing discharges to surface waters. The applicant has submitted preliminary stormwater plans suitable for the Conditional Use Application, and final plans are required prior to building permit issuance.

Site landscaping will be selected from Table 107.68.1, Appendix A, Article 8, Section 107 of the City of Marathon Code of Ordinances. The native vegetation will improve the environmental quality of the site and reduce irrigation needs. The applicant has submitted a detailed vegetation plan that is compliant with the landscaping requirements. Additionally, the applicant will provide additional landscaping to reduce light spillage onto neighboring properties and turtle nesting beaches.

Therefore, with conditions, the request is **in compliance** with the requirements of these sections.

- All lighting, beach raking, and redevelopment must comply with Article II of Chapter 14 of the Code of Ordinances.
- Setbacks in front of Casa del Sol is defined in permit P2019-0017 (Exterior remodel), P2019-0325 (dock repair).

**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 cases of fire or catastrophe;**

The applicant has provided a breakdown of the proposed occupancy of the onsite buildings. The “Trip Generation Analysis” schedule provided in the Traffic Study indicated that there will be an increase in trip generation from the existing use to the proposed use for the site. The traffic study determined that based on the expected trip generation for the project, there would be no adverse effect on the operating characteristics of U.S. 1. The submitted study finds that the proposed expansion will not inhibit the safe flow of traffic travelling through the City of Marathon, and that no additional improvements are warranted on U.S. 1.

Ingress and egress to the property is being provided through driveways onto Overseas Highway. The trip generation analysis of the traffic study shows that currently the existing uses generate 304 daily trips from the 33 units. With the proposed hotel/resort 38 units, residential units, and commercial space, the daily trip would be a total of 394 total. Therefore, the proposed redevelopment would create an increase in trip generation by 90 trips.

Section 107.43 requires site triangles where the access drive intersects with the street. Clear site triangles must be shown on the site plan at time of building permit issuance.

The redevelopment of these properties will require additional fire suppression measures. The applicant has coordinated with the Fire Marshall on the proposed locations of new fire hydrants as well as fire sprinklers. Additional fire truck vehicle access and turnarounds are required.

Therefore, with conditions, the request is **in compliance** with the requirements of these sections.

- Clear sight triangles must be shown on the site plan at time of building permit issuance.
- All conditions of the Fire Marshall must be met in site planning and in permit application preparation prior to permit issuance.

**2. Off-street parking and loading areas where required, with particular attention to item 1 above;**

Parking requirements are outlined in Section 107.46 (Parking Schedule). The following table shows the parking requirement for the commercial uses on the parcel:

Use	Code Citation	Requirement	Spaces Required
Hotel or Motel	107.47.A	1 per every 3 employees	2
		1 per guest room	32
Retail		3 per 1,000 SF	6
		1 per employee at largest shift	2
Total Required			59
Total Provided			59

Section 107.52 includes a requirement that one handicapped space be provided for every 25 spaces required. For 59 spaces, three (3) handicapped spaces are required. Parking space sizes are 9' x 18' for 90 degree parking, and handicapped spaces are 12' x 21' as required by Code. The proposed site plan is consistent with the code requirements for parking and aisle width. Additionally, the applicant proposed that the parking for the hotel be handled through a valet, allowing for stacking parking under the motel structures.

The Code also requires bicycle parking to be provided for educational facilities, multifamily dwellings, commercial, institutional and industrial uses, as well as all developments adjacent to a bike path, at a rate of one (1) space for every ten (10) parking spaces, per Section 107.48. The developer has proposed a bike rack for the project// six bicycle spaces on site.

Therefore, with the conditions noted above, the request is **in compliance** with the requirements of these sections.

- Bike racks must be shown on the final site plan.

**3. The noise, glare or odor effects of the conditional use on surrounding properties;**

The proposed project consists of redevelopment of three existing commercial use. New lighting will be necessary for this project. The applicant has provided a typical lighting plan which conforms with the City of marathon

LDR's. A more detailed lighting plan must be submitted for permitting purposes. The applicant's detailed plans should achieve the net result of no detrimental noise, glare or odors being generated by any of the uses.

Therefore, with conditions, the request is **in compliance** with the requirements of this section.

- A detailed lighting plan must be submitted before the project is permitted, including turtle lighting.

**4. Refuse and service areas, with particular reference to locations, screening and Items 1 and 2 above;**

**5. Utilities, with reference to location and availability;**

Chapter 107, Article 13, establishes the City's Concurrency Management and certification requirements. This Conditional Use constitutes the City's Concurrency Level of Service Certificate, as follows:

- Wastewater: The applicant is currently working with the Utilities department to accommodate the wastewater needs, and assess the additional impacts and wastewater fees.
- Water: The Florida Keys Aqueduct Authority currently provides potable water for the facility. Staff recommends a separate meter for irrigation and landscaping.
- Solid Waste: Marathon Garbage Service will provide solid waste disposal.
- Surface Water: The applicant has provided stormwater design information suitable for the Conditional Use application review which demonstrates compliance with City standards. However, a final stormwater plan will be required for building permit issuance.
- Recreation and Open Space: This redevelopment will have a de minimis impact on recreation and open space.
- Roadways: The applicant is redeveloping the site with a higher intensity than was contained within the prior development; therefore, a traffic study was completed to analyze the impact on transportation facilities.
- Educational Facilities: This redevelopment will have a de minimis impact on educational facilities since existing uses are being replaced in kind.

Therefore, with conditions, the request is **in compliance** with the requirements of these sections.

- City approval is required for the stormwater management system prior to Building Permit Approval.
- City approval of the modified connection to the City Wastewater Utility will be required.
- The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for a one year.

**6. Screening and buffering with reference to type, dimensions and character;**

Table 107.66.1 establishes project boundary buffer standards applicable to the project. The subject parcel is zoned MU and is bordered by properties zoned RM, requiring a 'high' boundary buffer. The preliminary landscape plans show that this buffer is maintained. The final landscape plans must be approved by the City Biologist. The existing Casa del Sol property has a driveway within the buffer area that provides parking and access under the structure. Staff recommends landscaping as much as possible within the area without hindering the existing vehicle access.

Section 107.71 A. requires that parcels with a MU zoning designation provide a Type 1 Streetscape Treatment for all parcels along U.S. 1. The proposed landscape plan meets the minimum requirements. According to the Code, four canopy trees shall be planted in and about access points. In addition smaller accent trees shall be planted every 120 feet and staggered midway between the large canopy trees. Additionally, all parking not located to the rear of buildings shall be screened from the right-of-way by a landscaped buffer along U.S. 1, including a continuous hedge or combination hedge and earth berm providing a three-foot high visual screen within two (2) years of planting.

Table 103.15.2 outlines setback requirements in the MU district as follow: front yard 0 – 30’; side yard 1 and 2, 0 – 10; interior side yard, 10; and, street side, 0-5’. Accessory structures, including pools, have a 10’ setback.

Table 106.28.1 outlines setbacks requirements for a principle structure on in-fill lots, along open water shorelines not adjacent to manmade canals, channels or basins, and which have been altered by the legal placement of fill, which are surrounded by significant development where principal structures are set back less than fifty (50) feet from the MHWL. A resource buffer distance is set at a 20 foot minimum.

This plan shows a 10’ setback on the front yard, 3’ setback on the western side, and a 14’ setback on the eastern side yard, and 50’ rear yard setback.

Section 107.36 A.1 states that for parcels in the MU district the required interior yard setback may be reduced through the conditional use process. The existing use has an interior setback of 10’, therefore so long as the proposed redevelopment meets all other setback requirements, the interior side setback is allowed at the proposed 10’.

Setback	Required	Required Landscape	Proposed	Compliant
Front	0-30	10	10	Y
East Side	0-10	20	14	N
West Side	0-10	N/A	3	Y
Shoreline	10	N/A	50	N

As mentioned above, the existing structures are further into the setbacks than is currently proposed. These are being pulled back to the greatest extent practicable. Additionally, TRC review can reduce the required landscape buffer distance in half. Therefore, the 20’ buffer can be reduced to 10’ making the existing driveway as compliant as possible.

Parking area landscaping is required by Section 107.66 of the Code. The City Biologist has reviewed the submitted parking area landscape plan and has found it to be in compliance with the code.

Therefore, with conditions, the request is *in compliance* with the requirements of these sections.

**7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding uses;**

A review of sign requirements at this stage in development approval is not necessary. Signs for the project will be reviewed prior to issuance of building permit according to Chapter 107, Article 7, Signs.

Article 107.54 establishes criteria for lighting, including light pole light limitations and other technical criteria. Final lighting plans will be submitted along with final landscaping plans, and will include verification from the landscape architect that all provisions of the article are met.

Therefore, the request is **in compliance** with the requirements of these sections.

- All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
- All final lighting plan must be submitted prior to building permit issuance, and must comply with turtle lighting requirements.
- A final landscaping plan must be submitted prior to building permit issuance.

**8. Required yards and other open space;**

Section 106.16 established required open space for the project. The site is scarified; therefore, a twenty percent open space requirement applies. Additionally, the shoreline open space requirement is 70% is open. For the 5,163 SF buffer area, the maximum coverage is 1,549 SF by accessory structures. The applicant proposes 1,000 SF, which exceeds the open space requirement.

Therefore, the request is **in compliance** with the requirements of these sections.

**9. General compatibility with surrounding properties; and**

The project is a redevelopment of long standing existing uses in an area of the City which has been acknowledged as an area suitable for redevelopment. Adjacent uses include a commercial establishment and residential uses. A redevelopment of existing hotels is expected to be fully compatible with these uses. The proposed project represents improvement to the current state of prior development, and is expected to increase compatibility with surrounding properties.

Section 107.40 restricts the height of buildings to 37' as measured from the crown of the roadway or unimproved grade. The site plans show that buildings range from 31' to 33'.

Therefore, the request is **in compliance** with the requirements of these sections.

**10. Any special requirements set forth in the LDRs for the particular use involved.**

Section 104.25 Hotels or Motels contains special requirements.

The following criteria are applicable to this redevelopment:

- As a condition of development, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.
- All hotel or motels shall provide on- or off-site employee housing living space in an amount equal to a minimum of twenty (20) percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units.

Therefore, with the conditions note above, the request is **in compliance** with the requirements of this section.



## **CONCLUSION:**

The Conditional Use Approval is intended 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. Conditional uses shall not be allowed where the conditional use would create a nuisance, traffic congestion, a threat to the public health, safety or welfare of the community.

The proposed redevelopment consists of the replacement and enhancement of a long standing existing commercial use. As such the development, including the overall upgrading and improvement of the site, furthers the policies for development in the City and is consistent with the Comprehensive Plan and Land Development Regulations. The project is compatible with surrounding uses, and is not expected to create a nuisance, traffic congestion or threat to public, health, safety or welfare.

## **RECOMMENDATION:**

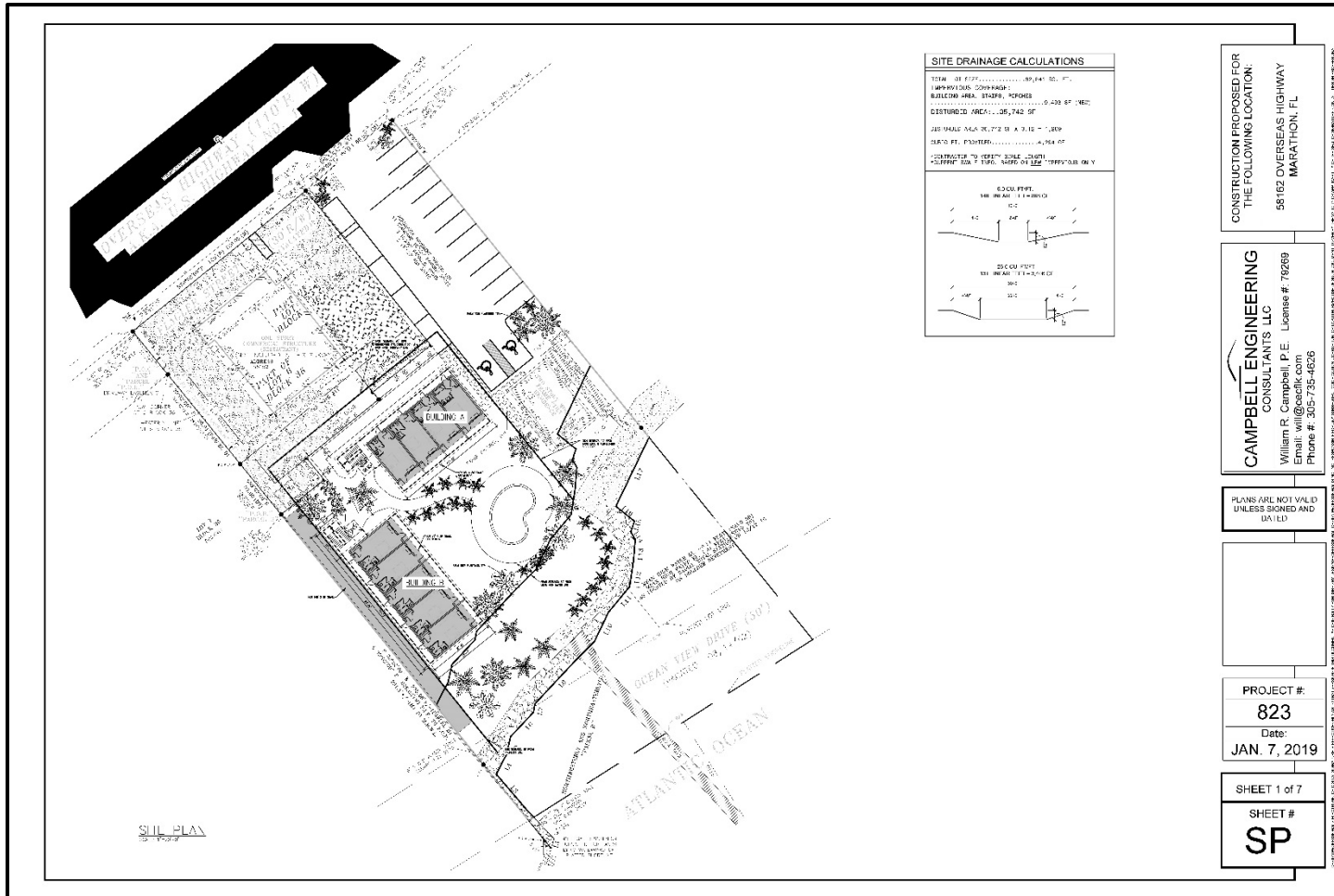
The Planning Commission voted 5-0 to forward a recommendation of conditional approval of the redevelopment of Grassy Key Resort, LLC as proposed Motel/Hotel/Resort to the City Council. The proposed conditions of approval are listed below.

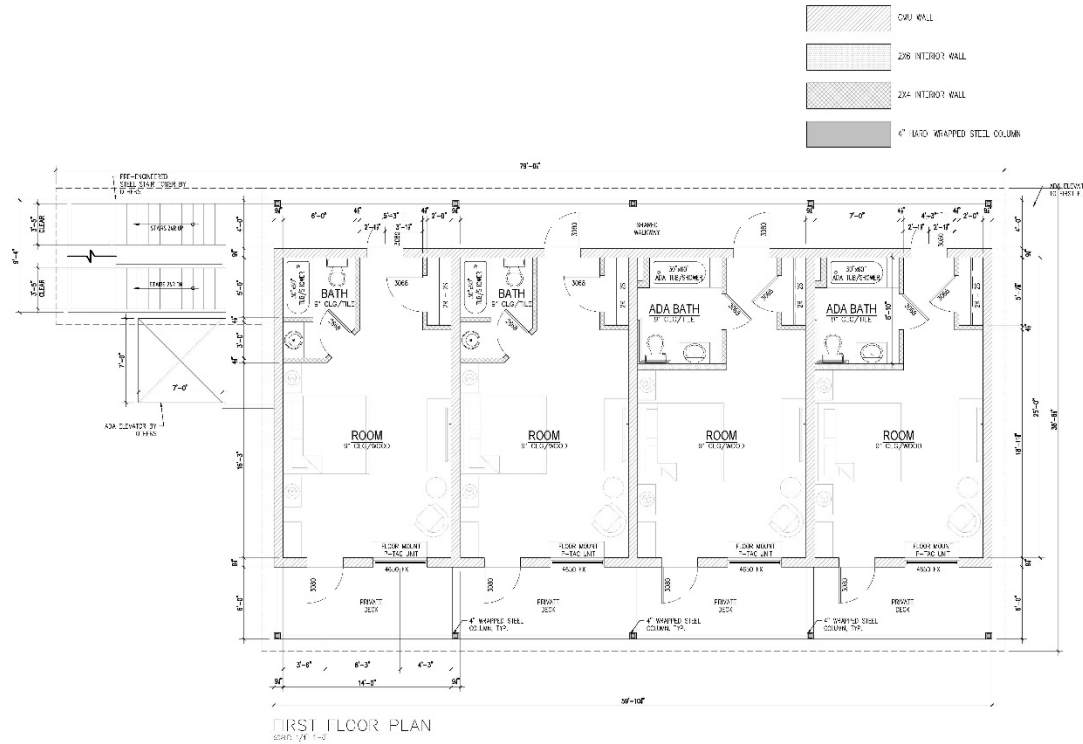
### Conditions of Approval

- 1) Redevelopment area not in turtle nesting beach. Area within the turtle nesting beach shall comply with setbacks established in P2018-0251, (Site Work), P2019-0017 (Exterior remodel), P2019-0325 (dock repair).
- 2) The applicant will meet all floodplain related requirements as part of the Building Permit process;
- 3) A detailed lighting plan must be submitted before permit issuance, including requirements for turtle nesting beach lighting;
- 4) City approval is required for the stormwater management system prior to Building Permit Approval.
- 5) City approval of the modified connection to the City Wastewater Utility will be required;
- 6) All signs and turtle lighting will be reviewed and approved for compliance with the City of Marathon LDR's;
- 7) A final landscaping plan must be submitted prior to building issuance;
- 8) Clear sight triangles must be shown on the site plan at time of building permit issuance.
- 9) All hotel or motels shall provide on- or off-site employee housing living space in an amount equal to a minimum of 20 percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units;
- 10) The applicant will obtain any required permits from ACOE and DEP prior to building permit issuance;
- 11) The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshall;
- 12) As a condition of redevelopment, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.
- 13) The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.

**Attachments:**

Attachment: Proposed Site Plan A

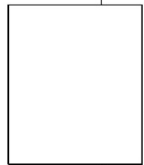




CONSTRUCTION PROPOSED FOR THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL.

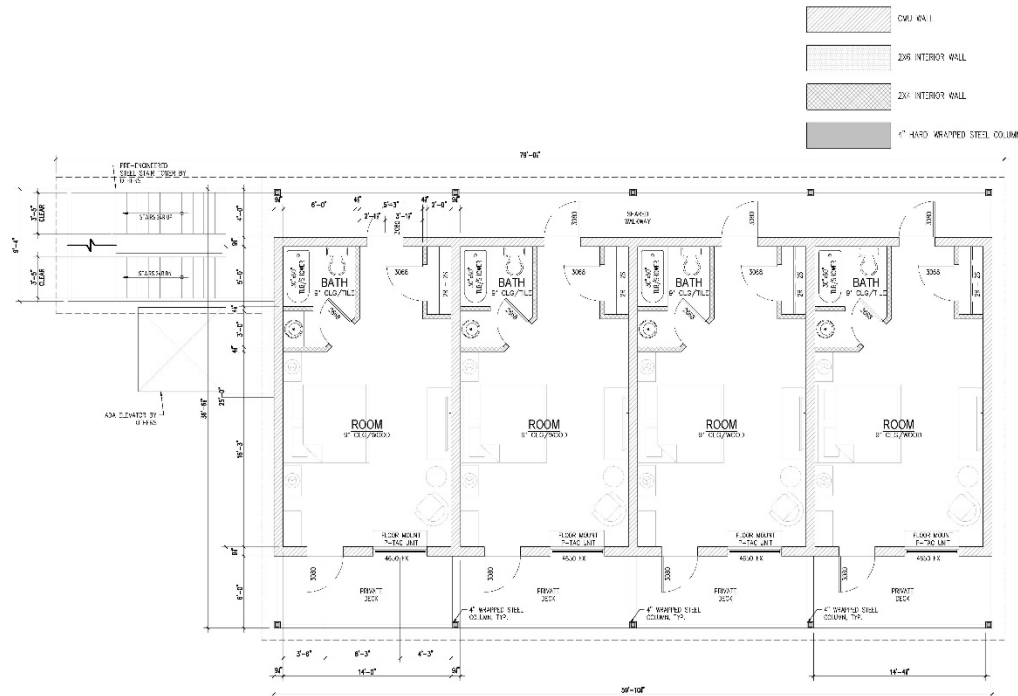
**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79269  
Email: will@cedtek.com  
Phone #: 305-735-4626

PLANS ARE NOT VALID UNLESS SIGNED AND DATED







PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

SHEET 2 of 7  
SHEET #  
**A-1**



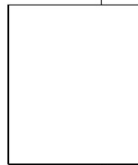
S<sub>COND</sub> FLOOR PLAN  
SCALE: 1/4" = 1'-0"

-  CMU EX. 1
-  2X6 INTERIOR WALL
-  2X4 INTERIOR WALL
-  4" W/WRAPD STEEL COLUMN

CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL.

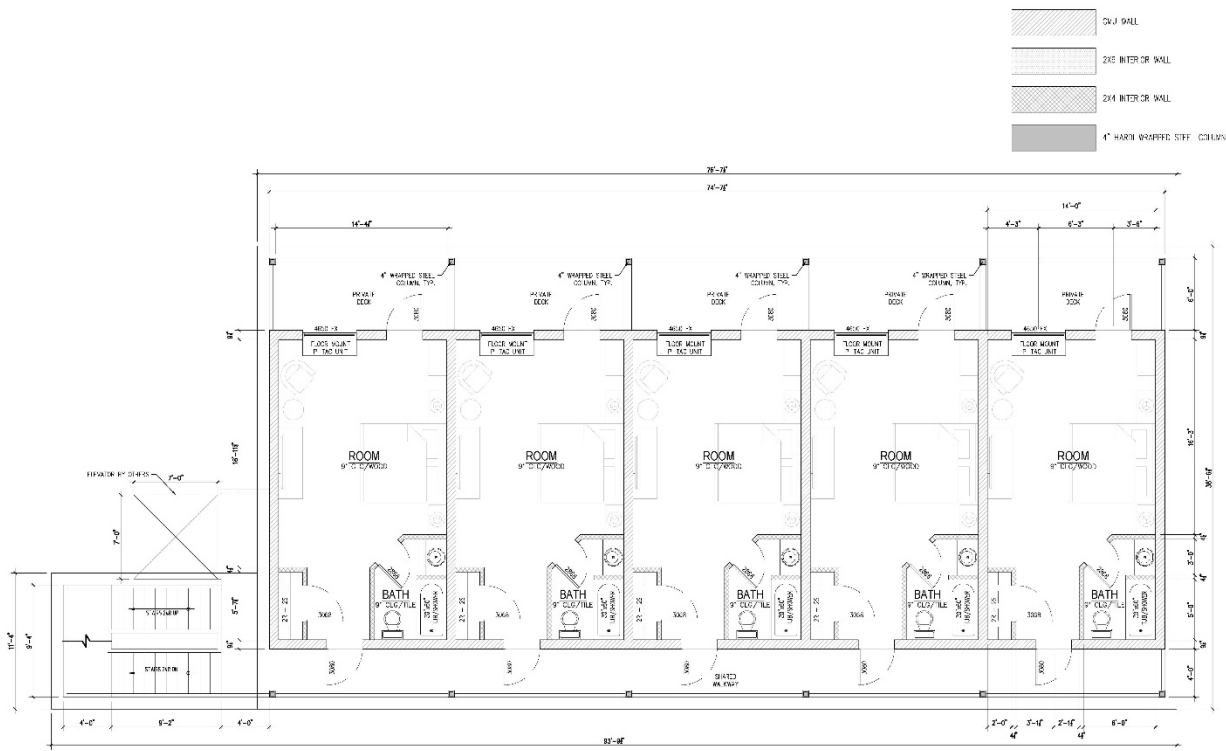
**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79269  
Email: will@ccealk.com  
Phone #: 305-735-4626

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PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

SHEET 3 of 7  
SHEET #  
**A-2**

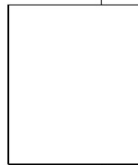


BUILDING B FLOOR PLAN  
SCALE: 1/8"=1'-0"

CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL.

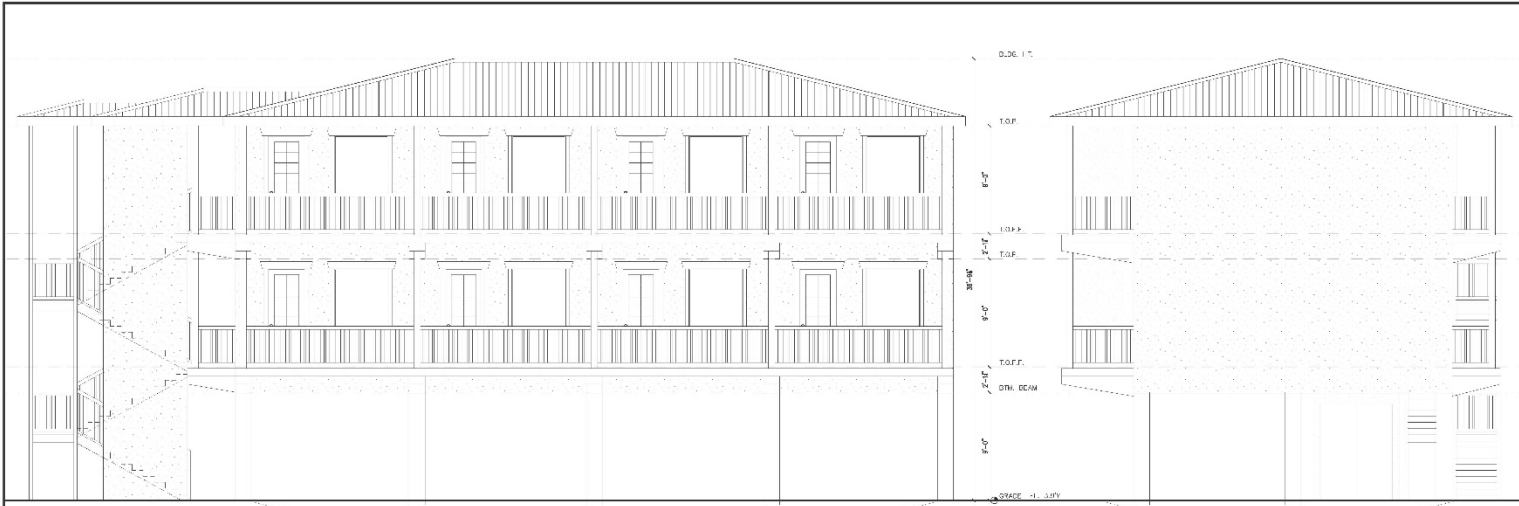
**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79269  
Email: will@cedtek.com  
Phone #: 305-735-4626

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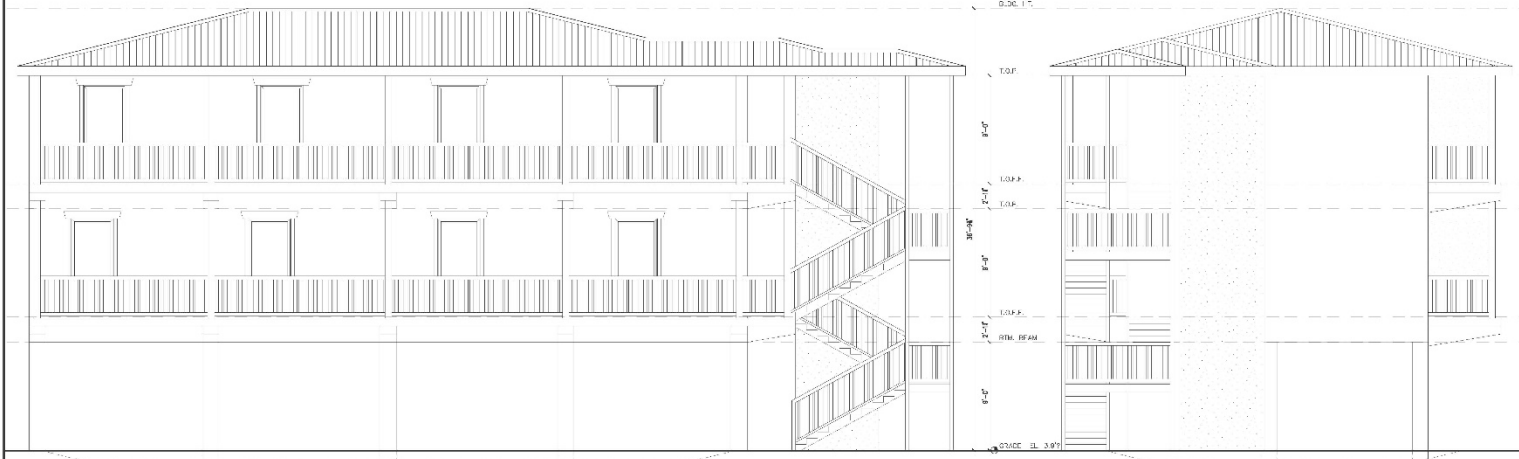
PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

SHEET 4 of 7  
SHEET #  
**A-3**



REAR ELEVATION — BUILDING A  
SCALE: 1/4" = 1'-0"

LEFT ELEVATION — BUILDING A  
SCALE: 1/4" = 1'-0"



FRONT ELEVATION — BUILDING A  
SCALE: 1/4" = 1'-0"

RIGHT ELEVATION — BUILDING A  
SCALE: 1/4" = 1'-0"

CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL.

**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79289  
Email: will@ceenlk.com  
Phone #: 305-735-4626

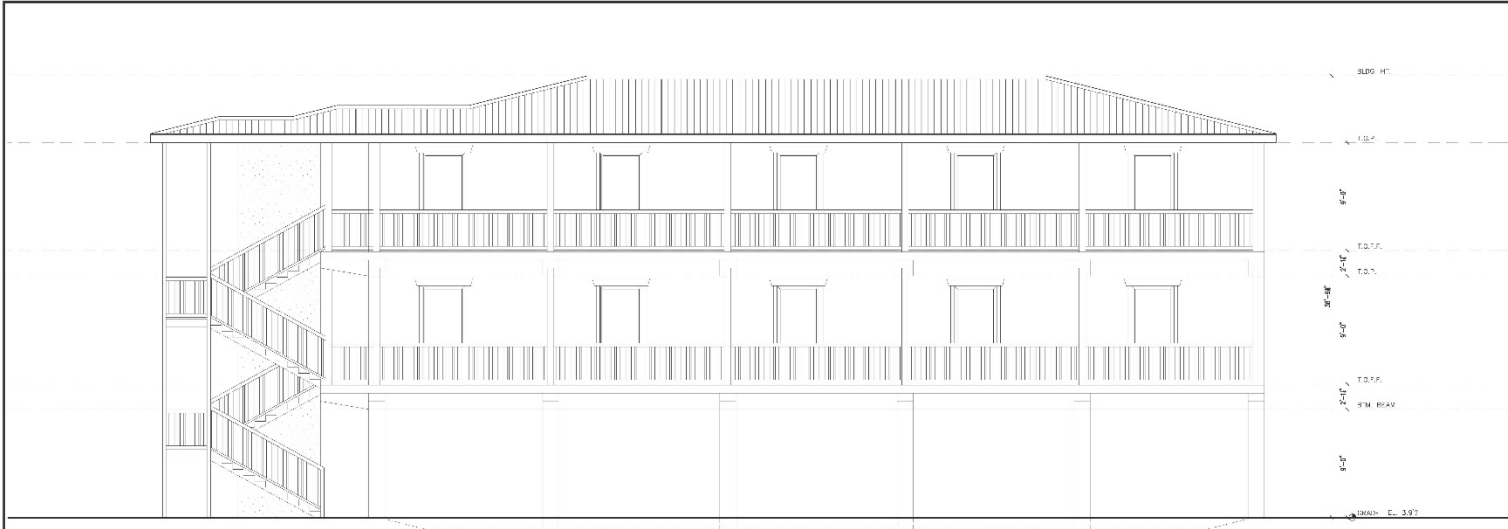
PLANS ARE NOT VALID  
UNLESS SIGNED AND  
DATED



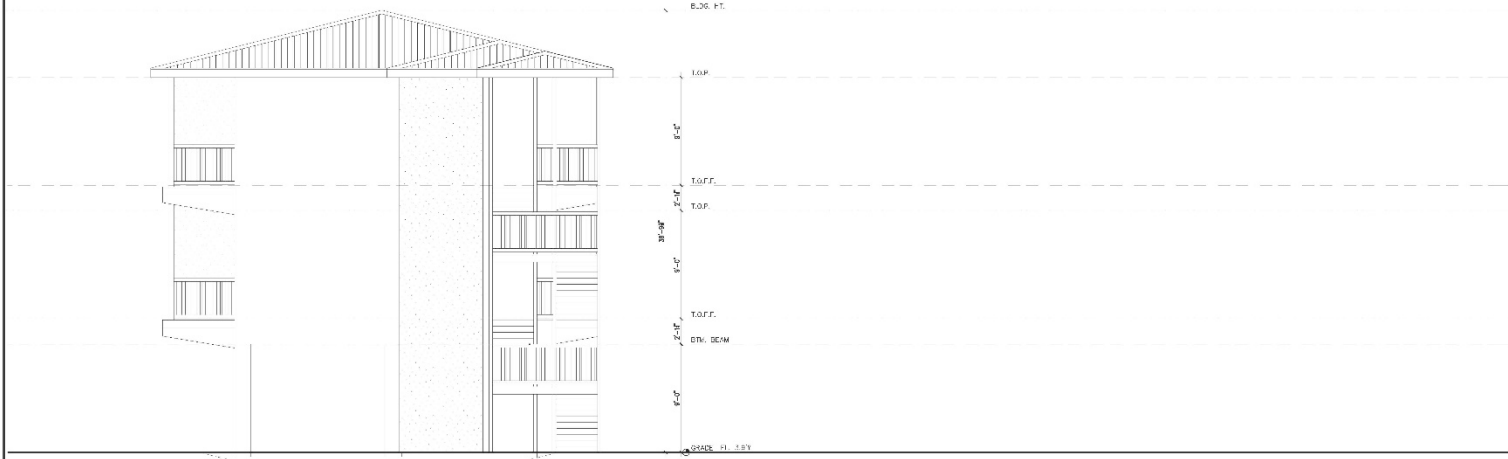
PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

SHEET 5 of 7

SHEET #  
**A-4**



FRONT ELEVATION - BUILDING B  
SCALE: 1/4" = 1'-0"



LEFT ELEVATION - BUILDING B  
SCALE: 1/4" = 1'-0"

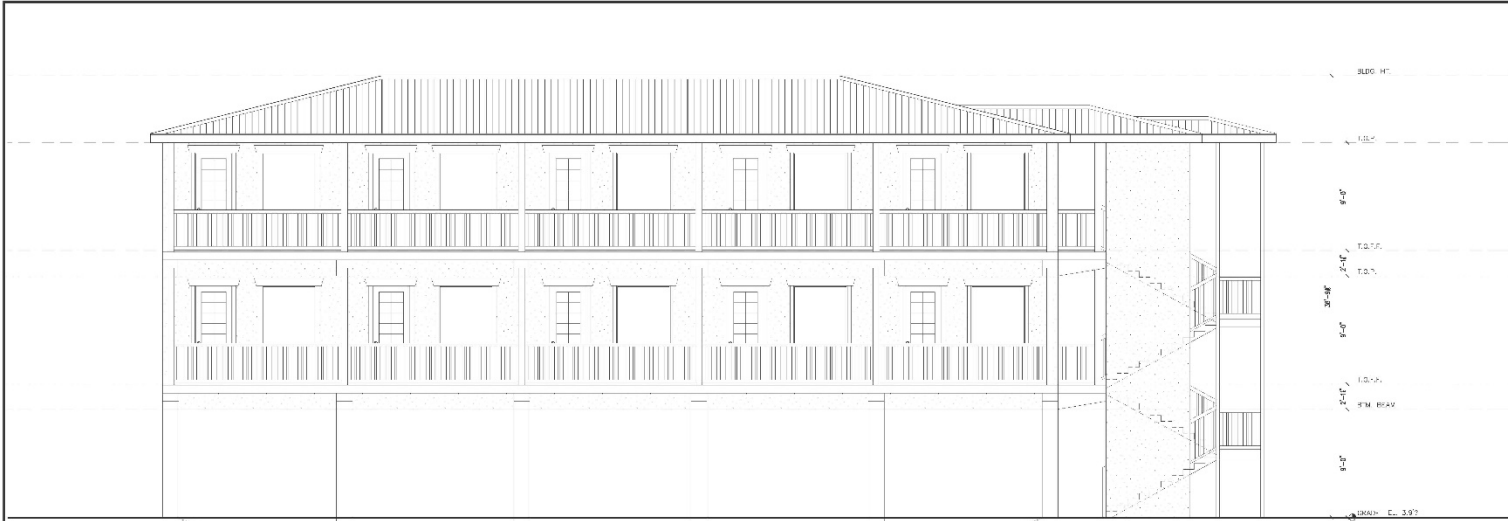
CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL

**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79289  
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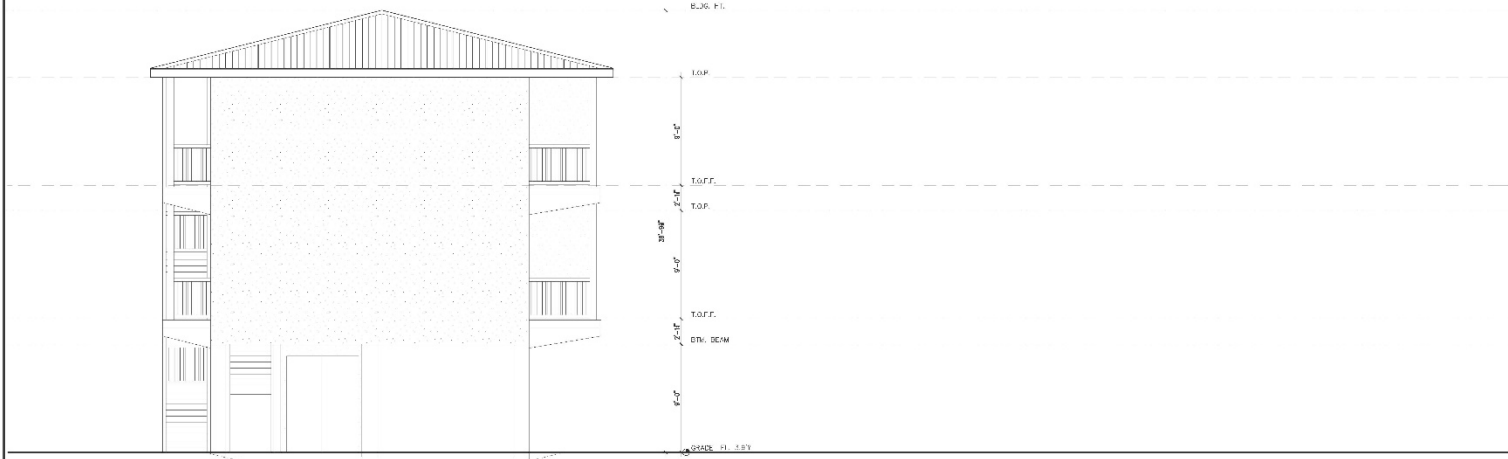
PLANS ARE NOT VALID  
UNLESS SIGNED AND  
DATED

PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

SHEET 6 of 7  
SHEET #  
**A-5**



REAR ELEVATION - BUILDING B  
SCALE: 1/4" = 1'-0"



RIGHT SIDE ELEVATION - BUILDING B  
SCALE: 1/4" = 1'-0"

CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL.

**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
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PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

SHEET 7 of 7  
SHEET #  
**A-6**





**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-46**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST BY GRASSY KEY RESORT GROUP, LLC FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED “CONDITIONAL USE PERMIT” SEEKING AUTHORIZATION FOR THE REDEVELOPMENT OF AN EXISTING HOTEL RESORT AND COMMERCIAL USES ON PROPERTY LOCATED AT 58070 AND 58182 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS TOWNSHIP 65, SECTION 24, RANGE 33; BK 36 LTS 1-2-3-4, PT LTS 5-6 (PARCEL A) AND WLY 15FT UNNAMED ST ADJ LOT 1 RES B-C-C 8/11/61 AND ADJ PORTION OF FLAGLER STREET AND GRASSY KEY BAY BOTTOM ADJ LTS 1-2-3, LOT 12 AND PT LOT 13 IN THE CRAINS SUBDIVISION, GRASSY KEY, MARATHON, FLORIDA: HAVING REAL ESTATE NUMBERS 00370940-000000 AND 00371060. NEAREST MILE MARKER 58.5.**

**WHEREAS**, Grassy Key Resort Group, LLC (The “Applicant”) filed an Application on February 14<sup>th</sup>, 2019 for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, the applicant has proposed the redevelopment of thirty three (38) transient units (two properties, one motel complex of thirty-three (33) units and five (5) RV sites) and 11,550 square feet of commercial space, including a hotel/motel/resort lodging, retail store, bar, accessory building and accessory uses, clubs, and two swimming pools; and

**WHEREAS**, the 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**, said Grassy Key Resort Group, LLC property located at 58070 Overseas Hwy (RE No. 00371060-000000) consists of 15 transient hotel/motel unit entitlements and commercial space, , and retail store; and

**WHEREAS**, Applicant desires to transfer 10 transient residential units from property located at 58070 Overseas Hwy (RE No. 00371060-000000) to the redevelopment of property located at 58182 Overseas Hwy (RE No. 00370940-000000) leaving 5 transient residential units at 58070 Overseas Hwy (RE No. 00371060-000000) to be developed as recreational vehicle pads (RV); and

**WHEREAS**, the property located at 58182 Overseas Highway (RE No. oo370940-000000) will be redeveloped to include ten (10) new hotel units in accordance with the plans attached.; and

**WHEREAS**, on the 15<sup>th</sup> day April, 2019, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearing”) 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, is consistent with its policy to encourage the development of residential properties in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

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

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

**Section 2.** The City Council hereby approves Development Order 2019-07, a copy of which is attached hereto as Exhibit “A”, granting a Conditional Use Permit to Grassy Key Resort Group, LLC 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 execution.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 28<sup>th</sup> DAY OF MAY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

---

**John Bartus, 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:**

---

David Migut, City Attorney

**EXHIBIT “A”  
CITY OF MARATHON, FLORIDA  
CONDITIONAL USE  
DEVELOPMENT ORDER # 2019-07**

**A DEVELOPMENT ORDER APPROVING A REQUEST BY GRASSY KEY RESORT GROUP, LLC FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED “CONDITIONAL USE PERMIT” SEEKING AUTHORIZATION FOR THE REDEVELOPMENT OF AN EXISTING HOTEL RESORT AND COMMERCIAL USES ON PROPERTY LOCATED AT 58070 AND 58182 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS TOWNSHIP 65, SECTION 24, RANGE 33; BK 36 LTS 1-2-3-4, PT LTS 5-6 (PARCEL A) AND WLY 15FT UNNAMED ST ADJ LOT 1 RES B-C-C 8/11/61 AND ADJ PORTION OF FLAGLER STREET AND GRASSY KEY BAY BOTTOM ADJ LTS 1-2-3, LOT 12 AND PT LOT 13 IN THE CRAINS SUBDIVISION, GRASSY KEY, MARATHON, FLORIDA: HAVING REAL ESTATE NUMBERS 00370940-000000 AND 00371060. NEAREST MILE MARKER 58.5.**

**WHEREAS**, Grassy Key Resort Group, LLC (The “Applicant”) filed an Application on February 14<sup>th</sup>, 2019 for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, the applicant has proposed the redevelopment of thirty three (38) transient units (two properties, one motel complex of thirty-three (33) units and five (5) RV sites) and 11,550 square feet of commercial space, including a hotel/motel/resort lodging, retail store, bar, accessory building and accessory uses, clubs, and two swimming pools; and

**WHEREAS**, the 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**, said Grassy Key Resort Group, LLC property located at 58070 Overseas Hwy (RE No. 00371060-000000) consists of 15 transient hotel/motel unit entitlements and commercial space, , and retail store; and

**WHEREAS**, Applicant desires to transfer 10 transient residential units from property located at 58070 Overseas Hwy (RE No. 00371060-000000) to the redevelopment of property located at 58182 Overseas Hwy (RE No. 00370940-000000) leaving 5 transient residential units at 58070 Overseas Hwy (RE No. 00371060-000000) to be developed as recreational vehicle pads (RV); and

**WHEREAS**, the property located at 58182 Overseas Highway (RE No. 00370940-000000) will be redeveloped to include ten (10) new hotel units in accordance with the plans attached.; and

**WHEREAS**, on the 15<sup>th</sup> day April, 2019, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearing”) 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, is consistent with its policy to encourage the development of residential properties in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**FINDINGS OF FACT:**

1. the applicant has proposed the redevelopment of thirty three (38) transient units (two properties, one motel complex and five (5) RV sites) and 11,550 square feet of commercial space, including a hotel/motel/resort lodging, retail store, bar, accessory building and accessory uses, clubs, and two swimming pools; and
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) Redevelopment area not in turtle nesting beach. Area within the turtle nesting beach shall comply with setbacks established in P2018-0251, (Site Work), P2019-0017 (Exterior remodel), P2019-0325 (dock repair).
- 2) The applicant will meet all floodplain related requirements as part of the Building Permit process;
- 3) A detailed lighting plan must be submitted before permit issuance, including requirements for turtle nesting beach lighting;
- 4) City approval is required for the stormwater management system prior to Building Permit Approval.
- 5) City approval of the modified connection to the City Wastewater Utility will be required;
- 6) All signs and turtle lighting will be reviewed and approved for compliance with the City of Marathon LDR's;
- 7) A final landscaping plan must be submitted prior to building issuance;
- 8) Clear sight triangles must be shown on the site plan at time of building permit issuance.
- 9) All hotel or motels shall provide on- or off-site employee housing living space in an amount equal to a minimum of 20 percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units;
- 10) The applicant will obtain any required permits from ACOE and DEP prior to building permit issuance;
- 11) The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshall;
- 12) As a condition of redevelopment, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.
- 13) The Conditional Use Development Order will constitute the Certificate of Concurrency 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 permit is hereby GRANTED subject to the conditions specified herein.

**EFFECTIVE DATE:**

This development order shall not take effect for thirty (30) 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.

\_\_\_\_\_ Date

\_\_\_\_\_  
George Garrett  
Director of Planning

This Development Order was filed in the Office of the City Clerk of this \_\_\_\_ day of \_\_\_\_\_, 2019.

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

**NOTICE**

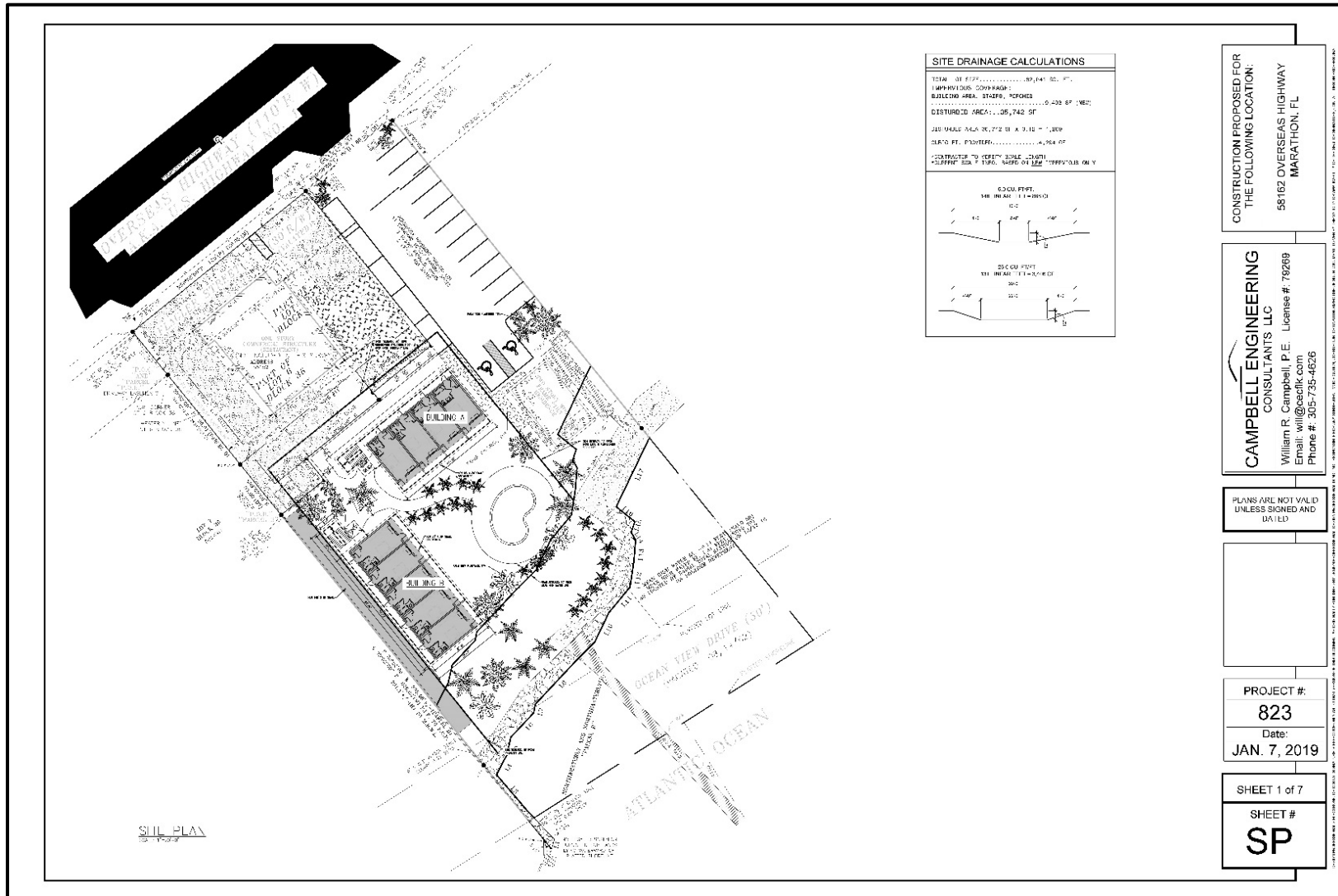
Under the authority of Section 102.79(c) of the City of Marathon Land Development Regulations, this development order shall become null and void with no further notice required by the City, unless a business license has been issued for the use or a complete building permit application for site preparation 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 Community Affairs 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, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Community Affairs. 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 Lesley Rhyne – 2975 Overseas Highway, Marathon, FL 33050 this \_\_\_\_ day of \_\_\_\_\_, 2019.

Diane Clavier, City Clerk

Attachment: Proposed Site Plan A



SITE DRAINAGE CALCULATIONS	
TEAM	01/17/19
IMPROVEMENTS	CONTRACTOR
BUILDING AREA	STAIRS, RAMP
DISTURBED AREA	25,742 SF
250 MM DIA. R.C. 72 IN. A 3.12 IN. 1.000	
24 IN. DIA. R.C. 72 IN. A 3.12 IN. 1.000	
CONTRACTOR TO VERIFY SLOPE	CONTRACTOR TO VERIFY SLOPE
CONTRACTOR TO VERIFY SLOPE	CONTRACTOR TO VERIFY SLOPE

CONSTRUCTION PROPOSED FOR THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL

**CAMPBELL ENGINEERING CONSULTANTS LLC**  
William R. Campbell, P.E. License # 76289  
Email: will@cecalk.com  
Phone #: 305-735-4626

PLANS ARE NOT VALID UNLESS SIGNED AND DATED

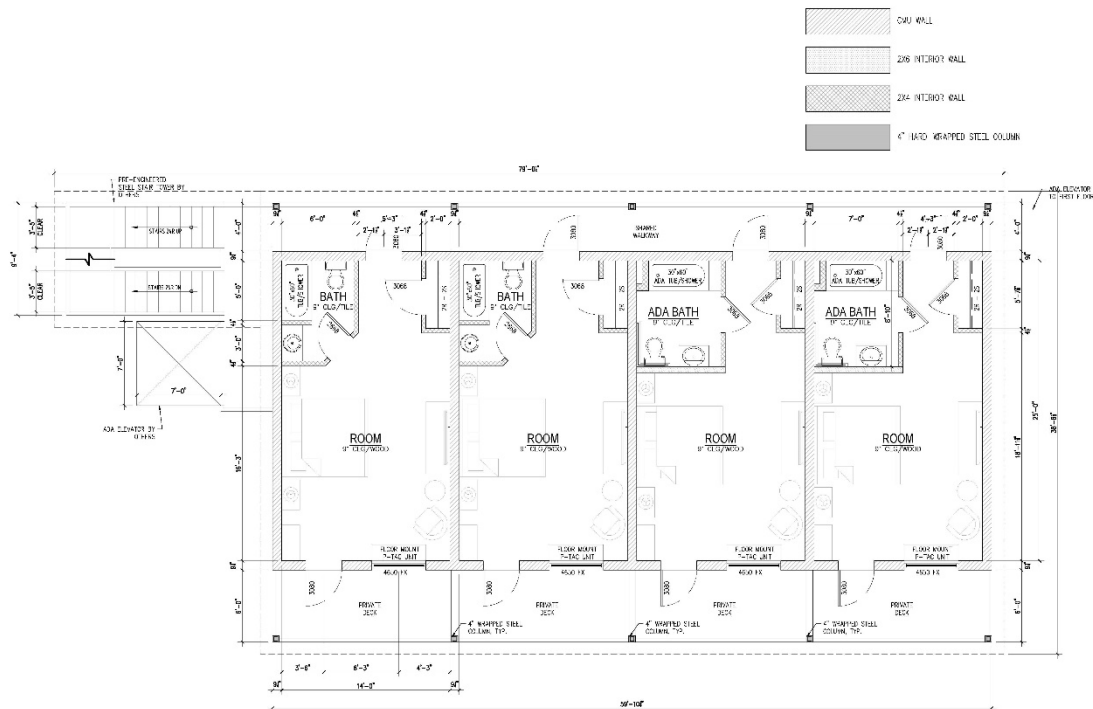
PROJECT #:  
**823**

Date:  
**JAN. 7, 2019**

SHEET 1 of 7

SHEET #  
**SP**





FIRST FLOOR PLAN  
SCALE: 1/8" = 1'-0"

CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
68162 OVERSEAS HIGHWAY  
MARATHON, FL

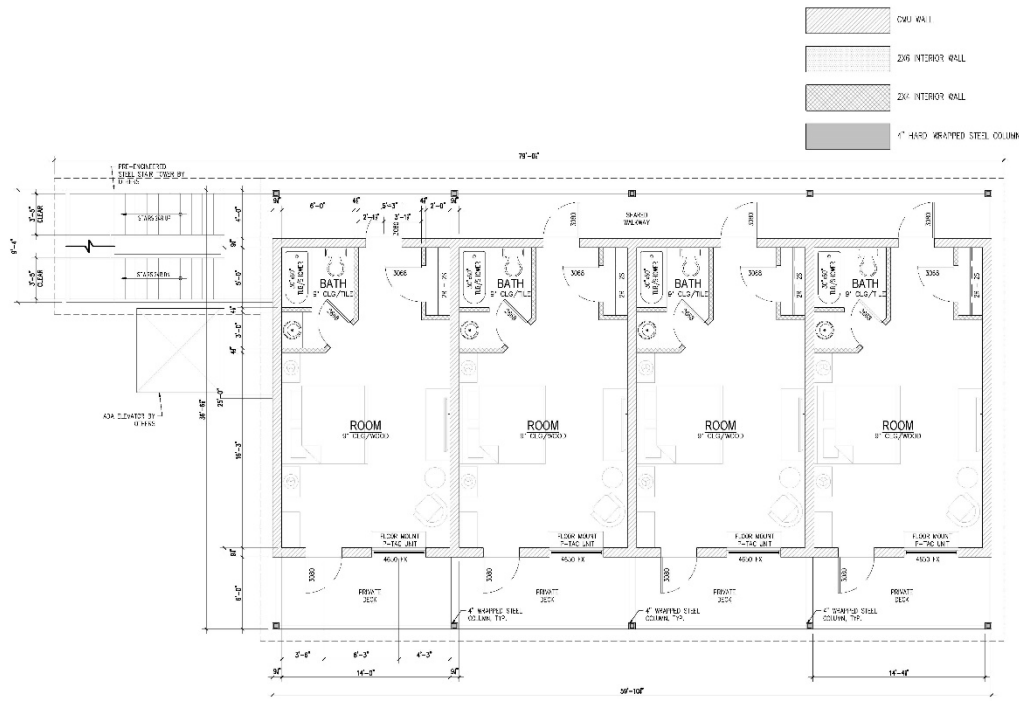
**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79269  
Email: will@cecfk.com  
Phone #: 305-735-4828

PLANS ARE NOT VALID  
UNLESS SIGNED AND  
DATED

PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

SHEET 2 of 7  
SHEET #  
**A-1**

THIS PROFESSIONAL SEAL IS NOT VALID UNLESS THE SEAL IS SIGNED AND DATED BY THE SEAL HOLDER AND THE SEAL IS NOT REPRODUCED OR ALTERED IN ANY MANNER. THE SEAL IS THE PROPERTY OF THE SEAL HOLDER AND SHALL REMAIN WITH THE ORIGINAL SET OF DRAWINGS. ANY REPRODUCTION OR ALTERATION OF THIS SEAL IS PROHIBITED. ANY REPRODUCTION OR ALTERATION OF THIS SEAL IS PROHIBITED. ANY REPRODUCTION OR ALTERATION OF THIS SEAL IS PROHIBITED.

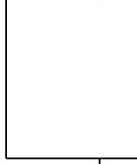


S.COND FLOOR PLAN  
25AR 7/4 1-2

CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL

**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79269  
Email: will@ceclik.com  
Phone #: 305-735-4828

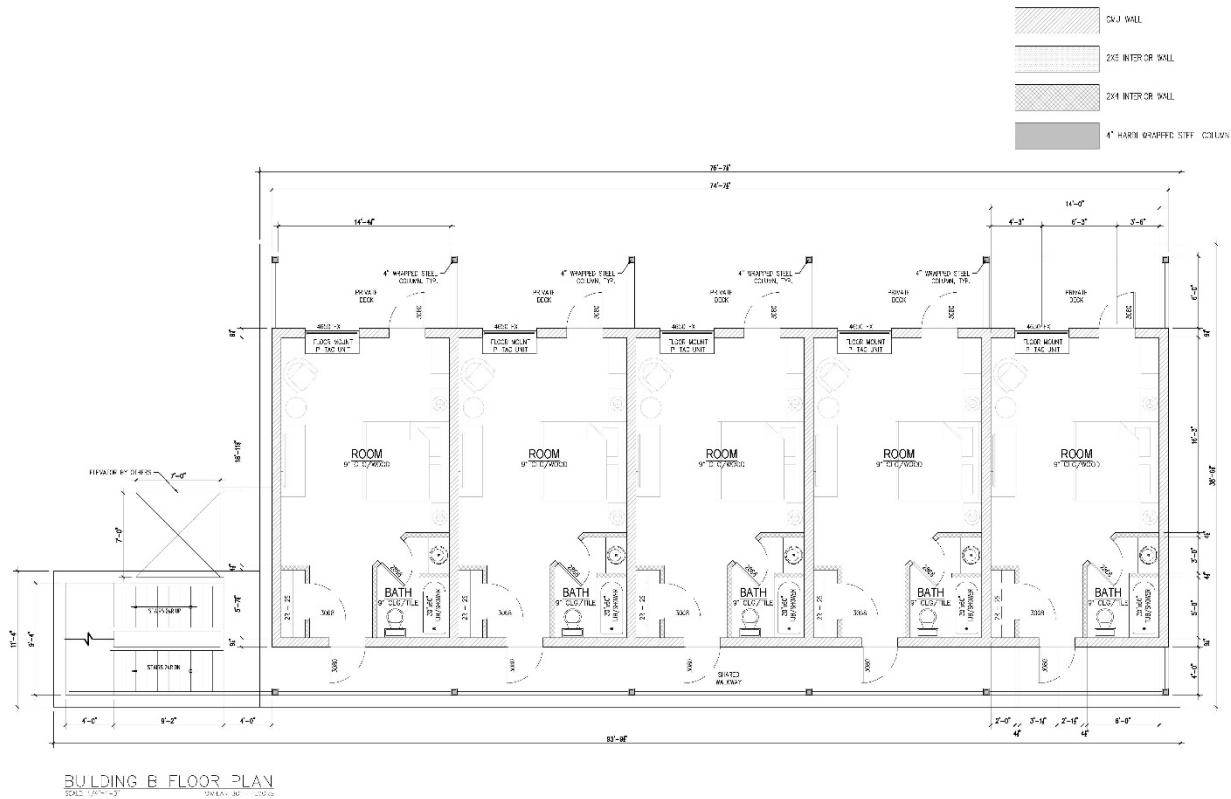
PLANS ARE NOT VALID  
UNLESS SIGNED AND  
DATED



PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

SHEET 3 of 7  
SHEET #  
**A-2**

I, WILLIAM R. CAMPBELL, LICENSED PROFESSIONAL ENGINEER, STATE OF FLORIDA, LICENSE NO. 79269, HEREBY CERTIFY THAT I AM THE DESIGNER OF THESE PLANS AND I AM NOT PROVIDING THESE PLANS TO ANY OTHER PARTY FOR ANY OTHER PROJECT. I AM NOT PROVIDING THESE PLANS TO ANY OTHER PARTY FOR ANY OTHER PROJECT.



BUILDING B FLOOR PLAN  
SCALE: 1/8" = 1'-0"

CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL

**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79269  
Email: will@ceclik.com  
Phone #: 305-735-4828

PLANS ARE NOT VALID  
UNLESS SIGNED AND  
DATED

PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

SHEET 4 of 7  
SHEET #  
**A-3**



REAR ELEVATION — BUILDING A  
SCALE: 1/8" = 1'-0"

LEFT ELEVATION — BUILDING A  
SCALE: 1/8" = 1'-0"

FRONT ELEVATION — BUILDING A  
SCALE: 1/8" = 1'-0"

RIGHT ELEVATION — BUILDING A  
SCALE: 1/8" = 1'-0"

CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL

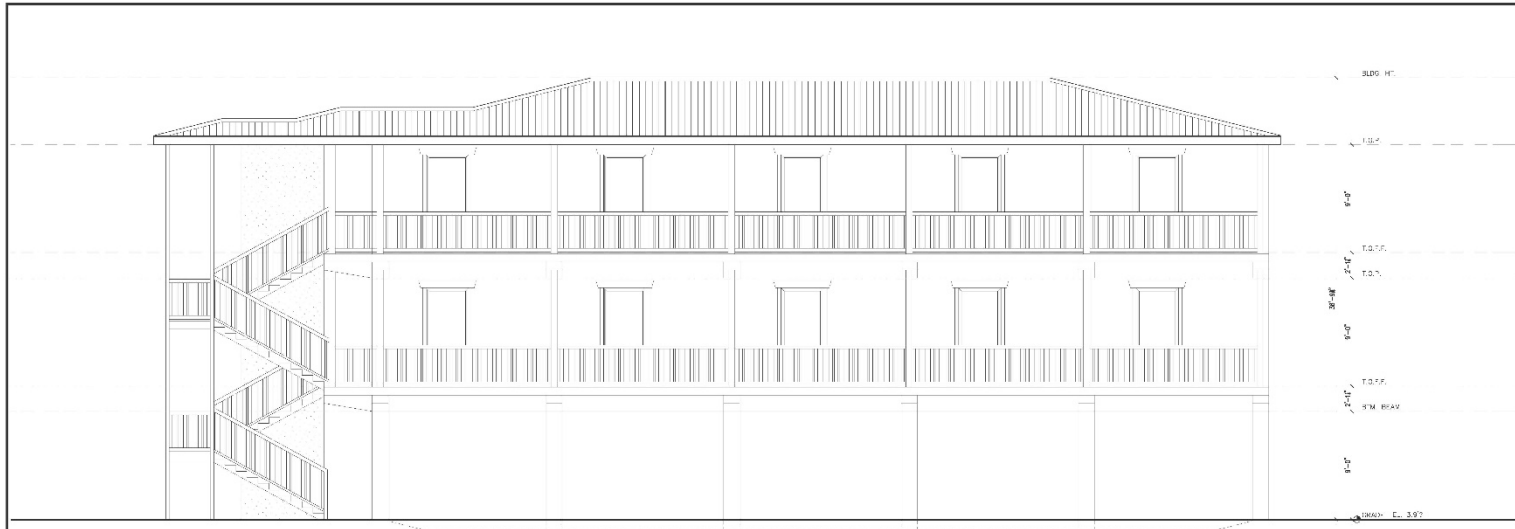
**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79269  
Email: will@ceclik.com  
Phone #: 305-735-4626

PLANS ARE NOT VALID  
UNLESS SIGNED AND  
DATED

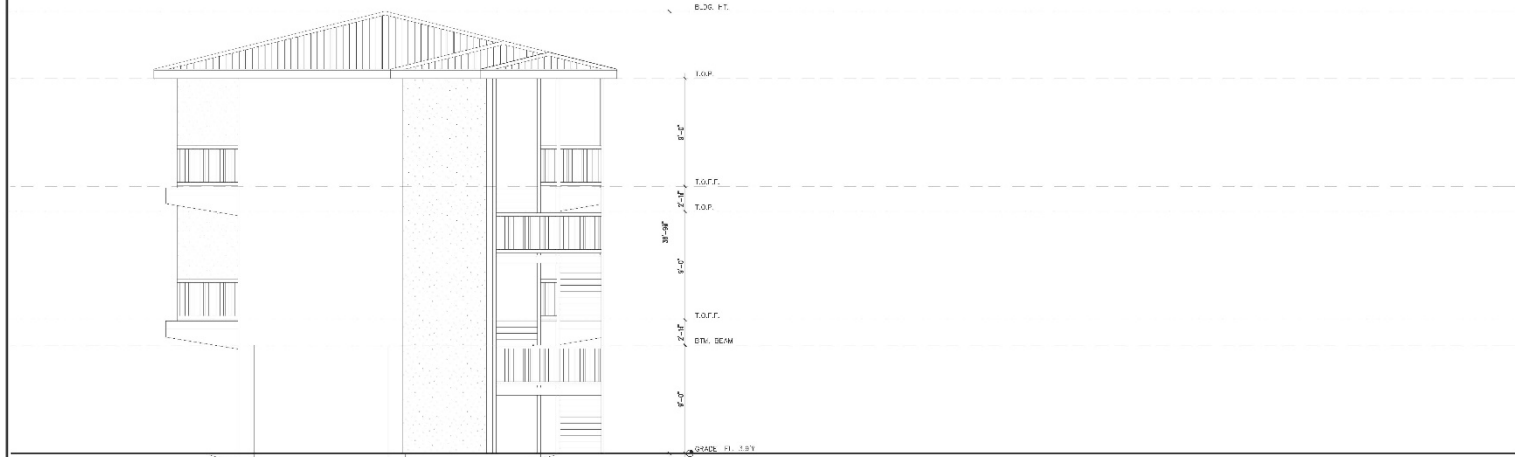
PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

SHEET 5 of 7  
SHEET #  
**A-4**

I AM A PROFESSIONAL ENGINEER LICENSED IN THE STATE OF FLORIDA. I HAVE REVIEWED THESE PLANS AND I CERTIFY THAT THEY COMPLY WITH ALL APPLICABLE CODES AND REGULATIONS. I HAVE NOT BEEN CONVICTED OF ANY CRIMINAL OFFENSES THAT WOULD PREVENT ME FROM EXERCISING MY PROFESSIONAL ENGINEERING DUTIES. I HAVE NOT BEEN DISCIPLINED BY ANY BOARD OF PROFESSIONAL ENGINEERS. I HAVE NOT BEEN CONVICTED OF ANY CRIMINAL OFFENSES THAT WOULD PREVENT ME FROM EXERCISING MY PROFESSIONAL ENGINEERING DUTIES. I HAVE NOT BEEN DISCIPLINED BY ANY BOARD OF PROFESSIONAL ENGINEERS.



FRONT ELEVATION - BUILDING B  
SCALE: 1/8" = 1'-0"



LEFT ELEVATION - BUILDING B  
SCALE: 1/8" = 1'-0"

CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL

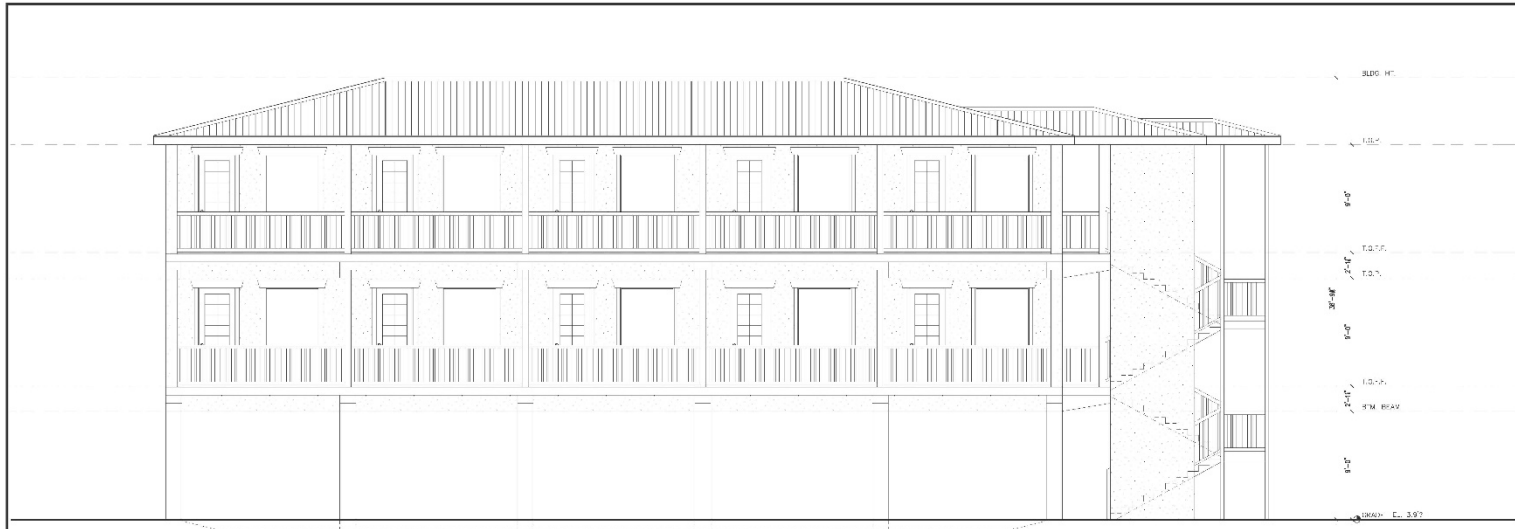
**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79269  
Email: will@cecilk.com  
Phone #: 305-735-4626

PLANS ARE NOT VALID  
UNLESS SIGNED AND  
DATED

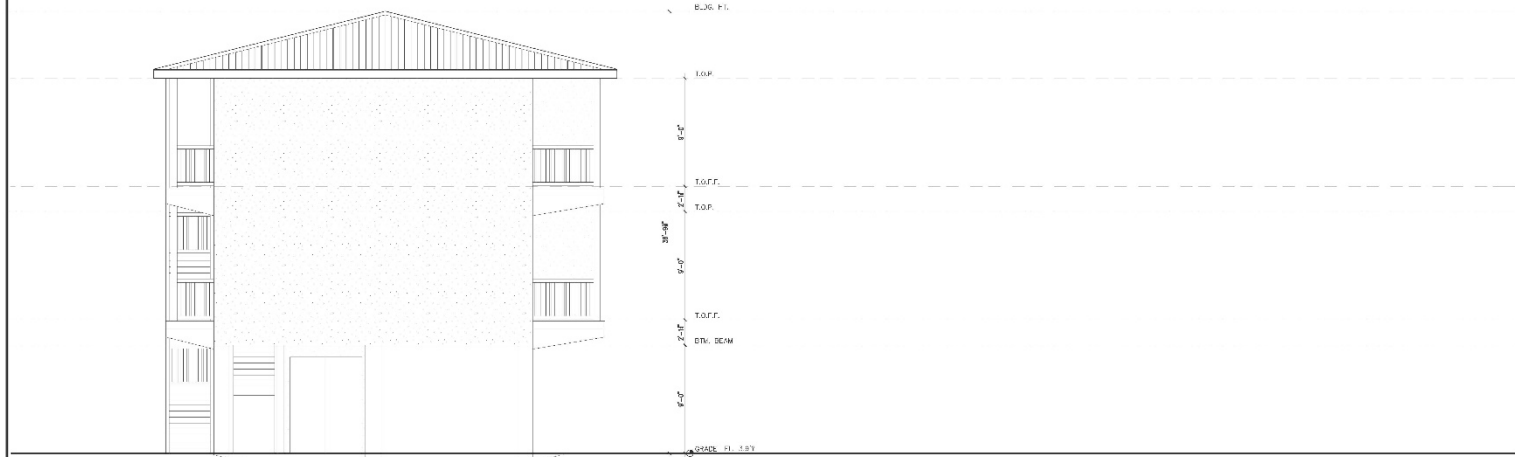
PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

SHEET 6 of 7  
SHEET #  
**A-5**

FOR THE PROFESSIONAL ENGINEER'S USE ONLY: THIS DOCUMENT IS THE PROPERTY OF CAMPBELL ENGINEERING CONSULTANTS LLC AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF CAMPBELL ENGINEERING CONSULTANTS LLC. ANY UNAUTHORIZED REPRODUCTION OR TRANSMISSION OF THIS DOCUMENT IS STRICTLY PROHIBITED. IT IS THE RESPONSIBILITY OF THE USER TO OBTAIN NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.



R\_REAR ELEVATION BUILDING B  
SCALE: 1/8" = 1'-0"



R\_FRONT ELEVATION - BUILDING B  
SCALE: 1/8" = 1'-0"

CONSTRUCTION PROPOSED FOR  
THE FOLLOWING LOCATION:  
58162 OVERSEAS HIGHWAY  
MARATHON, FL

**CAMPBELL ENGINEERING**  
CONSULTANTS LLC  
William R. Campbell, P.E. License #: 79269  
Email: will@cecilk.com  
Phone #: 305-735-4626

PLANS ARE NOT VALID  
UNLESS SIGNED AND  
DATED

PROJECT #:  
**823**  
Date:  
**JAN. 7, 2019**

SHEET 7 of 7  
SHEET #  
**A-6**

I hereby certify that I am a duly Licensed Professional Engineer in the State of Florida, License No. 79269, and that I am the author of the design and construction documents herein. I am not providing any design or construction services to any other party for the same project as that for which these documents are prepared. I am not providing any design or construction services to any other party for the same project as that for which these documents are prepared.



**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-47**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST BY GRASSY KEY RESORT GROUP, LLC FOR A DEVELOPMENT AGREEMENT, PURSUANT TO CHAPTER 102, ARTICLES 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED “DEVELOPMENT AGREEMENT” SEEKING AUTHORIZATION FOR THE REDEVELOPMENT OF AN EXISTING HOTEL RESORT AND COMMERCIAL USES ON PROPERTY LOCATED AT 58070 AND 58182 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS TOWNSHIP 65, SECTION 24, RANGE 33; BK 36 LTS 1-2-3-4, PT LTS 5-6 (PARCEL A) AND WESTERLY 15FT UNNAMED ST ADJACENT LOT 1 RES B-C-C 8/11/61 AND ADJACENT PORTION OF FLAGLER STREET AND GRASSY KEY BAY BOTTOM ADJACENT LOTS 1-2-3, LOT 12 AND PT LOT 13 IN THE CRAINS SUBDIVISION, GRASSY KEY, MARATHON, FLORIDA: HAVING REAL ESTATE NUMBERS 00370940-000000 AND 00371060. NEAREST MILE MARKER 58.5.**

**WHEREAS**, Grassy Key Resort Group, LLC (The “Applicant”) filed an Application on February 14<sup>th</sup>, 2019 for a Development Agreement pursuant to Chapter 102, Article 8 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, the applicant has proposed the redevelopment of thirty three (38) transient units (two properties, one motel complex of thirty-three (33) units and five (5) RV sites) and 11,550 square feet of commercial space, including a hotel/motel/resort lodging, retail store, bar, accessory building and accessory uses, clubs, and two swimming pools; and

**WHEREAS**, the City staff reviewed the Applicant’s request for a Development Agreement determining that the Applicant’s project proposal was in compliance with the City’s Comprehensive Plan and Land Development Regulations (LDRs) and further that there was no substantial impact on the City’s Level of Service (LOS); and

**WHEREAS**, said Grassy Key Resort Group, LLC property located at 58070 Overseas Hwy (RE No. 00371060-000000) consists of 15 transient hotel/motel unit entitlements and commercial space, and retail store; and

**WHEREAS**, Applicant desires to transfer 10 transient residential units from property located



at 58070 Overseas Hwy (RE No. 00371060-000000) to the redevelopment of property located at 58182 Overseas Hwy (RE No. 00370940-000000) leaving 5 transient residential units at 58070 Overseas Hwy (RE No. 00371060-000000) to be developed as recreational vehicle pads (RV); and

WHEREAS, the property located at 58182 Overseas Highway (RE No. 00370940-000000) will be redeveloped to include ten (10) new hotel units in accordance with the plans attached.; and

WHEREAS, on the 15<sup>th</sup> day April, 2019, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearing”) regarding the request submitted by the Applicant, for a Development Agreement to Chapter 102, Article 8 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, is consistent with its policy to encourage the development of residential properties in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

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

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

**Section 2.** The City Council hereby approves a Development Agreement to Grassy Key Resort Group, LLC, a copy of which is attached hereto as Exhibit “A,” 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 execution.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 28<sup>th</sup> DAY OF MAY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

---

**John Bartus, 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:**

---

David Migut, City Attorney

**EXHIBIT A  
DEVELOPMENT AGREEMENT**

(Space Reserved for Recording)

**Development Agreement  
Grassy Key Resort Group, LLC  
Marathon, Florida**

This Development Agreement (“Agreement”) is entered into by and between the City of Marathon, a Florida Municipal Corporation (herein referred to as “City”), and Grassy Key Resort Group, LLC, a Florida limited liability company, whose address is 58182 Overseas Highway, Marathon, FL 33050 (herein referred to as “Owner”), pursuant to *Chapter 102, Article 8* of the Land Development Regulations of the City of Marathon, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes, and is binding on the effective date as set forth herein.

**WITNESSETH:**

**WHEREAS**, Owner owns real properties located at 58182 Overseas Hwy and 58070 Overseas Hwy in Marathon, Florida, described in composite Exhibit “A” hereto, which includes the location of a hotel and beach club and its proposed expansion, including a recreational vehicle park; and

**WHEREAS**, the real property described in Exhibit “A” is designated on the City’s Future Land Use Map (FLUM) as Mixed Use Commercial (MU-C), and is zoned as Mixed Use (MU), which land use designation and zoning allow the property to be used for transient rentals and a recreational vehicle park ; and

**WHEREAS**, said Grassy Key Resort Group, LLC property located at 58182 Overseas Hwy (Prior RE Nos. 00370940-000000, 00370980-000000, 00371000-000000 now combined as 00370940-000000) consists of **23** transient hotel/motel units and 86,051 square feet of commercial uses, including a hotel/motel/resort lodging, restaurant, bar, accessory building and accessory uses, clubs, swimming pool, and retail store; and

**WHEREAS**, said Grassy Key Resort Group, LLC property located at 58070 Overseas Hwy (RE No. 00371060-000000) consists of **15** transient hotel/motel units and 11,550 square feet of commercial uses, including a hotel/motel/resort lodging, restaurant, bar, accessory building and accessory uses, clubs, swimming pool, and retail store; and

**WHEREAS**, Owner desires to transfer **10** transient hotel/motel units from property located at 58070 Overseas Hwy (RE No. 00371060-000000) to redevelop property located at 58182 Overseas Hwy (RE No. 00370940-000000) leaving **5** transient hotel/motel units at 58070

Overseas Hwy (RE No. 00371060-000000) to be developed with recreational vehicle pads (RV) for a temporary period of time of five (5) years retaining the rights to redevelop 58070 Overseas Hwy (RE No. 00371060-000000); and

**WHEREAS**, the Marathon Planning Commission held a public hearing on the 15<sup>th</sup> day of April, 2019, to consider this agreement, and recommended approval of this agreement; and

**WHEREAS**, the City Council of Marathon held public hearings on the 14<sup>th</sup> day of May and 28<sup>th</sup> day of May, 2019, to consider this Agreement; and

**WHEREAS**, the City of Marathon desires to encourage development and redevelopment of hotels, motels, and recreational vehicle parks in the City to attract tourism, enhance the economy of the City for the benefit of its residents, improve the good appearance of the City, enhance the City's ability to support needed improvements in infrastructure, and encourage other redevelopment efforts for the economic growth, prosperity and welfare of the residents of the City of Marathon; 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; and

**WHEREAS**, the proposed redevelopment is permissible and appropriate for the City's Transitional Comprehensive Plan Future Land Use designations of Mixed Use Commercial applicable to the Property and for the Mixed Use Commercial designation in the City's Comprehensive Plan;

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as Follows:

**I. RECITALS.**

The foregoing recitals are a part of this Agreement on which the parties have relied and are incorporated into this Agreement by reference.

**II. PURPOSES OF AGREEMENT.**

The purposes of this Agreement are as follows:

To expand the redevelopment of 58182 Overseas Hwy (RE No. 00370940-000000) site to include thirty-three (33) transient hotel/motel units and commercial uses, including a hotel/motel/resort lodging, restaurant, bar, accessory building and accessory uses, clubs, swimming pool, and retail store and allow redevelopment of 58070 Overseas Hwy (RE No. 00371060-000000) with five (5) recreational vehicle pads (RV) for a temporary period of time of five (5) years as per the plans in Exhibit A, consistent with the City of Marathon's Comprehensive Plan and Objective 1-3.4 of the City of Marathon's Comprehensive Plan.

Notwithstanding the above, at any time the Owner may redevelop 58070 Overseas Hwy (RE No. 00371060-000000) with hotel/motel units or any a use consistent with the City of Marathon's Comprehensive Plan. That doesn't otherwise require a Conditional Use Permit approval

### **III. Definitions.**

For the purposes of this Agreement, all terms shall have the definitions as found in the City of Marathon's Land Development Regulations, Comprehensive Plan and in Chapter 163, Florida Statutes, or in other applicable Florida Statutes, and if not defined in the Code, Plan, or Statute, the term shall be understood by its usual and customary meaning.

### **IV. Statutory and Code Requirements.**

The Parties recognize the binding effect of the Florida Local Government Development Agreement Act, Sections 163.3221, et seq., Florida Statutes, as to the form and content of this Agreement and in accordance therewith set forth and agree to the following:

#### **A. Legal Description and Ownership.**

Grassy Key Resort Group, LLC is the Owner of properties located at 58182 Overseas Hwy identified by RE No. 00370940-000000 and 58070 Overseas Hwy identified by RE No. 00371060-000000, which properties are the subject of this Agreement and hereinafter referred to as Properties, as described in Exhibit A. At time of development, there will be no other legal or equitable owners of the subject property known to the parties to this Agreement.

#### **B. 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 two (2) years from the Effective Date of this Agreement to obtain the first building permit and five (5) years from the Effective Date of this Agreement to obtain all Certificates of Occupancy and/or Final Inspections for structures on the Property as shown on the Site Plan.

This Agreement may be renewed or extended as provided herein.

#### **C. Permitted Uses.**

1. The Development permitted on the Property shall consist of those uses set forth herein, as identified on the conceptual site plan attached hereto in composite Exhibit A and incorporated herein by reference. The permitted uses are as follows:

- i. Existing Development
- ii. Transient Units: 33 transient residential (hotel) units at property located at 58182 Overseas Hwy (RE No. 00370940-000000) and 5 transient hotel/motel units at 58070 Overseas Hwy (RE No. 00371060-000000) to be developed with recreational vehicle pads (RV) for a temporary period of time of five (5) years

with rights at any time to redevelop 58070 Overseas Hwy (RE No. 00371060-000000) with hotel/motel units or any use consistent with the City of Marathon's Comprehensive Plan that doesn't require a Conditional Use Permit; and

2. For the duration of this Agreement, the Parties agree that any and all of the approved development shall adhere to, conform to, and be controlled by this Agreement, the Exhibits attached hereto and incorporated by reference, the LDRs and the Comprehensive Plan governing the development of the subject property on the Effective Date of this Agreement. In the event that all or a portion of the existing or authorized development subject to this Agreement should be destroyed by storm, fire or other disaster, the Owner, its grantees, successors, or assigns shall have the absolute right to rebuild or repair the affected structure(s) and reinitiate the prior approved use so long as such development is in compliance with this Agreement.

3. The following documents are attached hereto and incorporated by reference, showing the Property Boundary and Existing and Proposed Uses:

Composite Exhibit A: Boundary Survey and Conceptual Site Plan

4. Maximum Building Height shall be thirty-seven (37) feet, as provided in Future Land Use Element Policy 1-3.2.5 in the City's Comprehensive Plan and as defined by the LDRs.

5. The Owner shall execute and record in the public records of Monroe County a Declaration of Covenants 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 Units constructed on the property; and which shall require the occupants of all Transient Units on the property to comply with Hurricane Evacuation Requirements set forth in Policy 1-2.2.1 of the Future Land Use Element of City's Comprehensive Plan, in effect or as amended.

#### D. Public Facilities

1. The Florida Keys Aqueduct Authority provides domestic potable water.

2. Electric Service is provided by the Florida Keys Electric Co-op.

3. Solid Waste Service is provided by Marathon Garbage Service.

4. Owner shall provide wastewater and sewage collection and disposal by expanding its current connection to the City.

5. Educational Facilities. The redevelopment of transient use as contemplated by this Agreement will not impact education facilities.

6. Recreational Facilities. The Property includes onsite recreational facilities for visitors and guests of the property. Therefore, redevelopment of the property will have no impact on public recreation facilities.

7. Stormwater. A Stormwater Management System which meets all applicable local, state and federal requirements shall be constructed onsite as part of the Site Redevelopment. This system will retain, detain, and treat Stormwater on the Property and therefore will provide a substantial benefit to water quality in the area. There shall be no direct discharge to the City of Marathon Nearshore Waters.

8. Any increased impacts on Public Facilities or Public Services attributable to each unit of the development, and the cost of capital improvement to meet the associated increased demand on such facilities or services, shall be assured by payment to the City, concurrent with the issuance of the building permits for each unit, of any City of Marathon Impact Fees required by the ordinance then in effect, as well as by payment by owner of any applicable utility system Development Fees. In addition, Owner agrees to be subject to any reasonable impact fee ordinance adopted by the City within twenty-four (24) months after the Effective Date of the Agreement, providing such ordinance applies equally and uniformly to all redevelopment in Marathon.

9. Fire Protection. 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 as required by City Code.

E. Local Development Permits.

The following is a list of all Development Permits approved or needed to be approved for the redevelopment of the Property as specified and requested in this Agreement:

1. This Development Agreement.
2. Conditional Use Approval.
3. The Final Site Plan, Landscape Plan, Drainage Plan, Building Elevations and Floor Plan approvals.
4. Building and related construction permits for all structures utilized for principal use or accessory use, land clearing, and landscaping.
5. Federal, State, Regional, and Local Permits for Stormwater runoff.

Nothing in this Agreement shall preclude the parties from applying additional conditions, by mutual agreement, during Final Site Plan review or permitting.

F. Finding of Consistency.

By Entering into this Agreement, the City finds that the redevelopment permitted or proposed herein is consistent with and furthers the Comprehensive Plan (as defined herein), applicable LDRs and the Principles for Guiding Development set forth at Section 380.0552(7), Florida Statutes.



G. Existing BPAS Exempt Units

1. The Parties acknowledge that there exist on the property located 58182 Overseas Hwy (RE No. 00370940-000000):

<u>Development Type</u>	<u>Existing</u>
Transient Units:	33 units

2. The Parties acknowledge that there exist on the property located 58070 Overseas Hwy (RE No. 00371060-000000):

<u>Development Type</u>	<u>Existing</u>
Transient Units:	5 units

H. Reservations or Dedications of Land for Public Purposes.

The parties anticipate that Owner may reserve or dedicate land for public purposes in connection with the Redevelopment but is currently unaware of the specifics of such reservation(s) or dedication(s). Reservations and dedications for public purposes in connection with this Agreement may be requested by the City's Comprehensive Plan and City Code. Such reservations or rededications may include, by way of example, easements necessary for the provision of stormwater, utility, and wastewater services to the Property.

I. Mutual Cooperation.

City and Owner agree to cooperate fully and assist each other in the performance of the provisions of this Agreement.

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

The redevelopment shall be developed in accordance with all required permits and in accordance with all applicable provisions of the City's Comprehensive Plan and Land Development Regulations in effect on the effective date of this Agreement. No Certificate of Occupancy for an individual building shall be issued until all plans for that building are approved by the City and Owner has complied with all conditions in permits issued by the City and the other regulatory entities for that building. The City agrees that any permits or certificates of occupancy to be issued by the City shall not be unreasonably withheld or delayed.

K. Compliance With Permit, Terms, Conditions, and Restrictions Not Identified Herein.

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

L. Laws Governing.

1. For the duration of this Agreement, all approved development of the Property shall comply with and be controlled by this Agreement and provisions of the City of Marathon's Comprehensive Plan and City Code in effect on the date of execution of this Agreement, inclusive of text changes and rezoning approved by the City Council on the date of the City's approval of this Agreement, if any. The parties do not anticipate that the City will apply subsequently adopted laws and policies to the Property, except as expressly provided in this Agreement.

2. Pursuant to Section 163.3233, Florida Statutes, the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that:

- i. 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;
- ii. 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 development that is subject to this Agreement;
- iii. The City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or
- iv. The Agreement is based on substantially inaccurate information supplied by Owner.

Provided, however, nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

3. If state or federal laws enacted after the Effective Date of this Agreement preclude any party's compliance with the terms of this Agreement, it shall be modified as 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 law.

M. Amendment, Renewal and Termination.

This Agreement may be amended, renewed, or terminated as follows:

1. As provided in Section 163.3237, Florida Statutes, this Agreement may be amended by mutual consent of the parties to this Agreement or by their successors in interest. Amendment under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.

2. As provided in Section 163.3237, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirement in Section 163.3225,

Florida Statutes, and applicable LDRs. 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 fifteen (15) days before each public hearing in a newspaper of general circulation and readership in Marathon, 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.

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

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

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

N. Breach of Agreement and Cure Provisions.

1. If the City concludes that there has been a material breach in this Agreement by Owner, prior to revoking this Agreement, the City shall serve written notice on Owner identifying the term or condition the City contends has been materially breached and providing Owner with ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Agreement. Each of the following events shall be considered a material breach of this Agreement:

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

2. If Owner concludes that there has been a material breach in the terms of this Agreement by the City, Owner shall serve written notice on the City identifying the term or condition Owner contends has been materially breached and providing the City with ninety (90) days from the date of receipt of the notice to cure the breach, or negotiate an amendment to this Agreement. The following events shall be considered a material breach of this Agreement:

- (i) Failure to comply with the provisions of this Agreement;
- (ii) Failure to timely process any application for Site Plan approval or other development authorized by this Agreement.

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

4. Notwithstanding any other provisions of this Development Agreement to the contrary, neither party hereto shall be deemed to be in default under this Development Agreement where delay in the construction or performance of the obligations imposed by this Development Agreement are caused by war, revolution, labor strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions, embargoes, litigation (excluding litigation between the City and the Owner), tornadoes, hurricanes, tropical storms or other severe weather events, or any other causes beyond the control of such party. The time of performance hereunder, as well as the term of this Development Agreement, shall be extended for the period of any forced delays or delays caused or resulting from any of the foregoing causes. The Owner must submit evidence to the City's reasonable satisfaction of any such delay.

O. 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 anyone of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Services as certified or registered mail, return receipt requested, postage prepaid; or (c) by deposit with an overnight express delivery service with a signed receipt required. Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

TO OWNER:

Grassy Key Resort Group, LLC .  
c/o Matthew Sexton  
58182 Overseas Hwy  
Marathon, FL 33050

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

CUNNINGHAM MILLER PA  
Lesley Rhyne, Esq.  
2975 Overseas Hwy  
Marathon, FL 33050

TO THE CITY:

City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
(305) 743-0033

P. Annual Report.

On each anniversary date of the Effective Date of this Agreement, Owner shall provide the City with a report identifying (a) the amount of development authorized by this Agreement that has

been completed, (b) the amount of development authorized by this Agreement that remains to be completed, and (c) any changes to the plan of development 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.

Q. Enforcement.

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

R. Binding Effect.

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

S. Assignment.

This Agreement may not be assigned without the written consent of the parties, which consent shall not be unreasonably withheld.

T. 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.

U. 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 validity of the remaining provisions of this Agreement.

V. Applicable Laws.

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.

W. Litigation/Attorneys Fees; Venue; Waiver of Right to Jury Trial.

As between the City and Owner, in the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorney's fees. This includes, but is not limited to, reimbursement for reasonable attorney's 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 THIS AGREEMENT.

X. Use of Singular and Plural.

Where the context requires, the singular includes the plural, and plural includes the singular.

Y. 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.

Z. 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 this Agreement.

AA. 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.

BB. Recording; Effective Date.

The Owner shall record this Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date the last party signs 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 at the Department of Community Affairs, Division of Community Planning, 2555 Shumard Oak Boulevard, Tallahassee FL 32399-2100 by hand delivery or 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 and received by the Owner or his agents. Owner shall also provide a copy of the recorded Agreement to the City at 9805 Overseas Highway, Marathon, Florida 33050, within the same time period. This Agreement shall become effective thirty (30) days after the date the State Land Planning Agency receives its copy pursuant to Section 163.3239, Florida Statutes.

CC. 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 have set their hands and seals on the day and year below written. Signed, sealed, and delivered in the presence of:

WITNESSES:

OWNER

GRASSY KEY RESORT GROUP, LLC

By: Grassy Key Resort Group, LLC  
authorized representative

\_\_\_\_\_  
Signature

By: \_\_\_\_\_

\_\_\_\_\_  
Name of witness (printed or typed)

Name: Matthew Sexton

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of witness (printed or typed)

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Matthew Sexton, as authorized representative of Grassy Key Resort Group, LLC., who is personally known to me or who produced \_\_\_\_\_ as identification, and who did/did not take an oath.

\_\_\_\_\_  
Notary Public, State of Florida At Large  
My commission expires:

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

ATTEST:

CITY OF MARATHON

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

By: \_\_\_\_\_  
MAYOR

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

\_\_\_\_\_

## COUNCIL AGENDA STATEMENT



**Meeting Date:** May 28, 2019  
**To:** Honorable Mayor and City Councilmembers  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

**Agenda Item:** Consideration Of A Request For A Conditional Use Permit And Development Agreement For 1477 Overseas Highway LLC And Seasons Inc., Pursuant to Chapter 102, Articles 8 & 13 Of The City of Marathon Land Development Regulations (Code) Entitled “Conditional Use Permits” And “Development Agreements,” For The Redevelopment Of The Properties As An Affordable Housing Project, Located at 1477 Overseas Highway And 263 15<sup>th</sup> Street, Which Are Legally Described As The North 150 Feet of Lot 1 and 2, Part of Lots 1 and 2, Block 2 , Parrish Subdivision, Marathon, Florida, Having Real Estate Numbers 00326770-000000 and 00326760-000000. Nearest Mile Marker 48.

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**APPLICANT/ OWNER:** 1477 Overseas Highway LLC and Seasons Inc.

**AGENT:** Mike Aranda Jr. & Mike Aranda Sr.

**LOCATION:** The project site is located at 1477 Overseas Highway and 263 15th Street

**Figure 1**  
**Project Site**





**REQUEST:** A request for a Conditional Use Permit and Development Agreement to:

- Utilize densities allowed pursuant to the partial Residential – Mobile Home (R-MH) zoning associated with a portion of the site
- Develop ten (10) workforce / affordable housing units
- Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City’s LDRs

**RECOMMENDATION:**

The Planning staff and other City Staff met in consideration of this item on April 10, 2019 and forward a recommendation of conditional approval for the proposed Conditional Use Permit and Development Agreement submitted by 1477 Overseas Highway LLC and Seasons Inc. The proposed Conditions follow.

The Planning Commission met on April 15, 2019 in review of the proposed project. Staff and the Applicant made brief presentations after which the Planning Commission deliberated forwarding a 5/0 recommendation for approval with two conditions of their own.

1. Utilize densities allowed pursuant to the Residential – Mobile Home (R-MH) zoning associated with a portion of the site
  - a. Develop of ten (10) workforce / affordable housing units
  - b. Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City’s LDRs.
2. The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR’s), BPAS process, or any other legally established process prior to building permit issuance. **THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.**
3. Clear sight triangles must be shown on the site plan at time of building permit issuance.
4. The applicant will provide fire protection plans in accordance with fire protection requirements as required under the State Fire Code and as outlined by the City Fire Marshal and as:
  - a. Particularly, no structure, lying within the proposed building site for each unit, may be closer than 10 feet from one another, including entry stairs, eaves, and porches, or in the alternative
  - b. Shall contain some form of enhanced fire rating so that through the rating, the buildings may be closer than ten (10) feet from one another.
5. The applicant will meet all floodplain related requirements as part of the Building Permit process;
6. The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance.
  - a. Particularly, the development must manage water quality at least (1.5 inches or rainfall over the entire site) and manage stormwater to pre development rate of the twenty-five (25) year, seventy-two (72) hour storm.
7. The applicant will obtain City approval for wastewater management through the City’s Wastewater Utility.
  - a. Particularly, the City has capacity, but will need to install a force main tap, to accommodate the Applicant. The cost of the force main tap shall be borne by the Applicant through their additional required Connection and System Development Charges. The costs of any on-site sewer work shall be borne entirely

by the Applicant.

8. The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
9. A Final Site Plan must be submitted showing the approved buildings and all civil engineering elements, including final grading, potable water, wastewater, and stormwater management.
10. Applicant will provide a minimum number of parking spaces required under the City's LDRs and limit parking to the area associated with each individual unit.
11. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees. Particularly,
12. The Applicant will be required to install a six (6) foot fence or wall with exterior facing landscape vegetation on the U.S. 1 property boundary in lieu of a full landscape buffer.
13. The applicant will obtain approval of final buffering, landscaping, and lighting plans and install all elements of such in coordination with the City staff as needed prior to Certificate of Occupancy;
14. The affordable units must be deed restricted prior to issuance of certificate of occupancy.
15. The individual units proposed shall meet all conditions of the Florida Building and Fire Codes, the conditions of the Conditional Use Permit and Development Agreement and Code Concerning the construction and rental of affordable housing units, Chapter 104, Article 1, Section 104.03 of the LDRs.
16. The Conditional Use Development Order will constitute the Certificate of Concurrence for the project. The determination shall run contemporaneous with the term and timing requirements of the Development Agreement.

**FUTURE LAND USE AND ZONING MAP DESIGNATION:**

Mixed Use Commercial and Residential High (RH) &  
Mixed Use Commercial (MU) and Residential Mobile Home (RMH). See Figure 2A & 2B.

**Figure 2A & 2B  
Future Land Use & Zoning Map**



**TOTAL PROPERTY SIZE:**

Total acreage: Approx. 0.46 Acres or 19,948 square feet.

**SURROUNDING ZONING AND USES:**

	<u>Zoning</u>	<u>Use</u>
<b>North</b>	MU	Commercial (Restaurant, Commercial Fishing, Vacation Rentals, Redevelopment)
<b>East</b>	R-MH	Mobile Homes
<b>South</b>	R-MH	Residences & Mobile Homes
<b>West</b>	R-MH	Commercial (Dion's) / Mobile Homes

**EXISTING CONDITIONS:**

The project site consists of two parcels. The parcels are currently. New development of affordable residences is underway to the south and KAIR will soon redevelop their Lighthouse Mission site to a location further south.

**PROPOSED REDEVELOPMENT:**

Residential: 10 Affordable Housing Units

**BACKGROUND:**

The proposed project seeks the redevelopment of a commercial and residential property both of which are currently vacant.

The applicant, through the Development Agreement process, wishes to:

- Utilize densities allowed pursuant to the partial Residential – Mobile Home (R-MH) zoning associated with a portion of the site
- Develop of ten (10) workforce / affordable housing units
- Deed restrict he workforce / affordable units for a minimum of 50 years pursuant to the City’s LDRs.

This report addresses the application for a Conditional Use Permit and Development Agreement. **All conditions of the Conditional Use and Development Agreement approval will have to be met before any building permit will be approved.**

**EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:**

The criteria for evaluating a Development Agreement approval are outlined in Chapter 102, Article 8, Development Agreement & Chapter 102, Article 13, Conditional Use Permits, in the City of Marathon Land Development Regulations.

## CRITERIA

### A. The proposed use is consistent with the Comprehensive Plan and LDRs;

The proposed redevelopment project is located within the Residential Mobile Home (RMH) Zoning District. Per Chapter 103, Article 2, Section 103.09 of the Land Development Regulations, the district is designed to “establish areas of high-density residential uses characterized by mobile homes in mobile home parks, permanent RVs, and transient RVs where they have previously existed in the District, designated within the Residential High (RH) future land use category on the Future Land Use Map (FLUM).”

The proposed project consists of the redevelopment of an existing commercial and residential area and is consistent with the Residential Nobile Home Zoning District. Section 103.15 establishes whether specific uses are allowed as of right, limited, accessory or conditional uses, through Table 103.15.2. That table shows that multifamily residential uses are allowed as Conditional Uses in the R-MH district. Conditional Use review is intended to allow a broader view of the potential impacts of a project on adjacent uses and on City concurrency related resources such as road capacity, solid waste, sewer, and potable water availability.

The proposed project consists of the redevelopment of a site to include ten (10) individual residential units. The project as proposed meets the basic definition of development in the RM-H zoning district. The units will meet all requirements of the Florida Building Code.

Therefore, with conditions, the request is ***in compliance*** with the requirements of these sections.

- The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR’s), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.

### B. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;

The proposed project is located within the Residential High Future Land Use District. Policy 1-3.1.4 of the City of Marathon Comprehensive Plan states that the “principal purpose of the Residential High future land use category is to provide for high-density single-family, multi-family, and institutional residential development. The Residential High future land use category is characterized by high density compact development on lots with disturbed or scarified vegetation and areas that are appropriate for infill development and that are served by existing infrastructure”. The proposed project includes a redevelopment of vacant use into a higher density use, which is consistent with the Residential High classification.

The existing land use pattern in the project vicinity consists of a mix of residential, multi-family residential, and mobile home uses. Closer to the water near Boot Key Harbor, the area represents one of the remaining active working waterfront locations within the City. The redevelopment of the site will result in significant

improvement to the site development quality, including upgraded landscaping, stormwater management, and architecture. The improvements are expected to have a positive benefit on the surrounding uses and the City of Marathon.

Therefore, the request is ***in compliance*** with the requirements of these sections.

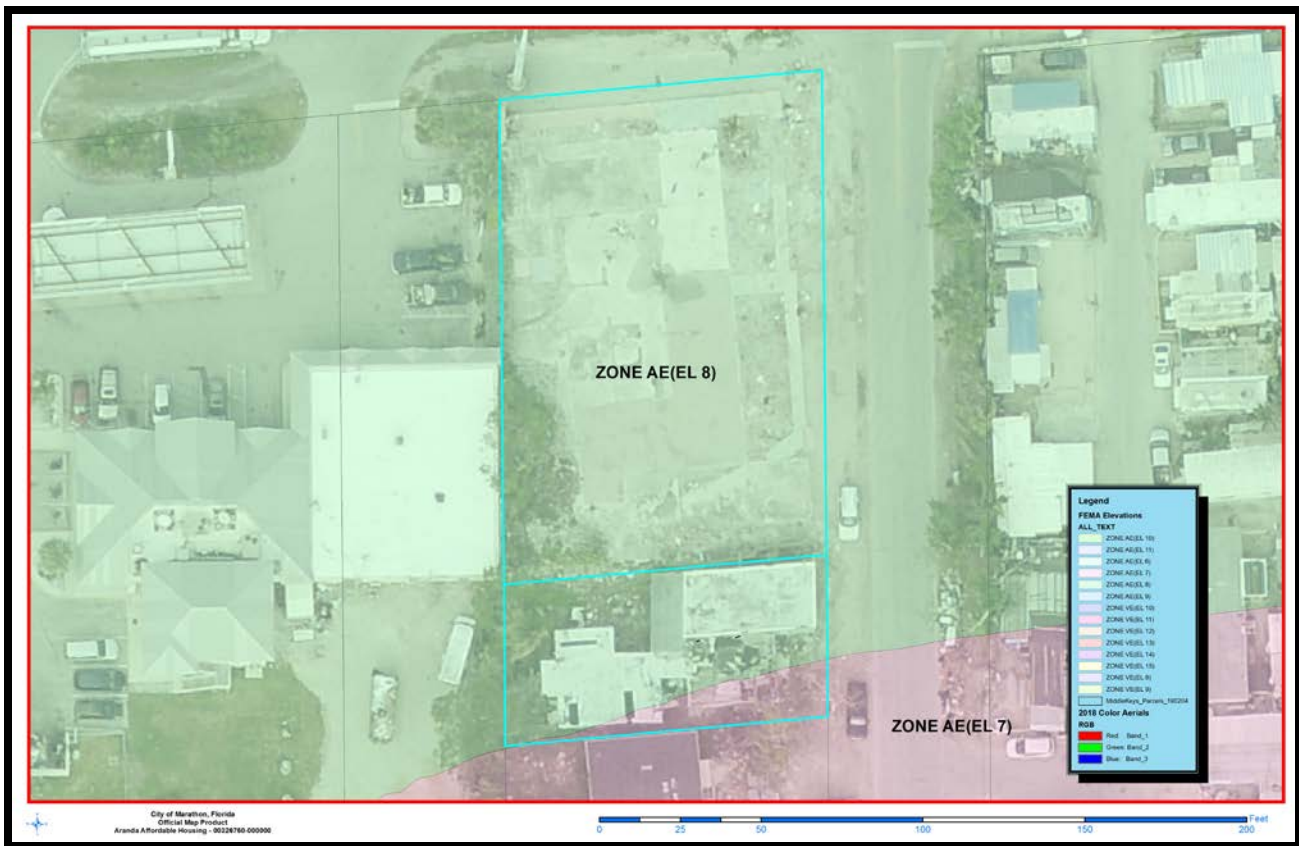
**C. The proposed use shall not adversely affect the health, safety, and welfare of the public;**

The proposed use is a redevelopment of an existing use which has not had any known impact to the health, safety and welfare of the public. No new impacts are expected to arise with the redevelopment.

Plans submitted with the project are suitable for the approval of a Development Agreement in this matter and as they relate to Chapter 107, Article 12, 100 Year Floodplain. Final review of floodplain compliance will occur as part of building permit issuance. See Figure 3

Therefore, the request is ***in compliance*** with the requirements of these sections.

**Figure 3  
FEMA NFIP Flood Maps**



**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:**



The existing conditions maps indicate the subject area is designated as developed land, indicating that there is no natural character to the property at this time. In addition, though found within a ‘Species Focus Area’ as defined in the settlement agreement for the FEMA-FWS lawsuit, “undeveloped land,” as defined therein, falls out of the considerations in the species assessment guides thus having “no impact” on the species of concern, the Eastern Indigo Snake. See figure 4.

**Figure 4  
Species Focus Area Habitat**



Further improvements to water quality are expected to arise from stormwater improvements to the site, which should provide up-to-date treatment and eliminate any existing discharges to surface waters. The applicant has submitted preliminary stormwater plans suitable for the Conditional Use Application, and final plans are required prior to building permit issuance.

Site landscaping will be selected from Table 107.68.1, Appendix A, Article 8, Section 107 of the City of Marathon Code of Ordinances. The native vegetation will improve the environmental quality of the site and reduce irrigation needs.

Therefore, with conditions, the request is ***in compliance*** with the requirements of these sections.

- The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal;
- The applicant will meet all floodplain related requirements as part of the Building Permit process;
- The applicant will obtain City approval of the stormwater management system prior to Building

Permit issuance;

- The applicant will obtain City approval for wastewater management through the City's Wastewater Utility;
- The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
- A Final Site Plan must be submitted showing the approved buildings and all civil engineering elements, including final grading, potable water, wastewater, and stormwater management.
- Applicant will provide a minimum number of parking spaces required under the City's LDRs and limit parking to the area associated with each individual unit..
- A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- The applicant will obtain approval of final buffering, landscaping, and lighting plans and install all elements of such in coordination with the City staff as needed prior to Certificate of Occupancy;

**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 cases of fire or catastrophe;**

Ingress and egress to the property is being provided on 15<sup>th</sup> Street.

Therefore, with conditions, the request is *in compliance* with the requirements of these sections.

- Clear sight triangles must be shown on the site plan at time of building permit issuance.

**2. Off-street parking and loading areas where required, with particular attention to item 1 above;**

Two parking spaces per unit are required of a single family residence or duplex. The developer is providing twenty four (24) spaces as required.

Therefore, with the conditions noted above, the request is *in compliance* with the requirements of these sections.

- Applicant will provide a minimum number of parking spaces required under the City's LDRs and limit parking to the area associated with each individual unit.

**3. The noise, glare or odor effects of the conditional use on surrounding properties;**

The proposed project consists of development of a residential use. No new impacts will occur.

Therefore, with conditions, the request is *in compliance* with the requirements of this section.

**4. Refuse and service areas, with particular reference to locations, screening and Items 1 and 2 above;**

Solid Waste pick-up is provided under by MGS. There will be no capacity issues in this regard.

Therefore, the request is *in compliance* with the requirements of this section.

**5. Utilities, with reference to location and availability;**

Chapter 107, Article 13, establishes the City's Concurrency Management and certification requirements. This Conditional Use constitutes the City's Concurrency Level of Service Certificate, as follows:

- Wastewater: The property is currently not connected to the City sewer system. The applicant will provide wastewater and sewage collection and disposal via connecting to the City sewer system.
- Water: The Florida Keys Aqueduct Authority will provide potable water for the facility.
- Solid Waste: Marathon Garbage Service will provide solid waste disposal.
- Surface Water: The applicant must submit a final stormwater plan before building permit issuance.
- Recreation and Open Space: This redevelopment will provide more recreation and open space than exists on site currently.
- Roadways: No additional traffic impact will occur as a result of this project.
- Educational Facilities: This redevelopment will have a de minimis impact on educational facilities since existing uses are being replaced in kind.

Therefore, with conditions, the request is *in compliance* with the requirements of these sections.

- City approval is required for the stormwater management system prior to Building Permit Approval.
- City approval of the connection to the City Wastewater Utility will be required.

**6. Screening and buffering with reference to type, dimensions and character;**

The project will be required to provide street trees for each unit pursuant to the requirements of the LDRs.

Therefore, with conditions, the request is *in compliance* with the requirements of these sections.

**7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding uses;**

There will be no signs associated with the redevelopment of the site.

Therefore, the request is *in compliance* with the requirements of these sections.

**8. Required yards and other open space;**

Section 106.16 established required open space for the project. The site is scarified; therefore, a twenty percent open space requirement applies. As proposed, the project will meet the minimum open space requirements.



Additionally, the property is required to provide a landscape buffer along the U.S. 1 property boundary. Section 107.70 requires a medium buffer along this property line.

Therefore, the request is *in compliance* with the requirements of these sections.

- The Applicant will be allowed to install a six (6) foot wall with exterior facing landscape vegetation on the U.S. 1 property boundary in lieu of a full landscape buffer.

**9. General compatibility with surrounding properties; and**

The project is a development of residential uses in an area of the City which is relatively dense and intense. Adjacent uses include other residences, single family, mobile homes, duplexes, and multifamily units, a day care facility, and two churches and a City park. The proposed project will be compatible with surrounding uses.

Therefore, with the conditions below, the request is *in compliance* with the requirements of these sections.

**10. Any special requirements set forth in the LDRs for the particular use involved.**

With these modifications to the proposed DA, the request is *in compliance* with the requirements of this section.

**CONCLUSION:**

The proposed project seeks the development of two contiguous vacant commercial and residential properties. The project furthers the intent of both the City’s Comprehensive Plan and Land Development Regulations to:

- Utilize densities allowed pursuant to the partial Residential – Mobile Home (R-MH) zoning associated with a portion of the site
- Develop of ten (10) workforce / affordable housing units
- Deed restrict he workforce / affordable units for a minimum of 50 years pursuant to the City’s LDRs and require that the units remain at the project site for ten (10) years.

**RECOMMENDATION:**

The Planning staff and other City Staff met in consideration of this item on April 10, 2019 and forward a recommendation of conditional approval for the proposed Conditional Use Permit and Development Agreement submitted by 1477 Overseas Highway LLC and Seasons Inc. The proposed Conditions follow.

The Planning Commission met on April 15, 2019 in review of the proposed project. Staff and the Applicant made brief presentations after which the Planning Commission deliberated forwarding a 5/0 recommendation for approval with two conditions of their own.

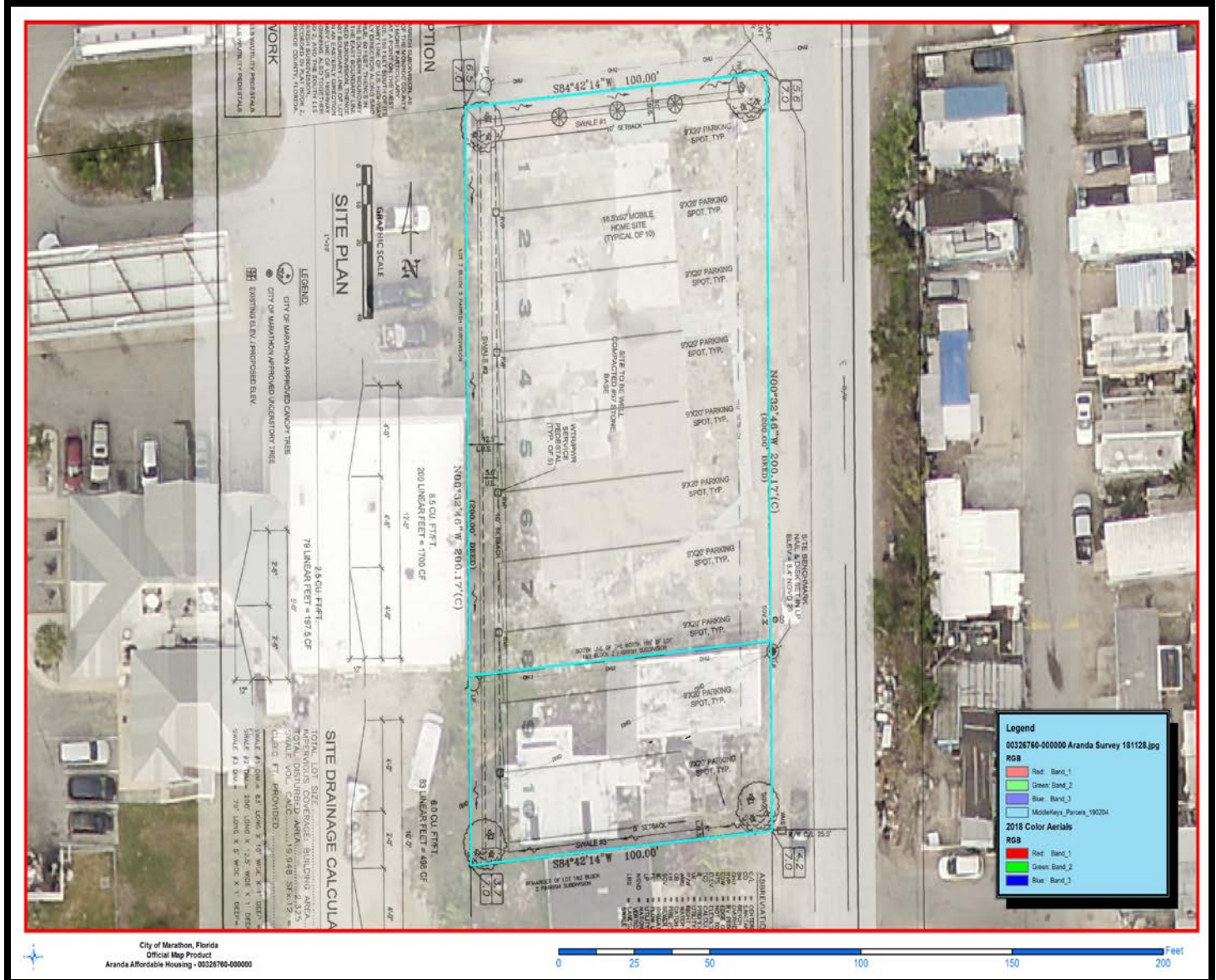
## Conditions of Approval

1. Utilize densities allowed pursuant to the Residential – Mobile Home (R-MH) zoning associated with a portion of the site
  - a. Develop of ten (10) workforce / affordable housing units
  - b. Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City’s LDRs.
2. The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR’s), BPAS process, or any other legally established process prior to building permit issuance. **THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.**
3. Clear sight triangles must be shown on the site plan at time of building permit issuance.
4. The applicant will provide fire protection plans in accordance with fire protection requirements as required under the State Fire Code and as outlined by the City Fire Marshal and as .
  - c. Particularly, no structure, lying within the proposed building site for each unit, may be closer than 10 feet from one another, including entry stairs, eaves, and porches, or in the alternative
  - d. Shall contain some form of enhanced fire rating so that through the rating, the buildings may be closer than ten (10) feet from one another.
5. The applicant will meet all floodplain related requirements as part of the Building Permit process;
6. The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance.
  - e. Particularly, the development must manage water quality at least (1.5 inches or rainfall over the entire site) and manage stormwater to pre development rate of the twenty-five (25) year, seventy-two (72) hour storm.
7. The applicant will obtain City approval for wastewater management through the City’s Wastewater Utility.
- f. Particularly, the City has capacity, but will need to install a force main tap, to accommodate the Applicant. The cost of the force main tap shall be borne by the Applicant through their additional required Connection and System Development Charges. The costs of any on-site sewer work shall be borne entirely by the Applicant.
8. The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
9. A Final Site Plan must be submitted showing the approved buildings and all civil engineering elements, including final grading, potable water, wastewater, and stormwater management.
10. Applicant will provide a minimum number of parking spaces required under the City’s LDRs and limit parking to the area associated with each individual unit.
11. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees. Particularly,
12. The Applicant will be required to install a six (6) foot fence or wall with exterior facing landscape vegetation on the U.S. 1 property boundary in lieu of a full landscape buffer.
13. The applicant will obtain approval of final buffering, landscaping, and lighting plans and install all elements of such in coordination with the City staff as needed prior to Certificate of Occupancy;
14. The affordable units must be deed restricted prior to issuance of certificate of occupancy.

15. The individual units proposed shall meet all conditions of the Florida Building and Fire Codes, the conditions of the Conditional Use Permit and Development Agreement and Code Concerning the construction and rental of affordable housing units, Chapter 104, Article 1, Section 104.03 of the LDRs.

16. The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination shall run contemporaneous with the term and timing requirements of the Development Agreement.

# EXHIBIT 1 Site Plan



**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-XXX**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST FOR A CONDITIONAL USE PERMIT REQUESTED BY 1477 OVERSEAS HIGHWAY LLC AND SEASONS INC., PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “CONDITIONAL USE PERMITS,” FOR THE REDEVELOPMENT OF THE PROPERTIES AS TEN (10) AFFORDABLE HOUSING RESIDENCES LOCATED AT 1477 OVERSEAS HIGHWAY AND 263 15<sup>TH</sup> STREET, WHICH ARE LEGALLY DESCRIBED AS THE NORTH 150 FEET OF LOT 1 AND 2, PART OF LOTS 1 AND 2, BLOCK 2, PARRISH SUBDIVISION, MARATHON, FLORIDA, HAVING REAL ESTATE NUMBERS 00326770-000000 AND 00326760-000000. NEAREST MILE MARKER 48.**

**WHEREAS**, Request By 1477 Overseas Highway LLC and Seasons Inc. (The “Applicant”) filed an Application on June 26, 2017 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 8 and 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant proposes to develop ten (10) deed restricted affordable residential units; and

**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 15<sup>th</sup> day of April, 2019, 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 14<sup>th</sup> day of May, 2019 and the 28<sup>th</sup> day of May, 2019 the City Council (the “Council”) conducted properly advertised public hearings (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 the redevelopment of properties within the City of Marathon and will further the health, safety and welfare of the residents of Marathon; and

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

**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 2019-08, a copy of which is attached hereto as Exhibit “A”, granting a Conditional Use Permit to Request By 1477 Overseas Highway LLC and Seasons Inc. 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 its adoption by the City of Marathon and after review and approval by the Department of Economic Opportunity pursuant to Chapters 163 and 380, *Florida Statutes*.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS \_\_ DAY OF \_\_\_\_\_, 2019.**

**THE CITY OF MARATHON, FLORIDA**

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**John Bartus, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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Diane Clavier  
City Clerk

(City Seal)

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

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David Migut, City Attorney



**CITY OF MARATHON, FLORIDA  
CONDITIONAL USE  
DEVELOPMENT ORDER # 2019-08**

**A DEVELOPMENT ORDER OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST FOR A CONDITIONAL USE PERMIT REQUESTED BY 1477 OVERSEAS HIGHWAY LLC AND SEASONS INC., PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “CONDITIONAL USE PERMITS,” FOR THE REDEVELOPMENT OF THE PROPERTIES AS TEN (10) AFFORDABLE HOUSING RESIDENCES LOCATED AT 1477 OVERSEAS HIGHWAY AND 263 15<sup>TH</sup> STREET, WHICH ARE LEGALLY DESCRIBED AS THE NORTH 150 FEET OF LOT 1 AND 2, PART OF LOTS 1 AND 2, BLOCK 2 , PARRISH SUBDIVISION, MARATHON, FLORIDA, HAVING REAL ESTATE NUMBERS 00326770-000000 AND 00326760-000000. NEAREST MILE MARKER 48.**

**WHEREAS,** Request By 1477 Overseas Highway LLC and Seasons Inc. (The “Applicant”) filed an Application on June 26, 2017 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 8 and 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS;** the Applicant proposes to develop ten (10) deed restricted affordable residential units; and

**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 15<sup>th</sup> day of April, 2019, 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 14<sup>th</sup> day of May, 2019 and the 28<sup>th</sup> day of May, 2019 the City Council (the “Council”) conducted properly advertised public hearings (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 the redevelopment of properties within the



City of Marathon and will further the health, safety and welfare of the residents of Marathon; and

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

**FINDINGS OF FACT:**

1. The applicant will develop ten (10) deed restricted affordable residential units with the following determinations:
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;
    3. The noise, glare or odor effects of the conditional use on surrounding properties;
    4. Refuse and service areas, with particular reference to location;
    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. Utilize densities allowed pursuant to the Residential – Mobile Home (R-MH) zoning associated with a portion of the site
  - a. Develop of ten (10) workforce / affordable housing units
  - b. Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City's LDRs.
2. The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. **THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.**
3. Clear sight triangles must be shown on the site plan at time of building permit issuance.
4. The applicant will provide fire protection plans in accordance with fire protection requirements as required under the State Fire Code and as outlined by the City Fire Marshal and as .
  - c. Particularly, no structure, lying within the proposed building site for each unit, may be closer than 10 feet from one another, including entry stairs, eaves, and porches, or in the alternative
  - d. Shall contain some form of enhanced fire rating so that through the rating, the buildings may be closer than ten (10) feet from one another.
5. The applicant will meet all floodplain related requirements as part of the Building Permit process;
6. The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance.
  - e. Particularly, the development must manage water quality at least (1.5 inches or rainfall over the entire site) and manage stormwater to pre development rate of the twenty-five (25) year, seventy-two (72) hour storm.
7. The applicant will obtain City approval for wastewater management through the City's Wastewater Utility.
  - f. Particularly, the City has capacity, but will need to install a force main tap, to accommodate the Applicant. The cost of the force main tap shall be borne by the Applicant through their additional required Connection and System Development Charges. The costs of any on-site sewer work shall be borne entirely by the Applicant.
8. The applicant will obtain sign permits for any signs erected on the property, as required under

the Code; and

9. A Final Site Plan must be submitted showing the approved buildings and all civil engineering elements, including final grading, potable water, wastewater, and stormwater management.
10. Applicant will provide a minimum number of parking spaces required under the City's LDRs and limit parking to the area associated with each individual unit.
11. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees. Particularly,
12. The Applicant will be required to install a six (6) foot fence or wall with exterior facing landscape vegetation on the U.S. 1 property boundary in lieu of a full landscape buffer.
13. The applicant will obtain approval of final buffering, landscaping, and lighting plans and install all elements of such in coordination with the City staff as needed prior to Certificate of Occupancy;
14. The affordable units must be deed restricted prior to issuance of certificate of occupancy.
15. The individual units proposed shall meet all conditions of the Florida Building and Fire Codes, the conditions of the Conditional Use Permit and Development Agreement and Code Concerning the construction and rental of affordable housing units, Chapter 104, Article 1, Section 104.03 of the LDRs.
16. The Conditional Use Development Order will constitute the Certificate of Concurrence for the project. The determination shall run contemporaneous with the term and timing requirements of the Development Agreement.

**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 thirty (30) 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.

\_\_\_\_\_  
Date

\_\_\_\_\_  
George Garrett  
Director of Planning

This Development Order was filed in the Office of the City Clerk of this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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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 Community Affairs 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, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Community Affairs. 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 *Mike Aranda, 1222 SE 47<sup>th</sup> Street #330, Cape Coral, FL 33904*, this \_\_\_ day of \_\_\_\_\_, 2019.

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Diane Clavier City Clerk

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-XXX**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST FOR A DEVELOPMENT AGREEMENT REQUESTED BY 1477 OVERSEAS HIGHWAY LLC AND SEASONS INC., PURSUANT TO CHAPTER 102, ARTICLES 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “DEVELOPMENT AGREEMENTS,” FOR THE REDEVELOPMENT OF THE PROPERTIES AS TEN (10) AFFORDABLE HOUSING RESIDENCES LOCATED AT 1477 OVERSEAS HIGHWAY AND 263 15<sup>TH</sup> STREET, WHICH ARE LEGALLY DESCRIBED AS THE NORTH 150 FEET OF LOT 1 AND 2, PART OF LOTS 1 AND 2, BLOCK 2 , PARRISH SUBDIVISION, MARATHON, FLORIDA, HAVING REAL ESTATE NUMBERS 00326770-000000 AND 00326760-000000. NEAREST MILE MARKER 48.**

**WHEREAS**, Request By 1477 Overseas Highway LLC And Seasons Inc. (The “Applicant”) filed an Application on February 201, 2019 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 8 and 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant proposes to develop ten (10) deed restricted affordable residential units; and

**WHEREAS**, City staff reviewed the Applicant’s request for a Development Agreement determining that the Applicant’s project proposal was in compliance with the City’s Comprehensive Plan and Land Development Regulations (LDRs) and further that there was no substantial impact on the City’s Level of Service (LOS); and

**WHEREAS**, on the 15<sup>th</sup> day of April, 2019, 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 14<sup>th</sup> day of May, 2019 and the 28<sup>th</sup> day of May, 2019 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, is in Compliance with the City’s Comprehensive Plan and LDRs and further, that the approval is in the public interest, is consistent with its policy to encourage the redevelopment of properties within the City of Marathon and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS,** the purpose of the Conditional Use Permit and Development Agreement is to allow for the integration of certain land uses and structures within the City of Marathon, based on conditions imposed by the Council. 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 City Council hereby approves the document attached hereto as Exhibit “A”, granting 1477 Overseas Highway LLC And Seasons Inc., Inc. a Development Agreement subject to the Conditions imposed.

**Section 3.** This resolution shall take effect immediately upon its adoption by the City of Marathon and after review and approval by the Department of Economic Opportunity pursuant to Chapters 163 and 380, *Florida Statutes*.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2019.**

**THE CITY OF MARATHON, FLORIDA**

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**John Bartus, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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Diane Clavier  
City Clerk

(City Seal)

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

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David Migut, City Attorney



**EXHIBIT A**  
**DEVELOPMENT AGREEMENT**

Parcel I.D. Nos.:  
RE# 00326760-000000 and 00326770-000000  
(Space reserved/or recording)

DEVELOPMENT AGREEMENT FOR  
1477 Overseas Highway LLC and Seasons Inc.  
MARATHON, FLORIDA

**THIS DEVELOPMENT AGREEMENT** ("Agreement") is entered into by and between the CITY OF MARATHON, FLORIDA, a Florida municipal corporation (herein referred to as "City"), and 1477 Overseas Highway LLC and Seasons Inc., 1222 SE 47<sup>th</sup> Street Suite #330, Cape Coral, FL 33904, a Delaware Corporation (herein referred to as "Owner"), pursuant to Chapter 102, Article 8, of the Land Development Regulations of the City of Marathon, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes, and is binding on the Effective Date set forth herein.

WITNESSETH:

**WHEREAS**, Owner is the owner of real property located in Marathon, Monroe County, Florida, more particularly described in Exhibit "A" (boundary survey), attached hereto and incorporated herein by reference; and

**WHEREAS**, Owner has submitted a proposal to develop and construct ten (10) affordable residential units; and

**WHEREAS**, the construction and maintenance of affordable housing within the City of Marathon is a desirable goal and will serve to preserve workforce housing in the face of economic gentrification; and

**WHEREAS**, the economic development afforded by this Agreement is in the best interest of both parties to this Agreement as well as the general public in the City of Marathon; and

**WHEREAS**, the Marathon Planning Commission held a public hearing on the 15<sup>th</sup> day of April, 2019, to consider this Agreement, and recommended approval of this Agreement; and

**WHEREAS**, the City Council of Marathon held public hearings on the 14<sup>th</sup> day of May and 28<sup>th</sup> day of May, 2019, to consider this Agreement; and

**WHEREAS**, the City has determined that this Agreement is in the public interest and is consistent with its policy to encourage the redevelopment of Marathon in a manner that provides and preserves affordable housing and will further the health, safety, and welfare of the residents of Marathon; and

**WHEREAS**, the Applicant will utilize densities allowed pursuant to the Residential –

Mobile Home (R-MH) zoning associated with a portion of the site

- a. Develop of ten (10) workforce / affordable housing units
- b. Deed restrict the workforce / affordable units for a minimum of 50 years.

**WHEREAS**, the Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. **THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT, and**

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### **I. RECITALS.**

The foregoing Recitals are a part of this Agreement on which the parties have relied and are incorporated into this Agreement by reference.

#### **II. PURPOSES OF AGREEMENT.**

The purposes of this Agreement are as follows:

- A. Allow the Applicant to utilize densities allowed pursuant to the Residential – Mobile Home (R-MH) zoning associated with a portion of the site
- B. To encourage redevelopment of the Property consistent with Objective 1-3.4 in the City's Comprehensive Plan.
- C. To secure the ability to construct Owner's proposed development of residences totaling ten (10) units. Implicit in this Development Agreement are the Conditions imposed in the approval of the Conditional Use Permit for this project. The Conditional Use Permit shall run contemporaneous with the Development Agreement.

#### **III. DEFINITIONS.**

For the purposes of this Agreement, all terms shall have the definitions as found in the Land Development Regulations (LDRs), Comprehensive Plan and in Chapter 163, Florida Statutes, or in other applicable Florida Statutes, and if not defined in the Code, Plan, or Statute, the term shall be understood by its usual and customary meaning.

#### **IV. STATUTORY AND CODE REQUIREMENTS.**

The parties recognize the binding effect of the Florida Local Government development Agreement Act, Sections 163.3221, et seq., Florida Statutes, as to the form and content of this Agreement and in accordance therewith set forth and agree to the following:

A. Legal Description and Ownership. 1477 Overseas Highway LLC and Seasons Inc., 1222 SE 47<sup>th</sup> St Unit 330 ,Cape Coral, Fl 33904, is the Owner of the Property, which Property is the subject of this Agreement, as described in Exhibit B, Boundary and Topographic Survey. There are no other legal or equitable owners of the subject property known to the parties to this Agreement.

B. Duration of Agreement and Submission of Permit Application. Owner shall have a period of twelve (12) months from the Effective Date of this Agreement to submit an application for a building permit with the City to commence construction of the project contemplated herein. The duration of this Agreement shall be ten (10) years from the effective date. Should the owner not commence construction within eighteen (18) months of the effective date of this Agreement, then this Agreement shall be null and void and the allocation of affordable housing contained herein shall be null and void and said allocation shall revert to the entity contributing the affordable allocations. This Agreement may be renewed or extended as provided herein. If the Owner has not complied with the terms of this section, this Agreement may be subject to termination as provided herein.

C. Building Right Allocations. The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. **THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT, and**

Affordable Housing is defined in Section 110.00 of the City's LDRs as: "Dwelling units which contain less than or equal to 1,800 square feet of habitable space meet 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 City; and are restricted in perpetuity or as allowed by law for a minimum 50-year period to use by households that meet the requirements of at least one (1) of the following income categories: Very-low, low, median, moderate or middle. The requirements for these income categories are as provided in Chapter 104, "Specific Use Regulations". "

It is agreed that the affordable housing shall comply with the Moderate-income standards or Middle-income standards as set forth in Section 104.03 (d) and 104.03 (e).

Moderate-income is defined as: "A household, whose income (excluding that of fulltime students under 18 years of age) does not exceed 120 percent of the median adjusted gross annual income for households within the county;"

Middle-income is defined as: "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;"

D. Conditions of Approval.

1. Utilize densities allowed pursuant to the Residential – Mobile Home (R-MH) zoning associated with a portion of the site
  - a. Develop of ten (10) workforce / affordable housing units
  - b. Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City’s LDRs.
2. The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR’s), BPAS process, or any other legally established process prior to building permit issuance. **THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.**
3. Clear sight triangles must be shown on the site plan at time of building permit issuance.
4. The applicant will provide fire protection plans in accordance with fire protection requirements as required under the State Fire Code and as outlined by the City Fire Marshal and as .
  - a. Particularly, no structure, lying within the proposed building site for each unit, may be closer than 10 feet from one another, including entry stairs, eaves, and porches, or in the alternative
  - b. Shall contain some form of enhanced fire rating so that through the rating, the buildings may be closer than ten (10) feet from one another.
5. The applicant will meet all floodplain related requirements as part of the Building Permit process;
6. The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance.
  - a. Particularly, the development must manage water quality at least (1.5 inches or rainfall over the entire site) and manage stormwater to pre development rate of the twenty-five (25) year, seventy-two (72) hour storm.
7. The applicant will obtain City approval for wastewater management through the City’s Wastewater Utility.
  - a. Particularly, the City has capacity, but will need to install a force main tap, to accommodate the Applicant. The cost of the force main tap shall be borne by the Applicant through their additional required Connection and System

Development Charges. The costs of any on-site sewer work shall be borne entirely by the Applicant.

8. The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
9. A Final Site Plan must be submitted showing the approved buildings and all civil engineering elements, including final grading, potable water, wastewater, and stormwater management.
10. Applicant will provide a minimum number of parking spaces required under the City's LDRs and limit parking to the area associated with each individual unit.
11. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees. Particularly,
12. The Applicant will be required to install a six (6) foot fence or wall with exterior facing landscape vegetation on the U.S. 1 property boundary in lieu of a full landscape buffer.
13. The applicant will obtain approval of final buffering, landscaping, and lighting plans and install all elements of such in coordination with the City staff as needed prior to Certificate of Occupancy;
14. The affordable units must be deed restricted prior to issuance of certificate of occupancy.
15. The individual units proposed shall meet all conditions of the Florida Building and Fire Codes, the conditions of the Conditional Use Permit and Development Agreement and Code Concerning the construction and rental of affordable housing units, Chapter 104, Article 1, Section 104.03 of the LDRs.
16. The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination shall run contemporaneous with the term and timing requirements of the Development Agreement.

E. Sale or Lease. Owner agrees to strictly comply with all the requirements of the City of Marathon regarding sale or leasing of the affordable housing units (general affordable pool as defined in Section 107.06(c) to be constructed as part of the project. The City hereby approves the following special condition regarding the Deed Restriction of these units as affordable:

The Applicant will utilize densities allowed pursuant to the Residential – Mobile Home (R-MH) zoning associated with a portion of the site

- a. Develop of ten (10) workforce / affordable housing units
- b. Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City's LDRs.

F. Density and Building Height. The property is located in a Residential High Zoning District as defined in the Land Development Regulations. Maximum building height permitted on the property is thirty-seven (37) feet.

G. Public Facilities, Concurrency, Impact Fees. The following identifies the public facilities that are required that will service the development of the Property: who shall provide the facilities; what new facilities, if any, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of development.

1. Potable Water. Domestic potable water is provided by the Florida Keys Aqueduct Authority.
2. Electric Service. Electric service is provided by Florida Keys Electric Service.
3. Solid Waste. Solid waste service is provided by Marathon Garbage Service or its successors and assigns, as determined by the City Council.
4. Fire Service. Fire service is provided by the Marathon Fire Department.
5. Wastewater, Sewage Collection and Disposal. Wastewater and sewage collection, treatment, and disposal shall be done by connection to the City sewer system.
6. Public Recreational Facilities. Public recreational facilities are available near the property in the Marathon Community Park and the Jesse Hobbs Park.
7. Stormwater Management. There shall be no direct discharge to the City of Marathon Nearshore Waters.
8. Fire Protection. Fire sprinklers will be installed only if required by State Fire Code.
9. Concurrency. All public facilities, with the exception of Wastewater, 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. Wastewater capacity is available through the Central Sewer system for the City of Marathon.
10. Impact Fees. The City shall waive the impact fees for the affordable units allowed pursuant to Section 111.02 F.3(f).

H. Reservations or Dedications of Land for Public Purposes. These are not contemplated or necessary for this development.

I. Local Development Permits. The following City development approvals are required for the development of the Property.

1. This Development Agreement.
2. Building and related construction permits for the structures, land clearing and landscaping. At any time any building permit is applied for, Owner shall demonstrate compliance with all applicable Federal, State and Municipal Disabled Access Regulations in effect at the time of application.
3. Local Permits for Wastewater Collection and Stormwater Runoff. Nothing in this Agreement shall preclude the parties from applying conditions in addition to Federal, State and regional permits, by mutual agreement, during final site plan review or permitting.

4. Approval of affordable BPAS allocations through the BPAS allocation process.

J. Finding of Consistency. By entering into this Agreement, the City finds that the development permitted or proposed herein is consistent with and furthers the Comprehensive Plan, applicable LDRs and the Principles for Guiding Development set forth in Section 380.0552(7), Florida Statutes.

K. Mutual Cooperation. City and Owner agree to cooperate fully and assist each other in the performance of the provisions of this Agreement.

L. Development to Comply with Permits and City Comprehensive Plan and Code Provisions. The redevelopment shall be developed in accordance with all required permits and in accordance with all applicable provisions of the City's Comprehensive Plan and Land Development Regulations in effect on the effective date of this Agreement. No Certificate of Occupancy for an individual building shall be issued until all plans for that building are approved by the City and Owner has complied with all conditions in permits issued by the City and the other regulatory entities for that building. The City agrees that any permits or certificates of occupancy to be issued by the City shall not be unreasonably withheld or delayed

M. Compliance With Permit Terms, Conditions, and Restrictions Not Identified Herein. The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve Owner of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

N. Laws Governing.

1. For the duration of this Agreement, all approved development of the Property shall comply with and be controlled by this Agreement and provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Agreement, inclusive of text changes and rezoning approved by the City Council on the date of the City's approval of this Agreement, if any. The parties do not anticipate that the City will apply subsequently adopted laws and policies to the Property, except as expressly provided in this Agreement

2. Pursuant to Section 163.3233, Florida Statutes, 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 development 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 accurate information supplied by Owner. Provided, however, nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

3. If state or federal laws enacted after the Effective Date of this Agreement preclude any party's compliance with the terms of this Agreement, it shall be modified as 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 law.

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

1. As provided in Section 163.3237, Florida Statutes, this Agreement may be amended by mutual consent of the parties to this Agreement or by their successors in interest. Amendment under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.

2. As provided in Section 163.3237, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirement in Section 163.3225, Florida Statutes, and applicable LORs. 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 fifteen (15) days before each public hearing in a newspaper of general circulation and readership in Marathon, 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.

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

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

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

P. Breach of Agreement and Cure Provisions.

1. If the City concludes that there has been a material breach in this Agreement by Owner, prior to revoking this Agreement, the City shall serve written notice on Owner identifying the term or condition the City contends has been materially breached and providing Owner with ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Agreement. Each of the following events shall be considered a material breach of this Agreement:

- a. Failure to comply with the provisions of this Agreement;
- b. Failure to comply with terms and conditions of permits issued by the City or other regulatory entity for the development authorized by this Agreement.

2. If Owner concludes that there has been a material breach in the terms of this Agreement by the City, Owner shall serve written notice on the City identifying the term or condition Owner contends has been materially breached and providing the City with ninety (90) days from the date of receipt of the notice to cure the breach, or negotiate an amendment to this Agreement. The following events shall be considered a material breach of this Agreement:

- a. Failure to comply with the provisions of this Agreement;
- b. Failure to timely process any application for Site Plan approval or other development authorized by this Agreement.

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

4. Notwithstanding any other provisions of this Development Agreement to the contrary, neither party hereto shall be deemed to be in default under this Development Agreement where delay in the construction or performance of the obligations imposed by this Development Agreement are caused by war, revolution, labor strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions, embargoes, litigation (excluding litigation between the City and the Owner), tornadoes, hurricanes, tropical storms or other severe weather events, or any other causes beyond the control of such party. The time of performance hereunder, as well as the term of this Development Agreement, shall be extended for the period of any forced delays or delays caused or resulting from any of the foregoing causes. The Owner must submit evidence to the City's reasonable satisfaction of any such delay.

Q. 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 anyone of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Services as certified or registered mail, return receipt requested, postage prepaid; or ( c) by deposit with an overnight express delivery service with a signed receipt required Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

TO OWNER:

1477 Overseas Highway LLC and Seasons Inc.  
1222 SE 47<sup>th</sup> St Unit 330  
Cape Coral, Fl 33904

TO THE CITY:

Chuck Lindsey, City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
(305) 743-0033

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

David Migut, City Attorney  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
(305) 743-0033

R. Annual Report. On each anniversary date of the Effective Date of this Agreement, Owner shall provide the City with a report identifying (a) the amount of development authorized by this Agreement that has been completed (b) the amount of development authorized by this Agreement that remains to be completed, and (c) any changes to the plan of development 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.

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

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

U. Assignment. This Agreement may not be assigned without the written consent of the parties, which consent shall not be unreasonably withheld.

V. Drafting of Agreement. The parties acknowledge that they jointly participated in the drafting of this Agreement and that no term or provision of this Agreement shall be construed in favor of or against either party based solely on the drafting of the Agreement.

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

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

Y. Litigation/Attorneys Fees; Venue; Waiver of Right to Jury Trial. As between the City and Owner, in the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorney's fees. This includes, but is not limited to~ reimbursement for reasonable attorney's 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 THIS AGREEMENT.

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

A.A. 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.

B.B. 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 this Agreement.

C.C. 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.

D.D. Recording; Effective Date. The Owner shall record this Agreement in the Public Records of Monroe County, Florida, within fourteen (14) days after the date the last party signs 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 at the Department of Economic Opportunity, Division of Community Planning, 107 Madison Street, Room 22, Tallahassee, Florida 32399 by hand delivery or 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 and received by the Owner or his agents. Owner shall also provide a copy of the recorded

Agreement to the City at 9805 Overseas Highway, Marathon, Florida 33050, within the same time period. This Agreement shall become effective thirty (30) days after the date the State Land Planning Agency receives its copy pursuant to Section 163.3239, Florida Statutes.

E.E. 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 have set their hands and seals on the day and year below written. Signed, sealed, and delivered in the presence of:

WITNESSES:

OWNER

1477 Overseas Highway LLC and Seasons Inc.,

\_\_\_\_\_  
Signature

By:\_\_\_\_\_

Name: Michael Aranda, Jr.

Title: President

\_\_\_\_\_  
Name of witness (printed or typed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of witness (printed or typed)

On the 28<sup>th</sup> day of May, 2019, The City Council of the City of Marathon approved this the Conditional Use Permit for this Agreement by Resolution 2019-**XXX** and this Agreement by Resolution No. 2019-**YYY**.

ATTEST:

CITY OF MARATHON

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

By:\_\_\_\_\_  
John Bartus, Mayor

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

\_\_\_\_\_  
David Migut, City Attorney

## COUNCIL AGENDA STATEMENT



**Meeting Date:** May 28, 2019  
**To:** Honorable Mayor and Council Members  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

**Agenda Item:** **Ordinance 2019-10**, Amending The City’s Comprehensive Plan To Modify Or Add To Its Conservation And Coastal Element, Goals Objectives, And Policies To Comply With Florida Statute 163.3178(2)(F) “Peril of Flood”; Intending To Modify, “Purpose;” Goal 4-1, “Conserve, Manage, Use, And Protect Natural And Environmental Resources;” Policy 4-1.3.3, “Surface Water Management And Flood Damage Prevention;” And Objective 4-1.17, “Minimum Coastal Hazards;” And Intending To Add Policies To Include Policy 4-1.17.8, “Strategies For Responding To Sea Level Rise;” Policy 4-1.17.9, “Flood-Resistant Development Requirements;” Policy 4-1.17.10, “Extreme Weather Event Mitigation;” And Policy 4-1.17.11, “Best Practices And Mitigation Strategies;” And Finally, Intending To Modify Objective 4-1.22, “Reduce Exposure To Natural Hazards,” Policy 4-1.22.5, “Manage Redevelopment Activities; And Policy 4-1.22.8, “Regulate Redevelopment Of Non-Conforming Structures To The Required Base Flood Elevation;” Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity After The First Hearing By The City Council; And Providing For An Effective Date.

### **RECOMMENDATION:**

The Planning Commission reviewed the proposed Comprehensive Plan amendment on May 20, 2019 and recommends Approval in order to meet the minimum standards of the Perils of Flood requirements promulgated in Section 163.3178(2)(f), Florida Statutes.

**APPLICANT:** City of Marathon

**REQUEST:** Amend City of Marathon Comprehensive Plan in order to bring it into compliance with recent legislative amendments to Section 163.3178(2)(f), Florida Statutes (commonly referred to as the “Peril of Flood” statute).

### **ANALYSIS OF COMPREHENSIVE PLAN CHANGE REQUEST:**

#### **Preface**

The current Land Development Regulations provide only brief guidance concerning the review of a proposed Comprehensive Plan Amendment.



Section 102.19 simply states:

**Section 102.19. Standards for Review.**

When considering an application for a Comprehensive Plan Amendment, the review shall include all standards and criteria of Fla. Stat. ch. 163.

Standards in Chapter 163, F.S. offer some additional guidance, but are limited. Pertinent sections of Chapter 163 promulgate process rather than establishing criteria for the development of a proposed Comprehensive Plan Amendment. Chapter 163.3184, Process for adoption of comprehensive plan or plan amendment, define the sequential process for transmittal, review, and approval of a Comprehensive Plan Amendment. Most relevant to this delineation of process is the definition of “**compliance**” which is recited for review below:

**163.3184 Process for adoption of comprehensive plan or plan amendment.--**

(1) DEFINITIONS.--As used in this section, the term:

(b) "In compliance" means consistent with the requirements of ss. [163.3177](#), when a local government adopts an educational facilities element, 163.3178, 163.3180, 163.3191, and 163.3245, with the state comprehensive plan, with the appropriate strategic regional policy plan, and with chapter 9J-5, Florida Administrative Code, where such rule is not inconsistent with this part and with the principles for guiding development in designated areas of critical state concern and with part III of chapter 369, where applicable. Thus, leading through an exhaustive process, the State Land Planning Agency must find a Comprehensive Plan or Plan Amendment in compliance in accordance with the above definition. Process as further defined in the section leads from Local Government Transmittal through review by the State Land Planning Agency and other required local and state government bodies to a finding of “in compliance” by the State Land Planning Agency.

Review is contemplated and expected to be completed by such agencies as the South Florida Regional Planning Council, whose responsibility it is to review the proposal for consistency with the Strategic Regional Policy Plan. Such review is not therefore, the responsibility of the local government to determine consistency in this regard and will not be addressed herein. Though referenced in the definition of compliance and elsewhere Chapters 163.3177, 163.3191, 163.3245, and 369 will not be reviewed as a compliance matter. Chapter 163.3177 defines required elements in a comprehensive plan. The City has an approved comprehensive plan which must be assumed to have all required elements. Chapter 163.3191 refers to the required Evaluation and Appraisal Report (EAR); a review of an approved comprehensive plan required of the City every seven years. The City is not subject to an EAR at this juncture and therefore is not relevant as a criterion to the review herein. Finally, Chapter 163.3245 refers to the development of an optional sector plan. This optional element of an approved comprehensive plan was not adopted by the City and therefore will not be used as a criterion for review in this proposed FLUM amendment. Chapter 369 refers to invasive aquatic plant control and the Wekiva River area and similarly will not be the subject of compliance review herein.

Other pertinent review elements leading to a determination of compliance are found in Chapter 163.3178 Coastal management, Chapter 163.3180 Concurrency and the principals for guiding development in the Florida Keys Area of Critical State Concern. This application for a FLUM amendment will be analyzed against the limited compliance issues found in sections of Chapter 163 F.S. and Chapter 380 F.S. noted immediately above. Relevant sections are provided in EXHIBITS 2, 3, & 4 attached or with website references for your review

### **Compliance Discussion**

Relevant criteria promulgated in Chapters 163 and 380 F.S. can be itemized in bullets as follows based on the critical concerns more specifically identified in the City's comprehensive plan:

- Natural Resource Protection
  - Wetlands
  - Estuaries
  - Living marine resources
  - Beaches / Dunes
  - Unique wildlife habitat
  - Water Quality
- Historical Resources
- Infrastructure / Concurrency Management
  - Wastewater
  - Stormwater
  - Potable Water
  - Solid Waste
  - Transportation
- Affordable Housing
- Hazard Mitigation
  - CHHA
  - Hurricane Evacuation
- Ports
  - Marina Siting
- Public Use
  - Shoreline use and Access
  - Water dependent and independent activity
- Land Acquisition
  - Conservation
  - CHHA
  - Public Services

These bullet items should be utilized as the focus points for review of the proposed FLUM amendment and for future comprehensive plan amendments.

## SUMMARY

The University Of Florida Levin College Of Law Conservation Clinic in partnership with Florida land use and environmental attorney Byron Flagg have examined the City of Marathon's Comprehensive Plan for compliance with the Florida "Peril of Flood" statute. As a result, the reviewers recommend that the City of Marathon make minor amendments to its Comprehensive Plan to comply with recent legislative amendments to Section 163.3178(2)(f), Florida Statutes (commonly referred to as the "Peril of Flood" statute). The reviewers recommend minor additions to the City's Conservation and Coastal Element of its Comprehensive Plan to comply with Section 163.3178(2)(f), Florida Statutes. This report and attached draft ordinance (Exhibit B) constitute Deliverables 3.2 and 3.3 of Task 3 under the City's Grant # 1816 from the Florida DEP's Florida Coastal Office, Florida Resilient Coastlines Program.

The short review provided by the University of Florida explains the Background & Legislative History of statutory changes to Section 163.3178(2)(f) and the new statutory requirements coastal local governments must now implement. This report also provides the recommended text changes that will bring the City's Comprehensive Plan into compliance and brief legal analysis for each change. The report identifies which sections of the City's current Conservation and Coastal Element already satisfy the new statutory requirements and the report provides additional resources in "Exhibit 3.1" regarding resiliency planning, best practices, and FEMA guidelines for communities that participate in the National Flood Insurance Program's (NFIP) Community Rating System (CRS), as well as a draft ordinance as "Exhibit 3.2" implementing the recommended text changes to the City's Comprehensive Plan.

## BACKGROUND & LEGISLATIVE HISTORY

### A. *The Comprehensive Plan's "Coastal Management" Element*

All of Florida's counties and municipalities are required to adopt local government comprehensive plans that guide future growth and development pursuant to Chapter 163, Florida Statutes, which comprise Florida's *Community Planning Act* and growth management policies. Each local government comprehensive plan must include at least two planning periods (one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period). Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, water supply, drainage, potable water, natural groundwater recharge, coastal management, conservation, recreation and open space, intergovernmental coordination, capital improvements, and public schools. Comprehensive Plans are developed through a public participatory visioning process and then articulated through specific Goals, Objectives, and Policies under each Element.

In addition to these general comprehensive planning requirements under state law, local governments in coastal areas must include a *coastal management element* in their comprehensive plan pursuant to Section 163.3177(6)(g), Florida Statutes. The coastal management element must set forth the principles, guidelines, standards, and strategies that shall guide the local government's decisions and adoption of land development regulations and special issues related to coastal development. In addition, Section 163.3178, Florida Statutes, (entitled *Coastal Management*) requires coastal management comprehensive plan policies to be based on studies, surveys, and

data but also requires coastal planning elements to include a “redevelopment component” which outlines the principles used to eliminate inappropriate and unsafe development in coastal areas.

During the 2015 Florida Legislative Session, the Legislature passed Senate Bill 1094 which was signed into law by the Governor in May, 2015. That law is now commonly referred to as the “Peril of Flood” statute because it addressed new requirements related to flood insurance provisions under Florida Law, required record keeping for certain flood elevation certificates, and also required coastal local governments to include in their comprehensive plans (if they had not already done so), new “development and redevelopment principles, strategies, and engineering solutions” focused on reducing flood risks and flood losses within coastal areas. In general, the statute requires coastal communities to more specifically consider future flood risk in the coastal management element of the comprehensive plan, including consideration of sea level rise.

But prior to Senate Bill 1094 going into effect, Section 163.3178, Florida Statutes was not specific about what aspects of coastal planning a “redevelopment component” must address. Senate Bill 1094 changed that lack of specificity by adding new language aimed at reducing flood risk from natural events including consideration of sea level rise by adding six requirements to a local government’s “redevelopment component.”

The City of Marathon’s coastal management element is combined with its conservation element in Chapter Four of the City’s Comprehensive Plan and is named the “Conservation & Coastal Element.”

#### ***B. Senate Bill 1094’s “Redevelopment Component” Requirements***

As a result of Senate Bill 1094’s amendments to Section 163.3178(2)(f), the City of Marathon’s Conservation and Coastal Management Element must include a redevelopment component that now meets the following statutory criteria. Section 163.3178(2)(f) states:

*(f) A redevelopment component that outlines the principles that must be used to eliminate inappropriate and unsafe development in the coastal areas when opportunities arise. The component must:*

- 1. Include development and redevelopment principles, strategies, and engineering solutions that reduce the flood risk in coastal areas which results from high-tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea-level rise.*
- 2. Encourage the use of best practices development and redevelopment principles, strategies, and engineering solutions that will result in the removal of coastal real property from flood zone designations established by the Federal Emergency Management Agency.*
- 3. Identify site development techniques and best practices that may reduce losses due to flooding and claims made under flood insurance policies issued in this state.*
- 4. Be consistent with, or more stringent than, the flood-resistant construction requirements in the Florida Building Code and applicable flood plain management regulations set forth in 44 C.F.R. part 60.*
- 5. Require that any construction activities seaward of the coastal construction control lines established pursuant to s. 161.053 be consistent with chapter 161.*
- 6. Encourage local governments to participate in the National Flood Insurance Program*

*Community Rating System administered by the Federal Emergency Management Agency to achieve flood insurance premium discounts for their residents.*

*C. Florida DEO's, Bureau of Community Planning and Growth Guidance*

The DEO's Bureau of Community Planning has broken the criteria listed above into two parts for consideration:

- 1.) Subsections (1)-(3) above are strategies for implementing a redevelopment component that include programs, activities and land development regulations. According to the Department of Economic Opportunity, it is up to local governments to establish policies that comply with these requirements. The statutory language does not direct explicitly what those requirements are; rather, it is up to communities to determine appropriate plan policy.
- 2.) Subsections (4)-(6) above are easily adoptable as policies that incorporate these requirements in the text of the Coastal Management Element.

Subsections (1)-(3) can be implemented in many ways. At the minimum, language related to all of the six components must appear in the Coastal Management Element with slight tailoring to (1)-(3) to apply to the City of Marathon. As stated in DEO's break down, Subpolicies (4)-(6) can mimic the statutory language without much tailoring to comply with Florida law. The most thorough amendment would go beyond DEO's analysis and not only alter the Coastal Management Element, but also incorporate amendments throughout the entire Comprehensive Plan as appropriate. At this time, the City of Marathon does not require such an elaborate approach and can safely satisfy the statutory requirements by limiting changes to the Coastal Management Element.

Subsection (5), regarding Coastal Construction Control Lines, need not be addressed in the City of Marathon's Comprehensive Plan because no Control Line has been set for this area of Monroe County. Thus, Subsection (5) will not be addressed in this report. However, the recommended changes to the text of the City's Conservation & Coastal Element does mirror the the language in subsection (5) so that it exists in the event coastal construction control lines are established later on.

*D. PURPOSE OF PROPOSED AMENDMENTS TO CITY OF MARATHON'S CONSERVATION & COASTAL ELEMENT*

*E.*

- To bring the City of Marathon into compliance with Florida law, specifically the new statutory requirements codified in Section 163.3178(2)(f).
- To maintain the high-level direction-setting goals, objectives and policies of the City of Marathon's Comprehensive Plan while complying with the specific requirements set forth in §163.3178(2)(f)(1).
- In 2017, Hurricane Irma devastated the City of Marathon, causing tens of millions of dollars in damage. The requirements of the Peril of Flood statute, if implemented throughout the City's Comprehensive Plan and land development regulations and consistently enforced, could lessen the impact on real property and structures from flood-related natural disasters over time.

- The sixth criterion of §163.3178(2)(f) encourages communities to participate in the National Flood Insurance Program Community Rating System (CRS). While Marathon has participated in the program since incorporating in 1999, its current Community Rating is a 6. As a result, this community rating allows residents to currently save 20% on their flood insurance premiums. If the City is able to improve its CRS rating under the National Flood Insurance Program, property owners in Marathon could be eligible for even more savings on flood insurance – the maximum discount reaching up to 45% for communities that implement and enforce land development regulations that reduce flood risk. The highest score in the CRS is 1. Link to: FEMA publication FEMA B 575/2018; *National Flood Insurance Program, Community Rating System, A Local Official’s Guide to Saving Lives, Preventing Property Damage, and Reducing the Cost of Flood Insurance:* [https://www.fema.gov/media-library-data/1535126505943-439b296e7778b037d05f698f65c7891b/2018NFIP\\_CRS\\_Brochure\\_June\\_2018\\_508OK.pdf](https://www.fema.gov/media-library-data/1535126505943-439b296e7778b037d05f698f65c7891b/2018NFIP_CRS_Brochure_June_2018_508OK.pdf)

## **ANALYSIS**

### Natural Resources

The City of Marathon Comprehensive Plan places significant emphasis on the protection of its environmental resources while protecting the property rights of its citizens. The proposed amendment through the implementation of the existing and these modified Comprehensive Plan and Land Development Regulations has the potential to enhance the protection of natural resources through continued land acquisition and/or development of conservation easements, .

### Historical and Cultural Resources

No Significant Impact would result from the proposed change.

### Infrastructure

Implementation of the Perils of Flood Goals, Objectives, and Policies will lead to the review of the potential to enhance the protection of all of the City’s infrastructure. This will require review of potential threats to the City’s infrastructure, primarily from hurricanes and sea level rise, consider options, prioritize those options, and develop or seek the funding to implement infrastructure improvements.

### Wastewater infrastructure

Implementation of the Perils of Flood Goals, Objectives, and Policies will lead to the review of the potential to enhance the protection of all of the City’s wastewater infrastructure. This will require review of potential threats to the City’s infrastructure, primarily from hurricanes and sea level rise, consider options, prioritize those options, and develop or seek the funding to implement infrastructure improvements.

### Stormwater infrastructure

Implementation of the Perils of Flood Goals, Objectives, and Policies (GOPs) will lead to the review of the potential to enhance the protection of all of the City's stormwater infrastructure. This will require review of potential threats to the City's infrastructure, primarily from hurricanes and sea level rise, consider options, prioritize those options, and develop or seek the funding to implement infrastructure improvements.

### Potable Water

The City will work with the Florida Keys Aqueduct Authority to insure that its infrastructure is well protected from the potential impacts of hurricanes and sea level rise through implementation of the modified GOPs proposed herein.

### Solid Waste

No Significant Impact would result from the proposed change.

### Transportation

The City will work with the Florida Department of Transportation and review the threats to its own streets to insure that its infrastructure is well protected from the potential impacts of hurricanes and sea level rise through implementation of the modified GOPs proposed herein.

### Affordable Housing

No Significant Impact would result from the proposed change.

### Hazard Mitigation

No Significant Impact would result from the proposed change.

### Coastal High Hazard Areas

Implementation of the Perils of Flood revisions will have some, but limited, impact on the City's current enforcement of regulations regarding the Coastal High Hazard Areas (CHHAs as we already heavily regulate development in what are otherwise known as Category 1 surge zones or VE Zones.

### Hurricane Evacuation

No Significant Impact would result from the proposed change. All transient residents would be required to evacuate within the first 24 hours of a 48 hour evacuation window. The City's (and County) obligation is to be prepared to evacuate its permanent population at 24 hours before the impacts of Tropical Storm Force Winds in the Keys.

As sea level rise begins to impact the Florida Keys, the City and County will be required to ensure that roads will not be inundated with tidal waters. This may require elevating collector roads and U.S. Highway 1.

#### Ports – Marina Siting

No Significant Impact would result from the proposed change.

#### Public Use – Access to Water

No Significant Impact would result from the proposed change.

#### Land Acquisition

The proposed amendment will utilize existing land acquisition mechanisms to further the purposes of providing green buffers and shoreline protection from the immediate impacts of high tides, storm surge, and approaching hurricanes..

### **Alternate Compliance Review Criteria**

Since there are no internal Comprehensive Plan change review criteria available in Chapter 102, Article 6, those that would apply for an LDR text change request (Chapter 102, Article 7) are useful. The basis for the LDR text change criteria are the same as for a Comprehensive Plan change ultimately.

Section 102.26(B) of the Land Development Regulations requires that the following standards and criteria be considered for any proposed text amendment. Each criteria and explanation of relevance to this proposed amendment are listed below:

#### **A. The need and justification for the change;**

The University Of Florida Levin College Of Law Conservation Clinic in partnership with Florida land use and environmental attorney Byron Flagg have examined the City of Marathon's Comprehensive Plan for compliance with the Florida "Peril of Flood" statute. As a result, the reviewers recommend that the City of Marathon make minor amendments to its Comprehensive Plan to comply with recent legislative amendments to Section 163.3178(2)(f), Florida Statutes (commonly referred to as the "Peril of Flood" statute). The reviewers recommend minor additions to the City's Conservation and Coastal Element of its Comprehensive Plan to comply with Section 163.3178(2)(f), Florida Statutes. This report and attached draft ordinance (Exhibit B) constitute Deliverables 3.2 and 3.3 of Task 3 under the City's Grant # 1816 from the Florida DEP's Florida Coastal Office, Florida Resilient Coastlines Program.

This report briefly explains the Background & Legislative History of statutory changes to Section 163.3178(2)(f) and the new statutory requirements coastal local governments must now implement. This report also provides the recommended text changes that will bring the City's Comprehensive Plan into compliance and brief legal analysis for each change. The report



identifies which sections of the City's current Conservation and Coastal Element already satisfy the new statutory requirements and the report provides additional resources in "Exhibit 3.1" regarding resiliency planning, best practices, and FEMA guidelines for communities that participate in the National Flood Insurance Program's (NFIP) Community Rating System (CRS), as well as a draft ordinance as "Exhibit 3.2" implementing the recommended text changes to the City's Comprehensive Plan.

**B. The consistency of the proposed amendment with the Comprehensive Plan; and**

Statutory modifications to Section 163.3178(2)(f), Florida Statutes require that all Comprehensive Plans for coastal Counties include amendments in compliance with the statutory changes. The City has reviewed its Comprehensive Plan which largely meets the requirements of the Perils of Flood Statute, to create the minimum necessary changes while retaining complete internal consistency of all GOPs.

**C. Whether the proposed change shall further the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan.**

The proposed text amendments furthers the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan by providing the mechanism to carry out the requirements of the Perils of Flood Statute.

**CONCLUSION:**

The proposed Amendment is consistent with and furthers the goals of the City of Marathon Comprehensive Plan and Land Development Regulations.

**RECOMMENDATION:**

The Planning Commission reviewed the proposed Comprehensive Plan amendment on May 20, 2019 and recommends Approval in order to meet the minimum standards of the Perils of Flood requirements promulgated in Section 163.3178(2)(f), Florida Statutes.



## Peril of Flood Compliance Ordinance Memorandum University of Florida Conservation Clinic

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**Date:** Draft Review April 8, 2019

**To:** George Garrett, Planning Director  
David Migut, Esq., City Attorney

**From:** Byron Flagg, Esq.  
Tom Ankersen, Esq., Director, UF Levin College of Law Conservation Clinic  
Brandon Pownall, J.D. Candidate  
Alexandra Mamontoff, J.D. Candidate

**Subject:** DEP Grant 1816 Task 3 Deliverable – Report and Comprehensive Plan Draft Ordinance Amendment For Compliance with the “Peril of Flood” Florida Statute.

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### I. EXECUTIVE SUMMARY

The University of Florida Levin College of Law Conservation Clinic in partnership with Florida land use and environmental attorney Byron Flagg have examined the City of Marathon’s Comprehensive Plan for compliance with the Florida “Peril of Flood” statute. As a result, the reviewers recommend that the City of Marathon make minor amendments to its Comprehensive Plan to comply with recent legislative amendments to Section 163.3178(2)(f), Florida Statutes (commonly referred to as the “Peril of Flood” statute). The reviewers recommend minor additions to the City’s Conservation and Coastal Element of its Comprehensive Plan to comply with Section 163.3178(2)(f), Florida Statutes.

This report briefly explains the Background & Legislative History of statutory changes to Section 163.3178(2)(f) and the new statutory requirements coastal local governments must now implement. This report also provides the recommended text changes that will bring the City’s Comprehensive Plan into compliance and brief legal analysis for each change. The report identifies which sections of the City’s current Conservation and Coastal Element already satisfy the new statutory requirements and the report provides additional resources in “Exhibit A” regarding resiliency planning, best practices, and FEMA guidelines for communities that participate in the National Flood Insurance Program’s (NFIP) Community Rating System (CRS), as well as a draft ordinance as “Exhibit B” implementing the recommended text changes to the City’s Comprehensive Plan.

## II. BACKGROUND & LEGISLATIVE HISTORY

### A. *The Comprehensive Plan's "Coastal Management" Element*

All of Florida's counties and municipalities are required to adopt local government comprehensive plans that guide future growth and development pursuant to Chapter 163, Florida Statutes, which comprise Florida's *Community Planning Act* and growth management policies. Each local government comprehensive plan must include at least two planning periods (one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period). Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, water supply, drainage, potable water, natural groundwater recharge, coastal management, conservation, recreation and open space, intergovernmental coordination, capital improvements, and public schools. Comprehensive Plans are developed through a public participatory visioning process and then articulated through specific Goals, Objectives, and Policies under each Element.

In addition to these general comprehensive planning requirements under state law, local governments in coastal areas must include a *coastal management element* in their comprehensive plan pursuant to Section 163.3177(6)(g), Florida Statutes. The coastal management element must set forth the principles, guidelines, standards, and strategies that shall guide the local government's decisions and adoption of land development regulations and special issues related to coastal development. In addition, Section 163.3178, Florida Statutes, (entitled *Coastal Management*) requires coastal management comprehensive plan policies to be based on studies, surveys, and data but also requires coastal planning elements to include a "redevelopment component" which outlines the principles used to eliminate inappropriate and unsafe development in coastal areas.

During the 2015 Florida Legislative Session, the Legislature passed Senate Bill 1094 which was signed into law by the Governor in May, 2015. That law is now commonly referred to as the "Peril of Flood" statute because it addressed new requirements related to flood insurance provisions under Florida Law, required record keeping for certain flood elevation certificates, and also required coastal local governments to include in their comprehensive plans (if they had not already done so), new "development and redevelopment principles, strategies, and engineering solutions" focused on reducing flood risks and flood losses within coastal areas. In general, the statute requires coastal communities to more specifically consider future flood risk in the coastal management element of the comprehensive plan, including consideration of sea level rise.

But prior to Senate Bill 1094 going into effect, Section 163.3178, Florida Statutes was not specific about what aspects of coastal planning a "redevelopment component" must address. Senate Bill 1094 changed that lack of specificity by adding new language aimed at reducing flood risk from natural events including consideration of sea level rise by adding six requirements to a local government's "redevelopment component."

The City of Marathon's coastal management element is combined with its conservation element in Chapter Four of the City's Comprehensive Plan and is named the "Conservation & Coastal Element."

### *B. Senate Bill 1094's "Redevelopment Component" Requirements*

As a result of Senate Bill 1094's amendments to Section 163.3178(2)(f), the City of Marathon's Conservation and Coastal Management Element must include a redevelopment component that now meets the following statutory criteria. Section 163.3178(2)(f) states:

*(f) A redevelopment component that outlines the principles that must be used to eliminate inappropriate and unsafe development in the coastal areas when opportunities arise. The component must:*

- 1. Include development and redevelopment principles, strategies, and engineering solutions that reduce the flood risk in coastal areas which results from high-tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea-level rise.*
- 2. Encourage the use of best practices development and redevelopment principles, strategies, and engineering solutions that will result in the removal of coastal real property from flood zone designations established by the Federal Emergency Management Agency.*
- 3. Identify site development techniques and best practices that may reduce losses due to flooding and claims made under flood insurance policies issued in this state.*
- 4. Be consistent with, or more stringent than, the flood-resistant construction requirements in the Florida Building Code and applicable flood plain management regulations set forth in 44 C.F.R. part 60.*
- 5. Require that any construction activities seaward of the coastal construction control lines established pursuant to s. 161.053 be consistent with chapter 161.*
- 6. Encourage local governments to participate in the National Flood Insurance Program Community Rating System administered by the Federal Emergency Management Agency to achieve flood insurance premium discounts for their residents.*

### *C. Florida DEO's, Bureau of Community Planning and Growth Guidance*

The DEO's Bureau of Community Planning has broken the criteria listed above into two parts for consideration:

- 1.) Subsections (1)-(3) above are strategies for implementing a redevelopment component that include programs, activities and land development regulations. According to the Department of Economic Opportunity, it is up to local governments to establish policies that comply with these requirements. The statutory language does not direct explicitly what those requirements are; rather, it is up to communities to determine appropriate plan policy.*
- 2.) Subsections (4)-(6) above are easily adoptable as policies that incorporate these requirements in the text of the Coastal Management Element.*

Subsections (1)-(3) can be implemented in many ways. At the minimum, language related to all of the six components must appear in the Coastal Management Element with slight tailoring

to (1)-(3) to apply to the City of Marathon. As stated in DEO's break down, Subpolicies (4)-(6) can mimic the statutory language without much tailoring to comply with Florida law. The most thorough amendment would go beyond DEO's analysis and not only alter the Coastal Management Element, but also incorporate amendments throughout the entire Comprehensive Plan as appropriate. At this time, the City of Marathon does not require such an elaborate approach and can safely satisfy the statutory requirements by limiting changes to the Coastal Management Element.

Subsection (5), regarding Coastal Construction Control Lines, need not be addressed in the City of Marathon's Comprehensive Plan because no Control Line has been set for this area of Monroe County. Thus, Subsection (5) will not be addressed in this report. However, the recommended changes to the text of the City's Conservation & Coastal Element does mirror the the language in subsection (5) so that it exists in the event coastal construction control lines are established later on.

#### *D. PURPOSE OF PROPOSED AMENDMENTS TO CITY OF MARATHON'S CONSERVATION & COASTAL ELEMENT*

- To bring the City of Marathon into compliance with Florida law, specifically the new statutory requirements codified in Section 163.3178(2)(f).
- To maintain the high-level direction-setting goals, objectives and policies of the City of Marathon's Comprehensive Plan while complying with the specific requirements set forth in §163.3178(2)(f)(1).
- In 2017, Hurricane Irma devastated the City of Marathon, causing tens of millions of dollars in damage. The requirements of the Peril of Flood statutes, if implemented throughout the City's Comprehensive Plan and land development regulations and consistently enforced, could lessen the impact on real property and structures from flood-related natural disasters over time.
- The sixth criterion of §163.3178(2)(f) encourages communities to participate in the National Flood Insurance Program Community Rating System (CRS). While Marathon has participated in the program since incorporating in 1999, its current Community Rating is a 6. As a result, this community rating allows residents to currently save 20% on their flood insurance premiums. If the City is able to improve its CRS rating under the National Flood Insurance Program, property owners in Marathon could be eligible for even more savings on flood insurance – the maximum discount reaching up to 45% for communities that implement and enforce land development regulations that reduce flood risk. The highest score in the CRS is 1. Link to: FEMA publication FEMA B 575/2018; *National Flood Insurance Program, Community Rating System, A Local Official's Guide to Saving Lives, Preventing Property Damage, and Reducing the Cost of Flood Insurance*:  
[https://www.fema.gov/media-library-data/1535126505943-439b296e7778b037d05f698f65c7891b/2018NFIP\\_CRS\\_Brochure\\_June\\_2018\\_508OK.pdf](https://www.fema.gov/media-library-data/1535126505943-439b296e7778b037d05f698f65c7891b/2018NFIP_CRS_Brochure_June_2018_508OK.pdf)

### III. TEXT AND ANALYSIS OF AMENDMENTS TO THE CONSERVATION & COASTAL MANAGEMENT ELEMENT

Rather than restate the City's entire Conservation & Coastal Element in this memo, only the locations where recommended changes to Goals, Objectives, and Policies are included below. The recommended additions are in red underlined text while text recommended for deletion is ~~stricken~~. The text in grey boxed paragraphs that follow text amendment recommendations includes the legal analysis and reasoning that supports the proposed changes. The proposed changes are limited to the City of Marathon's Conservation & Coastal Element to satisfy the requirements of the "Peril of Flood" statute, however, the City may wish to consider addressing sea level rise or resiliency planning in other elements of its Comprehensive Plan. If the recommended changes below are adopted, the City of Marathon's Comprehensive Plan will, at a minimum, comply with the "Peril of Flood" act amendments to Section 163.3178(2)(f) discussed above.

# CONSERVATION AND COASTAL ELEMENT GOALS, OBJECTIVES, AND POLICIES

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## PURPOSE

Pursuant to ~~Chapter~~ Sections 163.3177(6)(d)&(g), and 163.3178, F.S., the purpose of the Conservation and Coastal Element is to promote the conservation, use and protection of natural resources as well as to plan for, and where appropriate, restrict development and redevelopment activities where such activities would damage or destroy coastal resources, and protect human life and property and while limiting public expenditures in ~~areas~~ locations that are subject to destruction by natural disaster, high tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea level rise. The Conservation and Coastal Element also includes a redevelopment component that outlines the broad Goals, Objectives and Policy principles that must be used to eliminate inappropriate and unsafe development in the coastal areas when opportunities arise as mandated by Section 163.3178(2)(f), Florida Statutes.

The proposed language clarifies and focusses the intent and purpose of the Conservation and Coastal Element to comply with statutory mandates as well as to identify what specific statutory requirements are implemented.

## GOAL 4-1 CONSERVE, MANAGE, USE AND PROTECT NATURAL AND ENVIRONMENTAL RESOURCES

It is the goal of the City to conserve, manage, use and protect the natural and environmental resources within the City to ensure continued resource availability and environmental quality and to manage development and redevelopment activities to protect coastal resources, protect human life and property and limit public expenditures in areas subject to destruction by natural disasters, flooding, and sea level rise. §163.3177(6)d.2, §163.3177(6)(g) F.S. & 163.3178(2)(f).

This proposal complies with §163.3178(2)(f) generally. These additions to Goal 4-1 which establish the broad policy missions of the Coastal Management Element will provide the necessary emphasis to establish a “redevelopment component” that focuses on reducing or eliminating flood risk. The proposed text additions in the introductory “Purpose” paragraph

and in the broad policy language of Goal 4-1 will provide a broad policy foundation for the City of Marathon to enact and implement adaptation and resilience measures.

Policy 4-1.3.3            Surface Water Management and Flood Damage Prevention

The City shall continue to maintain surface water management and flood damage prevention regulations. New development and all redevelopment encroaching into the 100 year floodplain shall incorporate elevation and flood protection measures sufficient to protect against the 100 year flood. The City shall maintain consistency with program policies of the National Flood Insurance Program to ensure that it maintains the highest possible rating within the National Flood Insurance Program’s Community Rating System. The City shall monitor and implement new cost effective ~~programs~~ development and redevelopment principles, strategies, and engineering solutions for minimizing flood damage resulting from high tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea level rise. Such ~~programs~~ principles, strategies, and engineering solutions may include modifications to construction setback requirements, ~~or~~ othersite design techniques, as well as upgraded building and construction techniques which include resilient construction techniques and increasing “Freeboard” elevation requirements.

This proposal complies with §163.3178(2)(f)(1), (3) & (4). More than 20 states and hundreds of communities require new construction be elevated higher than FEMA requires, which is based on the 100 year flood plain. The practice of requiring greater elevation than FEMA is known as “freeboard.” The additional text proposed here is an aspirational goal for the City of Marathon to consider requiring increasing freeboard and other resilient construction techniques in order to minimize flood damage related to sea level rise and other natural disasters. Such practices not only ensure human health and property will remain safe, but may result in an increased community rating system score which in turn saves residents money on FEMA Flood Insurance. When communities go beyond the minimum standards for floodplain management required by the NFIP, the CRS can provide discounts of up to 45 percent off of flood insurance premiums. However, regulations that require new construction techniques may increase costs to property owners so the City must always balance cost-effectiveness with benefit to the community. Which is why the propose language in Policy 4-1.3.3 is aspirational versus mandatory. But by including this proposed language, the City is further meeting the requirements of §163.3178(2)(f). Refer to the Resources Appendix of this Report for more information about resilient construction techniques and strategies.

Other Florida local governments that have adopted Freeboard redevelopment regulations: Escambia County, City of Layton, Palm Beach County, Village of Tequesta, City of Gulf Breeze, City of Milton, Town of Indian Shores, Town of Longboat Key and Pensacola Beach.

FEMA defines “Freeboard” as follows:



“Freeboard is a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed. Freeboard is not required by NFIP standards, but communities are encouraged to adopt at least a one-foot freeboard to account for the one-foot rise built into the concept of designating a floodway and the encroachment requirements where floodways have not been designated. Freeboard results in significantly lower flood insurance rates due to lower flood risk.”

For communities participating in the NFIP, structures within the Special Flood Hazard Area (SFHA) are subject to floodplain management regulations that create certain construction requirements to minimize flood risk. The Code of Federal Regulations (44 CFR 60.3c2) requires that the lowest floor of a residential structure (including basement), be at or above the Base Flood Elevation (BFE) if located in the SFHA. However, even though freeboard requirements are not required by NFIP, increasing freeboard in land development regulations can be an effective strategy for mitigating flood risk in certain locations.

**Objective 4-1.17                    Minimum Minimizes Coastal Hazards**

The City shall continue to maintain Land Development Regulations which regulate development and redevelopment activities in a manner that minimizes the danger to life and property occasioned by hurricane events, high tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea level rise. §163.3178(2)(f) & §163.3178(2)(h) F.S.

This proposal complies with §163.3178(2)(f)(1) & (2).

Policy 4-1.17.8                    Strategies for Responding to Sea-level rise

The City will develop strategies for responding to sea-level rise, including consideration of the effects of sea-level rise on potable water sources, saltwater intrusion, septic systems, wastewater treatment facilities and associated systems, the water table, public infrastructure, redevelopment strategies, and affordable housing policies. The City’s planning decisions shall consider and utilize the 1-Foot, 2-Foot, and 3-Foot Sea Level Rise planning horizon projections as established by the Southeast Florida Climate Change Compact’s “Unified Seal Level Rise Projection” report published in October 2015. Those planning horizons are: 1) short term, by 2030, sea level is projected to rise 6 to 10 inches above 1992 mean sea level, 2) medium term, by 2060, sea level is projected to rise 14 to 34 inches above 1992 mean sea level, 3) long term, by 2100, sea level is projected to rise 31 to 81 inches above 1992 mean sea level.

This proposal complies with §163.3178(2)(f)(3). In 2012, the Southeast Florida Regional Climate Change Compact (the “compact”) published its Inundation Mapping and Vulnerability Assessment which included maps and tables that demonstrating potential vulnerability for 1,2, and 3 foot sea level rise scenarios in the Southeast Florida region covering Monroe, Miami-Dade, Broward, and Palm Beach Counties. This Vulnerability Assessment includes three maps of the City of Marathon. The one foot scenario is predicted to occur between 2040-2070, 2 foot from 2060-2115 and 3 foot from 2075-2150. Uncertainty in the tidal surface and the elevation data is presented on each map in two categories: (1) More likely to be inundated defined as 100-75% certainty of a given location having an elevation below sea level at high tide for a given scenario and (2) Possibly inundated defined as 25-74.9% certainty. The maps and tables of information contained in the 2012 Vulnerability Assessment are intended to be used for Hospitals, Schools,

Emergency shelters, Evacuation routes, Marine facilities, value of property impacted, acres of future land planning purposes among the four Compact Counties to begin to identify infrastructure at risk and to develop adaptation strategies and policies for inclusion in the Regional Climate Action Plan to address these risks with the intent of becoming a more climate-resilient community. The 2012 Vulnerability Assessment urges that more complex modeling is necessary to refine predictive capability of actual inundation. Since this analysis was originally performed just prior to 2012, other Counties have used extreme high tide events that occur in the fall of each year to ground truth select locations for inundation from rising seas. The 2012 Vulnerability Assessment is available here:

<http://southeastfloridaclimatecompact.org/wp-content/uploads/2014/09/vulnerability-assessment.pdf>

In October 2015, the Compact published its updated “Unified Sea Level Rise Projection” and those projections are what are recommended be adopted as the base sea-level rise projections for Marathon in Policy 4-1.17.8 above. These projections can be used to estimate future sea level elevations in Southeast Florida and the relative change in sea level from today to a point in the future. The Compact’s 2015 “Unified Sea Level Rise Projection” report provides a “Guidance for Application” section which contains directions and specific examples of how the projection can be used by local governments, planners, designers and engineers and developers. “This regional projection is offered to ensure that all major infrastructure projects throughout the Southeast Florida region have the same basis for design and construction relative to future sea level.” A copy of the Compact’s 2015 “Unified Sea Level Rise Projection” report is available here: <http://southeastfloridaclimatecompact.org/wp-content/uploads/2015/10/2015-Compact-Unified-Sea-Level-Rise-Projection.pdf>

Because the National Flood Insurance Program has adopted NOAA’s “intermediate-high” sea level rise projection as a base minimum projection for the purposes of CRS credit and meeting CRS prerequisites, NOAA’s “intermediate-high” projection for 2100 (as included in its 2012 report “Global Sea Level Rise Scenarios for the United States National Climate Assessment,” should be the minimum sea level rise projection that the City will use for planning purposes. However, the NFIP CRS permits communities to consider other sea-level rise projections provided that they are equal to or greater than NOAA’s “intermediate-high” projection for year 2100. The Southeast Florida Regional Climate Change Compact’s 2100 sea level rise projections are consistent or greater than the NOAA Intermediate High projection of 3.9 feet.

Policy 4-1.17.9 Flood-resistant Development Requirements

Development and redevelopment in the City will be consistent with or more stringent than the flood-resistant construction requirements in the Florida Building Code and applicable floodplain management regulations set forth in 44 C.F.R. part 60.

This proposal complies with §163.3178(2)(f)(4). As stated by DEO, Subsection 163.3187(2)(f)(4) can be implemented merely by mimicking the statutory language as done here.

Policy 4-1.17.10 Extreme Weather Event Mitigation

The City shall document and maintain maps depicting the extent of flood inundation from extreme high tides (“king tides”), more frequent severe rainfall events, and newly revealed areas at risk of flooding to efficiently target mitigation efforts.

This proposal complies with §163.3178(2)(f)(1), (2), & (3).

Policy 4-1.17.11 Best Practices and Mitigation Strategies

The City shall utilize best practices and initiate mitigation strategies to reduce the flood risk in coastal areas that result from high tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea level rise by incorporating into its land development regulations where practical and economically feasible, resilient construction technique requirements, promotion of living shorelines, protection of coastal marsh and mangroves, and use of innovative natural material breakwaters to reduce wave energy.

This proposal complies with §163.3178(2)(f)(1) & (2).

### **Objective 4-1.22                      Reduce Exposure to Natural Hazards**

The City shall reduce or eliminate exposure of human life and public and private property to natural hazards resulting from high-tide events, storm surge, flash floods, nuisance flooding, stormwater runoff, and the related impacts of sea-level rise, through establishment and update of a Post Disaster Redevelopment Plan. In addition, the City shall develop local plan components including policies for managing recovery operations through a Recovery Task Force. §163.3178(2)(f) F.S.

This proposal complies with §163.3178(2)(f)(1).

#### Policy 4-1.22.5                      Manage Redevelopment Activities

The City shall manage unanticipated future redevelopment activities necessitated by hurricane events, high-tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea-level rise or other natural disasters through this Plan, the adopted Land Development Regulations and the City Master Plan. Redevelopment in the City will be consistent with or more stringent than the flood-resistant construction requirements in the Florida Building Code and applicable floodplain management regulations set forth in 44 C.F.R. part 60. Furthermore, in the event that coastal construction control lines become established within the City's jurisdiction pursuant to Section 161.053, F.S., all construction activities seaward of established coastal construction control lines shall be consistent with Chapter 161, Florida Statutes.

This proposal complies with §163.3178(2)(f)(1), (4) & (5).

Policy 4-1.22.8 Regulate Redevelopment of Non-Conforming Structures ~~Non-Conforming~~  
to the Required Base Flood Elevation

If an existing structure which is non-conforming to the required base flood elevation is substantially damaged (based on the definition in Chapter 161, F.S.) or abandoned, it shall be rebuilt ~~only to the extent that complies with the current Flood Plain Management standards for the affected property.~~ to add freeboard at least three feet over minimum Base Flood Elevation as depicted on current FEMA Flood Insurance Rate Maps. The City shall develop and adopt regulations in its Land Development Code to implement this requirement.

This proposal complies with §163.3178(2)(f)(1), (2), & (3). The freeboard suggested here for redevelopment of substantially damaged structures is consistent with other Florida communities (Escambia County, City of Layton, Palm Beach County, Village of Tequesta, City of Gulf Breeze, City of Milton, Town of Indian Shores, Town of Longboat Key and City of Pensacola Beach). While costly for property owners today, the addition of three feet to a substantially damaged or abandoned structure will increase an improved property's resiliency to storm events while also increasing the potential for an increase in the City's CRS score – which in turn could bring an insurance cost savings to property owners.

IV. SECTION 163.3178(2)(F) STATUTORY REQUIREMENTS ALREADY ADDRESSED IN THE CITY'S CONSERVATION & COASTAL ELEMENT

The City's current Conservation and Coastal Management Element already addresses some of the statutory mandates required by Section 163.3187(2)(f). Below are provisions already in compliance with the statute and which further the statute's intent:

Policy 4-1.3.3          Steering development away from danger  
"Directing growth away from VE Flood Zones through Local Mitigation Strategies and the Building Permit Allocation System identified in this Plan;" (Policy 4-1.3.1)

✓ Complies with Fla. Stat. §163.3178(2)(f)(2), (6)

Policy 4-1.3.3          Surface Water Management and Flood Damage Prevention  
The City shall continue to maintain surface water management and flood damage prevention regulations. New development encroaching into the 100 year floodplain shall incorporate elevation and flood protection measures sufficient to protect against the 100 year flood. The City shall maintain consistency with program policies of the National Flood Insurance Program. The City shall monitor new cost effective programs for minimizing flood damage. Such programs may include modifications to construction setback requirements or other site design techniques, as well as upgraded building and construction techniques. **Could actually incorporate language from the proposed revision to Policy 4-1.22.8 as a requirement of ALL development or redevelopment.**

✓ Complies with Fla. Stat. §163.3178(2)(f)(2), (6)

Policy 4-1.3.5          Protect Coastal and Estuarine Environmental Quality and the Shoreline

The City shall continue to maintain Land Development Regulations mandating that the potential impacts of shoreline development be analyzed as part of the development review process..... All development shall: ...

e. Reduce exposure to natural hazards;

✓ Complies with Fla. Stat. §163.3178(2)(f)(1), (3). The language could be emphasized to ensure that sea level rise projections are considered.

Policy 4-1.3.6 Protect, Stabilize and Enhance Shorelines

The City shall continue to maintain Land Development Regulations that stipulate that no native vegetation shall be removed from shorelines without a duly authorized permit. Similarly, criteria shall be included requiring applicants for development along the shoreline to re-vegetate, stabilize and enhance damaged vegetative shorelines by planting native plant species, which:...

b. Offer protection from erosion and flooding;

✓ Complies with Fla. Stat. §163.3178(2)(f)(1)

Policy 4-1.4.8 Shoreline Setback Development Criteria

Minimum coastal construction setbacks in the City shall be established in the Land Development Regulations to protect: ...

d. Structures from the effects of long-term sea level rise;

e. Beaches and shorelines from erosion;

✓ Complies with Fla. Stat. §163.3178(2)(f)(1), (2)

Policy 4-1.5.14 Protect Natural Resources through Development Review

The City shall require development review of all proposed development or redevelopment to prevent unnecessary destruction or inappropriate use of existing natural resources and natural sites. Through the development review process the City shall enforce qualitative and quantitative development criteria consistent with the Plan that governs:



- a. The management of surface water;
- b. The preservation of open space; ...

✓Complies with Fla. Stat. §163.3178(2)(f)(1), (2), (6)

Policy 4-1.17.5 Identify Areas Particularly Susceptible to Damage within the CHHA The Local Mitigation Strategy shall identify areas particularly susceptible to damage within the CHHA; including FEMA designated V-zones within the City and repetitive loss areas as defined by FEMA’s analytical model and shall specify procedures for relocating or to replacing public infrastructure away from these locations, where feasible.

✓Complies with Fla. Stat. §163.3178(2)(f)(2), (3), (6)

Policy 4-1.17.6 Limit Redevelopment in CHHA

The City shall limit redevelopment in areas within the CHHA shown by the Local Mitigation Strategy to be particularly susceptible to repeated damage. Criteria for assessing redevelopment potential for these properties shall be addressed within the Post Disaster Redevelopment Plan, to be prepared pursuant to Policy 4-1.22.3.

✓Complies with Fla. Stat. §163.3178(2)(f)(2), (3), (6)

Policy 4-1.17.7 Implement General Hazard Mitigation by Restricting the Density/Intensity of Development.

Maximum densities and intensities within the CHHA shall be restricted by the densities and intensities established pursuant to Policy 1-3.2.7, in conjunction with open space requirements also established by Policy 1-3.2.7, of the Future Land Use Element of this Plan. Based upon the findings of the adopted Local Mitigation Strategy, within the Land Development Regulations, densities and intensities permitted within locations indicated by the Local Mitigation Strategy may further be restricted.

✓Complies with Fla. Stat. §163.3178(2)(f)(2), (3), (6)

V. CONCLUSION AND REFERENCES

This report’s authors recommend that, if the above proposed text amendments are adopted, the City of Marathon will fully comply with the new requirements established by Fla. Stat. §163.3178(2)(f). Not only will the City’s Conservation and Coastal Element comply with Florida law, but would lay the foundation for future changes that would enhance the resiliency of the City of Marathon’s real property and structures to flooding events and potentially increase the City’s CRS rating.

Appendix A  
Resources

As a reference for the proposed changes herein, communities who have already adopted, or are in the process of adopting similar comprehensive plan text amendments to comply with the new “Peril of Flood” requirements of Sect. 163.3178(2)(f), include:

- The Town of Jupiter
- The City of St. Augustine
- Nassau County
- The City of Tampa
- The City of Boynton Beach
- The City of Jacksonville
- The City of Satellite Beach

Publications that provide information about the FEMA FIRP and CRS, as well as information on resilient construction techniques for consideration when reviewing or updating land development regulations. The City may want to consider creating its own publication or information on its website for the public similar to the City of Miami Beach’s publication.

Title	Link
Are You Interested in Building Resiliently? (City of Miami Beach public outreach document).	<a href="https://www.miamibeachfl.gov/wp-content/uploads/2018/02/2.Fact-Sheet-Are-you-Interested-in-Building-Resiliently.pdf">https://www.miamibeachfl.gov/wp-content/uploads/2018/02/2.Fact-Sheet-Are-you-Interested-in-Building-Resiliently.pdf</a>
Building Science Branch, Publications and Training Courses. (FEMA P-787, 5 <sup>th</sup> ed., Sept. 2016). (See Page 41 – provides links to Flood Publications that provide resilient construction and	<a href="https://www.fema.gov/media-library-data/1476460097383-a315a523cd7a30a1c737b7dd6388400d/FEMA_P787_2016-508.pdf">https://www.fema.gov/media-library-data/1476460097383-a315a523cd7a30a1c737b7dd6388400d/FEMA_P787_2016-508.pdf</a>

re-construction techniques, strategies, and principles).	
Earning Points Towards Savings: Charleston County's CRS Efforts Pay Off for Residents.	<a href="https://www.fema.gov/media-library-data/1458929223895-422368999fc05199fe5b9fb4fd0506dc/17-Earning-Points-Towards-Savings_web.pdf">https://www.fema.gov/media-library-data/1458929223895-422368999fc05199fe5b9fb4fd0506dc/17-Earning-Points-Towards-Savings_web.pdf</a>
A Guide to Flood-Resistant Building Terms. (With links to case studies on effective resilient design). New York Times, January 2017.	<a href="https://www.nytimes.com/2017/01/25/nyregion/a-guide-to-flood-resistant-building-terms.html">https://www.nytimes.com/2017/01/25/nyregion/a-guide-to-flood-resistant-building-terms.html</a>
FEMA – Mitigation Best Practices; Brazoria County Adopts Freeboard Regulation in Combatting Flood Loss	<a href="https://www.fema.gov/media-library-data/1441822561672-254e32a71d6e179b8d32ecfbbb1358d4/08-Brazoria-County-Adopts-Freeboard-Regulation-in-Combatting-Flood-Loss_web.pdf">https://www.fema.gov/media-library-data/1441822561672-254e32a71d6e179b8d32ecfbbb1358d4/08-Brazoria-County-Adopts-Freeboard-Regulation-in-Combatting-Flood-Loss_web.pdf</a>
FEMA - Flood Best Practices	<a href="https://www.fema.gov/media-library-data/1428341274550-533f7424dd8f45f30e997b2f2b593658/Flooding-BPs.pdf">https://www.fema.gov/media-library-data/1428341274550-533f7424dd8f45f30e997b2f2b593658/Flooding-BPs.pdf</a>

Appendix B  
Draft Ordinance

**Sponsored By:** Lindsey  
**Planning Commission Public Hearing Date:** May 20, 2019  
**City Council Public Hearing Date:** May 28, 2019  
**Enactment Date:**

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2019-10**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING THE CITY'S COMPREHENSIVE PLAN TO MODIFY OR ADD TO ITS CONSERVATION AND COASTAL ELEMENT, GOALS OBJECTIVES, AND POLICIES TO COMPLY WITH FLORIDA STATUTE 163.3178(2)(F), "PERIL OF FLOOD;" INTENDING TO MODIFY, "PURPOSE;" GOAL 4-1, "CONSERVE, MANAGE, USE, AND PROTECT NATURAL AND ENVIRONMENTAL RESOURCES;" POLICY 4-1.3.3, "SURFACE WATER MANAGEMENT AND FLOOD DAMAGE PREVENTION;" AND OBJECTIVE 4-1.17, "MINIMUM COASTAL HAZARDS;" AND INTENDING TO ADD POLICIES TO INCLUDE POLICY 4-1.17.8, "STRATEGIES FOR RESPONDING TO SEA LEVEL RISE;" POLICY 4-1.17.9, "FLOOD-RESISTANT DEVELOPMENT REQUIREMENTS;" POLICY 4-1.17.10, "EXTREME WEATHER EVENT MITIGATION;" AND POLICY 4-1.17.11, "BEST PRACTICES AND MITIGATION STRATEGIES;" AND FINALLY, INTENDING TO MODIFY OBJECTIVE 4-1.22, "REDUCE EXPOSURE TO NATURAL HAZARDS," POLICY 4-1.22.5, "MANAGE REDEVELOPMENT ACTIVITIES; AND POLICY 4-1.22.8, "REGULATE REDEVELOPMENT OF NON-CONFORMING STRUCTURES TO THE REQUIRED BASE FLOOD ELEVATION;" PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY AFTER FINAL ADOPTION BY THE CITY COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon (the "City") has adopted a Comprehensive Plan which has been found to be in compliance by the State Department of Economic Opportunity ("DEO"), pursuant to Chapters 163 and 380, Florida Statutes; and

**WHEREAS**, Florida Senate Bill 1094, also known as the "Peril of Flood Act," was signed into law and became effective in 2015 as Section 163.3178(2)(f), Florida Statute; and

**WHEREAS**, the Peril of Flood Act requires each coastal local government to include a redevelopment component in the coastal management element of its comprehensive plan, and

**WHEREAS**, the Peril of Flood Act specifies six aspects of redevelopment that a coastal management element must address to reduce the risk of flood and encourage a local government's participation in the FEMA Community Rating System; and

**WHEREAS**, the Peril of Flood Act included sea level rise as one of the causes of flood risk that must be addressed in the Coastal Management Element of a Comprehensive Plan; and

**WHEREAS**, the City desires to address the Peril of Flood requirements using the findings and recommendations from Bermello, Ajamil, and Partners and the University of Florida, Levin College of Law Conservation Clinic provided to the City as deliverables under Florida DEP’s Coastal Office “Resilient Coastlines Program Funding” Grant #1816; and

**WHEREAS**, this ordinance addresses the Peril of Flood requirements within the “Conservation and Coastal Element” of the City’s Comprehensive Plan; and

**WHEREAS**, the City Council finds it necessary, desirable, and proper to adopt the amendments to the Goals, Objectives and Policies of the Comprehensive Plan in order to reflect changing conditions, pursuant to Sections 163.3191 and 163.3178(2)(f) Florida Statute.; and

**WHEREAS**, this Ordinance, thus passed at its first reading, shall be transmitted to DEO and sister State Agencies for their coordinated Comprehensive Plan review so as to obtain and receive the DEO Objections, Recommendations, and Comments (ORC) prior to final adoption,

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

~~Strikethrough~~ = deletion      **bold underline** = addition

**SECTION 1.** The above recitals are true, correct, and incorporated herein by this reference.

**SECTION 2.** Amend the Comprehensive Plan, Chapter 4, Conservation and Coastal Element, “Purpose:”

**PURPOSE**

Pursuant to ~~Chapter~~ Sections 163.3177(6)(d)&(g), and 163.3178, F.S., the purpose of the Conservation and Coastal Element is to promote the conservation, use and protection of natural resources as well as to plan for, and where appropriate, restrict development and redevelopment activities where such activities would damage or destroy coastal resources, and protect human life and property ~~and~~ while limiting public expenditures in ~~areas~~ locations that are subject to destruction by natural disaster, high tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea level rise. The Conservation and Coastal Element also includes a redevelopment component that outlines the broad Goals, Objectives and Policy principles that must be used to eliminate inappropriate and unsafe development in the coastal areas when opportunities arise as mandated by Section 163.3178(2)(f), Florida Statutes.

**SECTION 3.** Amend the Comprehensive Plan, Chapter 4, Conservation and Coastal Element, to include Goal 4-1:

## **GOAL 4-1 CONSERVE, MANAGE, USE AND PROTECT NATURAL AND ENVIRONMENTAL RESOURCES**

**It is the goal of the City to conserve, manage, use and protect the natural and environmental resources within the City to ensure continued resource availability and environmental quality and to manage development and redevelopment activities to protect coastal resources, protect human life and property and limit public expenditures in areas subject to destruction by natural disasters, flooding, and sea level rise. §163.3177(6)d.2, §163.3177(6)(g) F.S. & 163.3178(2)(f).**

**SECTION 4.** Amend the Comprehensive Plan, Chapter 4, Conservation and Coastal Element, to include Policy 4-1.3.3:

### **Objective 4-1.3 Protect, Conserve, and Enhance Coastal Resources**

*The City shall protect, conserve and enhance coastal resources, wetlands, water resources, living marine resources, wildlife habitats and other natural resources and the environmental health of Florida Bay, the Atlantic Ocean and all surface and ground waters within its jurisdiction, in order to maintain the economic and social well being of its citizens. The City shall help ensure that the ambient water quality of near shore waters meets or exceeds State standards for Class II Outstanding Florida Waters. §163.3177(6)(d)2.; §163.3177(6)(g)1. And §163.3178(2)(e). F.S.*

\*\*\*

### Policy 4-1.3.3 Surface Water Management and Flood Damage Prevention

The City shall continue to maintain surface water management and flood damage prevention regulations. New development and all redevelopment encroaching into the 100 year floodplain shall incorporate elevation and flood protection measures sufficient to protect against the 100 year flood. The City shall maintain consistency with program policies of the National Flood Insurance Program to ensure that it maintains the highest possible rating within the National Flood Insurance Program's Community Rating System. The City shall monitor and implement new cost effective ~~programs~~ development and redevelopment principles, strategies, and engineering solutions for minimizing flood damage resulting from high tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea level rise. Such ~~programs~~ principles, strategies, and engineering solutions may include modifications to construction setback requirements, ~~or~~ othersite design techniques, as well as upgraded building and construction techniques which include resilient construction techniques and increasing "Freeboard" elevation requirements.

**SECTION 5.** Amend the Comprehensive Plan, Chapter 4, Conservation and Coastal Element, to include Objective 4-1.13 and Policy 4-1.13.1:

### **Objective 4-1.13 Prioritize and Limit Shoreline Uses**

*The City shall prioritize shoreline uses to limit the specific and cumulative impacts of*

*development and redevelopment, enhance coastal resources and ensure the continued economic viability of the City. §163.3177(6)(g), §163.3178(2)(f) F.S. and §163.3178(2)(g) F.S.*

#### Policy 4-1.13.1 Shoreline Uses

The City shall continue to maintain Land Development Regulations to establish shoreline land use priorities. These regulations shall categorize water-dependent and water-related land uses, establish permitting criteria and use priorities. Priority shall be given to water dependent uses over water related. Water-dependent and water-related uses shall take priority over uses that are not water-dependent or -related. In conjunction with the development of these regulations, the City shall:

- a. Identify environmentally suitable waterfront areas, using the most up to date data on sea level rise, and recommend strategies for reserving such areas for water-dependent and water-related development sites consistent with estimated need;
- b. Analyze conflicts among existing shoreline uses and recommend strategies for reducing or eliminating such conflicts;
- c. Identify strategies for encouraging appropriate mixed use development that includes water-dependent and water-related uses and is compatible with existing land uses;
- d. Develop strategies to protect the waterfront sites exhibiting Keys Unique Character;
- e. Complete a survey of all other water-dependent uses; and
- f. Complete an inventory of public access points to the beach or shoreline through public and through private lands.

**SECTION 6.** Amend the Comprehensive Plan, Chapter 4, Conservation and Coastal Element, to include Objective 4-1.17 and adding Policies 4-1.17. 8 through 4-1.17.11:

#### ***Objective 4-1.17 Minimum Coastal Hazards***

*The City shall continue to maintain Land Development Regulations which regulate development and redevelopment activities in a manner that minimizes the danger to life and property occasioned by hurricane events, high tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea level rise. §163.3178(2)(f) & §163.3178(2)(h) F.S.*

#### Policy 4-1.17.8 Strategies for Responding to Sea-level rise

The City will develop strategies for responding to sea-level rise, including consideration of the effects of sea-level rise on potable water sources, saltwater intrusion, septic systems, wastewater treatment facilities and associated systems, the water table, public infrastructure, redevelopment strategies, and affordable housing policies. The City's planning decisions shall consider and utilize the 1-Foot, 2-Foot, and 3-Foot Sea Level Rise planning horizon projections as established by the Southeast Florida Climate Change Compact's "Unified Seal Level Rise Projection" report published in October 2015. Those planning horizons are: 1) short term, by 2030, sea level is projected to rise 6 to 10 inches above 1992 mean sea level, 2) medium term, by 2060, sea level is projected to rise 14 to 34 inches above 1992 mean sea level, 3) long term, by 2100, sea level is projected to rise 31 to 81 inches above 1992 mean sea level.

Policy 4-1.17.9 Flood-resistant Development Requirements

All development and redevelopment in the City will be consistent with or more stringent than the flood-resistant construction requirements in the Florida Building Code and applicable floodplain management regulations set forth in 44 C.F.R. part 60. All new development and redevelopment shall incorporate freeboard of at least three feet over minimum Base Flood Elevation as depicted on current FEMA Flood Insurance Rate Maps. The City shall develop and adopt regulations in its Land Development Code to implement this requirement.

Policy 4-1.17.10 Extreme Weather Event Mitigation

The City shall document and maintain maps depicting the extent of flood inundation from extreme high tides (“king tides”), more frequent severe rainfall events, and newly revealed areas at risk of flooding to efficiently target mitigation efforts.

Policy 4-1.17.11 Best Practices and Mitigation Strategies

The City shall utilize best practices and initiate mitigation strategies to reduce the flood risk in coastal areas that result from high tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea level rise by incorporating into its land development regulations where practical and economically feasible, resilient construction technique requirements, promotion of living shorelines, protection of coastal marsh and mangroves, and use of innovative natural material breakwaters to reduce wave energy.

**SECTION 7.** Amend the Comprehensive Plan, Chapter 4, Conservation and Coastal Element, to include Objective 4-1.22, Policy 4-1.22.5 and Policy 4-1.22.8:

**Objective 4-1.22 Reduce Exposure to Natural Hazards**

*The City shall reduce or eliminate exposure of human life and public and private property to natural hazards resulting from high-tide events, storm surge, flash floods, nuisance flooding, stormwater runoff, and the related impacts of sea-level rise, through establishment and update of a Post Disaster Redevelopment Plan. In addition, the City shall develop local plan components including policies for managing recovery operations through a Recovery Task Force. §163.3178(2)(f) F.S.*

\*\*\*

Policy 4-1.22.5 Manage Redevelopment Activities

The City shall manage unanticipated future redevelopment activities necessitated by hurricane events, high-tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea-level rise or other natural disasters through this Plan, the adopted Land Development Regulations and the City Master Plan. Redevelopment in the City will be consistent with or more stringent than the flood-resistant construction requirements in the Florida Building Code and applicable floodplain management regulations set forth in 44 C.F.R. part 60. Furthermore, in the event that coastal construction control lines become established within the City’s jurisdiction pursuant to Section 161.053, F.S., all construction activities seaward of established coastal construction control lines shall be consistent with Chapter 161, Florida Statutes.



\*\*\*

Policy 4-1.22.8 Regulate Redevelopment of **Non-Conforming** Structures ~~Non-Conforming~~ to the Required Base Flood Elevation

If an existing structure which is non-conforming to the required base flood elevation is substantially damaged (based on the definition in Chapter 161, F.S.) or abandoned, it shall be rebuilt ~~only to the extent that complies with the current Flood Plain Management standards for the affected property.~~ to add freeboard at least three feet over minimum Base Flood Elevation as depicted on current FEMA Flood Insurance Rate Maps. The City shall develop and adopt regulations in its Land Development Code to implement this requirement.

**SECTION 8.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**SECTION 9.** The provisions of this Ordinance constitute a “Comprehensive Plan amendment” as defined by State law. Accordingly, the City Clerk is authorized to forward a copy of this Ordinance to the DCA and other state agencies for review and approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

**SECTION 10.** This Ordinance shall be effective immediately upon approval by Department of Economic Opportunity pursuant to Chapters 163 and 380, Florida Statutes.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA,  
THIS 28<sup>TH</sup> DAY OF MAY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

---

**John Bartus, 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:**

---

David Migut, City Attorney

COUNCIL AGENDA STATEMENT



**Meeting Date:** May 28, 2019  
**To:** Honorable Mayor and Council Members  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

**Agenda Item:** **Resolution 2019-48**, Consideration Of A Request To The City Council Of The City Of Marathon, Florida To Release Funds In The Amount Of \$300,000 To First Tropical Getaways, Inc and Marathon Rentals, LLC; Said Funds Are Held By A Local Attorney Pursuant To Conditions And Requirements Promulgated In Resolutions 2015-123 and 2017-94; The Terms For The Release Of Said Funds Is Similarly Prescribed Under each Development Agreement; And Providing For An Effective Date.

---

**BACKGROUND:**

First Tropical Getaways, Inc and Marathon Rentals, LLC (the “Applicant”) were approved for Development Agreements for the two independent projects memorialized in Resolutions 2015-123 and 2017-94 for the purposes of

1. Securing the ability to construct a total of twelve duplex and quad-plex residences
2. Securing fourteen (14) affordable BPAS residential allocations, and
3. Establishing an In Lieu Payment Credit for current and future Transferrable Building Right (TBR) Transfers; and

The City of Marathon (the “City”) entered into each Development Agreement with the Applicant promulgated in these two Resolutions.

The Applicant has met the terms of all conditions of both Development Agreements as defined in Section IV, “Statutory and Code Requirements,” Subsections B., Duration or Agreement and Submission of Permit Application” and C., “Building Right Allocations.” The Applicant has further applied for, received permits, constructed, and received a Certificate of Occupancy (C.O.) for all fourteen (14) residential units and deed restricted all units as affordable workforce housing units.

The Applicant has previously requested and had released of funds held by the City (\$200,000.00) and those held in escrow (\$200,000.00) by two (2) local attorneys as memorialized in Resolution 2017-39. This amount is the equivalent of transferring twenty (20) TBRs and building two (2) affordable housing units.

The Applicant has currently placed in escrow through one (1) local attorney the amount of \$300,000.00 pursuant to provisions in Section IX, Subsection D. 3, of the Development Agreement. The Applicant, pursuant to the conditions of the Development Agreement described

herein and having met all requirements of the Agreement, has requested release of funds held by these funds. Staff has reviewed the Applicant's request, concurs that the project is complete and that the funds noted above are held in escrow pursuant to the Agreement.

**CONSISTENCY CHECKLIST:**

	Yes	No
1. Comprehensive Plan	<u>  X  </u>	_____
2. Other City Offices	<u>  X  </u>	_____
3. Not applicable_____		

**FISCAL NOTE:**

N/A

Approved by Finance Department

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**RECOMMENDATION:**

Approve Resolution

**CITY OF MARATHON, FLORIDA  
RESOLUTION NO. 2019-48**

**CONSIDERATION OF A REQUEST TO THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA TO RELEASE FUNDS IN THE AMOUNT OF \$300,000 TO FIRST TROPICAL GETAWAYS, INC AND MARATHON RENTALS, LLC; SAID FUNDS ARE HELD BY A LOCAL ATTORNEY PURSUANT TO CONDITIONS AND REQUIREMENTS PROMULGATED IN RESOLUTIONS 2015-123 AND 2017-94; AND THE TERMS FOR THE RELEASE OF SAID FUNDS IS SIMILARLY PRESCRIBED UNDER EACH DEVELOPMENT AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, First Tropical Getaways, Inc and Marathon Rentals, LLC (the “Applicant”) were approved for Development Agreements for the two independent projects memorialized in Resolutions 2015-123 and 2017-94 for the purposes of

1. Securing the ability to construct a total of twelve duplex and quad-plex residences,
2. Securing fourteen (14) affordable BPAS residential allocations, and
3. Establishing an In Lieu Payment Credit for current and future Transferrable Building Right (TBR) Transfers; and

**WHEREAS**, the City of Marathon (the “City”) entered into each Development Agreement with the Applicant promulgated in these two Resolutions; and

**WHEREAS**, the Applicant has met the terms of all conditions of both Development Agreements as defined in Section IV, “Statutory and Code Requirements,” Subsections B., Duration or Agreement and Submission of Permit Application” and C., “Building Right Allocations;” and

**WHEREAS**, the Applicant has further applied for, received permits, constructed, and received a Certificate of Occupancy (C.O.) for all fourteen (14) residential units and deed restricted all units as affordable workforce housing units; and

**WHEREAS**, the Applicant has previously requested and had released of funds held by the City (\$200,000.00) and those held in escrow (\$200,000.00) by two (2) local attorneys as memorialized in Resolution 2017-39. This amount is the equivalent of transferring twenty (20) TBRs and building two (2) affordable housing units; and

**WHEREAS**, the Applicant has currently placed in escrow through one (1) local attorney the amount of \$300,000.00 pursuant to provisions in Section IX, Subsection D. 3, of the Development Agreement; and

**WHEREAS**, the Applicant, pursuant to the conditions of the Development Agreement described herein and having met all requirements of the Agreement, has requested release of funds held in escrow by the law firm of Patrick M. Stevens, P.A.; and

**WHEREAS**, staff confirms that funds are held in escrow pursuant to the Agreement in the amount of \$300,000.000; and

**WHEREAS**, staff has reviewed the Applicant's request, concurs that the project is complete and that the funds noted above are held in escrow pursuant to the Agreement,

**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 authorizes the release of funds held in escrow by the firm of Patrick M. Stevens, P.A. at the following address and in the amount of \$300,000.00.

Patrick M. Stevens, Esq.  
Law Offices of Patrick M. Stevens, P.A.  
5701 Overseas Hwy. Suite 1  
Marathon, FL 33050

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

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 28<sup>th</sup> DAY OF MAY 2019.**

**CITY OF MARATHON, FLORIDA**

\_\_\_\_\_  
**John Bartus, Mayor**

**AYES:  
NOES:  
ABSENT:  
ABSTAIN:**

**ATTEST:**

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

(City Seal)

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

\_\_\_\_\_  
David Migut, City Attorney

Sponsored by: Puto

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2015-123**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST FOR A DEVELOPMENT AGREEMENT FOR RERR UNLIMITED, LLC, PURSUANT TO CHAPTER 102, ARTICLE 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED "DEVELOPMENT AGREEMENTS," FOR THE DEVELOPMENT OF A PROPERTY WITH TWO AFFORDABLE HOUSING UNITS; WITH PROPOSED DENSITIES OF APPROXIMATELY 25 AFFORDABLE HOUSING UNITS PER ACRE; LOCATED AT 4043 LOUISA STREET; WHICH IS LEGALLY DESCRIBED AS BLOCK 2 NORTHERN HALF OF LOT 1 MARATHON BEACH SUBDIVISION, SECTION 10, TOWNSHIP 66 SOUTH, RANGE 32 EAST, MARATHON, MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBER 00337120-000000, NEAREST MILE MARKER 50 AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, RERR Unlimited LLC, (The "Applicant") filed an Application on August 13, 2015 for a Development Agreement pursuant to Chapter 102, Article 8 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant proposes to develop two affordable housing residential units; and

**WHEREAS**, City staff reviewed the Applicant's request for a Development Agreement determining that the Applicant's project proposal was in compliance with the City's Comprehensive Plan and Land Development Regulations (LDRs) and further that there was no substantial impact on the City's Level of Service (LOS); and

**WHEREAS**, on the 8<sup>th</sup> day of October, 2015, 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 13<sup>th</sup> and 27<sup>th</sup> days of October, 2015 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 RERR, 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 27<sup>th</sup> day of October, 2015.

**THE CITY OF MARATHON, FLORIDA**



Chris Bull, Mayor

AYES: Kelly, Zieg, Keating, Senmartin, Bull  
NOES: None  
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:**



David Migut, City Attorney

Parcel I.D. Nos.:  
RE# 00337120-000000  
(Space reserved/or recording)

DEVELOPMENT AGREEMENT FOR  
RERR UNLIMITED  
MARATHON, FLORIDA

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the CITY OF MARATHON, FLORIDA, a Florida municipal corporation (herein referred to as "City"), and RERR UNLIMITED, a Delaware limited liability company (herein referred to as "Owner"), pursuant to Chapter 102, Article 8, of the Land Development Regulations of the City of Marathon, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes, and is binding on the Effective Date set forth herein.

WITNESSETH:

**WHEREAS**, Owner is the owner of real property located in Marathon, Monroe County, Florida, more particularly described in Exhibit "A" (boundary survey), attached hereto and incorporated herein by reference; and

**WHEREAS**, Owner has submitted a proposal to develop and construct two (2) affordable residential units; and

**WHEREAS**, the construction and maintenance of affordable housing within the City of Marathon is a desirable goal and will serve to preserve workforce housing in the face of economic gentrification; and

**WHEREAS**, the economic development afforded by this Agreement is in the best interest of both parties to this Agreement as well as the general public in the City of Marathon; and

**WHEREAS**, the Marathon Planning Commission held a public hearing on the 8<sup>th</sup> day of October, 2015, to consider this Agreement, and recommended approval of this Agreement; and

**WHEREAS**, the City Council of Marathon held public hearings on the 13<sup>th</sup> and 27<sup>th</sup> days of October, 2015, to consider this Agreement; and

**WHEREAS**, the City has determined that this Agreement is in the public interest and is consistent with its policy to encourage the redevelopment of Marathon in a manner that provides and preserves affordable housing and will further the health, safety, and welfare of the residents of Marathon; and

**WHEREAS**, the State of Florida has awarded the City of Marathon sufficient allocations of market rate and affordable housing to allow the Owner an award of two (2) affordable unit

entitlements that will allow completion of the project; and the city accepts a \$20,000 in lieu of payment for the transfer of Market Rate TBR's, and

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**I. RECITALS.**

The foregoing Recitals are a part of this Agreement on which the parties have relied and are incorporated into this Agreement by reference.

**II. PURPOSES OF AGREEMENT.**

The purposes of this Agreement are as follows:

- A. To encourage redevelopment of the Property consistent with Objective 1-3.4 in the City's Comprehensive Plan.
- B. To secure the ability to construct Owner's proposed development of two (2) single family residences.
- C. To secure two (2) affordable building allocations.
- D. To establish a In Lieu Payment Credit for future TBR Transfers.

**III. DEFINITIONS.**

For the purposes of this Agreement, all terms shall have the definitions as found in the Land Development Regulations (LDRs), Comprehensive Plan and in Chapter 163, Florida Statutes, or in other applicable Florida Statutes, and if not defined in the Code, Plan, or Statute, the term shall be understood by its usual and customary meaning.

**IV. STATUTORY AND CODE REQUIREMENTS.**

The parties recognize the binding effect of the Florida Local Government development Agreement Act, Sections 163.3221, et seq., Florida Statutes, as to the form and content of this Agreement and in accordance therewith set forth and agree to the following:

- A. Legal Description and Ownership. RERR Unlimited, is the Owner of the Property, which Property is the subject of this Agreement, as described in Exhibit B, Boundary and Topographic Survey. There are no other legal or equitable owners of the subject property known to the parties to this Agreement.
- B. Duration of Agreement and Submission of Permit Application. Owner shall have a period of twelve (12) months from the Effective Date of this Agreement to submit an application for a

building permit with the City to commence construction of the project contemplated herein. The duration of this Agreement shall be five (5) years from the effective date. Should the owner not commence construction within eighteen (18) months of the effective date of this Agreement, then this Agreement shall be null and void and the allocation of affordable housing contained herein shall be null and void and said allocation shall revert to the City. This Agreement may be renewed or extended as provided herein. If the Owner has not complied with the terms of this section, this Agreement may be subject to termination as provided herein.

C. Building Right Allocations. The City recognizes that the subject property currently possesses two (2) market rate entitlements (which Owner intends to transfer). The City hereby assigns to the project the two (2) affordable residential housing allocations.

1. The city shall ~~establish and track~~ "In Lieu Transfer Credits" ~~under the terms of this Development Agreement, as requested by Owner,~~ which shall accrue ~~increase~~ at a rate of \$1 of Credit for every \$1 Dollar of Project Residential Construction Costs, Documented In Lieu Transfer Credits, reviewed and approved by the City, may be and applied against future or ~~completed~~ pending Market Rate TBR transfers to Owner Property.

2. For the purposes of this Development Agreement, one (1) "In Lieu Transfer Credit," allowing the transfer of one (1) market rate TBR by the applicant, shall be equivalent to \$20,000 of construction cost as noted above. ~~In Lieu payment shall be \$20,000 for the duration of Developers Agreement or all credits applied whichever occurs first.~~

3. No In Lieu Transfer Credit shall be available for the transfer of market rate TBRs until the relevant affordable housing unit from which the credit is accruing has been constructed and a Certificate of Occupancy (CO) has been issued. In lieu of this requirement, the sum of \$20,000 may be placed in escrow running in favor of the City should the affordable unit not be finished and not receive a CO.

Affordable Housing is defined in Section 110.00 of the City's LDRs as: "Dwelling units which contain less than or equal to 1,800 square feet of habitable space meet 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 City; and are restricted in perpetuity or as allowed by law for a minimum 50-year period to use by households that meet the requirements of at least one (1) of the following income categories: Very-low, low, median, moderate or middle. The requirements for these income categories are as provided in Chapter 104, "Specific Use Regulations". "

It is agreed that the affordable housing shall comply with the Moderate-income standards or Middle-income standards as set forth in Section 104.03 (d) and 104.03 (e).

Moderate-income is defined as: "A household, whose income (excluding that of fulltime students under 18 years of age) does not exceed 120 percent of the median adjusted gross annual income for households within the county;"

Middle-income is defined as: "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;"

The standard is based on 120 percent adjusted median income (AMI) per annual HUD AMI and Federal Housing Finance Corporation (FHFC) rent charts for 2-bedroom and 3-bedroom units for Monroe County. For illustrative purposes, current rent charts for HUD and FHFC are attached hereto for reference as Exhibits 1 and 2.

D. Sale or Lease. Owner agrees to strictly comply with all the requirements of the City of Marathon regarding sale or leasing of the affordable housing units (general affordable pool as defined in Section 107.06(c) to be constructed as part of the project. In addition Owner anticipates establishing the affordable units as rental units, but in the event that the affordable units are sold, individually or in bulk, the affordable housing deed restrictions required by the City shall be imposed with a duration of fifty (50) years from the date of the issuance of the certificate of occupancy.

E. Density and Building Height. The property is located in a Residential Medium Zoning District as defined in the Land Development Regulations. Maximum building height permitted on the property is thirty-seven (37) feet.

F. Public Facilities, Concurrency, Impact Fees. The following identifies the public facilities that are required that will service the development of the Property: who shall provide the facilities; what new facilities, if any, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of development.

1. Potable Water. Domestic potable water is provided by the Florida Keys Aqueduct Authority.
2. Electric Service. Electric service is provided by Florida Keys Electric Service.
3. Solid Waste. Solid waste service is provided by Marathon Garbage Service or its successors and assigns, as determined by the City Council.
4. Fire Service. Fire service is provided by the Marathon Fire Department.
5. Wastewater, Sewage Collection and Disposal. Wastewater and sewage collection, treatment, and disposal shall be done by connection to the City sewer system.
6. Public Recreational Facilities. Public recreational facilities are available near the property in the Marathon Community Park and the Jesse Hobbs Park.
7. Stormwater Management. There shall be no direct discharge to the City of Marathon Nearshore Waters.
8. Fire Protection. Fire sprinklers will be installed if required by City Code.

9. Concurrency. All public facilities, with the exception of Wastewater, 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. Wastewater capacity is available through the Central Sewer system for the City of Marathon.

10. Impact Fees. The City shall waive the impact fees for the affordable units allowed pursuant to Section 111.02 F.3(f).

G. Reservations or Dedications of Land for Public Purposes. These are not contemplated or necessary for this development.

H. Local Development Permits. The following City development approvals are required for the development of the Property.

1. This Development Agreement.

2. Building and related construction permits for the structures, land clearing and landscaping. At any time any building permit is applied for, Owner shall demonstrate compliance with all applicable Federal, State and Municipal Disabled Access Regulations in effect at the time of application.

3. Local Permits for Stormwater Runoff. Nothing in this Agreement shall preclude the parties from applying conditions in addition to Federal, State and regional permits, by mutual agreement, during final site plan review or permitting.

I. Finding of Consistency. By entering into this Agreement, the City finds that the development permitted or proposed herein is consistent with and furthers the Comprehensive Plan, applicable LDRs and the Principles for Guiding Development set forth in Section 380.0552(7), Florida Statutes.

J. Mutual Cooperation. City and Owner agree to cooperate fully and assist each other in the performance of the provisions of this Agreement.

K. Development to Comply with Permits and City Comprehensive Plan and Code Provisions. The redevelopment shall be developed in accordance with all required permits and in accordance with all applicable provisions of the City's Comprehensive Plan and Land Development Regulations in effect on the effective date of this Agreement. No Certificate of Occupancy for an individual building shall be issued until all plans for that building are approved by the City and Owner has complied with all conditions in permits issued by the City and the other regulatory entities for that building. The City agrees that any permits or certificates of occupancy to be issued by the City shall not be unreasonably withheld or delayed

L. Compliance With Permit Terms, Conditions, and Restrictions Not Identified Herein. The failure of this Agreement to address a particular permit, condition, term, or restriction shall not

relieve Owner of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

M. Laws Governing.

1. For the duration of this Agreement, all approved development of the Property shall comply with and be controlled by this Agreement and provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Agreement, inclusive of text changes and rezoning approved by the City Council on the date of the City's approval of this Agreement, if any. The parties do not anticipate that the City will apply subsequently adopted laws and policies to the Property, except as expressly provided in this Agreement

2. Pursuant to Section 163.3233, Florida Statutes, 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 development 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 accurate information supplied by Owner. Provided, however, nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

3. If state or federal laws enacted after the Effective Date of this Agreement preclude any party's compliance with the terms of this Agreement, it shall be modified as 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 law.

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

1. As provided in Section 163.3237, Florida Statutes, this Agreement may be amended by mutual consent of the parties to this Agreement or by their successors in interest Amendment under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.

2. As provided in Section 163.3237, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirement in Section 163.3225, Florida Statutes, and applicable LORs. 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 fifteen (15) days before each public hearing in a newspaper of general circulation and readership in Marathon, 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.

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

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

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

O. Breach of Agreement and Cure Provisions.

1. If the City concludes that there has been a material breach in this Agreement by Owner, prior to revoking this Agreement, the City shall serve written notice on Owner identifying the term or condition the City contends has been materially breached and providing Owner with ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Agreement. Each of the following events shall be considered a material breach of this Agreement:

- a. Failure to comply with the provisions of this Agreement;
- b. Failure to comply with terms and conditions of permits issued by the City or other regulatory entity for the development authorized by this Agreement.

2. If Owner concludes that there has been a material breach in the terms of this Agreement by the City, Owner shall serve written notice on the City identifying the term or condition Owner contends has been materially breached and providing the City with ninety (90) days from the date of receipt of the notice to cure the breach, or negotiate an amendment to this Agreement. The following events shall be considered a material breach of this Agreement:

- a. Failure to comply with the provisions of this Agreement;



b. Failure to timely process any application for Site Plan approval or other development authorized by this Agreement.

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

4. Notwithstanding any other provisions of this Development Agreement to the contrary, neither party hereto shall be deemed to be in default under this Development Agreement where delay in the construction or performance of the obligations imposed by this Development Agreement are caused by war, revolution, labor strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions, embargoes, litigation (excluding litigation between the City and the Owner), tornadoes, hurricanes, tropical storms or other severe weather events, or any other causes beyond the control of such party. The time of performance hereunder, as well as the term of this Development Agreement, shall be extended for the period of any forced delays or delays caused or resulting from any of the foregoing causes. The Owner must submit evidence to the City's reasonable satisfaction of any such delay.

P. 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 anyone of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Services as certified or registered mail, return receipt requested, postage prepaid; or (c) by deposit with an overnight express delivery service with a signed receipt required Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

TO OWNER:  
Manager  
RERR Unlimited  
P. O. Box 07384  
Fort Myers, FL 33919  
(239) 267-4804

TO THE CITY:  
City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
(305) 743-0033

Q. Annual Report. On each anniversary date of the Effective Date of this Agreement, Owner shall provide the City with a report identifying (a) the amount of development authorized by this Agreement that has been completed- (b) the amount of development authorized by this Agreement that remains to be completed, and (c) any changes to the plan of development 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.

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

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

T. Assignment. This Agreement may not be assigned without the written consent of the parties, which consent shall not be unreasonably withheld.

U. 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.

V. 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 validity of the remaining provisions of this Agreement

W. Applicable Laws. 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

X. Litigation/Attorneys Fees; Venue; Waiver of Right to Jury Trial. As between the City and Owner, in the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorney's fees. This includes, but is not limited to~ reimbursement for reasonable attorney's 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 THIS AGREEMENT.

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

Z. 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.

A.A. 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 this Agreement.

B.B. 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.

C.C. Recording; Effective Date. The Owner shall record this Agreement in the Public Records of Monroe County, Florida, within fourteen (14) days after the date the last party signs 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 at the Department of Economic Opportunity, Division of Community Planning, 107 Madison Street, Room 22, Tallahassee, Florida 32399 by hand delivery or 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 and received by the Owner or his agents. Owner shall also provide a copy of the recorded Agreement to the City at 9805 Overseas Highway, Marathon, Florida 33050, within the same time period. This Agreement shall become effective thirty (30) days after the date the State Land Planning Agency receives its copy pursuant to Section 163.3239, Florida Statutes.

D.D. 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 have set their hands and seals on the day and year below written. Signed, sealed, and delivered in the presence of:

INTENITONALLY BLANK

WITNESSES:

OWNER  
RERR UNLIMITED

[Signature]  
Wit. #1 - Signature

By: [Signature]  
Name: Michael D. Aranda  
Title: Operating Manager

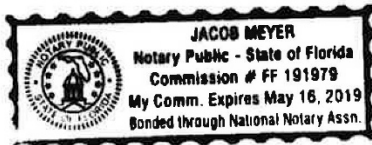
Yari Dominguez  
Printed Name of Wit. #1

[Signature]  
Wit. #2 - Signature

Jacob Meyer  
Printed Name of Wit. #2

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me on this 23<sup>rd</sup> day of November, 2015, by Michael D. Aranda, as Manager of RERR Unlimited, who is personally known to me or who produced \_\_\_\_\_ as identification, and who did/did not take an oath.



[Signature]  
Notary Public, State of Florida  
My commission expires:

On the 27 day of October, 2015, The City Council of the City of Marathon approved this Agreement by Resolution No. 2015-103.

ATTEST:  
[Signature]  
City Clerk

CITY OF MARATHON  
By: [Signature]  
Mayor

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

[Signature]  
David Migut, City Attorney

LAW OFFICES OF  
**THOMAS D. WRIGHT**

CHARTERED  
874 OVERSEAS HIGHWAY  
POST OFFICE BOX 800308

MARATHON, FLORIDA 33050-0308  
TELEPHONE (308) 743-8118  
FAX (308) 743-8188  
E-MAIL: [tdw@tdwlaw.com](mailto:tdw@tdwlaw.com)

FLORIDA BAR BOARD  
CERTIFIED REAL ESTATE ATTORNEY

THOMAS D. WRIGHT

July 7, 2015

Mr. Michael Aranda  
RERR Unlimited  
8885 Parkway, Suite 2180  
Ft. Myers, FL 33919


Dear Mike:

Relative to your purchase of the Marathon lot, please find enclosed the closing documents as follows:

- 1) Title Policy #7230809-93672850 issued through Chicago Title Insurance Company in the amount of \$45,000.00.
- 2) Warranty Deed which has been recorded in Official Records 2722, Page 2468 of the Public Records of Monroe County, Florida.

Should you have any questions on the enclosures or if I can be of further assistance, please do not hesitate to contact me.

Very truly yours,



Thomas D. Wright

/mmb  
Enclosures

4/5/11

3/5/11  
18.30  
323.50

Doc# 2014335 02/03/2015 11:40AM  
Filed & Recorded in Official Records of  
MONROE COUNTY RMY HERVILIN

Prepared by and return to:  
Thomas D. Wright  
Attorney at Law  
Law Offices of Thomas D. Wright Chartered  
Post Office Box 506309  
Marathon, FL 33950  
305-743-8118  
File Number: 14-517  
Will Call No.:

02/02/2015 11:40AM  
DGED DOC STAMP CL: Kry: \$315.00

Doc# 2014335  
Bk# 2722 Pg# 2468

Parcel Identification No. 00337120-000000

(Space Above This Line For Recording Date)

### Warranty Deed

(STATUTORY FORM - SECTION 689.02, F.S.)

This Indenture made this 21st day of January, 2015 between Paradise Financial Mortgage Fund 1, LLC, a Florida Limited Liability company whose post office address is 910 Grinnel Street, Key West, FL 33040 of the County of Monroe, State of Florida, grantor\*, and RERR Unlimited, a Delaware limited liability company whose post office address is of the County of , State of , grantee\*,

Witnesseth that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in Monroe County, Florida, to-wit:

North 1/2 of Lot 1, Block 2, Re-Subdivision of a part of Block 2, and all of Block 5, MARATHON BEACH, according to the Plat thereof, recorded in Plat Book 2, page 21 of the Public Records of Monroe County, Florida.

and said grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

\* "Grantor" and "Grantee" are used for singular or plural, as context requires.

In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.

DoubleTimes

Signed, sealed and delivered in our presence:

Doc# 2014335  
Bk# 2722 Pg# 2488

*William L. Lopez*  
Witness Name: William L. Lopez  
*Stephen W. Petro*  
Witness Name: STEPHEN W. PETRO

Paradise Financial Mortgage Fund I, LLC, a Florida limited liability company

By: *Robert K. Henkel*  
Robert K. Henkel, Managing Member

State of Florida  
County of Monroe

The foregoing instrument was acknowledged before me this 31st day of January, 2015 by Robert K. Henkel, Managing Member of Paradise Financial Mortgage Fund I, LLC, a Florida limited liability company, on behalf of said firm. He/she  is personally known or  has produced a driver's license as identification.

[Notary Seal]



*Tina Masters*  
Notary Public  
Printed Name: TINA MASTERS  
My Commission Expires: JUNE 30, 2018

MONROE COUNTY  
OFFICIAL RECORDS

EXHIBIT B  
Request for Return of Escrow



# *Rerr Unlimited LLC*

1222 SE 47<sup>th</sup> St, Ste 330 Cape Coral, FL 33904  
Office 239-267-4804 – fax 239-257-3445

March 27 2017

City of Marathon  
9805 Overseas Hwy  
Marathon, FL 33050

RE: Development Agreement for RERR UNLIMITED, LLC


Pursuant to Resolution 2015-123, RERR Unlimited LLC requests the release of monies being held by the city and other entities. As required by resolution 2015-123 The Certificate of Occupancy is attached hereto. As such, RERR Unlimited LLC has met all the obligations and conditions as required by the Resolution 2015-123 and kindly requests the release/approval to release from others the following amounts:

<u>Address / Name</u>	<u>TBR Number</u>	<u>City Held</u>
Peter Jay Ave	140091	\$20,000
850 84 <sup>th</sup> St Ocean	100021	\$20,000
16 Manowar Dr	70051	\$20,000
1135 74 <sup>th</sup> St Ocean	150074	\$20,000
Boherquez	70050	\$20,000
424 Calle Limon	140001	\$20,000
Fisherman's Point Association	140096	\$40,000
530/534 11 <sup>th</sup> St	100017	\$20,000
<u>928 W 75<sup>th</sup> St Ocean</u>	<u>14-0011</u>	<u>\$20,000</u>
<i>Total Requested</i>		<i>\$200,000</i>

<u>Address / Name</u>	<u>TBR Number</u>	<u>By Others</u>
1135 74 <sup>th</sup> St ocean	100021	\$20,000
Overseas Properties LLC	150043	\$160,000
<u>234 49<sup>th</sup> St</u>	<u>80049</u>	<u>\$20,000</u>
<i>Total Requested</i>		<i>\$200,000</i>

Thank you in advance for your assistance and please let me know if anything additional is needed to process this request.

Kindly



Michael Aranda  
Managing Member

EXHIBIT C  
City Affordable Housing Revenues

A11110  
 Date 5/10/2017  
 Time 2:34 PM

CITY OF MARATHON  
 Budgetary Posting Journal

Account Description		Account Number								
Date	Mo/Yr	Transaction Description	Trans Number	(T)	Ven/Cus	(T)	Type	Transaction	Debits	Credits
AFFORDABLE HOUSING FEE IN LIEU		105-329-101								
10/6/2008	10/2008	AFFORD HOUSE/BOCC PUMPOUT REIMB/PHONE REIMB	6622	D			CR	Revenue	0.00	60,000.00
9/30/2008	12/2008	ACCRUE AFFORDABLE HOUSING FEE FROM E GRECO					CR-RV	Revenue	0.00	(60,000.00)
9/30/2008	12/2008	ACCRUE AFFORDABLE HOUSING FEE FROM E GRECO					CR-RV	Revenue	0.00	(60,000.00)
9/30/2008	12/2008	ACCRUE AFFORDABLE HOUSING FEE FROM E GRECO					CR	Revenue	0.00	60,000.00
10/29/2009	10/2009	DEP JOHN WOLFE TBR 170 W 63RD	8243	D			CR	Revenue	0.00	20,000.00
12/23/2009	12/2009	MARATHON INN RES2008-61 AFFORDABLE HOUSING	8408	D			CR	Revenue	0.00	2,000.00
9/15/2014	09/2014	WALDERA PA TRUST TBR 1010 PETER JAY	16595	D			CR	Revenue	0.00	20,000.00
2/26/2015	02/2015	T WRIGHT TRUST/TBR 1342 7TH ST O	17407	D			CR	Revenue	0.00	20,000.00
5/13/2015	05/2015	T WRIGHT TRUST - TBR 1135-74TH ST	17728	D			CR	Revenue	0.00	20,000.00
5/13/2015	05/2015	T WRIGHT TRUST - TBR 16 MAN-O-WAR	17729	D			CR	Revenue	0.00	20,000.00
5/13/2015	05/2015	T WRIGHT TRUST - TBR 1010 PETER JAY #2	17730	D			CR	Revenue	0.00	20,000.00
5/13/2015	05/2015	T WRIGHT TRUST - TBR 850 - 84TH ST	17731	D			CR	Revenue	0.00	20,000.00
8/11/2015	08/2015	MARLIN BAY YACHT CLUB - RES 2015-81	18141	D			CR	Revenue	0.00	750,000.00
3/17/2016	03/2016	JOHN WOLFE TRUST - 866 105TH ST OCEAN	19129	D			CR	Revenue	0.00	20,000.00
4/29/2016	04/2016	ACCURATE MOTORS - 250 GULF TERRACE	19293	D			CR	Revenue	0.00	20,000.00
6/6/2016	06/2016	RERR - TBR 201 20TH ST OCEAN	19516	D			CR	Revenue	0.00	40,000.00
6/6/2016	06/2016	PYATT - TBR 230 41ST ST BLDG 3	19517	D			CR	Revenue	0.00	20,000.00
8/29/2016	08/2016	T WRIGHT TRUST - TBR 424 CALLE LIMON	19858	D			CR	Revenue	0.00	20,000.00
10/31/2016	10/2016	T WRIGHT TRUST - TBR 530/534 11TH ST	20121	D			CR	Revenue	0.00	20,000.00
10/31/2016	10/2016	T WRIGHT TRUST - TBR 928 75TH ST	20122	D			CR	Revenue	0.00	20,000.00
TOTALS: ORIG-EST= .00		EST-TRANSFERS= .00	TOT-REV= 1,052,000.00							

THOMAS D. WRIGHT

LAW OFFICES OF  
**THOMAS D. WRIGHT**  
CHARTERED  
8711 OVERSEAS HIGHWAY  
POST OFFICE BOX 500309  
MARATHON, FLORIDA 33050-0309  
TELEPHONE (305) 743-8118  
FAX (305) 743-8198  
E-MAIL tom@keysclosings.com

FLORIDA BAR BOARD  
CERTIFIED REAL ESTATE ATTORNEY

May 10, 2017

City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050

In Re: RERR

This is to confirm that our office is holding the sum of \$160,000.00 regarding the TBR's purchase from the Overseas Lounge Property. This is also to confirm that if a check in the amount of \$20,000.00 issued to the City is returned to our office regarding the Coldiron TBR, that sum is also in our account.

Very truly yours,



Thomas D. Wright

/mmmb



Patrick M. Stevens, P.A.  
(305) 745-5281  
(786) 294-6645 Fax

5710 Overseas Hwy., Suite 1  
Marathon, FL 33061  
pstevens@flloyalattorney.com  
mstevens@flloyalattorney.com  
admin@flloyalattorney.com

May 11, 2017

The City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050

Re: Money held in escrow for Transferable Building Rights for Anglers at Sombbrero

To whom it may concern,

This letter is to confirm that our office is holding \$20,000.00 in escrow for the sale of TBR# 080049, Fisher and Renner to Mike Aranda.

Respectfully,

A handwritten signature in blue ink that reads 'Mari Martin-Vegre'.

Mari Martin-Vegre  
Legal Assistant to  
Patrick M. Stevens

COUNCIL AGENDA STATEMENT

Meeting Date: May 28, 2019  
To: Honorable Mayor and Council Members  
From: Dan Saus, Utility Director  
Through: Charles Lindsey, City Manager



Agenda Item: **Resolution 2019-49**, Authorizing A “Piggy-Back” Purchase Pursuant To The City’s Purchasing Policies And Procedures And Approving The Purchase of a 600 KW Trailer Mounted Emergency Generator, Under The Florida Sheriff’s Bid FSA18-VEH16.0 Specification #79 From Mid Florida Diesel, In An Amount Not To Exceed \$208,785.00; Authorizing The City Manager To Enter Into Agreements In Connection Therewith, And Expending Budgeted Funds; And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

The FY 2018-19 budget includes a purchase of a trailer mounted generator for support of Wastewater Utilities for the Utilities Department. This Agenda item authorizes the purchase of a 600 KW trailer mounted emergency generator in an amount not to exceed \$208,785.00. This generator will be for department use in the case that one our permanent generators fails or is damaged as happened in Irma and on as needed basis. This unit will be able to power any of our facilities as needed.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	_____	_____
2. Other –Sewer Mandate	_____	_____

FISCAL NOTE:

The adopted FY19 Wastewater Utility budget includes appropriations of \$350,000 for a trailer mounted 750KW 460V 3 phase generator.

RECOMMENDATION:

Approve Resolution

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-49**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING A “PIGGY-BACK” PURCHASE PURSUANT TO THE CITY’S PURCHASING POLICIES AND PROCEDURES AND APPROVING THE PURCHASE OF A 600KW TRAILER MOUNTED EMERGENCY GENERATOR UNDER THE FLORIDA SHERIFF’S BID FSA18-VEH16.0 SPECIFICATION #79 FROM MID FLORIDA DIESEL, IN AN AMOUNT NOT TO EXCEED \$208,785.00; AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENTS IN CONNECTION THEREWITH, AND EXPENDING BUDGETED FUNDS WHICH WILL BE SUBMITTED FOR REIMBURSEMENT FROM THE FDEP GRANT; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, pursuant to Ordinance 2015-04, the City adopted purchasing policies and procedures (the “Purchasing Policies and Procedures”) after determining that it was fiscally prudent and in the City’s best interest to adopt policies and procedures for City employees and officials regarding the acquisition and purchase of contractual services, equipment, goods, and other similar types of services; and

**WHEREAS**, the Purchasing Policies and Procedures allow the City Council to enter into contracts for materials, supplies, equipment, public improvements or services without competitive bidding by utilizing existing contract terms and prices entered into by other local, state or federal governmental authorities that followed a competitive bidding procedure leading to the award of the contract in question; and

**WHEREAS**, the City desires to take advantage of the Florida Sheriffs’ Association Contract No. FSA18-VEH16.0 Spec. #79 from Mid Florida Diesel, to purchase a 600KW trailer mounted emergency generator in an amount not to exceed \$208,785.00, which will be submitted for reimbursement from the FDEP Grant.

**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 authorizes the City Manager to enter into an agreement and expend budgeted funds on behalf of the City for the purchase of a 600 KW trailer mounted emergency generator in an amount not to exceed \$208,785.00.

**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 28<sup>th</sup> DAY OF MAY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

---

**Mayor John Bartus**

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**ATTEST:**

---

Diane Clavier, City Clerk

(City Seal)

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

---

David Migut, City Attorney



# MID FLORIDA DIESEL



2215 HIGHWAY 60 EAST  
BARTOW, FL. 33830

**(863) 519-0107 FAX (863) 519-0109**

[WWW.MIDFLORIDADIESEL.COM](http://WWW.MIDFLORIDADIESEL.COM)

May 15<sup>th</sup>, 2019

## Proposal

For

### 600KW Trailer Mounted Generator

Florida Sheriff Association FSA 18-VEH16.0 Specification #79

City Of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050

ATTN: Dan Saus

Mid Florida Diesel submits the following proposal for the project:

**Blue Star MODEL: (Qty - 1) – VD600-02-FT4 Trailer**

(Quote # 05022019-JA)Rev# 2

**GENERATOR: 600kW, 750 kVA**

**VOLTAGE: 2-Position Selector Board (208v &, 480-volt 3 phase)**

**ENGINE: Volvo TWD1673GE, Tier 4 Diesel Engine, 60 Hz, 1800 RPM**

#### Standard Features Included:

Microprocessor based, digital readout control system.

Engine vitals monitored by LCD display: Oil pressure, Running time, Engine temperature, Safety shutdowns (HWT, OC, OS, OP, LWL), Battery voltage, Generator AC voltage, AC amperage, Frequency.

Additional Features: Oil drain extension, Battery with rack & cable, Battery Charger, Critical muffler, Vibration isolation pads, Water heater, Fuel solenoid valve

#### Selected Model Features Included:

130degree rise

Isochronous Governor + / - .25%

Permanent Magnet

EPA Tier 4 Certified

#### CONTROL PANEL:

#### DGC-2020 Control Panel (Expanded)

Blue Star DGC-2020 Microprocessor Based Gen-Set Controller

Mounted Facing Left from Generator End (Unless Specified Otherwise)

Standard Features: Low Oil Pressure, High Coolant Temp, Overspeed, Overcrank Shutdowns

Emergency Stop Pushbutton, Audible Alarm Buzzer with Silencing Switch

Optional Features Include: Generator Protection (Undervoltage, Overvoltage, Underfrequency, Overfrequency, Overcurrent)

#### Accessories:

Control Panel Battery Disconnect Switch

Voltage Adjust Control

ATS hook-up Box

**ENCLOSURE Level 3 (Sound Attenuated Enclosure) Powder Coated .090 Aluminum**

Rugged and Durable 150 MPH Wind Rated Enclosure with Exhaust Hood  
Pitched Roof for Increased Structural Integrity and Improved Watershed  
Punched Intake with Baffle and Punched Exhaust Openings  
Keyed Alike Lockable Doors with Draw Down Latches and Stainless Steel Component Hinges  
Additional 1.5" Thick Polydamp Type D Acoustical Foam (PAF)  
Structural Steel Base with Mounting and Lifting Holes  
Includes Vibration Mounts to Isolate Unit from Base Rail

**Accessories:**

150 mph Wind Load Rated

**COOLING SYSTEM:**

Unit Mounted Radiator

**Accessories:**

Low Coolant Level Shutdown

Plumbed to Bulkhead Fitting in Base

**CIRCUIT BREAKER:**

2000 Amp 100% Rated 3 Pole 600 Volt Breaker

Mounted & Wired in a NEMA 1 Enclosure

**Accessories:**

**BATTERY:**

Lead Acid Battery, with rack

**BLOCK HEATER: 5000W 240VAC**

-20F w/ Isolation valves

**Included Accessories:**

Mounted and Wired to Terminal Strip

**VIBRATION ISOLATION: Vibration**

Pads Isolator

**BATTERY CHARGER:**

24 volt, 3amps

**Accessories:**

Mount Battery Charger and Wire DC (1)

**MUFFLER:**

Critical Grade Muffler Mounted inside enclosure

**Included Accessories:**

**TRAILER: T30000-3 Triple Axle**

Electric brakes with breakaway

3" Pintle Eye, Safety Chains with 3/8" hooks

Front Stabilizing Jack Set

Adjustable Rear Stabilizers (2 ea.)

Integral single wall fuel tank up to **500 gallon.**

DOT wiring enclosed in 1/2" steel conduit

Direct reading manual fuel gauge

7-Pin RV Style trailer plug

Fuel fill and vent

White spoke wheels

Fuel pick-up and return ports

Mechanical fuel gauge

Low level fuel alarm

Mounting rails- genset specific

Primed and painted semi-gloss black

Torsion Axles

**MISCELLANEOUS:**

- Oil and Coolant Drain lines extended outside of enclosure with valves
- 120v Power receptacles for jacket water heater and battery charger
- Paint – White
- Testing - Standard Commercial Test
- Manual One (1) Instruction Manual
- One (2) Year / 2000 Hour Limited Warranty
- Test Acceptance Run by Factory Trained Representative

**NOTES:**

1. This proposal is our interpretation of your requirement and includes only the items listed. Should there be other requirements or specifications, we will re-quote accordingly.
2. Units are shipped wet to include lube oil and a 50/50 water and anti-freeze mix unless otherwise noted in this quotation.
3. Factory will confirm deliver at the time of order.
4. CANCELLATION: Shall be subject to applicable fees but no less than 20% of the purchase price
5. EXCLUSIONS: Installation of any kind, Offloading of Generator, Placement of Generator on Pad, Fuel, Tank, Piping, and Insulation.
6. Freight/Factory Start-up included in the price.
7. Terms: Net -30

**Proposal Summary:**

<b>FSA Spec #079 Standard Blue Star Mobile (500KW) VD500-02-FT4 Trailer Bid:</b>	<b>\$178,500.00</b>
<b><u>FSA ADDER</u> Option-Upgrade to an 600KW (Order Code: VD600-02FT4 Trailer):</b>	<b><u>\$16,480.00</u></b>
<b>Sub-Total Price:</b>	<b>\$194,980.00*</b>

*ADDER: Enclosure-Inside LED Lighting (2 Ea.) Spec #079 (Order Code: DC Lighting-Interior):	<b>\$950.00</b>
*ADDER: Enclosure-Outside LED Lighting (2 Ea.) Spec #079(Order Code: DC Lighting-Exterior):	<b>\$950.00</b>
*ADDER: One each 50amp, 120/240vac, 1 ph., twist lock receptacle Spec #79 (Order Code-1-50amp):	<b>\$410.00</b>
*ADDER: One each 30amp, 120/240vac, 1 ph., RV type receptacle. Spec #79 (Order Code: 1-30amp):	<b>\$410.00</b>
*ADDER: Two each 20amp, 120/240vac, 1ph, duplex GFI receptacle Spec #079 (Order Code: 2-20amp):	<b>\$500.00</b>
*ADDER: Load Distribution Center for Single Point Accessory Wiring Spec #079(Order Code: LD-Trailer):	<b><u>\$960.00</u></b>
<b>Sub Total:</b>	<b>\$4,180.00*</b>

*ADDER: 22 ea. Camloc Power Connection -Spec #079 (Order Code 30% discount off List Price)	
	List Price: <b>\$13,750.00</b>
	Subtract 30%: <b><u>-\$4,125.00</u></b>
	<b>Sub-Total: \$9,625.00*</b>

**Total Sale Price: \$208,785.00\***  
Sales Tax Not Included

\*\*\*\*\*

Quoted prices do not include Federal, State or Local taxes which may be applicable. Quoted prices include normal testing, packaging and instructional literature. Special testing, packaging, additional instructional literature, parts, provisioning lists or prints are not included, and prices will be quoted separately.

Quotation Firm for 30 Day(s)  
Delivery Notes: 16-18 Weeks

BY: Joe Antonini

Joe Antonini  
Mid Florida Diesel, Inc.

COUNCIL AGENDA STATEMENT

Meeting Date: May 28, 2019  
To: Honorable Mayor and Council Members  
From: Dan Saus, Utility Director  
Through: Charles Lindsey, City Manager



Agenda Item: **Resolution 2019-50**, Authorizing A “Piggy-Back” Purchase Pursuant To The City’s Purchasing Policies And Procedures And Approving The Purchase of a Ford F250 Utility Body, Under The Florida Sheriff’s Bid 2019-120716-NAF From Alan Jay Fleet Sales, In An Amount Not To Exceed \$36,589.50; Authorizing The City Manager To Enter Into Agreements In Connection Therewith, Appropriating And Expending Budgeted Funds; And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

The FY 2018-19 budget anticipated the replacement and/or purchase of Equipment/Vehicles for support of Wastewater Utilities for the Utilities Department. This Agenda item authorizes the purchase a 2019 Ford F250 Super cab XL, with utility body in an amount not to exceed \$36,589.50. This truck will replace our oldest unit in service.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	_____	_____
2. Other –Sewer Mandate	_____	_____

FISCAL NOTE:

The adopted FY19 Wastewater Utility Fund budget includes appropriations of \$38,000 for the replacement of a vehicle.

RECOMMENDATION: Approve Resolution

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-50**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING A “PIGGY-BACK” PURCHASE PURSUANT TO THE CITY’S PURCHASING POLICIES AND PROCEDURES AND APPROVING THE PURCHASE OF A 600KW TRAILER MOUNTED EMERGENCY GENERATOR UNDER THE FLORIDA SHERIFF’S BID 2019-120716-NAF FROM ALAN JAY FLEET SALES, IN AN AMOUNT NOT TO EXCEED \$36,589.50; AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENTS IN CONNECTION THEREWITH, APPROPRIATING AND EXPENDING BUDGETED FUNDS WHICH WILL BE SUBMITTED FOR REIMBURSEMENT FROM THE FDEP GRANT; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, pursuant to Ordinance 2015-04, the City adopted purchasing policies and procedures (the “Purchasing Policies and Procedures”) after determining that it was fiscally prudent and in the City’s best interest to adopt policies and procedures for City employees and officials regarding the acquisition and purchase of contractual services, equipment, goods, and other similar types of services; and

**WHEREAS**, the Purchasing Policies and Procedures allow the City Council to enter into contracts for materials, supplies, equipment, public improvements or services without competitive bidding by utilizing existing contract terms and prices entered into by other local, state or federal governmental authorities that followed a competitive bidding procedure leading to the award of the contract in question; and

**WHEREAS**, the City desires to take advantage of the Florida Sheriffs’ Association Contract No. 2019-120716-NAF from Alan Jay Fleet Sales, to purchase a 2019 Ford Super cab utility body in an amount not to exceed \$36,589.50, which will be submitted for reimbursement from the FDEP Grant.

**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 authorizes the City Manager to enter into an agreement and expend budgeted funds on behalf of the City for the purchase of 2019 Ford Super cab utility body in an amount not to exceed \$36,589.50.

**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 28<sup>th</sup> DAY OF MAY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

---

**Mayor John Bartus**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

---

Diane Clavier, City Clerk

(City Seal)

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

---

David Migut, City Attorney



Awarded Contract

Call Us first, for all of your Fleet Automotive, & Light Truck needs.

Quote

PHONE (800) ALANJAY (252-6529)		DIRECT 863-402-4234	WWW.ALANJAY.COM	20014-2
Corporate Office	2003 U.S. 27 South Sebring, FL 33870	MOBILE 863-991-4693	Mailing Address	P.O. BOX 9200 Sebring, FL 33871-9200
		FAX 863-402-4221		

ORIGINAL QUOTE DATE  
5/14/2019

# QUICK QUOTE SHEET

REVISED QUOTE DATE  
5/14/2019

REQUESTING AGENCY	MARATHON, CITY OF		
CONTACT PERSON	DAN SAUS	EMAIL	<a href="mailto:SAUSD@CI.MARATHON.FL.US">SAUSD@CI.MARATHON.FL.US</a>
PHONE	305-289-5009	MOBILE	FAX

<b>SOURCEWELL (FORMERLY NJPA) CONTRACT # 2019-120716-NAF</b>	<b>www.NationalAutoFleetGroup.com</b>
--	---------------------------------------

MODEL	X2A	MSRP	\$35,685.00
2019 FORD F-250 SUPER CAB 2WD XL 8' BED 164" WB (X2A 600A)			
<b>CUSTOMER ID</b>		<b>NJPA PRICE</b>	<b>\$24,873.00</b>
<b>BED LENGTH</b>	<b>56" CA</b>		

\*\* All vehicles will be ordered white w/ darkest interior unless clearly stated otherwise on purchase order.

FACTORY OPTIONS	DESCRIPTION	
Z1 AS	OXFORD WHITE WITH STEEL VINYL 40/20/40 SPLIT BENCH SEAT	\$0.00
996 44S	6.2L EFI V8 ENGINE WITH 6-SPEED AUTOMATIC TRANSMISSION.	\$0.00
52B	ELECTRIC BRAKE CONTROLLER	\$265.00
TT	FACTORY TRAILER TOW HITCH WITH 4/7 WIRE CONNECTOR STANDARD ON MY17+ SD.	\$0.00
90L	POWER WINDOWS, LOCKS, REMOTE KEYLESS, POWER GLASS MIRRORS WITH MANUAL TELESCOPING FEATURE.	\$910.00
17S	STX APPEARANCE PACKAGE -inc: STX fender badge, Tires: LT275/65Rx18E BSW A/S, Chrome Rear Step Bumper, Chrome Front Bumper, Wheels, 18" Painted Cast Aluminum, bright hub covers/center ornaments, Radio: AM/FM Stereo/Single-CD/MP3, 6 speakers, Bright Chrome Hub Covers and Center ornaments, Bright Chrome Grille, Steering Wheel-Mounted cruise control	\$1,680.00
66D	Pickup Box Delete -inc: Deletes tie-down hooks, tailgate and 7/4 pin connector, Incomplete vehicle package - requires further manufacture and certification by a final stage manufacturer, In addition, Ford urges manufacturers to follow the recommendations of the Ford Incomplete Vehicle Manual and the Ford Truck Body Builder's Layout Book (and applicable supplements), Spare Wheel, Tire, Carrier & Jack Delete, Rear Bumper Delete *CREDIT* Requires further manufacture and certification by a final stage manufacturer.	(\$350.00)
872	FACTORY REAR VIEW CAMERA & PREP KIT WITH ELECTROCHROMIC MIRROR, CAMERA SHIPS LOOSE FOR INSTALLATION AFTER BODY INSTALL.	\$410.00
512	SPARE TIRE, WHEEL, CARRIER & JACK Spare tire is standard equipment; becomes optional when 66D pickup box delete is ordered. (Req's 66D)	\$290.00

CONTRACT OPTIONS	DESCRIPTION	FACTORY OPTIONS	
CAMERA	INSTALL FACTORY ORDERED REAR VISION CAMERA IN SERVICE BODY		\$145.00
D2B	DRAW BAR 2 5/16" BALL PIN AND CLIP		\$38.50
FS-4LED	Federal Signal 4-Corner LED System Split Amber/White. LED's will be mounted in headlamps and tail lamps where possible, alternate mounting locations may be substituted.		\$555.00
DTF 4 TRK	DEEP TINT FILM 4 DOORS AND BACK GLASS EXT/CREW CAB TRUCK		\$225.00
USOB	HD UTILITY BODY SPRAY ON BED LINER IN CARGO AREA ONLY		\$585.00
K696J	KNAPHEIDE SRW 8' UTILITY BODY PAINTED WHITE TO MATCH CAB OF TRUCK. (Includes 2nd Stage MSO, Weight Slip, & Completed Vehicle Certification)		\$6,070.00
MJYAAAAP	WHELEN MINI JUSTICE (AMBER) LIGHT BAR		\$788.00
7 & 4 WIRE	7 wire RV Plug with 4-wire flat combination plug		\$105.00
NO-TEMP	TEMP TAG NOT REQUESTED, CUSTOMER WILL HANDLE THEIR OWN TAG WORK.		\$0.00

**CONTRACT OPTIONS \$8,511.50**

TRADE IN

TOTAL COST

\$36,589.50

YES WE TAKE TRADE INS ~~~ ASK ABOUT MUNICIPAL FINANCING ~~~

\$0.00

TOTAL COST LESS TRADE IN(S)

QTY

1

\$36,589.50

Estimated Annual payments for 60 months paid in advance: \$8,048.81

Municipal finance for any essential use vehicle, requires lender approval, WAC.

Comments

VEHICLE QUOTED BY

Scott Wilson

FLEET SALES MANAGER

[scott.wilson@alanjay.com](mailto:scott.wilson@alanjay.com)

"I Want to be Your Fleet Provider"

I appreciate the opportunity to submit this quotation. Please review it carefully. If there are any errors or changes, please feel free to contact me at any time.  
I am always happy to be of assistance.





# ALAN JAY FLEET

SCOTT WILSON | 863-402-4234 | SCOTT.WILSON@ALANJAY.COM

[Fleet] 2019 Ford Super Duty F-250 SRW (X2A) XL 2WD SuperCab 8' Box (5)



Note:Photo may not represent exact vehicle or selected equipment.

## Window Sticker

### SUMMARY

[Fleet] 2019 Ford Super Duty F-250 SRW (X2A) XL 2WD SuperCab 8' Box

MSRP:\$35,685.00

Interior:Medium Earth Gray, HD Vinyl 40/20/40 Split Bench Seat

Exterior 1:Oxford White

Exterior 2:No color has been selected.

Engine: 6.2L 2-Valve SOHC EFI NA V8 Flex-Fuel

Transmission: TorqShift-G 6-Spd Auto w/SelectShift

### OPTIONS

CODE	MODEL	MSRP
X2A	[Fleet] 2019 Ford Super Duty F-250 SRW (X2A) XL 2WD SuperCab 8' Box	\$35,685.00
<b>OPTIONS</b>		
17S	STX Appearance Package	\$1,690.00
44S	Transmission: TorqShift-G 6-Spd Auto w/SelectShift	\$0.00
512	Spare Tire, Wheel, Carrier & Jack	\$295.00
52B	Trailer Brake Controller	\$270.00
585	Radio: AM/FM Stereo/MP3	Inc.

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Data Version: 8323. Data Updated: May 12, 2019 9:44:00 PM PDT.



# ALAN JAY FLEET

SCOTT WILSON | 863-402-4234 | SCOTT.WILSON@ALANJAY.COM

[Fleet] 2019 Ford Super Duty F-250 SRW (X2A) XL 2WD SuperCab 8' Box (5)

600A	Order Code 600A		\$0.00
648	Wheels: 18" Sparkle Silver Painted Cast Aluminum	Inc.	
66D	Pickup Box Delete		(\$625.00)
872	Rear View Camera & Prep Kit		\$415.00
90L	Power Equipment Group		\$915.00
996	Engine: 6.2L 2-Valve SOHC EFI NA V8 Flex-Fuel		\$0.00
AS	Medium Earth Gray, HD Vinyl 40/20/40 Split Bench Seat		\$0.00
TCH	Tires: LT275/65Rx18E BSW A/S	Inc.	
X37	3.73 Axle Ratio		\$0.00
Z1	Oxford White		\$0.00

<b>SUBTOTAL</b>	<b>\$38,645.00</b>
Adjustments Total	\$0.00
Destination Charge	\$1,595.00
<b>TOTAL PRICE</b>	<b>\$40,240.00</b>

## FUEL ECONOMY

Est City:N/A

Est Highway:N/A

Est Highway Cruising Range:N/A

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Data Version: 8323. Data Updated: May 12, 2019 9:44:00 PM PDT.



# ALAN JAY FLEET

SCOTT WILSON | 863-402-4234 | SCOTT.WILSON@ALANJAY.COM

[Fleet] 2019 Ford Super Duty F-250 SRW (X2A) XL 2WD SuperCab 8' Box (5)

## Standard Equipment

### Mechanical

- Engine: 6.2L 2-Valve SOHC EFI NA V8 Flex-Fuel -inc: Flex-Fuel badge on fleet orders only (STD)
- Transmission: TorqShift-G 6-Spd Auto w/SelectShift (STD)
- 3.73 Axle Ratio (STD)
- 50-State Emissions System
- Transmission w/Oil Cooler
- Rear-Wheel Drive
- 72-Amp/Hr 650CCA Maintenance-Free Battery w/Run Down Protection
- 157 Amp Alternator
- Class V Towing Equipment -inc: Harness, Hitch and Trailer Sway Control
- 3880# Maximum Payload
- GVWR: 10,000 lb Payload Package
- HD Shock Absorbers
- Front Anti-Roll Bar
- Firm Suspension
- Hydraulic Power-Assist Steering
- 34 Gal. Fuel Tank
- Single Stainless Steel Exhaust
- Front Suspension w/Coil Springs
- Leaf Rear Suspension w/Leaf Springs
- 4-Wheel Disc Brakes w/4-Wheel ABS, Front And Rear Vented Discs, Brake Assist and Hill Hold Control

### Exterior

- Wheels: 17" Argent Painted Steel -inc: painted hub covers/center ornaments (STD)
- Tires: LT245/75R17E BSW A/S (4) (STD)
- Regular Box Style
- Steel Spare Wheel
- Full-Size Spare Tire Stored Underbody w/Crankdown
- Clearcoat Paint
- Black Front Bumper w/Black Rub Strip/Fascia Accent and 2 Tow Hooks
- Black Rear Step Bumper

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Data Version: 8323. Data Updated: May 12, 2019 9:44:00 PM PDT.



# ALAN JAY FLEET

SCOTT WILSON | 863-402-4234 | SCOTT.WILSON@ALANJAY.COM

[Fleet] 2019 Ford Super Duty F-250 SRW (X2A) XL 2WD SuperCab 8' Box (5)

## Exterior

Black Side Windows Trim and Black Front Windshield Trim

Black Door Handles

Black Manual Side Mirrors w/Manual Folding

Manual Extendable Trailer Style Mirrors

Fixed Rear Window

Light Tinted Glass

Variable Intermittent Wipers

Aluminum Panels

Black Grille

Front License Plate Bracket

Tailgate Rear Cargo Access

Reverse Opening Rear Doors

Manual Tailgate/Rear Door Lock

Fully Automatic Aero-Composite Halogen Daytime Running Lights Preference Setting Headlamps w/Delay-Off

Cargo Lamp w/High Mount Stop Light

## Entertainment

Radio: AM/FM Stereo -inc: digital clock and 4 speakers

Fixed Antenna

1 LCD Monitor In The Front

## Interior

4-Way Driver Seat -inc: Manual Recline and Fore/Aft Movement

4-Way Passenger Seat -inc: Manual Recline and Fore/Aft Movement

60-40 Folding Split-Bench Front Facing Fold-Up Cushion Rear Seat

Manual Tilt/Telescoping Steering Column

Gauges -inc: Speedometer, Odometer, Oil Pressure, Engine Coolant Temp, Tachometer, Transmission Fluid Temp, Engine Hour Meter, Trip Odometer and Trip Computer

Fixed Rear Windows

Manual Air Conditioning

HVAC -inc: Underseat Ducts

Illuminated Locking Glove Box

Interior Trim -inc: Chrome Interior Accents

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[Fleet] 2019 Ford Super Duty F-250 SRW (X2A) XL 2WD SuperCab 8' Box (5)

## Interior

- Full Cloth Headliner
- Urethane Gear Shift Knob
- HD Vinyl 40/20/40 Split Bench Seat -inc: center armrest, cupholder, storage and driver's side manual lumbar
- Day-Night Rearview Mirror
- Passenger Visor Vanity Mirror
- 2 12V DC Power Outlets
- Full Overhead Console w/Storage and 2 12V DC Power Outlets
- Front Map Lights
- Fade-To-Off Interior Lighting
- Full Vinyl/Rubber Floor Covering
- Underhood And Pickup Cargo Box Lights
- Instrument Panel Bin and Covered Dashboard Storage
- Manual 1st Row Windows
- Systems Monitor
- Trip Computer
- Outside Temp Gauge
- Analog Display
- Manual Adjustable Front Head Restraints and Manual Adjustable Rear Head Restraints
- Securilock Anti-Theft Ignition (pats) Engine Immobilizer
- Air Filtration

## Safety-Mechanical

- Electronic Stability Control (ESC) And Roll Stability Control (RSC)
- ABS And Driveline Traction Control

## Safety-Exterior

- Side Impact Beams

## Safety-Interior

- Dual Stage Driver And Passenger Seat-Mounted Side Airbags
- Tire Specific Low Tire Pressure Warning
- Dual Stage Driver And Passenger Front Airbags w/Passenger Off Switch

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# ALAN JAY FLEET

SCOTT WILSON | 863-402-4234 | SCOTT.WILSON@ALANJAY.COM

[Fleet] 2019 Ford Super Duty F-250 SRW (X2A) XL 2WD SuperCab 8' Box (5)

## Safety-Interior

Mykey System -inc: Top Speed Limiter, Audio Volume Limiter, Early Low Fuel Warning, Programmable Sound Chimes and Beltminder w/Audio Mute

Safety Canopy System Curtain 1st And 2nd Row Airbags

Outboard Front Lap And Shoulder Safety Belts -inc: Rear Center 3 Point and Height Adjusters

Back-Up Camera

## WARRANTY

Basic Years: 3

Basic Miles/km: 36,000

Drivetrain Years: 5

Drivetrain Miles/km: 60,000

Corrosion Years: 5

Corrosion Miles/km: Unlimited

Roadside Assistance Years: 5

Roadside Assistance Miles/km: 60,000

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COUNCIL AGENDA STATEMENT



Meeting Date: March 28, 2019  
To: Honorable Mayor & Members of the City Council  
From: Dan Saus, Utilities Manager  
Through: Charles Lindsey, City Manager

Agenda Item: **Resolution 2019-51**, Awarding contract for the Service Area 3 to 4 Influent Re-Pump Design and Construction Engineering Services and Area 3 Pre-Treatment Construction Engineering Services To Weiler Engineering Corporation.; Approving Contract in the Amount of \$110,770.00; Authorizing The City Manager To Execute The Contract, Appropriating and Expending Funds On Behalf Of The City; And Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

Pursuant to the provisions contained in the Continuing Services Agreement dated February 7, 2013 between the City of Marathon and Weiler Engineering Corporation wishes to contract for engineering services as described in Exhibit “A” Work Authorization No. PSA 2019-03-WW for the “Service Area 3 to 4 Influent Re-Pump Design, Permitting, and Construction Engineering Services and Area 3 Pre-Treatment Construction Engineering Services” dated March 28, 2019.

The Proposal attached as Exhibit “A” details the Scope of Work and cost breakdown for the “Service Area 3 to 4 Influent Re-Pump Design, Permitting, and Construction Engineering Services and Area 3 Pre-Treatment Construction Engineering Services”. City staff, consisting of the Utility Director and the Utility Staff, have reviewed the proposal of Weiler Engineering Corporation., and the proposal is reasonable for the work as shown on Exhibit “A” in the amount of \$110,770.00. Weiler Engineering Corporation, has completed other projects successfully for the City in the past. The proposal and subsequent contract will provide engineering design services to complete the work as described in Exhibit “A”. This Work Authorization also includes the CEI services for the inspections and closeout of the project during construction.

The project may be eligible for future ACOE grant funding.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u>X</u>	_____
2. Other – 2010 Sewer Mandate	<u>X</u>	_____
3. Not applicable	<u>X</u>	_____

FISCAL NOTE:

This project was not anticipated during the budget process, approval of the resolution will appropriate funds. This expenditure will be submitted to future ACOE funding, if granted, for reimbursement.

RECOMMENDATION: Approval of Resolution

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-51**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AWARDED A CONTRACT FOR THE SERVICE AREA 3 TO 4 INFLUENT RE-PUMP DESIGN, PERMITTING, AND CONSTRUCTION ENGINEERING SERVICES AND AREA 3 PRE-TREATMENT CONSTRUCTION ENGINEERING SERVICES. TO WEILER ENGINEERING CORPORATION; APPROVING PROJECT AGREEMENT IN THE NOT TO EXCEED TOTAL AMOUNT OF \$110,770.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND APPROPRIATE AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon (the “City”) and Weiler Engineering Corporation. (the “Engineer”) have entered into a continuing services agreement for Professional Engineering Services in February of 2013; and

**WHEREAS**, work authorization No. WW 2019-03,” (the “Project Agreement”) contains the scope of work to provide Service Area 3 to 4 Influent Re-Pump Design and Construction Engineering Services and Area 3 Pre-Treatment Construction Engineering Services (the “Project”). The Work Authorization also includes CEI services for construction inspections and closeout of the project. Dated May 28, 2019; and

**WHEREAS**, the City staff wish to enter into this agreement, which will enable the City to bid and construct the Service Area 3 to 4 Influent Re-Pump Design and Construction Engineering Services and Area 3 Pre-Treatment Construction Engineering Services;

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

**Section 1.** The foregoing recitals are true and correct and are incorporated herein by this reference.

**Section 2.** The Project Agreement attached hereto as Exhibit “A”, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to sign the Project Agreement and expend budgeted funds 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 28<sup>th</sup> DAY OF MAY 2019.**

**THE CITY OF MARATHON, FLORIDA**

---

**John Bartus, 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:**

---

David Migut, City Attorney

**EXHIBIT "A"**  
**PROJECT SPECIFIC AGREEMENT**

**Service Area 3 to 4 Influent Re-Pump Design,  
Permitting and Construction Engineering Services and  
Area 3 Pretreatment Construction Engineering  
Services**

PSA 2019-03-WW

**PROJECT SPECIFIC AGREEMENT**  
**Between**  
**THE CITY OF MARATHON, FLORIDA**  
**And**  
**Weiler Engineering Corporation.**  
**For**

**Service Area 3 to 4 Influent Re-Pump Design, Permitting and Construction Engineering Services and Area 3 Pretreatment Construction Engineering Services**

Pursuant to the provisions contained in the “Continuing Services Agreement” between the City of Marathon, Florida (the “City”) and Weiler Engineering Corporation, (the “Consultant”) dated February 14, 2017; this Project Specific Agreement authorizes the Consultant to provide the services as set forth below:

**SECTION 1. SCOPE OF SERVICES**

1.1 The CONSULTANT shall provide engineering services to the CITY for the Project as described in the “Project Description” included in Exhibit “1.”

1.2 The “Scope of Services and Project Schedule” and tasks to be provided by the CONSULTANT for this Project are those services and tasks as included in Exhibit “1”.

1.3 The CITY may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes must be contained in a written change order executed by the parties in accordance with the provisions of the Continuing Services Agreement, prior to any deviation from the terms of the Project Agreement, including the initiation of any extra work.

**SECTION 2. DELIVERABLES**

2.1 As part of the Scope of Services and Project Schedule, the Consultant shall provide to the City the following Deliverables as included in Exhibit “2”.

- Signed Sealed force main civil plans
- Signed sealed force main structural plans
- Signed sealed force main electrical plans
- Signed sealed force main technical specification
- Signed sealed force main FDEP and FDOT permit application packages
- Force main and Area 3 Pretreatment Construction inspection daily reports
- Force main and Area 3 Pretreatment contract closeout documents

### **SECTION 3. TIME OF PERFORMANCE/DAMAGE**

3.1 **Commencement.** The CONSULTANT'S services under this Project Agreement and the time frames applicable to this Project Agreement shall commence upon the date provided in a written Notification of Commencement ("Commencement Date") provided to the CONSULTANT from the CITY. The CONSULTANT shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. CONSULTANT must receive written notice from the City Manager prior to the beginning the performance of services.

3.2 **Contract Time.** Upon receipt of the Notification of Commencement, the CONSULTANT shall commence services to the CITY on the Commencement Date, and shall continuously perform services to the CITY, without interruption, in accordance with the time frames set forth in the "Project Schedule," a copy of which is attached and incorporated into this Agreement as Exhibit "3". The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the Project or the date of actual completion of the Project, whichever shall last occur, shall constitute the Contract Time.

3.3 **Liquidated Damages.** Unless otherwise excused by the CITY in writing, in the event that the CONSULTANT fails to meet to the contract time for completion of services as determined by the Project Schedule, the CONSULTANT shall pay to the CITY the sum of dollars identified below per day for each and every calendar day unexcused delay beyond the completion date, plus approved time extensions, until completion of the project: \$       N/A       per day. The CONSULTANT may claim extension if the factors involved are not under their direct control.

Any sums due and payable hereunder by the CONSULTANT shall be payable, not as a penalty, but as liquidated damages representing and estimate at or before the time of executing this Agreement. When the CITY reasonably believes that completion will be inexcusably delayed, the CITY shall be entitled, but not required, to withhold from any amounts otherwise due the CONSULTANT an amount then believed by the CITY to be adequate to recover liquidated damages applicable to such delays. If and when the CONSULTANT overcomes the delay in achieving completion, or any part thereof, for which the CITY has withheld payment, the CITY shall promptly release to the CONSULTANT those funds withheld, but no longer applicable, as liquidated damages.

3.4 All limitations of time set forth in this Agreement are of the essence.

### **SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION**

4.1 **Compensation.** Total not to exceed amount for this Work Authorization is \$ [OR, IF HOURLY, "CITY AGREES TO PAY CONSULTANT COMPENSATION AT CONSULTANT'S HOURLY RATES, UP TO A MAXIMUM AMOUNT NOT TO EXCEED **\$ 110,770.00.**

4.2 **Reimbursable Expenses.** The following expenses are reimbursable at their actual cost: travel and accommodations, long distance telephone calls, facsimile, courier

services, mileage (at a rate approved by the CITY), photo and reproduction services. All document reproductions are also reimbursable, at a rate approved by the CITY.

## **SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT**

### **5.1 Invoices**

5.1.1 **Hourly Not To Exceed Rate.** CONSULTANT shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner. These invoices shall identify the nature of the work performed, the personnel performing the work, the time worked and the total billing in accordance with the Payment Schedule set forth in Exhibit “3”, to this Project Agreement. Invoices will show the total amount billed against this work authorization and shall not exceed the not-to-exceed amount without authorization from the City. The CITY shall pay CONSULTANT within thirty (30) calendar days of approval by the City Manager of any invoices submitted by CONSULTANT to the CITY.

5.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the CITY for payment to the CONSULTANT is disputed, or additional backup documentation is required, the CITY shall notify the CONSULTANT within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The CONSULTANT shall provide the CITY with additional backup documentation within five (5) working days of the date of the CITY’S notice. The CITY may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONSULTANT. The CITY, at its sole discretion, may pay to the CONSULTANT the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

5.3 **Suspension of Payment.** In the event that the CITY becomes credibly informed that any representations of the CONSULTANT, provided pursuant to Subparagraph 5.1, are wholly or partially inaccurate, or in the event that the CONSULTANT is not in compliance with any term or condition of this Project Agreement, the CITY may withhold payment of sums then or in the future otherwise due to the CONSULTANT until the inaccuracy, or other breach of Project Agreement, and the cause thereof, is corrected to the CITY’S reasonable satisfaction.

5.4 **Retainage.** The CITY reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due to the CONSULTANT for the design until the design is completed. Said retainage may be withheld at the sole discretion of the City Manager or his/her designee and as security for the successful completion of the CONSULTANT’S duties and responsibilities under the Project Agreement.

5.5 **Final Payment.** Submission of the CONSULTANT’S invoice for final payment and reimbursement shall constitute the CONSULTANT’S representation to the CITY that, upon receipt from the CITY of the amount invoiced, all obligations of the CONSULTANT to others, including its consultants, incurred in connection with the Project, shall be paid in full. The CONSULTANT shall deliver to the CITY all documents requested by the CITY evidencing

payments to any and all subcontractors, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of any and all claims against the CITY by the CONSULTANT.

## **SECTION 6. TERMINATION/SUSPENSION**

6.1 **For Cause.** This Project Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONSULTANT abandons this Project Agreement or causes it to be terminated by the CITY, the CONSULTANT shall indemnify the CITY against any loss pertaining to this termination. In the event that the CONSULTANT is terminated by the CITY for cause and it is subsequently determined by a court by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 6.2 of this Project Agreement and the provision of Section 6.2 shall apply.

6.2 **For Convenience.** This Project Agreement may be terminated by the CITY for convenience upon fourteen (14) calendar days' written notice to the CONSULTANT. In the event of termination, the CONSULTANT shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding subconsultant obligations. The CONSULTANT shall be compensated for all services performed to the satisfaction of the CITY and for reimbursable expenses incurred prior to the date of termination. The CONSULTANT shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of Paragraph 5.1 of this Project Agreement. Under no circumstances shall the CITY make any payment to the CONSULTANT for services which have not been performed.

6.3 **Assignment upon Termination.** Upon termination of this Project Agreement, a copy of all of the CONSULTANT's work product shall become the property of the CITY and the CONSULTANT shall, within ten (10) working days of receipt of written direction from the CITY, transfer to either the CITY or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the CONSULTANT pertaining to this Project Agreement. Further, upon the CITY'S request, the CONSULTANT shall assign its rights, title and interest under any subcontractor's agreements to the CITY.

6.4 **Suspension for Convenience.** The CITY shall have the right at any time to direct the CONSULTANT to suspend its performance, or any designated part thereof, for any reason whatsoever or without reason, for a cumulative period of up to thirty (30) calendar days. If any such suspension is directed by the CITY, the CONSULTANT shall immediately comply with same. In the event the CITY directs a suspension of performance as provided for herein through no fault of the CONSULTANT, the CITY shall pay to the CONSULTANT its

reasonable costs, actually incurred and paid, of demobilization and remobilization, as full compensation for any such suspension.

## **SECTION 7. COMPLIANCE WITH LAW**

7.1 **COMPLIANCE WITH LAWS** – The parties shall comply with all applicable local, state and federal laws and guidelines relating to the services that are subject to this Agreement. Federal regulations apply to all of the City of Marathon contracts using Federal funds as a source for the solicitation of goods and services. The following Federal requirements apply to this Emergency Agreement:

7.2 **ACCESS BY THE GRANTEE, SUBGRANTEE, FEDERAL GRANTOR AGENCY AND COMPTROLLER GENERAL:** The Contractor shall allow access by the grantee, subgrantee, Federal grantor agency and Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions.

7.3 **CLEAN AIR AND WATER ACTS:** The Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1386), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), (Contracts and/or subcontracts, and sub grants of amounts in excess of \$100,00.00).

7.4 **CONTRACT WORK HOURS AND SAFETY STANDARDS:** The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Constructions contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers.)

7.5 **COPELAND ANTI-KICKBACK ACT:** The Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction repair).

7.6 **COPYRIGHTS:** The Grantee is free to copyright original work developed in the course of or under the agreement. FEMA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes. Publication resulting from work performed under this agreement shall include an acknowledgement of FEMA financial support, by granted number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA views.

7.7 **DISADVANTAGED BUSINESS ENTERPRISES (DBE) CONTRACTORS:** The contractor agrees to ensure that Disadvantage Business Enterprises as defined in 49 C.F.R. Part 23, as amended, have the maximum opportunity to participate in the

performance of contracts and this agreement. In this regard, contractor shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 23, as amended, to ensure that the Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. The contractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of federal assisted contracts.

7.8 **ENERGY POLICY AND CONSERVATION ACT:** The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

7.9 **EQUAL EMPLOYMENT OPPORTUNITY:** The Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 C.F.R. Chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).

7.10 **REPORTING:**

7.10.1 **Reports Submission:** Per 44 CFR 13.50, when the appropriate grant award performance period expires, the Grantee shall submit the following documents within 90 days: (1) Financial performance or Progress Report; (2) Financial status Report (SF 269) or outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable); (3) Final request for payment (SF-270) (if applicable); (4) Invention disclosure (if applicable); and (5) Federally-owned property report.

7.10.2 **Reports Acceptance:** FEMA shall review the Grantee reports, perform the necessary financial reconciliation, negotiate necessary adjustments between the Grantee's and FEMA's records, and close grant in writing.

7.11 **Removed**

7.12 **BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352)**—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining



any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**SECTION 8 INCORPORATION OF TERMS AND CONDITIONS OF CONTINUING SERVICE AGREEMENT**

8.1 This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated February 14, 2017 between the parties as though fully set forth herein. In the event that any terms or conditions of this Project Agreement conflict with the Continuing Services Agreement, the provisions of this specific Project Agreement shall prevail and apply.

PURSUANT TO F.S. 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR ANY NEGLIGENCE.

**[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.]**

## **SECTION 9 Term/Time of Performance**

9.1 This Project Specific Agreement shall be effective on the date it is fully executed by all parties and shall continue in full force for 3 year (s) or until completion of the Project, unless otherwise terminated pursuant to the Construction Management Services Agreement or other applicable provisions of this Project Specific Agreement. The City Engineer or Manager, in his sole discretion, may extend the term of this Project Specific Agreement through written notification to the Consultant. Such extension shall not exceed 180 days. No further extensions of this Project Specific Agreement shall be effective unless authorized by the City Engineer or Manager.

9.2 The Consultant's services under this Project Specific Agreement and the time frames applicable to this Project Specific Agreement shall commence upon the date provided in a written Notification of Commencement ("Commencement Date") provided to the Consultant from the City. The Consultant shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. Consultant must receive written notice from the City prior to the beginning the performance of services.

9.3 Upon receipt of the Notification of Commencement, the Consultant shall commence services to the City on the Commencement Date, and shall continuously perform services to the City, without interruption, in accordance with the time frames set forth in the Project Schedule."

## **SECTION 10 Project Records**

10.1 All final plans, documents, reports, studies and other data prepared by the Consultant or a subconsultant will bear the endorsement of a person in the full employ of the Consultant or the subconsultant and duly registered in the appropriate professional category.

10.2 After the City's acceptance of final plans and documents, an electronic copy of the Consultant's or the subconsultant's drawings, tracings, plans and maps will be provided to the City at no additional cost to the City.

10.3 Upon completion of any construction by a contractor on a project assigned to Consultant, the Consultant shall furnish acceptable field verified "record drawings" of the work on full sized prints (and/or electronic data file if requested by the City). The Consultant shall signify, by affixing an appropriate endorsement on every sheet of the record sets that the work shown on the endorsed sheets was reviewed by the Consultant.

10.4 The Consultant shall not be liable for use by the City of said plans, documents, studies or other data for any purpose other than stated in the applicable Project Specific Agreement.

- 10.5 All tracings, documents, data, deliverables, records, plans, specifications, maps, surveys, field survey notes, and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of City, and reproducible copies shall be made available upon request to the City.
- 10.6 All project records shall be maintained by Consultant and made available upon request of the
- 10.7 City at all times for the duration of this Agreement and during the period stated by Florida Records Retention Schedules. During this time period the City Manager or designee have access to and the right to examine and audit any records of the Consultant involving transactions related to this Agreement, including its financial records. The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or designee to any records pertaining to work performed under this Agreement.

## **SECTION 11 Ownership and Access to Public Records.**

- 11.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City.
- 11.2 The Consultant is a "Contractor" as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:
1. Keep and maintain public records required by the City to perform the service.
  2. Upon request from the City Clerk, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
  3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Consultant does not transfer the records to the City.
  4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the City.

- 11.3 “Public Records” is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.
- 11.4 Should the Consultant assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the Consultant.
- 11.5 The Consultant consents to the City’s enforcement of the Consultant’s Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the Consultant shall pay all court costs and reasonable attorney’s fees incurred by the City.
- 11.6 The Consultant’s failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the Consultant shall be grounds for immediate unilateral cancellation of this Agreement by the City.
- 11.7 **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-743-0033, [CITYCLERK@CI.MARATHON.FL.US](mailto:CITYCLERK@CI.MARATHON.FL.US), OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.**

**PAYMENT UNDER THIS PROJECT SPECIFIC AGREEMENT SHALL ONLY BE MADE FROM APPROPRIATIONS BUDGETED ON AN ANNUAL BASIS.**

IN WITNESS WHEREOF, the parties have executed this instrument on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CONSULTANT:**

**CITY:**

By: Edward R. Castle

By: \_\_\_\_\_

Its: Vice President

Its: \_\_\_\_\_

**ATTEST:**

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

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

\_\_\_\_\_  
City Attorney

This agreement shall be executed on behalf of Consultant by its President or a Vice President. If executed by a person other than Consultant's President or a Vice President, then attach evidence of that person's actual authority to bind Consultant to this agreement.

**EXHIBIT “1”**  
**PROJECT DESCRIPTION**

**Service Area 3 to 4 Influent Re-Pump Design, Permitting and Construction Engineering Services and Area 3 Pretreatment Construction Engineering Services**

The project consists of design and permitting of a raw wastewater re-pumping station at the Service Area 3 WWTP and an associated force main to convey the re-pumped raw wastewater to the Service Area 4 WWTP for treatment. Construction engineering services for the force main project and for the Area 3 Wastewater Pretreatment Project are also included in the scope.

The Service Area 3 wastewater is approximately five times the strength of ordinary domestic wastewater due to the high concentration of restaurants, fish houses, boat pump-outs and other non-residential sources of wastewater. From time to time, the loading to the Area 3 WWTP can increase over a short period of time, causing treatment upsets. To help overcome this, the City wishes to have the ability to pump a portion of the high-strength wastewater from the Area 3 collection system to the Area 4 WWTP, which experiences loadings that are more typical of domestic wastewater and has excess capacity available.

The force main project will include design of a duplex pumping station with variable frequency drives that will withdraw raw wastewater from the vertical header piping to the Area 3 headworks, prior to screening and introduction of recycle streams. This is necessary to ensure that only raw wastewater is measured and reported to FDEP. The pumping system will include a flow meter and will be integrated into the existing SCADA system for control and record keeping.

The project will also include the design of a force main to convey the re-pumped wastewater from the Area 3 WWTP to the Area 4 WWTP. It is anticipated that the new force main will connect to the existing Area 4 force main on Sombrero Beach Road at the entrance to the alley behind the K-Mart plaza. From that connection point, the wastewater will combine with the existing Area 4 force main flow and will be conveyed to the Area 4 WWTP headworks.

The project scope includes design of the pumping station and force main as well as preparation of permit applications for the required FDEP and FDOT permitting.

After completion of design, permitting and bidding, construction will begin. Construction phase engineering services include review of shop drawings and submittals, periodic construction inspections, attendance at construction progress meetings, responses to inquiries from the contractors, review of applications for payment, assistance with grant funding work plans and progress reports and closeout of the construction project and the FDEP and FDOT permits. Construction phase engineering services for the Service Area 3 Wastewater Pretreatment project is also included in this scope.

**EXHIBIT “2”  
SCOPE OF SERVICES AND PROJECT SCHEDULE**

EXHIBIT A

Date:

**SCOPE OF SERVICES**

**For Service Area 3 to 4 Influent Re-Pump Design, Permitting and Construction Engineering Services and Area 3 Wastewater Pretreatment Construction Engineering Services**

**GENERAL UNDERSTANDING**

It is understood that the City of Marathon wishes to design a pumping system and force main that would allow a portion of the influent from Service Area 3 to be pumped to the Service Area 4 Wastewater Treatment Plant (WWTP) for treatment. Due to the high concentration of restaurants, fish houses, boat pump-outs and other non-residential sources of wastewater, the influent from Service Area 3 is high strength and can cause periodic surge loads to the WWTP. To help alleviate this periodic high loading, the City wishes to have the ability to pump influent from the Service Area 3 WWTP at a rate of 50 GPM to 100 GPM to the Service Area 4 WWTP for treatment.

It is also understood that the City has awarded a construction contract for the installation of an ozone pretreatment system for the City Marina pump station and for the Area 3 Influent Equalization Tank. WEC will perform construction phase engineering services for this construction project as part of this scope of work.

**SCOPE OF WORK**

WEC will provide preliminary and final design of a raw wastewater pumping station and a force main to transfer a portion of the Service Area 3 influent to the Service Area 4 WWTP for treatment. The scope will also include preparation of permit application packages for FDOT and FDEP permitting and bidding phase services. Construction phase services for both the force main project and the Area 3 pretreatment project will include review of shop drawings and submittals, periodic construction inspections, attendance at construction progress meetings, responses to inquiries from the contractors, review of applications for payment, assistance with grant funding work plans and progress reports and closeout of the construction project and the FDEP and FDOT permits (where applicable).

**PROJECT SCHEDULE**

Preliminary Design	Weeks 1 - 4
60% Design	Weeks 4 - 7
100 % Design	Weeks 7 - 9
Technical Specifications and Bid Documents	Weeks 7 - 9
Bidding Assistance	Weeks 9 - 13
Construction Engineering Services	Start depends on contract award. Duration 8 months
Project Close-Out	4 weeks from completion of construction

**EXHIBIT “3”  
CONSULTANT’S HOURLY RATES**

Company: The Weiler Engineering Corporation	
Job Position Title	Total Hourly Rate \$/Hour
Principal in Charge	\$190.00
Expert Witness	\$250.00
Registered Professional Engineer (P.E.)	\$145.00
Environmental Scientist	\$145.00
Mining Specialist PhD (non-P.E.)	\$145.00
Project Manager	\$145.00
Senior Planner	\$125.00
Registered Engineer Intern (E.I.)	\$115.00
Plans Examiner	\$115.00
Structural Inspector	\$115.00
Senior Construction Inspector	\$105.00
Senior Engineering Designer	\$100.00
Engineering Designer	\$90.00
Construction Inspector	\$90.00
Engineering Technician	\$80.00
Field Technician	\$80.00
Clerical	\$55.00

**Reimbursable Expenses**

Vellums	\$10.00 / each	(24 x 36)
Mylars	\$25.00 / each	(24 x 36)
Blue Prints	\$2.80 / each	(24 x 36)
Copies	\$0.30 / each	(11 x 17)
Copies	\$0.20 / each	(8½ x 14)
Copies	\$0.15 /each	(8½ x 11)
Travel*	Cost plus 15%	
Overnight mail	Cost plus 15%	
Other Reimbursable Expenses	Cost plus 15%	



COUNCIL AGENDA STATEMENT



Meeting Date: May 28, 2019  
To: Honorable Mayor and City Council Members  
From: David Migut, City Attorney  
Copy: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2019-52**, Approving a First Amendment to the Agreement between the City of Marathon and James (Jack) Bridges for Code Enforcement Special Magistrate Services and Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

The current agreement with James (Jack) Bridges is set to expire on June 12<sup>th</sup>, 2019. The agreement has an option to renew for one year. James (Jack) Bridges was ranked by the selection committee as the top respondent, and has performed well throughout the first year of the agreement.

Staff are seeking approval for a one year extension to the agreement under the same terms and conditions.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	_____	_____
2. Other _____	_____	_____
3. Not Applicable	_____	_____

FISCAL NOTE:

The adopted FY19 budget for the Code Department includes appropriations of \$12,000 for Special Magistrate services performed from October 1, 2018 through September 30, 2019. Funding for services from October 1, 2019 through June 12, 2020 will have to be appropriated during the FY20 budget process.

RECOMMENDATION: Approve Resolution

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-52**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF MARATHON AND JAMES (JACK) BRIDGES FOR CODE ENFORCEMENT SPECIAL MAGISTRATE SERVICES AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Resolution 2018-62, the City of Marathon (“City”) and James (Jack) Bridges entered into a contract for professional services, to wit: to perform all services generally associated with presiding over Code Compliance Hearings as a Code Compliance Special Magistrate (“Contract”). A copy of the Contract is attached hereto as Exhibit “B” and incorporated by this reference; and

**WHEREAS**, the City continues to require the services of a Code Compliance Special Magistrate; and

**WHEREAS**, the current Contract with James (Jack) Bridges for Code Compliance Special Magistrate services is scheduled to expire on June 12<sup>th</sup>, 2019, unless it is extended for an additional one (1) year term as provided for in the Contract; and

**WHEREAS**, the parties wish to document this First Amendment to extend the Contract for an additional one (1) year. All other terms and conditions of the Contract shall remain in full force and effect.

**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 First Amendment to the Contract between the City and James (Jack) Bridges, attached hereto as Exhibit “A,” together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to sign the Amendment and expend budgeted funds 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 28th DAY OF MAY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

---

**Mayor John Bartus**

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:**

---

David Migut, City Attorney

**EXHIBIT "A"**

**FIRST AMENDMENT**

**TO CONTRACT BETWEEN THE CITY OF MARATHON AND JAMES (JACK)  
BRIDGES FOR CODE COMPLIANCE SPECIAL MAGISTRATE SERVICES**

This Amendment to the Contract for professional services ("Amendment") is made and entered into this 28<sup>th</sup> day of May, 2019, by and between the City of Marathon, Florida, a municipal corporation of the State of Florida ("City") and James (Jack) Bridges.

**WHEREAS**, pursuant to Resolution 2018-62, The City of Marathon ("City") and James (Jack) Bridges entered into a contract for professional services, to wit: to perform all services generally associated with presiding over Code Compliance Hearings as a Code Compliance Special Magistrate ("Contract"). A copy of the Contract is attached hereto as Exhibit "B" and incorporated by this reference; and

**WHEREAS**, the parties wish to document their negotiated agreement in this First Amendment which will amend the Term. All other terms and conditions of the Contract shall remain in full force and effect.

**NOW THEREFORE**, in consideration of the mutual covenants set forth in this Amendment, the parties agree as follows:

**Section 1. Amendment to Section 1 of the Contract.** The parties hereby amend Section 1 of the Contract to read as follow:

**1.0 Term**

1.1 This Agreement shall take effect on the date of its execution by the Mayor.

1.2 The term of this Agreement shall ~~be for one (1) year, commencing upon the effective date,~~ continue for one (1) year, through June 12, 2020, unless otherwise terminated as provided for herein.

**EXCEPT AS PROVIDED HEREIN**, all other terms and conditions of the Contract as approved by Resolution 2018-62 shall remain in full force and effect.

**DATED** this \_\_\_ day of \_\_\_\_\_, 2019.

**WITNESSES:**

**JAMES (JACK) BRIDGES**

\_\_\_\_\_

**By:** \_\_\_\_\_

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

\_\_\_\_\_

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

**THE CITY OF MARATHON, FLORIDA**

\_\_\_\_\_  
**Charles Lindsey, City Manager**

**ATTEST:**

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

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

\_\_\_\_\_  
David Migut, City Attorney

CODE COMPLIANCE SPECIAL MAGISTRATE AGREEMENT

THIS AGREEMENT is entered into this <sup>12<sup>th</sup></sup> day of June, 2018, between the CITY OF MARATHON, a Florida municipal corporation, located at 9805 Overseas Highway, Marathon, Florida 33050 (the "CITY"), and JAMES (JACK) BRIDGES, located at Post Office Box 1714, Tavernier, Florida 33070 (the "SPECIAL MAGISTRATE").

WHEREAS, the CITY recently passed an ordinance establishing a special magistrate code compliance process; and

WHEREAS, the CITY subsequently solicited special magistrates via RFQ 122217DC; and

WHEREAS, the CITY chose SPECIAL MAGISTRATE as the top ranked respondent to the RFQ; and

WHEREAS, the SPECIAL MAGISTRATE represents that he is capable and prepared to provide such services.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the CITY and the SPECIAL MAGISTRATE agree as follows:

**1.0 Term**

1.1 This Agreement shall take effect on the date of its execution by the Mayor.

1.2 The term of this Agreement shall be for one (1) year, commencing upon the effective date, unless otherwise terminated as provided herein.

1.3 The CITY shall have the option to renew the Agreement for additional one-year periods, as approved by the City Council, at the same terms and conditions, by giving the SPECIAL MAGISTRATE written notice not less than thirty (30) days prior to the expiration of the term then in effect. There shall be no limit on the number of terms a person may serve as a special magistrate.

**2.0 Services to Be Performed by the SPECIAL MAGISTRATE**

2.1 The SPECIAL MAGISTRATE shall perform the services as generally described in the Scope of Work Exhibit "A".

**3.0 Compensation**

**3.1 General**

3.1.1 The CITY shall pay SPECIAL MAGISTRATE on an hourly basis at a rate of \$125.00 per hour for all of SPECIAL MAGISTRATE's time, inclusive of all costs incurred to provide said services. There will be no additional charges for office overhead to include administrative assistants/secretaries and other support personnel. The CITY will not provide reimbursement for travel, meals or mileage.

3.1.2 The hourly rate, as set out in Section 3.1.1 may be adjusted by an Amendment to this Agreement, after mutual written agreement of the parties, annually beginning

one year from the effective date of the Agreement. Approval by the CITY may only be granted by action of City Council, at its sole discretion.

3.1.3 Each individual invoice shall be due and payable forty-five (45) days after receipt by the CITY of a correct, fully-documented invoice, in form and substance satisfactory to the CITY. All invoices shall be delivered to:

City of Marathon  
Attn: City Clerk  
9805 Overseas Highway  
Marathon, Florida 33050

**4.0 Insurance**

4.1 SPECIAL MAGISTRATE shall carry and provide proof of \$1,000,000 professional/malpractice insurance.

4.2 SPECIAL MAGISTRATE shall not commence work under this Agreement until the required insurance as stated herein has been obtained and proof of such insurance has been provided to the CITY.

**5.0 Standard of Care**

5.1 SPECIAL MAGISTRATE has represented to the CITY that he has the experience necessary to perform the work in a professional and workmanlike manner.

5.2 SPECIAL MAGISTRATE shall exercise the same degree of care, skill, and diligence in the performance of the services as is provided by a professional of like experience, knowledge, and resources, under similar circumstances.

**6.0 Indemnification**

6.1 SPECIAL MAGISTRATE shall indemnify and hold harmless the CITY, its council members, officers, employees, and agents from all actions, claims, penalties, judgments, liabilities, losses, and causes of action which may arise out of its fulfillment of this Agreement.

6.2 SPECIAL MAGISTRATE shall defend the CITY, and shall pay all reasonable expenses incurred by the CITY in defending itself, with regard to all damages and penalties the CITY may legally be required to pay as a result of the negligence of the SPECIAL MAGISTRATE as aforesaid. Expenses shall include all incidental reasonable expenses including attorney fees, and shall include a reasonable value of any services rendered by the CITY's Legal Department.

6.3 Nothing in this indemnification is intended to constitute a waiver of the CITY's limitation on liability as set forth in section 768.28, Florida Statutes.

6.4 This covenant shall survive the expiration or termination of this Agreement.

6.5 This provision shall not be construed to require SPECIAL MAGISTRATE to indemnify the CITY in situations wherein their rulings are appealed in the ordinary course as provided by law.

**7.0 Independent Contractor**

7.1 SPECIAL MAGISTRATE undertakes performance of the services as an independent contractor and shall be wholly responsible for the methods of performance.

7.2 CITY shall have no right to supervise the methods used, but CITY shall have the right to observe such performance.

7.3 SPECIAL MAGISTRATE shall work closely with CITY in performing services under this Agreement

7.4 SPECIAL MAGISTRATE shall not pledge the CITY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and shall have no right to speak for or bind the CITY in any manner.

7.5 SPECIAL MAGISTRATE further warrants and represents that he has no obligation or indebtedness that would impair his ability to fulfill the terms of this Agreement.

**8.0 Authority to Practice**

8.1 SPECIAL MAGISTRATE hereby represents and warrants that he has and will continue to maintain all licenses and approvals required to conduct his business, and that he will at all times conduct his business activities in a reputable manner.

**9.0 Compliance with Laws**

9.1 In performance of the services, SPECIAL MAGISTRATE will comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

**10.0 Conflicts and Unavailability**

10.1 SPECIAL MAGISTRATE acknowledges that this Agreement is non-exclusive, that the CITY has an Alternate Special Magistrate, and consents to the CITY assigning any matter for which SPECIAL MAGISTRATE has or may have a conflict of interest, or for which SPECIAL MAGISTRATE is unavailable, to an Alternate Special Magistrate.

10.2 In the event that SPECIAL MAGISTRATE determines that a conflict of interest may arise or has arisen in reference to any matter that SPECIAL MAGISTRATE is handling for the CITY, SPECIAL MAGISTRATE shall notify the City Attorney and the City's Code Compliance Director no later than fourteen (14) days prior to the scheduled hearing. If a conflict arises or is first determined less than fourteen (14) days prior to the scheduled hearing, then the SPECIAL MAGISTRATE shall notify the CITY no later than 48 hours after such conflict arises or is first determined.

10.3 SPECIAL MAGISTRATE acknowledges that the CITY's code compliance hearing schedule will generally follow a set pattern and further agrees to inform CITY of any hearing dates that he will miss due to vacation or other planned absence at least thirty (30) days in advance.

10.4 In all other instances where the SPECIAL MAGISTRATE is unavailable, he agrees to give the CITY thirty (30) day notice, or if the unavailability arises less than thirty (30) days before a hearing date, SPECIAL MAGISTRATE agrees to provide notice of unavailability to the CITY within one (1) business day of when it arises.

**11.0 CITY's Responsibilities**

11.1 CITY shall be responsible for providing information in the CITY's possession that may reasonably be required by SPECIAL MAGISTRATE to provide the services described in Section 2.0.

**12.0 Termination of Agreement**

12.1 This Agreement may be terminated by the SPECIAL MAGISTRATE upon ninety (90) days prior written notice to the CITY.

12.2 This Agreement may be terminated by the CITY with or without cause upon ninety (90) days prior written notice to the SPECIAL MAGISTRATE.



12.3 Unless the SPECIAL MAGISTRATE is in breach of this Agreement, the SPECIAL MAGISTRATE shall be paid for services rendered to the CITY's satisfaction through the date of termination.

**13.0 Governing Law and Venue**

13.1 This Agreement shall be governed in all respects by the laws of the State of Florida, and any litigation with respect thereto shall be brought only in the courts of Monroe County, Florida or the United State District Court, Southern District of Florida, Key West Division.

**14.0 Non-Discrimination**

14.1 SPECIAL MAGISTRATE warrants and represents that all of his employees are treated equally during employment without regard to race, color, religion, gender, age, or national origin.

**15.0 Waiver**

15.1 A waiver by either the CITY or SPECIAL MAGISTRATE of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

**16.0 Severability**

16.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement.

16.2 Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

16.3 The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

16.4 The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement to be determined to be void.

**17.0 Entirety of Agreement**

17.1 The CITY and the SPECIAL MAGISTRATE agree that this Agreement sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein.

**18.0 Modification**

18.1 The Agreement may not be modified unless such modifications are evidenced in writing signed by both CITY and SPECIAL MAGISTRATE. Such modifications shall be in the form of a written Amendment executed by both parties.

**19.0 Successors and Assigns**

19.1 CITY and SPECIAL MAGISTRATE each binds itself/himself and its/his partners, successors, assigns, and legal representative to the other party to this Agreement and to their partners, successors, executors, administrators, assigns, and legal representatives.

19.2 SPECIAL MAGISTRATE shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement, or of any or all of its rights, title or interest therein, or the SPECIAL MAGISTRATE's power to execute this Agreement, to any person, company, or corporation without prior written consent of the CITY. Such consent may be withheld for any reason in the sole discretion of the City Council.

**20.0 Public Records**

20.1 The SPECIAL MAGISTRATE shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the CITY as provided under Section 119.011(2), Florida Statutes, specifically agrees to:

(1) Keep and maintain public records required by the CITY to perform the service.

(2) Upon request from the CITY's custodian of public records or designee, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract and following completion of the contract if the SPECIAL MAGISTRATE does not transfer the records to the CITY.

(4) Upon completion of the contract term, transfer, at no cost, to the CITY, all public records in possession of the SPECIAL MAGISTRATE or keep and maintain public records required by the CITY to perform the service. If the SPECIAL MAGISTRATE transfers all public records to the CITY upon the completion of this Agreement, the SPECIAL MAGISTRATE shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the SPECIAL MAGISTRATE keeps and maintains public records upon completion of the contract, the SPECIAL MAGISTRATE shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records or designee, in a format that is compatible with the information technology of the CITY.

**20.2 IF THE SPECIAL MAGISTRATE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SPECIAL MAGISTRATE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT 305-743-0033, [cityofmarathon@ci.marathon.fl.us](mailto:cityofmarathon@ci.marathon.fl.us), OR BY MAIL AT 9805 OVERSEAS HIGHWAY, MARATHON, FLORIDA 33050.**

**21.0 Notice**

21.1 Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by overnight courier service or by Certified Mail, postage prepaid as follows:

As to CITY:  
City of Marathon  
Attention: City Manager  
9805 Overseas Highway  
Marathon, Florida 33050

With a copy to:  
City of Marathon  
Attention: City Attorney  
9805 Overseas Highway  
Marathon, Florida 33050

As to SPECIAL MAGISTRATE:  
Jack Bridges, Esquire  
Post Office Box 1714  
Tavernier, Florida 33070-1714

**22.0 Contract Administration**

22.1 Except as otherwise provided in this Agreement, services of SPECIAL MAGISTRATE shall be under the general direction of the City Council, or their designee, who shall act as the CITY's representative during the term of the Agreement.

**Remainder of Page Intentionally Left Blank**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first written above.

THE CITY OF MARATHON, FLORIDA


  
Michelle Coldiron, Mayor

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:

  
David Migut, City Attorney

JAMES (JACK) BRIDGES

Witnesses:

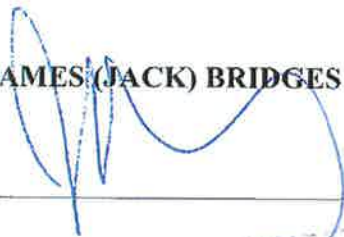

By: 

EXHIBIT "A"  
SCOPE OF WORK

The CITY requires the services of a Code Compliance Special Magistrate to preside over Code Compliance Hearings, which are quasi-judicial proceedings. Hearings are tentatively scheduled to be held on the 3<sup>rd</sup> Wednesday of the month at 2:00 pm in City Council Chambers located at 9805 Overseas Highway, Marathon, Florida 33050.

Specific duties include, but are not limited to:

1. Hearing and deciding alleged violations of the City of Marathon Code of Ordinances.
2. Assessing fines against violators of city codes and ordinances.
3. Consistent with Chapter 162, Florida Statutes, adopting rules for the conduct of hearings; subpoenaing alleged violators, witnesses, and evidence to hearings; taking testimony under oath; and issuing orders having the force of law to command whatever steps are necessary to bring a violation into compliance.
4. Issue findings of fact based on evidence of record, and conclusions of law, and issue an order affording the proper relief consistent with powers granted in the City of Marathon Code of Ordinances and in accord with Chapter 162, Florida Statutes.

## CITY COUNCIL AGENDA STATEMENT



**Meeting Date:** May 28, 2019

**To:** Honorable Mayor and Council Members

**From:** George Garrett, Planning Director

**Through:** Chuck Lindsey, City Manager

### Agenda Items:

Item 1. **Resolution 2019-53**, Revising Development Order 2016-12 To Include Administrative Revisions Concerning Changes In Ownership And Minor Changes In Conditions That Will More Accurately Reflect The True Conditions Of Upcoming Construction Approvals; For A Project Now Owned By Marathon Key Housing Partners, LP For A Conditional Use Permit Pursuant To Chapter 102, Article 13 Of The City Of Marathon Land Development Regulations (LDRs) Entitled "Conditional Use Permits", Authorizing The Development Of Fifty-Five (55) Multifamily Affordable Housing Units On Properties Located At 4800 Overseas Highway, Which Are Legally Described As Part Of Lot 1 Formerly Overseas Highway, As Well As Part Of Lot 1, Part Of Lot 2, Part Of Lot 3, Part Of Lot 4, Part Of Lot 4 (Parcel A), & Adjacent Bay Bottom Of Thompson & Adams Subdivision, Key Vaca, Monroe County, Florida, Having Real Estate Numbers 00102950-000000, 00327110-000000, 00327120-000000, 00327130-000000, 00327140-000000, & 00327140-000100. Nearest Mile Marker 50

Item 2. **Resolution 2019-54**, Approving The Second Amendment To The Interlocal Agreement (ILA) Between The City Of Marathon And Monroe County Transferring Affordable Housing Residential Dwelling Unit Allocations For An Approved Project In The Current Ownership Of Marathon Key Housing Partners LP; Said Ila Originally Approved Pursuant To City Resolution 2016-113 And Subsequently Amended Pursuant To Resolution 2019-27; The Subject Amendment Will Update Current Ownership In The Project And Add A Section Titled, "Owner's Right To Transfer; Performance By Recognized Mortgagee;" Said Project To Be Located Between 4700 And 4800 Overseas Highway, Marathon, Florida On Properties Including Real Estate Numbers 00327110-000000, 00327120-000000, 00327130-000000, And 00327140-000000. Nearest Mile Marker 50; Rescinding Resolution 2017-107; And Providing For An Effective Date.

Item 3. **Resolution 2019-55**, Revising Development Order 2016-07 To Include Administrative Revisions Concerning Changes In Ownership And Minor Changes In Conditions That Will More Accurately Reflect The True Conditions Of Upcoming Construction Approvals; For A Project Now Owned By Crystal Cove Housing Partners, LP For A Conditional Use Permit Pursuant To Chapter 102, Articles 13 Of The City Of Marathon Land Development Regulations (LDRs) Entitled "Conditional Use Permits," Authorizing The Development Of A Twenty-Eight (28) Unit RV Park, Forty-Six Affordable Housing Units And 7,700 Square Feet Of Commercial Retail On Properties Located At And Adjacent To 4900 Overseas Highway; Real Estate Numbers 00327150-000000, 00327910-000000, 00327920-

000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, And 00328030-000000. Nearest Mile Marker 50

Item 4. **Resolution 2019-56**, Approving The Second Amendment To The Interlocal Agreement (Ila) Between The City Of Marathon And Monroe County Transferring Affordable Housing Residential Dwelling Unit Allocations For An Approved Project In The Current Ownership Of Crystal Cove Housing Partners LP; Said Ila Originally Approved Pursuant To City Resolution 2016-125 And Subsequently Amended Pursuant To Resolution 2019-28; The Subject Amendment Will Update Of Current Ownership In The Project And Add A Section Titled, “Owner’s Right To Transfer; Performance By Recognized Mortgagee;” Project In The Ownership Of Crystal Cove Market Site LLC (Formerly HTG Crystal Cove), To Be Located 4900 Overseas Highway, Marathon, Florida On Properties Including Real Estate Numbers 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, And 00328030-000000. Nearest Mile Marker 50; Rescinding Resolution 2017-106; And Providing For An Effective Date.

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## **RECOMMENDATION:**

Approval of Resolutions 2019-53, 2019-54, 2019-55, and 2019-56

## **BACKGROUND**

### **Marathon Housing Partners, LP (formerly Key Vaca LLC)**

On December 13, 2016 the City of Marathon granted a Conditional Use Permit to Keys Affordable Development III LLC pursuant to Resolution 2016-122 to construct fifty-five (55) multifamily affordable housing units. In 2017 the Conditional Use Permit noted in Resolution 2016-122 was assigned to Key Vaca LLC the title owner of the property and remains in full force and effect.

On December 13, 2016 the City adopted Resolution 2016-113 approving an Interlocal Agreement between the City of Marathon and Monroe County for the transfer of fifty-five (55) affordable housing units which ran in favor of Keys Affordable Development III LLC. On July 11, 2017 the City of Marathon adopted Resolution 2017-54 which rescinded Resolution 2016-113 for the purposes, in part, of assigning the project to Key Vaca LLC. On July 11, 2017 the City of Marathon adopted Resolution 2017-55 which approved an Interlocal Agreement (ILA) between the City of Marathon and Monroe County transferring Fifty-five (55) affordable housing residential dwelling units to the City to be utilized in the project approved through Resolution 2016-122 as assigned to Key Vaca LLC. The subject project sought and has ultimately received tax credit funding through the Florida Housing Finance Corporation. Most recently, the City and County extended the ILA through Resolution 2019-27 to the date of December 31, 2021.

### **Crystal Cove Housing Partners, LP (formerly HTG Crystal Cove)**

On September 13, 2016 the City of Marathon granted a Conditional Use Permit to Keys Affordable Development III LLC pursuant to Resolution 2016-71 to construct forty-six (46) multifamily affordable housing units.

On December 13, 2016 the City adopted Resolution 2016-125 approving an Interlocal Agreement between the City of Marathon and Monroe County for the transfer of forty-six (46) affordable housing units which ran in favor of the Original Applicant. The subject project sought and has ultimately received tax credit funding through the Florida Housing Finance Corporation. Most recently, the City and County extended the ILA through Resolution 2019-28 to the date of December 31, 2021.

**Request**

The proposed Resolutions also seek to modify the original Development Orders underlying the approving Resolutions and the respective ILAs to recognize the new ownership and to add, in the case of the ILAs, a new clause entitled, “Owner’s Right To Transfer; Performance By Recognized Mortgagee.” This clause seeks to protect project investors in the event of mortgage transfers.

The project now known as Marathon Housing Partners, LP (formerly Key Vaca LLC) and Crystal Cove Housing Partners, LP (formerly HTG Crystal Cove) have submitted building plans jointly to complete a combined project. The building plans should be approved within the next several weeks (approximately May 30, 2019).

The four items above seek to retain all of the historic approvals for projects approved originally as Keys Affordable III LLC and HTG Crystal Cove. Though now combined as a single project under the new ownerships of Marathon Housing Partners, LP and Crystal Cove Housing Partners, LP, the site plans remain essentially the same and the number of units approved remains one hundred and one (101), as combined.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u>  X  </u>	<u>      </u>
2. Other – 2010 Sewer Mandate	<u>      </u>	<u>  X  </u>

FISCAL NOTE:

RECOMMENDATION

Approval of Resolutions 2019-53, 2019-54, 2019-55, and 2019-56



**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-53**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, REVISING DEVELOPMENT ORDER 2016-12 TO INCLUDE ADMINISTRATIVE REVISIONS CONCERNING CHANGES IN OWNERSHIP AND MINOR CHANGES IN CONDITIONS THAT WILL MORE ACCURATELY REFLECT THE TRUE CONDITIONS OF UPCOMING CONSTRUCTION APPROVALS; FOR A PROJECT NOW OWNED BY MARATHON KEY HOUSING PARTNERS, LP FOR A CONDITIONAL USE PERMIT PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED “CONDITIONAL USE PERMITS”, AUTHORIZING THE DEVELOPMENT OF FIFTY-FIVE (55) MULTIFAMILY AFFORDABLE HOUSING UNITS ON PROPERTIES LOCATED AT 4800 OVERSEAS HIGHWAY, WHICH ARE LEGALLY DESCRIBED AS PART OF LOT 1 FORMERLY OVERSEAS HIGHWAY, AS WELL AS PART OF LOT 1, PART OF LOT 2, PART OF LOT 3, PART OF LOT 4, PART OF LOT 4 (PARCEL A), & ADJACENT BAY BOTTOM OF THOMPSON & ADAMS SUBDIVISION, KEY VACA, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00102950-000000, 00327110-000000, 00327120-000000, 00327130-000000, 00327140-000000, & 00327140-000100. NEAREST MILE MARKER 50**

**WHEREAS;** Keys Affordable Development III, LLC (the “Original Applicant”) filed an Application on October 19th, 2016 for a Conditional Use Permit pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS;** the Applicant must obtain fifty-five (55) affordable units, to be transferred via the Transfer of Building Rights (TBR’s), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS 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 AND DEVELOPMENT AGREEMENT.

**WHEREAS;** City staff reviewed the original Applicant’s request for a Conditional Use Permit determining that the Original 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 5th day of December 2016, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request

submitted by the Original Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 respectively of the LDRs; and

**WHEREAS;** and on the 13th day of December, 2016 the City Council (the “Council”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Original 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 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; and

**WHEREAS,** the Conditional Use Permit was granted pursuant to City Resolution 2016-122; and

**WHEREAS;** the City sought the affordable allocations for the project through an interlocal agreement between the County and City, accepted through Resolution 2016-113, as revised through Resolution 2017-55; and thereafter extended through Resolution 2019-27; and

**WHEREAS;** Marathon Key Housing Partners, LP (the “Applicant”) has acquired or shall acquire the subject property and the allocable development rights previously owned by Original Applicant and the Applicant has proposed to develop fifty-five (55) affordable apartments on sites previously developed with four duplexes totaling eight units; and

**WHEREAS,** the purpose of this Resolution is to document a change in ownership and minor changes in conditions relating to the construction of the affordable housing units,

**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 the revision to Development Order 2016-12, a copy of which is attached hereto as Exhibit “A”, granting a revised Conditional Use Permit to Marathon Housing Partners, LLC 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 its adoption by the City of Marathon and after review and approval by the Department of Economic Opportunity pursuant to Chapters 163 and 380, *Florida Statutes*.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON,  
FLORIDA, THIS 28<sup>TH</sup> DAY OF MAY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

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**John Bartus, 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:**

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David Migut, City Attorney

**CITY OF MARATHON, FLORIDA  
CONDITIONAL USE  
DEVELOPMENT ORDER #2016-12 REVISED**

**A DEVELOPMENT ORDER OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A REQUEST BY MARATHON KEY HOUSING PARTNERS, LP FOR A CONDITIONAL USE PERMIT PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED “CONDITIONAL USE PERMITS”, AUTHORIZING THE DEVELOPMENT OF FIFTY-FIVE (55) MULTIFAMILY AFFORDABLE HOUSING UNITS ON PROPERTIES LOCATED AT 4800 OVERSEAS HIGHWAY, WHICH ARE LEGALLY DESCRIBED AS PART OF LOT 1 FORMERLY OVERSEAS HIGHWAY, AS WELL AS PART OF LOT 1, PART OF LOT 2, PART OF LOT 3, PART OF LOT 4, PART OF LOT 4 (PARCEL A), & ADJACENT BAY BOTTOM OF THOMPSON & ADAMS SUBDIVISION, KEY VACA, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00102950-000000, 00327110-000000, 00327120-000000, 00327130-000000, 00327140-000000, & 00327140-000100. NEAREST MILE MARKER 50.**

**WHEREAS;** Keys Affordable Development III, LLC (the “Original Applicant”) filed an Application on October 19th, 2016 for a Conditional Use Permit pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS;** the Applicant must obtain fifty-five (55) affordable units, to be transferred via the Transfer of Building Rights (TBR’s), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS 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 AND DEVELOPMENT AGREEMENT.

**WHEREAS;** City staff reviewed the Original Applicant’s request for a Conditional Use Permit determining that the Original 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 5th day of December 2016, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Original Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 respectively of the LDRs; and

**WHEREAS;** and on the 13th day of December, 2016 the City Council (the “Council”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Original 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 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; and

**WHEREAS,** the Conditional Use Permit was granted pursuant to City Resolution 2016-122; and

**WHEREAS;** the City sought the affordable allocations for the project through an interlocal agreement between the County and City, accepted through Resolution 2016-113, as revised through Resolution 2017-55; and thereafter extended through Resolution 2019-27; and

**WHEREAS;** Marathon Key Housing Partners, LP (the “Applicant”) has acquired or shall acquire the subject property and the allocable development rights previously owned by Original Applicant and the Applicant has proposed to develop fifty-five (55) affordable apartments on sites previously developed with four duplexes totaling eight units; and

**WHEREAS,** the purpose of this revised Development Order is to document a change in ownership and minor changes in conditions relating to the construction of the affordable housing units,

**FINDINGS OF FACT:**

1. The Applicant will redevelop the project site as set out in the project site plan allowing the Applicant to construct fifty-five (55) affordable units, to include an office, pool, 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. 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.
2. FDOT permit approval for the relocation of the curb cut is required prior to permit application approval.
3. As part of permit approval, the Applicant shall consider options for:
  - a. An additional point of access to 47<sup>th</sup> Street if feasible;
  - b. Recreational and green space areas of approximately 70,000 s.f. shall be provided on site and additional recreational amenities shall be available to residents on adjacent Residences at Crystal Cove parcel, including approximately 2,900 s.f. of recreational pool area.
4. After permit issuance, the applicant shall create safety features / structures between the road leading to the north and the canal / boat basin.
5. As part of the permit application, all conditions of the Fire Marshal must be met prior to permit issuance.

6. Final site plan must show bollards or other safety barrier for portion of paved easement along canal, to be completed after permit issuance.
7. City approval is required for ADA compliant parking spaces prior to Building Permit Approval.
8. City approval is required for bike racks prior to Building Permit Approval.
9. City approval is required for the stormwater management system prior to Building Permit Approval.
10. Applicant must obtain all outside agency approvals, this includes but is not limited to SFWMD, FDOT, ACOE, DEP.
11. City approval of the connection to the City Wastewater Utility will be required.
12. The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.
13. A Unity of Title will be required for these parcels.
14. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
15. A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.
16. All signs will be reviewed and approved for compliance with the City of Marathon LDR' s.
17. If applicable, two (2) side yards are required for stacked duplexes.
18. If applicable, townhouses are limited to ten (10) dwelling units per row, except for affordable housing.
19. If applicable, the private yard area for rooftop balcony dwelling is provided by the roof or balconies of the structure.
20. If applicable, the total area of the mixed-use or commercial apartments, including patios and access way shall not exceed the area covered by the ground floor and any covered walks or arcades.
21. Each unit shall have access to a balcony that is separate from the access to the unit, provides adequate privacy and the size shall be approximately 55 square feet in size.
22. If applicable, the patio or balcony area may be wholly or partially replaced by the provision of a recreation yard provided on site. Recreational yards shall be a minimum one-tenth (1/10) of unit floor area.
23. Affordable Housing Deed restrictions must be filed upon issuance of Certificate of Occupancy.

24. The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.

**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 unless otherwise approved or allowed by the City. 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 thirty (30) 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.

\_\_\_\_\_  
Date

\_\_\_\_\_  
George Garrett, Director of Planning



This Development Order was filed in the Office of the City Clerk of this \_\_\_\_ day of \_\_\_\_\_, 2019.

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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 Community Affairs 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, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Community Affairs. 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, vis U.S. certified mail, return receipt r nested, addressed to \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2019.

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

EXHIBIT "A"

**[REPLACE WITH CURRENT APPROVED SITE PLAN]**

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-54**

**A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, APPROVING THE SECOND AMENDMENT TO THE INTERLOCAL AGREEMENT (ILA) BETWEEN THE CITY OF MARATHON AND MONROE COUNTY TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL DWELLING UNIT ALLOCATIONS FOR AN APPROVED PROJECT IN THE CURRENT OWNERSHIP OF MARATHON KEY HOUSING PARTNERS LP; SAID ILA ORIGINALLY APPROVED PURSUANT TO CITY RESOLUTION 2016-113 AND SUBSEQUENTLY AMENDED PURSUANT TO RESOLUTION 2019-27; THE SUBJECT AMENDMENT WILL UPDATE CURRENT OWNERSHIP IN THE PROJECT AND ADD A SECTION TITLED, "OWNER'S RIGHT TO TRANSFER; PERFORMANCE BY RECOGNIZED MORTGAGEE;" SAID PROJECT TO BE LOCATED BETWEEN 4700 AND 4800 OVERSEAS HIGHWAY, MARATHON, FLORIDA ON PROPERTIES INCLUDING REAL ESTATE NUMBERS 00327110-000000, 00327120-000000, 00327130-000000, AND 00327140-000000. NEAREST MILE MARKER 50; RESCINDING RESOLUTION 2017-107; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on December 13, 2016 the City of Marathon granted a Conditional Use Permit to Keys Affordable Development III LLC (Original Applicant) pursuant to Resolution 2016-122 to construct fifty-five (55) multifamily affordable housing units; and

**WHEREAS**, in 2017 the Conditional Use Permit noted in Resolution 2016-122 was assigned to Key Vaca LLC the title owner of the property and remains in full force and effect; and

**WHEREAS**, on December 13, 2016 the City adopted Resolution 2016-113 approving an Interlocal Agreement between the City of Marathon and Monroe County for the transfer of fifty-five (55) affordable housing units which ran in favor of Keys Affordable Development III LLC; and

**WHEREAS**, on July 11, 2017 the City of Marathon adopted Resolution 2017-54 which rescinded Resolution 2016-113 for the purposes, in part, of assigning the project to Key Vaca LLC; and

**WHEREAS**, on July 11, 2017 the City of Marathon adopted Resolution 2017-55 which approved an Interlocal Agreement (ILA) between the City of Marathon and Monroe County transferring Fifty-five (55) affordable housing residential dwelling units to the City to be utilized in the project approved through Resolution 2016-122 as assigned to Key Vaca LLC; and

**WHEREAS**, the subject project sought and has ultimately received tax credit funding through the Florida Housing Finance Corporation; and

**WHEREAS**, the projects known as Key Vaca LLC and Crystal Cove Market Site LLC (originally HTG Crystal Cove) have submitted building plans jointly to complete a combined project; and

**WHEREAS**; Marathon Key Housing Partners, LP (the “Applicant”) has acquired or shall acquire the subject property and the allocable development rights previously owned by Original Applicant and the Applicant has proposed to develop fifty-five (55) affordable apartments on sites previously developed with four duplexes totaling eight units; and

**WHEREAS**, the building plans should be approved within the next several weeks (approximately May 30, 2019); and

**WHEREAS**, a request to extend the ILA was made through City Resolution 2019-27 and subsequently approved by Monroe County; and

**WHEREAS**, this Resolution seeks a Second Amendment to the ILA in order to recognize a change in project ownership and to add a section titled, “Owner’s Right To Transfer; Performance By Recognized Mortgagee,”

**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 requests that the ILA approved pursuant to Resolution 2017-55 and extended pursuant to Resolution 2019-27, be amended to reflect a change in project ownership and to add a section titled “Owner’s Right To Transfer; Performance By Recognized Mortgagee” and provides the attached Amendment document for proposed execution (EXHIBIT A).

**Section 3. Effective Date.** This Resolution shall become effective immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 28<sup>TH</sup> DAY OF MAY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

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**John Bartus, 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:**

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David Migut, City Attorney

**AMENDMENT 2**  
**INTERLOCAL AGREEMENT BETWEEN MONROE**  
**COUNTY AND THE CITY OF MARATHON**  
**TRANSFERRING AFFORDABLE HOUSING**  
**RESIDENTIAL DWELLING UNIT ALLOCATIONS**

This Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040 (“County”), and the City of Marathon, a municipal corporation of the State of Florida, whose address is 9805 Overseas Highway, Marathon, Florida 33050 (the “City”).

WITNESSETH:

**WHEREAS**, Monroe County and the City of Marathon recognize the value of regional partnerships in smart growth; and

**WHEREAS**, Policy 101.2.15 of the Year 2010 Monroe County Comprehensive Plan allows Rate of Growth Ordinance building permit allocations (hereinafter “affordable housing ROGO allocations” or “affordable ROGOs”) for affordable housing projects to be pooled and transferred between local government jurisdictions within the Florida Keys Area of Critical Concern, if accomplished through an interlocal agreement between the sending and receiving local governments; and

**WHEREAS**, Chapter Five (5) of the City Comprehensive Plan identifies goals, objectives and policies to provide for development pursuant to intergovernmental coordination and interlocal agreements; and

**WHEREAS**, Monroe County and the City of Marathon have previously entered into Interlocal Agreements to transfer affordable ROGOs; and

**WHEREAS**, Monroe County and the City of Marathon recognize the potential economic value of such transferable affordable ROGO allocations; and

**WHEREAS**, this Agreement is entered into pursuant to Florida Statutes, Section 163.01, *et seq.*, Florida Interlocal Cooperation Act of 1969, which states:

“It is the purpose of this section to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities”; and

**WHEREAS**, the comprehensive plans of Monroe County and the City of Marathon expressly identify interlocal agreements as a means of resolving issues mutually affecting their respective jurisdictions; and

**WHEREAS**, Marathon Key Housing Partners, LP, pursuant to City Resolution \_\_\_\_\_, has an approved Conditional Use Permit for a project that includes fifty-five (55) affordable housing units pertaining to the following site:

See Attachment “A”

**WHEREAS**, the parties have determined that this Agreement is in the best interests of the public and the public health, safety, and welfare.

**NOW, THEREFORE**, the parties hereto agree as follows:

**Section 1. TRANSFER:** The parties agree to permit the transfer of 55- affordable housing ROGO allocations, comprised of fifty-two (52) low-income category and three (3) very-low income category affordable housing ROGO allocations, from Monroe County to the City of Marathon for allocation, pursuant to this Agreement, and subject to the conditions contained herein, including but not limited to:

Marathon Key Housing Partners, LP, or its assignee and successors-in-interest, acting on its Conditional Use Permit approval from the City of Marathon; and

Marathon Key Housing Partners, LP, or its assignee and successors-in-interest, constructing and obtaining a Certificate of Occupancy for all of the affordable housing units, situated upon the subject property described herein, related to the transferred affordable housing ROGO allocations subject of this Interlocal Agreement, prior to December 31, 2021 (subject to extension for force majeure as approved by Monroe County); and

The recording of a 99-year Affordable Housing Deed Restriction on all of the affordable housing units contemplated herein, in accordance with this Agreement, and in accordance with the applicable requirements of the Code of Ordinances, City of Marathon, Florida and similar requirements of the Florida Building Code (FBC).

**Section 2. ASSIGNMENT:** Monroe County has assigned its rights to the affordable housing ROGO allocation contemplated herein to the City, and the fifty-five (55) affordable housing ROGO allocations are to be issued by the City in consideration of the Conditional Use Approval pursuant to City Resolution \_\_\_\_\_ issued and assigned to property owned by Key Vaca, LLC and/or Marathon Key Housing Partners, LP as its assignee (Legal Description attached as Exhibit "A"). In the event the subject project or, as applicable, Marathon Key Housing Partners, LP, or, as applicable, its assign(s) and successor(s) in interest or title, fail to complete the construction as evidenced by issuance of a Certificate of Occupancy for all fifty-five (55) units by the City of Marathon, any units which have not received a Certificate of Occupancy shall result in those allocations reverting to Monroe County and to their former status under the Agreement (subject, however, to Section 25 below); no amendment to this Agreement is necessary or required to trigger this automatic reverter clause.

**Section 3. TERM:** Subject to and upon the terms and conditions set forth herein, this Interlocal Agreement shall continue in force until one of the following occur:

The project does not complete construction and does not obtain Certificates of Occupancy for all fifty-five (55) affordable housing units contemplated herein by December 31, 2021 (subject to extension for force majeure as approved by Monroe County). All affordable housing units for which Certificates of Occupancy are issued prior to December 31, 2021 shall remain subject to this Interlocal Agreement irrespective of whether all 55 affordable housing units contemplated herein receive Certificates of Occupancy.

**Section 4. NOTIFICATION:** The City of Marathon shall immediately notify Monroe County of any assignment(s) and successor(s) in interest or title to Marathon Key Housing Partners, LP for the duration of Marathon Key Housing Partners, LP's interest(s) in the affordable housing ROGO allocation contemplated herein, and shall immediately notify Monroe County of any assignment(s) and successor(s) in interest or title to the affordable housing ROGO allocations contemplated herein above at least thirty



(30) business days prior to the date of such transfer or succession by certified U.S. Postal Service Certified mail to the Monroe County Planning & Environmental Resources Senior Director. The City of Marathon shall further provide prompt written notice to Monroe County of the extension, termination, or expiration of the aforesaid Conditional Use Permit for project contemplated herein. The City of Marathon shall further provide prompt written notice to Monroe County of the issuance of Certificates of Occupancy for the subject affordable housing units within thirty (30) business days after issuance of said Certificates.

All such notices under this Section (“**Section 4.**”) shall be sent to the following addresses:

Monroe County County Administrator  
1100 Simonton Street, Key West, FL 33040; and

Monroe County Planning & Environmental Resources Department  
Attn: Senior Director  
Subject: City of Marathon Interlocal Agreement  
2798 Overseas Highway, Marathon, FL 33050; and

With a copy to:

Monroe County Attorney’s Office  
Attn: County Attorney  
Subject: City of Marathon Interlocal Agreement  
P.O. Box 1026  
Key West, FL 33041

Failure of the City of Marathon or Marathon Key Housing Partners, LP or their assign(s) or successor(s) in interest or title, to perform any act required by this Interlocal Agreement shall neither impair nor limit the validity of this Agreement or limit its enforceability in any way.

**Section 5. CONSTRUCTION AND INTERPRETATION:** The construction and interpretation of this Interlocal Agreement and Monroe County Code(s) provisions in arising from, related to, or in connection with this Agreement, shall be deferred in favor of Monroe County and such construction and interpretation shall be entitled to great weight on trial and on appeal.

**Section 6. NO WAIVER:** Monroe County shall not be deemed to have waived any rights under this Interlocal Agreement unless such waiver has been expressly and specifically provided.

**Section 7. LIMITATION OF LIABILITY:** In the event of any litigation related to, arising from, or in connection with this Interlocal Agreement, the parties hereto and Marathon Key Housing Partners, LP, and its assignees and successors-in-interest, hereby agree to expressly waive their right to a jury trial.

**Section 8. DUTY TO COOPERATE:** When required to under this Interlocal Agreement, the City of Marathon and Marathon Key Housing Partners, LP, and its assignees and successors-in-interest, shall, to ensure the implementation of the government purpose furthered by this Agreement, cooperate with Monroe County’s reasonable requests, regarding the conditions and provisions contained herein.

**Section 9. GOVERNING LAWS/VENUE:** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida and the United States. Exclusive venue for any dispute arising under this Agreement shall be in the Sixteenth Judicial Circuit in and for Monroe County, Florida.

In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs. This Agreement is not subject to arbitration.

**Section 10. NONDISCRIMINATION:** The parties agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin; (2) Section 504 of the Rehabilitation Act of 1973, as amended (3) U.S.C. s. 1975, as amended (42 U.S.C. ss. 6101.6107)), which prohibits discrimination on the basis of age; (4) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (5) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (6) The Public Health Service Act of 1912., ss. 523 and 527 (42 U.S.C. ss. 290 dd-3 and 290 ee(03), as amended, relating to confidentiality of alcohol and drug abuse patient records; (7) The Americans With Disabilities Act of 1990 (42 U.S.C. s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; (8) The Civil Rights Act of 1992 (Chapter 760, Florida Statutes, and Section 509.021, Florida Statutes), as may be amended from time to time, relating to non-discrimination; and (9) any other nondiscrimination provisions in any federal or state statutes or local ordinances which may apply to the parties to, or the subject matter of, this Agreement.

**Section 11. CODE OF ETHICS:** The parties agree that their officers and employees recognize and will be required to comply with the standards of conduct relating to public officers and employees as delineated in Section 112.313, Florida Statutes regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position; conflicting employment or contractual relationship; and disclosure or use of certain information.

**Section 12. NO SOLICITATION/PAYMENT:** The parties warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not been paid or agreed to pay any person, company, corporation, individuals, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach of violation of this provision, each party agrees that the other party shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

**Section 13. SUBORDINATION:** This Agreement is subordinate to the laws and regulations of the United States and the State of Florida, whether in effect on commencement of this Interlocal Agreement or adopted after that date.

**Section 14. INCONSISTENCY:** If any item, condition, or obligation of this Agreement is in conflict with other items of this Agreement, the inconsistencies shall be construed so as to give meaning to those terms which limited the County's responsibility or liability.

**Section 15. PUBLIC ACCESS TO RECORDS:** The parties shall allow and permit members of the public reasonable access to, and inspection of, all documents, papers, letters or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the parties in conjunction with this Agreement.

**Section 16. NON-RELIANCE BY THIRD-PARTIES:** Other than as stated herein, no person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the parties agree that neither the County nor the City, or any agent, officer, or employee of each shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

**Section 17. NO PERSONAL LIABILITY:** No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of a party in his or her individual capacity, and no member, officer, agent or employee of a party shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

**Section 18. NOTICES:** In addition to those communications and notice requirements set forth in Section 4. of this Agreement, all notices and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

if to Monroe County:

Roman Gastesi, Jr., County Administrator  
Monroe County Historic Gato Building  
1100 Simonton Street  
Key West, Florida 33040; and

Planning & Environmental Resources Department  
Attn: Senior Director  
Subject: City of Marathon Interlocal Agreement  
2798 Overseas Highway, Marathon, FL 33050; and

With a copy to:

Monroe County Attorney's Office  
Attn: County Attorney  
Subject: City of Marathon Interlocal Agreement  
P.O. Box 1026  
Key West, FL 33040

Mark A. Gould, Jr., Esq.  
Arnall Golden Gregory LLP  
171 17<sup>th</sup> Street, NW  
Suite 2100  
Atlanta, GA 30363-1031  
Attorney for Property Owner

If to the City:

City Manager  
9805 Overseas Highway  
Marathon, Florida 33050

George Garrett, Planning Director  
9805 Overseas Highway  
Marathon, Florida 33050

With a copy to:

David Migut, Esquire  
City Attorney  
9805 Overseas Highway  
Marathon, FL 33050

Mark A. Gould, Jr., Esq.  
Arnall Golden Gregory LLP  
171 17<sup>th</sup> Street, NW  
Suite 2100  
Atlanta, GA 30363-1031  
Attorney for Property Owner

Any notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fee prepaid; hand delivered, or sent by overnight delivery service.

**Section 19. ENTIRE AGREEMENT/MODIFICATION/AMENDMENT:** This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

**Section 20. INCONSISTENCY, PARTIAL INVALIDITY, SEVERABILITY, AND SURVIVAL OF PROVISIONS:** If any condition or provision hereunder, or any portion thereof, is/are held to be invalid or unenforceable in or by any administrative hearing officer or court of competent jurisdiction, the invalidity or unenforceability of such condition(s) or provision(s) shall neither limit nor impair the operation, enforceability, or validity of any other condition or provision hereunder, or remaining portions thereof. All such other condition(s) or provision(s), or portions thereof, shall continue unimpaired in full force and effect.

**Section 21. CAPTIONS AND PARAGRAPH HEADINGS:** Captions and paragraph headings, where used herein, are inserted for convenience only and are not intended to descriptively limit the scope and/or intent of the particular paragraph or text to which they refer.

**Section 22. AUTHORITY TO ATTEST:** Each party to this Interlocal Agreement represents and warrants to the other that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary corporate and other organizational action, as required.

**Section 23. MISCELLANEOUS:** Each party represents and warrants to the other that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary corporate or other organizational action, as required.

**Section 24. COUNTERPARTS:** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

**Section 25. OWNER’S RIGHT TO TRANSFER; PERFORMANCE BY RECOGNIZED MORTGAGEE:**

**A. Owner’s Right to Transfer:** Marathon Key Housing Partners, LP or its successors and assigns in interest or title, as applicable, may:

1. Mortgage its interest in the Property; and
2. Subject to providing written notice thereof to Monroe County, transfer and/or convey its interests in the Property or the affordable housing ROGO allocations contemplated herein pursuant to a bona fide foreclosure proceeding or a bona fide deed in lieu of foreclosure, to a Mortgagee (as hereinafter defined), or its designee or buyer in a bona fide foreclosure or of the deed in lieu of foreclosure or from the Mortgagee or its designee that initially acquired the Property via the bona fide foreclosure or the deed in lieu of foreclosure provided that such designee or buyer is a Permitted Developer (as hereinafter defined) and covenants to perform the construction work required to obtain a Certificate of Occupancy as required herein, and at all times following such transfer, comply with the use obligations herein.

**B. Performance by Recognized Mortgagee:**

1. If Owner shall fail to complete the construction of the Project (as hereinafter defined) and obtain a Certificate of Occupancy for the affordable housing units related to the affordable housing ROGO allocations on or before the date set forth in this Interlocal Agreement, as such date may be extended due to Unavoidable Delay (as hereinafter defined) or otherwise with the reasonable consent of Monroe County (an “Owner Default”), a Recognized Mortgagee (as hereinafter defined) shall have two hundred-seventy (270) days more than is given to Owner (the “Recognized Mortgagee Cure Extension Period”) to cure, or cause to be cured, such Owner Default. In the event the Recognized Mortgagee cannot, through the use of commercially reasonable efforts, cure such Owner Default within the Recognized Mortgagee Cure Extension Period, the Recognized Mortgagee may have such longer period of time to complete the cure, subject to the terms herein, by notifying Monroe County and the City of Marathon in writing sixty (60) days before the end of the Recognized Mortgagee Cure Extension Period set forth herein, of its intent to (a) institute a Work Out Plan (hereinafter defined) or (b) institute a foreclosure proceeding. In the event that the Recognized Mortgagee notifies Monroe County and the City of Marathon of its intent to institute a Work Out Plan, by the end of the Recognized Mortgagee Cure Extension Period, the Recognized Mortgagee shall provide Monroe County and the City of Marathon with a plan for its review and reasonable approval setting forth how the Recognized Mortgagee proposes to achieve, or cause the achievement of, completion of construction the Project, including details of any new or restructured financings, and a revised construction schedule highlighting the new dates for completion and obtaining a Certificate of Occupancy (the “Work Out Plan”). Monroe County and the City of Marathon shall have thirty (30) days from the date of receipt of the Work Out Plan to review and approve the Work Out Plan, which Work Out Plan shall be approved if the Work Out Plan shows no substantial deviation from the Project contemplated herein (other than any deviation necessary for

the correction of any work in place at the time of the Work Out Plan that is required to be corrected). Once the Work Out Plan is approved by Monroe County and the City of Marathon, the Recognized Mortgagee shall be granted an additional cure period equal to the amount of time provided for in the final Work Out Plan, subject to Unavoidable Delay. The Recognized Mortgagee shall promptly commence, or cause commencement, of, such remedies and cure, and diligently pursue such remedies and cure to completion.

2. In the event that a Recognized Mortgagee notifies Monroe County and the City of Marathon of its intent to institute a foreclosure proceeding, the Recognized Mortgagee shall have sixty (60) days from such notice to institute foreclosure proceedings, shall prosecute the foreclosure proceedings in good faith continuously and with reasonable diligence and expedition to obtain possession of the Property. Upon obtaining possession of the Property through a foreclosure, or transfer in lieu of foreclosure, the Recognized Mortgagee or its designee (the “Subsequent Owner”) shall, within one hundred-twenty (120) days, send to Monroe County and the City of Marathon details of any new or restructured financings, and a revised construction schedule highlighting the new dates for completion and obtaining a Certificate of Occupancy (the “Completion Plan”). Monroe County and the City of Marathon shall have thirty (30) days to from the date of receipt to review and approve the Completion Plan, which Completion Plan shall be approved if the Completion Plan shows no substantial deviation from the Project contemplated herein (other than any deviation necessary for the correction of any work in place at the time of the Completion Plan that is required to be corrected). Once the Completion Plan is approved by Monroe County and the City of Marathon in their reasonable discretion, the Recognized Mortgagee or Subsequent Owner, as may be applicable, shall be granted an additional cure period equal to the amount of time provided for in the final Completion Plan, subject to Unavoidable Delay. The Recognized Mortgagee or Subsequent Owner, as may be applicable, shall promptly commence or cause commencement of such remedies and cure, and diligently and continuously pursue such remedies and cure to completion.

**C. Definitions:** The following capitalized terms shall have the respective meanings specified below for purposes hereof:

1. “Institutional Lender” means (a) any bank, savings bank, savings and loan association, commercial bank or trust company (whether acting individually or in a fiduciary capacity) or an entity controlled by, controlling or under common control with any of the foregoing, (b) an insurance company organized and existing under the laws of the United States or any state thereof, (c) a real estate investment trust, a trustee or issuer of collateralized mortgage obligations, a loan conduit or other similar investment entity which (1) is regularly engaged in the business of providing debt or equity financing and (2) acts through an institutional trustee, (d) a religious, educational or eleemosynary institution, a federal, state, or municipal employee’s welfare, benefit, pension or retirement fund, any governmental agency, quasi-governmental entity or government sponsored entity (e.g., Fannie Mae and/or Freddie Mac), (e) any brokerage or investment banking organization regularly engaged in the business of providing debt financing, or

(f) any combination of the foregoing entities. It is acknowledged and agreed that Citibank, N.A. is an Institutional Lender.

2. “Mortgage” means any mortgage, deed of trust, deed to secure debt, security agreement, collateral assignment or similar instrument encumbering the Property.

3. “Mortgagee” means the holder of a Mortgage.

4. “Permitted Developer” means an entity that as of the relevant date of inquiry (a) is controlled by one or more principals who have at least five (5) years of experience in developing residential buildings of a similar nature and size as the Project, (b) is (or has an affiliate which is) a developer, construction manager or general contractor (or engages a construction manager or general contractor) with at least five (5) years of experience in developing residential buildings of a similar nature and size as the Project, and (c) is a Permitted Person.

5. “Permitted Person” means any Person that (a) has not been convicted of a felony and/or any crime involving moral turpitude in the preceding ten (10) years; (b) has not, at any time in the three (3) preceding years, owned any property which, while in the ownership of such Person, was acquired by in rem tax foreclosure, other than a property that has been released or is in the process of being released to such Person; and (c) is not controlled (which in this instance shall mean the power, to direct the management and affairs of such Person’s day to day operations, whether through the ability to exercise voting power, by contract or otherwise, including the right to make (or consent to) all capital and other major decisions to be made by such Person) by a Person described in subsections (a) or (b) above.

6. “Person” means an individual, corporation, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government, or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

7. “Project” means the multifamily residential project and other structures, improvements and appurtenances to be constructed on the Property.

8. “Property” means the property described on Exhibit “A” to this Interlocal Agreement.

9. “Recognized Mortgage” means a Mortgage (a) that is held by an Institutional Lender (or a corporation or other entity wholly owned by an Institutional Lender), and (b) which is recorded in the Official Records of Monroe County.

10. “Recognized Mortgagee” means the holder of a Recognized Mortgage.

11. “Unavoidable Delay(s)” means actual delays affecting the applicable work to be performed under this Interlocal Agreement from causes beyond Owner’s reasonable

control, including delays due to acts of God (including earthquakes, floods and inordinately severe weather conditions of extended duration and impact), industry-wide strikes or other similar labor stoppages (not including labor actions specific to the Project or affecting a single group of contractors or suppliers), shortages or inability to obtain labor, fuel, steam, water, electricity, equipment, supplies, or materials (for which no substitute is readily available), inability to obtain labor, materials or permits due to unscheduled extraordinary governmental restrictions, governmental actions or orders of general applicability (not including actions or orders specific to the Project), any order or judgment that results in an injunction or a restraining order prohibiting or otherwise delaying the commencement or continuation of construction or other acts, provided such litigation was not instituted, financed or supported by the applicable party or any of its affiliates, enemy action or terrorism, civil commotion, fire, or unavoidable casualty; but in each case, only to the extent the same is not attributable to the acts or omissions of Owner and for which Owner has given Monroe County notice of such delay event within sixty (60) days after Owner became, or should have become, aware of same.

**Section 26. EFFECTIVE DATE:** This Agreement shall take effect on the date set forth above.

[signatures on following page]



IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

ATTEST: KEVIN MADOK, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By: \_\_\_\_\_  
Clerk

By: \_\_\_\_\_

Mayor George Neugent

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

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Assistant County Attorney

ATTEST:

THE CITY OF MARATHON, FLORIDA

By: \_\_\_\_\_  
DIANE CLAVER  
City Clerk

By: \_\_\_\_\_

Mayor: \_\_\_\_\_

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

(City Seal)

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

By: \_\_\_\_\_  
David Migut. City Attorney

EXHIBIT "A"  
LEGAL DESCRIPTION

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-55**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, REVISING DEVELOPMENT ORDER 2016-07 TO INCLUDE ADMINISTRATIVE REVISIONS CONCERNING CHANGES IN OWNERSHIP AND MINOR CHANGES IN CONDITIONS THAT WILL MORE ACCURATELY REFLECT THE TRUE CONDITIONS OF UPCOMING CONSTRUCTION APPROVALS; FOR A PROJECT NOW OWED BY CRYSTAL COVE HOUSING PARTNERS, LP FOR A CONDITIONAL USE PERMIT PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED "CONDITIONAL USE PERMITS," AUTHORIZING THE DEVELOPMENT OF A TWENTY-EIGHT (28) UNIT RV PARK, FORTY-SIX AFFORDABLE HOUSING UNITS AND 7,700 SQUARE FEET OF COMMERCIAL RETAIL ON PROPERTIES LOCATED AT AND ADJACENT TO 4900 OVERSEAS HIGHWAY; REAL ESTATE NUMBERS 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, AND 00328030-000000. NEAREST MILE MARKER 50**

**WHEREAS**, HTG Crystal Cove, LLLP (the "Original Applicant") filed an Application on June 30, 2016 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, City staff reviewed the Original Applicant's request for a Conditional Use Permit determining that the Original 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 15th day of August, 2015, the City of Marathon Planning Commission (the "Commission") conducted a properly advertised public hearing (the "Public Hearings") regarding the request submitted by the Original Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, and on the 23<sup>rd</sup> day of August, 2016 and the 13<sup>th</sup> day of September, 2016, the City Council (the "Council") conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by the Original Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**; the Council made a determination that the request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the

City's Comprehensive Plan and LDRs and further, that the approval is in the public interest, is consistent with its policy to encourage the redevelopment of properties within the City of Marathon and will further the health, safety and welfare of the residents of Marathon; and

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

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

**WHEREAS**; the City sought the affordable allocations for the project through an interlocal agreement between the County and City, accepted through Resolution 2016-125 and thereafter extended through Resolution 2019-28; and

**WHEREAS**; Crystal Cove Housing Partners, LP (the "Applicant") has acquired or shall acquire the subject property and the allocable development rights previously owned by Original Applicant and the Applicant proposes to develop forty-six (46) affordable housing residential units; and

**WHEREAS**, the purpose of this Resolution is to document a change in ownership and minor changes in conditions relating to the construction of the affordable housing units,

**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 Revised Development Order 2016-07, a copy of which is attached hereto as Exhibit "A", granting a revised Conditional Use Permit to Crystal Cove Housing Partners, LLC 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 its adoption by the City of Marathon and after review and approval by the Department of Economic Opportunity pursuant to Chapters 163 and 380, *Florida Statutes*.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 28<sup>TH</sup> DAY OF MAY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

---

**John Bartus, 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:**

---

David Migut, City Attorney

**CITY OF MARATHON, FLORIDA  
CONDITIONAL USE  
DEVELOPMENT ORDER #2016-07 REVISED**

**A DEVELOPMENT ORDER APPROVING A REQUEST BY CRYSTAL COVE HOUSING PARTNERS, LP FOR A CONDITIONAL USE PERMIT PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED "CONDITIONAL USE PERMITS," AUTHORIZING THE DEVELOPMENT OF A TWENTY-EIGHT (28) UNIT RV PARK, FORTY-SIX AFFORDABLE HOUSING UNITS AND 7,700 SQUARE FEET OF COMMERCIAL RETAIL ON PROPERTIES LOCATED AT AND ADJACENT TO 4900 OVERSEAS HIGHWAY; REAL ESTATE NUMBERS 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, AND 00328030-000000. NEAREST MILE MARKER 50**

**WHEREAS**, HTG Crystal Cove, LLLP (the "Original Applicant") filed an Application on June 30, 2016 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**, City staff reviewed the Original Applicant's request for a Conditional Use Permit determining that the Original 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 15th day of August, 2015, the City of Marathon Planning Commission (the "Commission") conducted a properly advertised public hearing (the "Public Hearings") regarding the request submitted by the Original Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, and on the 23<sup>rd</sup> day of August, 2016 and the 13<sup>th</sup> day of September, 2016, the City Council (the "Council") conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by the Original Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

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

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

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

**WHEREAS**; the City sought the affordable allocations for the project through an interlocal agreement between the County and City, accepted through Resolution 2016-125 and thereafter extended through Resolution 2019-28; and

**WHEREAS**; Crystal Cove Housing Partners, LP (the "Applicant") has acquired or shall acquire the subject property and the allocable development rights previously owned by Original Applicant and the Applicant proposes to develop forty-six (46) affordable housing residential units; and

**WHEREAS**, the purpose of this Revised Development Order is to document a change in ownership and minor changes in conditions relating to the construction of the affordable housing units,

**FINDINGS OF FACT:**

1. The Applicant will develop forty-six (46) affordable housing units and accessory structures as may be appropriate (See Attached Site Plan as Attachment 1).
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. A final lighting plan must be submitted prior to permit issuance.
2. A final landscape plan must be submitted prior to permit issuance.
3. Dumpsters are to be screened per code.
4. All conditions of the Fire Marshall must be met prior to permit issuance.
5. Where the project boundary buffer is reduced, thicker landscaping and screening is required.
6. Additional screening is to be created along any canal facing RV lots. The criteria established in Section 107.66 F shall be applied to this area with the additional height needed to screen headlights.
7. All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
8. Each RV site shall comply with all hurricane evacuation requirements set forth for City transient uses.
9. Existing entitlements include thirty (30) transient residential units (TRUs), one (1) market rate residential unit, and 1,633 square feet of commercial square footage. If applicable, these entitlements may be utilized to complete the project as approved. The approval of this Development Order does not convey or grant a vested right or entitlement to future allocations of affordable residential units by the City for the forty-six (46) affordable residential units referenced and approved in this Development Order. Such allocations shall be made at a future date consistent with the comprehensive plan amendments and LDR amendments. It is the intent of the applicant, with the support of the City, to seek the necessary affordable residential unit allocations through an Interlocal Agreement transferring the units from Monroe County to the City of Marathon.
10. 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:
  - a. 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;



- b. 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;
  - c. 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;
  - d. 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;
  - e. 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;
11. 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.
  12. 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.
  13. If applicable for any community workforce units, the following requirements shall be met:
    - a. Affordable housing criteria set forth in above and Chapter 110 "Definitions";
    - b. Shall be permanently deed-restricted as affordable;
    - c. Shall be restricted to occupancy to households that derive at least 70 percent of their household income from gainful employment in Monroe County;
    - d. Shall be restricted to occupancy for 28 consecutive days or longer;
    - e. Shall not be used for vacation rental use; and
    - f. Shall not be sold separately as a condominium.
  14. The total area of the mixed-use or commercial apartments, including patios and access way shall not exceed the area covered by the ground floor and any covered walks or arcades.
  15. Each unit shall have access to a balcony that is separate from the access to the unit, provides adequate privacy and the size shall be approximately 55 square feet in size.
  16. If applicable, any patio or balcony area may be wholly or partially replaced by the provision of a recreation yard provided on site. Recreational yards shall be a minimum one-tenth (1/10) of unit floor area.
  17. Recreational and open green space areas of approximately 29,000 s.f. shall be provided on site and additional recreational amenities shall be provided on site, including approximately 2,900 s.f. of recreational pool area.

18. If applicable, the developer and the City shall enter into a Development Agreement which at a minimum promulgates a requirement that necessary workforce housing units, pursuant to Chapter 104 Article 1, Section 104.25 and the City's Zoning in Progress concerning affordable housing, be complete prior to the Certificate of Occupancy for all RV units. In the alternative, the City will accept a bond for the value of the units or an irrevocable letter of credit which shall only be released upon completion of the required units.
19. If applicable, for RV lots 1-10: The owner has agreed to locate an opaque fence no less than 42" high, and buffered on the canal side by landscaping suitable to the City of Marathon, The location of the fence sections will extend for twelve feet (12') on the canal front sides of the lot to be located in front of the RV parking to shield headlights from shining across the canal.
20. An emergency gate entry/exit gate is allowed for emergency vehicle access at the northeast corner of the project site for entry/exit to and from 50<sup>th</sup> Street. This gate shall be continuously secured except to allow emergency vehicle access. The use of the gate for general or routine access of owners or patrons of the RV or affordable housing project elements is prohibited.

#### **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, unless otherwise approved or allowed by the City. 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 or 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 thirty (30) 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.

\_\_\_\_\_  
Date

\_\_\_\_\_  
George Garrett  
Director of Planning

This Development Order was filed in the Office of the City Clerk of this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
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 Community Affairs 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, please be advised that pursuant to Chapter 9J-1. Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Community Affairs. 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 \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2019.

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

EXHIBIT "A"

**[PLEASE REPLACE WITH APPROVED SITE PLAN]**

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-56**

**A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, APPROVING THE SECOND AMENDMENT TO THE INTERLOCAL AGREEMENT (ILA) BETWEEN THE CITY OF MARATHON AND MONROE COUNTY TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL DWELLING UNIT ALLOCATIONS FOR AN APPROVED PROJECT IN THE CURRENT OWNERSHIP OF CRYSTAL COVE HOUSING PARTNERS LP; SAID ILA ORIGINALLY APPROVED PURSUANT TO CITY RESOLUTION 2016-125 AND SUBSEQUENTLY AMENDED PURSUANT TO RESOLUTION 2019-28; THE SUBJECT AMENDMENT WILL UPDATE OF CURRENT OWNERSHIP IN THE PROJECT AND ADD A SECTION TITLED, "OWNER'S RIGHT TO TRANSFER; PERFORMANCE BY RECOGNIZED MORTGAGEE;" PROJECT IN THE OWNERSHIP OF CRYSTAL COVE MARKET SITE LLC (FORMERLY HTG CRYSTAL COVE), TO BE LOCATED 4900 OVERSEAS HIGHWAY, MARATHON, FLORIDA ON PROPERTIES INCLUDING REAL ESTATE NUMBERS 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, AND 00328030-000000. NEAREST MILE MARKER 50; RESCINDING RESOLUTION 2017-106; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, On or about December of 2016, the City of Marathon and Monroe County entered into an Interlocal Agreement (ILA) (Resolution 2016-125) transferring forty-six (46) affordable housing residential dwelling units to the City to be utilized in a project in the ownership of HTG Crystal Cove, LLC (Original Applicant); and

**WHEREAS**, the project known as Crystal Cove Housing Partners LP (originally HTG Crystal Cove) and Key Vaca LLC have submitted building plans jointly to complete a combined project; and

**WHEREAS**, the building plans should be approved within the next several weeks (approximately May 30, 2019); and

**WHEREAS**, a request to extend the ILA was made in Resolution 2019-28 and subsequently approved by the County; and

**WHEREAS**; the City sought the affordable allocations for the project through an interlocal agreement between the County and City, accepted through Resolution 2016-125 and thereafter extended through Resolution 2019-28; and

**WHEREAS;** Crystal Cove Housing Partners, LP (the "Applicant") has acquired or shall acquire the subject property and the allocable development rights previously owned by Original Applicant and the Applicant proposes to develop forty-six (46) affordable housing residential units; and

**WHEREAS,** this Resolution seeks a Second Amendment to the ILA in order to recognize a change in project ownership and to add a section titled, "Owner's Right To Transfer; Performance By Recognized Mortgagee,"

**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 requests that the ILA approved pursuant to Resolution 2016-125 and extended pursuant to Resolution 2019-28, be amended to reflect a change in project ownership and to add a section titled "Owner's Right To Transfer; Performance By Recognized Mortgagee" and provides the attached Amendment document for proposed execution (EXHIBIT A).

**Section 3.** The City Clerk shall forward a certified copy of this Resolution to appropriate individuals at Monroe County, Florida, the Florida Department of Economic Opportunity, the Florida Housing Finance Corporation, the Florida Task Force on Affordable Housing, and the Executive Offices of the Governor.

**Section 4. Effective Date.** This Resolution shall become effective immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 28<sup>TH</sup> DAY OF MAY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

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**John Bartus, 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:**

---

David Migut, City Attorney



**INTERLOCAL AGREEMENT BETWEEN MONROE  
COUNTY AND THE CITY OF MARATHON  
TRANSFERRING AFFORDABLE HOUSING  
RESIDENTIAL DWELLING UNIT ALLOCATIONS**

This Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040 (“County”), and the City of Marathon, a municipal corporation of the State of Florida, whose address is 9805 Overseas Highway, Marathon, Florida 33050 (the “City”).

WITNESSETH:

**WHEREAS**, Monroe County and the City of Marathon recognize the value of regional partnerships in smart growth; and

**WHEREAS**, Policy 101.2.15 of the Year 2010 Monroe County Comprehensive Plan allows Rate of Growth Ordinance building permit allocations (hereinafter “affordable housing ROGO allocations” or “affordable ROGOs”) for affordable housing projects to be pooled and transferred between local government jurisdictions within the Florida Keys Area of Critical Concern, if accomplished through an interlocal agreement between the sending and receiving local governments; and

**WHEREAS**, Chapter Five (5) of the City Comprehensive Plan identifies goals, objectives and policies to provide for development pursuant to intergovernmental coordination and interlocal agreements; and

**WHEREAS**, Monroe County and the City of Marathon have previously entered into Interlocal Agreements to transfer affordable ROGOs; and

**WHEREAS**, Monroe County and the City of Marathon recognize the potential economic value of such transferable affordable ROGO allocations; and

**WHEREAS**, this Agreement is entered into pursuant to Florida Statutes, Section 163.01, *et seq.*, Florida Interlocal Cooperation Act of 1969, which states:

“It is the purpose of this section to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities”; and

**WHEREAS**, the comprehensive plans of Monroe County and the City of Marathon expressly identify interlocal agreements as a means of resolving issues mutually affecting their respective jurisdictions; and

**WHEREAS**, Crystal Cove Housing Partners, LP, a Florida limited partnership, has received an allocation from the State of Florida Housing Finance Corporation (FHFC) for Low Income Housing Tax Credits (LIHTC); and

**WHEREAS**, Crystal Cove Housing Partners, LP has received City of Marathon approval of a Conditional Use Permit by Resolution \_\_\_\_\_ for a project that includes 46 affordable housing units pertaining to the following site:

**Legal Description attached as Exhibit A**

**WHEREAS**, the parties have determined that this Agreement is in the best interests of the public and the public health, safety, and welfare.

**NOW, THEREFORE**, the parties hereto agree as follows:

**Section 1. TRANSFER:** The parties agree to permit the transfer of up to 46 affordable low income housing ROGO allocations, from Monroe County to the City of Marathon for allocation, pursuant to this Agreement, and subject to the conditions contained herein, including but not limited to:

Crystal Cove Housing Partners, LP, or its assignee, constructing and obtaining a Certificate of Occupancy for all of the affordable housing units, situated upon the subject property described herein, related to the transferred affordable housing ROGO allocations subject of this Interlocal Agreement, prior to December 31, 2021 (subject to extension for force majeure as approved by Monroe County); and

The recording of a 99-year Affordable Housing Deed Restriction on all of the affordable housing units contemplated herein, in accordance with this Agreement, and in accordance with the applicable requirements of the Code of Ordinances, City of Marathon, Florida and similar requirements of the Florida Building Code (FBC).

**Section 2. ASSIGNMENT:** Monroe County has assigned its rights to the affordable housing ROGO allocation contemplated herein to the City, and the 46 affordable housing ROGO allocations are to be issued by the City to be used specifically by Crystal Cove Housing Partners, LP, or its successor or assign, at the development in Marathon known as “**Residences at Crystal Cove on 4900 Overseas Highway, Marathon**” (Legal Description attached as Exhibit “A”). In the event the subject project or, as applicable, Crystal Cove Housing Partners, LP, or, as applicable, its assign(s) and successor(s) in interest or title, fail to obtain federal or state housing financial assistance and complete the construction as evidenced by issuance of a Certificate of Occupancy for all 46 units by the City of Marathon, any units which have not received a Certificate of Occupancy shall result in those allocations reverting to Monroe County and to their former status under the Agreement (subject, however, to Section 25 below); no amendment to this Agreement is necessary or required to trigger this automatic reverter clause.

**Section 3. TERM:** Subject to and upon the terms and conditions set forth herein, this Interlocal Agreement shall continue in force until the following occurs:

The project does not complete construction and does not obtain Certificates of Occupancy for all 46 affordable housing units contemplated herein by December 31, 2021 (subject to extension for force majeure as approved by Monroe County). All affordable housing units for which Certificates of Occupancy are issued prior to December 31, 2021 shall remain subject to this Interlocal Agreement irrespective of whether all 46 affordable housing units contemplated herein receive Certificates of Occupancy.

**Section 4. NOTIFICATION:** The City of Marathon shall (1) Immediately notify Monroe County of any assignment(s) and successor(s) in interest or title to Crystal Cove Housing Partners, LP’s interest(s) in the affordable housing ROGO allocation contemplated herein, and (2) Shall immediately notify Monroe County of any assignment(s) and successor(s) in interest or title to the affordable housing ROGO

allocations contemplated herein above at least thirty (30) business days prior to the date of such transfer or succession by certified U.S. Postal Service Certified mail to the Monroe County Planning & Environmental Resources Senior Director. The City of Marathon shall further provide prompt written notice to Monroe County of the extension, termination, or expiration of the aforesaid Conditional Use Permit for project contemplated herein. The City of Marathon shall further provide prompt written notice to Monroe County of the issuance of Certificates of Occupancy for the subject affordable housing units within thirty (30) business days after issuance of said Certificates.

All such notices under this Section (“**Section 4.**”) shall be sent to the following addresses:

Monroe County Administrator  
1100 Simonton Street, Key West, FL 33040; and

Monroe County Planning & Environmental Resources Department  
Attn: Senior Director  
Subject: City of Marathon Interlocal Agreement  
2798 Overseas Highway, Marathon, FL 33050; and

With a copy to:

Monroe County Attorney’s Office  
Attn: County Attorney  
Subject: City of Marathon Interlocal Agreement  
P.O. Box 1026  
Key West, FL 33041

Mark A. Gould, Jr., Esq.  
Arnall Golden Gregory LLP  
171 17<sup>th</sup> Street, NW  
Suite 2100  
Atlanta, GA 30363-1031  
Attorney for Property Owner

Failure of the City of Marathon or Crystal Cove Housing Partners, LP or their assign(s) or successor(s) in interest or title, to perform any act required by this Interlocal Agreement shall neither impair nor limit the validity of this Agreement or limit its enforceability in any way.

**Section 5. CONSTRUCTION AND INTERPRETATION:** The construction and interpretation of this Interlocal Agreement and Monroe County Code(s) provisions in arising from, related to, or in connection with this Agreement, shall be deferred in favor of Monroe County and such construction and interpretation shall be entitled to great weight on trial and on appeal.

**Section 6. NO WAIVER:** Monroe County shall not be deemed to have waived any rights under this Interlocal Agreement unless such waiver has been expressly and specifically provided.

**Section 7. LIMITATION OF LIABILITY:** In the event of any litigation related to, arising from, or in connection with this Interlocal Agreement, the parties hereto and Crystal Cove Housing Partners, LP, and its assignees and successors-in-interest, hereby agree to expressly waive their right to a jury trial.

**Section 8. DUTY TO COOPERATE:** When required to under this Interlocal Agreement, the City of Marathon and Crystal Cove Housing Partners, LP, and its assignees and successors-in-interest, shall, to

ensure the implementation of the government purpose furthered by this Agreement, cooperate with Monroe County's reasonable requests, regarding the conditions and provisions contained herein.

**Section 9. GOVERNING LAWS/VENUE:** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida and the United States. Exclusive venue for any dispute arising under this Agreement shall be in the Sixteenth Judicial Circuit in and for Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs. This Agreement is not subject to arbitration.

**Section 10. NONDISCRIMINATION:** The parties agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin; (2) Section 504 of the Rehabilitation Act of 1973, as amended (3) U.S.C. s. 1975, as amended (42 U.S.C. ss. 6101.6107)), which prohibits discrimination on the basis of age; (4) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (5) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (6) The Public Health Service Act of 1912, ss. 523 and 527 (42 U.S.C. ss. 290 dd-3 and 290 ee(03), as amended, relating to confidentiality of alcohol and drug abuse patient records; (7) The Americans With Disabilities Act of 1990 (42 U.S.C. s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; (8) The Civil Rights Act of 1992 (Chapter 760, Florida Statutes, and Section 509.021, Florida Statutes), as may be amended from time to time, relating to non-discrimination; and (9) any other nondiscrimination provisions in any federal or state statutes or local ordinances which may apply to the parties to, or the subject matter of, this Agreement.

**Section 11. CODE OF ETHICS:** The parties agree that their officers and employees recognize and will be required to comply with the standards of conduct relating to public officers and employees as delineated in Section 112.313, Florida Statutes regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position; conflicting employment or contractual relationship; and disclosure or use of certain information.

**Section 12. NO SOLICITATION/PAYMENT:** The parties warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not been paid or agreed to pay any person, company, corporation, individuals, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach of violation of this provision, each party agrees that the other party shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

**Section 13. SUBORDINATION:** This Agreement is subordinate to the laws and regulations of the United States and the State of Florida, whether in effect on commencement of this Interlocal Agreement or adopted after that date.

**Section 14. INCONSISTENCY:** If any item, condition, or obligation of this Agreement is in conflict with other items of this Agreement, the inconsistencies shall be construed so as to give meaning to those terms which limited the County's responsibility or liability.

**Section 15. PUBLIC ACCESS TO RECORDS:** The parties shall allow and permit members of the public reasonable access to, and inspection of, all documents, papers, letters or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the parties in conjunction with this Agreement.

**Section 16. NON-RELIANCE BY THIRD-PARTIES:** Other than as stated herein, no person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the parties agree that neither the County nor the City, or any agent, officer, or employee of each shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

**Section 17. NO PERSONAL LIABILITY:** No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of a party in his or her individual capacity, and no member, officer, agent or employee of a party shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

**Section 18. NOTICES:** In addition to those communications and notice requirements set forth in Section 4. of this Agreement, all notices and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

if to Monroe County:

Roman Gastesi, Jr., County Administrator  
Monroe County Historic Gato Building  
1100 Simonton Street  
Key West, Florida 33040; and

Planning & Environmental Resources Department  
Attn: Senior Director  
Subject: City of Marathon Interlocal Agreement  
2798 Overseas Highway, Marathon, FL 33050; and

With a copy to:

Monroe County Attorney's Office  
Attn: County Attorney  
Subject: City of Marathon Interlocal Agreement  
P.O. Box 1026  
Key West, FL 33041

Mark A. Gould, Jr., Esq.  
Arnall Golden Gregory LLP  
171 17<sup>th</sup> Street, NW  
Suite 2100  
Atlanta, GA 30363-1031  
Attorney for Property Owner

If to the City:

City Manager  
9805 Overseas Highway  
Marathon, Florida 33050  
George Garrett, Planning Director  
9805 Overseas Highway  
Marathon, Florida 33050

With a copy to:

David Migut, Esquire  
City Attorney  
9805 Overseas Highway  
Marathon, FL 33050

Mark A. Gould, Jr., Esq.  
Arnall Golden Gregory LLP  
171 17<sup>th</sup> Street, NW  
Suite 2100  
Atlanta, GA 30363-1031  
Attorney for Property Owner

Any notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fee prepaid; hand delivered, or sent by overnight delivery service.

**Section 19. ENTIRE AGREEMENT/MODIFICATION/AMENDMENT:** This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

**Section 20. INCONSISTENCY, PARTIAL INVALIDITY, SEVERABILITY, AND SURVIVAL OF PROVISIONS:** If any condition or provision hereunder, or any portion thereof, is/are held to be invalid or unenforceable in or by any administrative hearing officer or court of competent jurisdiction, the invalidity or unenforceability of such condition(s) or provision(s) shall neither limit nor impair the operation, enforceability, or validity of any other condition or provision hereunder, or remaining portions thereof. All such other condition(s) or provision(s), or portions thereof, shall continue unimpaired in full force and effect.

**Section 21. CAPTIONS AND PARAGRAPH HEADINGS:** Captions and paragraph headings, where used herein, are inserted for convenience only and are not intended to descriptively limit the scope and/or intent of the particular paragraph or text to which they refer.

**Section 22. AUTHORITY TO ATTEST:** Each party to this Interlocal Agreement represents and warrants to the other that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary corporate and other organizational action, as required.

**Section 23. MISCELLANEOUS:** Each party represents and warrants to the other that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary corporate or other organizational action, as required.

**Section 24. COUNTERPARTS:** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

**Section 25. OWNER’S RIGHT TO TRANSFER; PERFORMANCE BY RECOGNIZED MORTGAGEE:**

**A. Owner’s Right to Transfer:** Crystal Cove Housing Partners, LP or its successors and assigns in interest or title, as applicable, may:

1. Mortgage its interest in the Property; and
2. Subject to providing written notice thereof to Monroe County, transfer and/or convey its interests in the Property or the affordable housing ROGO allocations contemplated herein pursuant to a bona fide foreclosure proceeding or a bona fide deed in lieu of foreclosure, to a Mortgagee (as hereinafter defined), or its designee or buyer in a bona fide foreclosure or of the deed in lieu of foreclosure or from the Mortgagee or its designee that initially acquired the Property via the bona fide foreclosure or the deed in lieu of foreclosure provided that such designee or buyer is a Permitted Developer (as hereinafter defined) and covenants to perform the construction work required to obtain a Certificate of Occupancy as required herein, and at all times following such transfer, comply with the use obligations herein.

**B. Performance by Recognized Mortgagee:**

1. If Owner shall fail to complete the construction of the Project (as hereinafter defined) and obtain a Certificate of Occupancy for the affordable housing units related to the affordable housing ROGO allocations on or before the date set forth in this Interlocal Agreement, as such date may be extended due to Unavoidable Delay (as hereinafter defined) or otherwise with the reasonable consent of Monroe County (an “Owner Default”), a Recognized Mortgagee (as hereinafter defined) shall have two hundred-seventy (270) days more than is given to Owner (the “Recognized Mortgagee Cure Extension Period”) to cure, or cause to be cured, such Owner Default. In the event the Recognized Mortgagee cannot, through the use of commercially reasonable efforts, cure such Owner Default within the Recognized Mortgagee Cure Extension Period, the Recognized Mortgagee may have such longer period of time to complete the cure, subject to the terms herein, by notifying Monroe County and the City of Marathon in writing sixty (60) days before the end of the Recognized Mortgagee Cure Extension Period set forth herein, of its intent to (a) institute a Work Out Plan (hereinafter defined) or (b) institute a foreclosure proceeding. In the event that the Recognized Mortgagee notifies Monroe County and the City of Marathon of its intent to institute a Work Out Plan, by the end of the Recognized Mortgagee Cure Extension Period, the Recognized Mortgagee shall provide Monroe County and the City of Marathon with a plan for its review and reasonable approval setting forth how the Recognized Mortgagee proposes to

achieve, or cause the achievement of, completion of construction the Project, including details of any new or restructured financings, and a revised construction schedule highlighting the new dates for completion and obtaining a Certificate of Occupancy (the “Work Out Plan”). Monroe County and the City of Marathon shall have thirty (30) days from the date of receipt of the Work Out Plan to review and approve the Work Out Plan, which Work Out Plan shall be approved if the Work Out Plan shows no substantial deviation from the Project contemplated herein (other than any deviation necessary for the correction of any work in place at the time of the Work Out Plan that is required to be corrected). Once the Work Out Plan is approved by Monroe County and the City of Marathon, the Recognized Mortgagee shall be granted an additional cure period equal to the amount of time provided for in the final Work Out Plan, subject to Unavoidable Delay. The Recognized Mortgagee shall promptly commence, or cause commencement, of, such remedies and cure, and diligently pursue such remedies and cure to completion.

2. In the event that a Recognized Mortgagee notifies Monroe County and the City of Marathon of its intent to institute a foreclosure proceeding, the Recognized Mortgagee shall have sixty (60) days from such notice to institute foreclosure proceedings, shall prosecute the foreclosure proceedings in good faith continuously and with reasonable diligence and expedition to obtain possession of the Property. Upon obtaining possession of the Property through a foreclosure, or transfer in lieu of foreclosure, the Recognized Mortgagee or its designee (the “Subsequent Owner”) shall, within one hundred-twenty (120) days, send to Monroe County and the City of Marathon details of any new or restructured financings, and a revised construction schedule highlighting the new dates for completion and obtaining a Certificate of Occupancy (the “Completion Plan”). Monroe County and the City of Marathon shall have thirty (30) days to from the date of receipt to review and approve the Completion Plan, which Completion Plan shall be approved if the Completion Plan shows no substantial deviation from the Project contemplated herein (other than any deviation necessary for the correction of any work in place at the time of the Completion Plan that is required to be corrected). Once the Completion Plan is approved by Monroe County and the City of Marathon in their reasonable discretion, the Recognized Mortgagee or Subsequent Owner, as may be applicable, shall be granted an additional cure period equal to the amount of time provided for in the final Completion Plan, subject to Unavoidable Delay. The Recognized Mortgagee or Subsequent Owner, as may be applicable, shall promptly commence or cause commencement of such remedies and cure, and diligently and continuously pursue such remedies and cure to completion.

**C. Definitions:** The following capitalized terms shall have the respective meanings specified below for purposes hereof:

1. “Institutional Lender” means (a) any bank, savings bank, savings and loan association, commercial bank or trust company (whether acting individually or in a fiduciary capacity) or an entity controlled by, controlling or under common control with any of the foregoing, (b) an insurance company organized and existing under the laws of the United States or any state thereof, (c) a real estate investment trust, a trustee or issuer of collateralized mortgage obligations, a loan conduit or other similar investment entity



which (1) is regularly engaged in the business of providing debt or equity financing and (2) acts through an institutional trustee, (d) a religious, educational or eleemosynary institution, a federal, state, or municipal employee's welfare, benefit, pension or retirement fund, any governmental agency, quasi-governmental entity or government sponsored entity (e.g., Fannie Mae and/or Freddie Mac), (e) any brokerage or investment banking organization regularly engaged in the business of providing debt financing, or (f) any combination of the foregoing entities. It is acknowledged and agreed that Citibank, N.A. is an Institutional Lender.

2. "Mortgage" means any mortgage, deed of trust, deed to secure debt, security agreement, collateral assignment or similar instrument encumbering the Property.

3. "Mortgagee" means the holder of a Mortgage.

4. "Permitted Developer" means an entity that as of the relevant date of inquiry (a) is controlled by one or more principals who have at least five (5) years of experience in developing residential buildings of a similar nature and size as the Project, (b) is (or has an affiliate which is) a developer, construction manager or general contractor (or engages a construction manager or general contractor) with at least five (5) years of experience in developing residential buildings of a similar nature and size as the Project, and (c) is a Permitted Person.

5. "Permitted Person" means any Person that (a) has not been convicted of a felony and/or any crime involving moral turpitude in the preceding ten (10) years; (b) has not, at any time in the three (3) preceding years, owned any property which, while in the ownership of such Person, was acquired by in rem tax foreclosure, other than a property that has been released or is in the process of being released to such Person; and (c) is not controlled (which in this instance shall mean the power, to direct the management and affairs of such Person's day to day operations, whether through the ability to exercise voting power, by contract or otherwise, including the right to make (or consent to) all capital and other major decisions to be made by such Person) by a Person described in subsections (a) or (b) above.

6. "Person" means an individual, corporation, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government, or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

7. "Project" means the multifamily residential project and other structures, improvements and appurtenances to be constructed on the Property.

8. "Property" means the property described on Exhibit "A" to this Interlocal Agreement.

9. “Recognized Mortgage” means a Mortgage (a) that is held by an Institutional Lender (or a corporation or other entity wholly owned by an Institutional Lender), and (b) which is recorded in the Official Records of Monroe County.

10. “Recognized Mortgagee” means the holder of a Recognized Mortgage.

11. “Unavoidable Delay(s)” means actual delays affecting the applicable work to be performed under this Interlocal Agreement from causes beyond Owner’s reasonable control, including delays due to acts of God (including earthquakes, floods and inordinately severe weather conditions of extended duration and impact), industry-wide strikes or other similar labor stoppages (not including labor actions specific to the Project or affecting a single group of contractors or suppliers), shortages or inability to obtain labor, fuel, steam, water, electricity, equipment, supplies, or materials (for which no substitute is readily available), inability to obtain labor, materials or permits due to unscheduled extraordinary governmental restrictions, governmental actions or orders of general applicability (not including actions or orders specific to the Project), any order or judgment that results in an injunction or a restraining order prohibiting or otherwise delaying the commencement or continuation of construction or other acts, provided such litigation was not instituted, financed or supported by the applicable party or any of its affiliates, enemy action or terrorism, civil commotion, fire, or unavoidable casualty; but in each case, only to the extent the same is not attributable to the acts or omissions of Owner and for which Owner has given Monroe County notice of such delay event within sixty (60) days after Owner became, or should have become, aware of same.

**Section 26. EFFECTIVE DATE:** This Agreement shall take effect on the date set forth above.

[signatures on following page]

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

ATTEST: KEVIN MADOK, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By: \_\_\_\_\_  
Clerk

By: \_\_\_\_\_

Mayor George Neugent

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

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Assistant County Attorney

ATTEST:

THE CITY OF MARATHON, FLORIDA

By: \_\_\_\_\_  
DIANE CLAVER  
City Clerk

By: \_\_\_\_\_  
Mayor: \_\_\_\_\_

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

(City Seal)

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

By: \_\_\_\_\_  
David Migut. City Attorney

EXHIBIT "A"  
LEGAL DESCRIPTION

CITY COUNCIL AGENDA STATEMENT



**Meeting Date:** May 28, 2019  
**To:** Honorable Mayor Council Members  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

**Agenda Item:** **Resolution 2019-57**, A Resolution Of The City Of Marathon, Florida Approving Minor Revisions To An Interlocal Agreement Between Monroe County And The City Of Marathon Transferring Affordable Housing Residential Allocation For A Project In The Name Of Multiple Corporations Including Callianasa Corp., Key Vaca LLC, Driftwood LLC, CB Schmitt Real Estate Company, Inc., And Twenty-Third Street, LLC, And Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

Through Resolution 2016-124, the City requested approval of an ILA between the County and the City for thirty-four (34) affordable housing allocations. The County approved the ILA with minor revisions. This Resolution seeks to adopt the ILA approved by the County so that the Clerk of Courts may close out the County’s Resolution on the matter.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u>  X  </u>	<u>      </u>
2. Other –Sewer Mandate	<u>      </u>	<u>  X  </u>

FISCAL NOTE:

Not Applicable

APPROVED BY FINANCE DIRECTOR:

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RECOMMENDATION:

Approval of Resolution 2019-57

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-57**

**A RESOLUTION OF THE CITY OF MARATHON, FLORIDA APPROVING MINOR REVISIONS TO AN INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY AND THE CITY OF MARATHON TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL ALLOCATION FOR A PROJECT IN THE NAME OF MULTIPLE CORPORATIONS INCLUDING CALLIANASA CORP., KEY VACA LLC, DRIFTWOOD LLC, CB SCHMITT REAL ESTATE COMPANY, INC., AND TWENTY-THIRD STREET, LLC, AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon (the “City”) wishes to revise an Interlocal Agreement with Monroe County (the “County”) originally approved under Resolution 2016-124 for the purposes of Transferring affordable housing unit allocations; and

**WHEREAS**, the Interlocal Agreement with the County is in the best interest of Monroe County and the City of Marathon for the purposes of providing opportunities for affordable housing,

**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 Revised Interlocal Agreement (ILA) attached hereto as Exhibit “A”, between Monroe County and the City of Marathon Transferring Affordable Housing Residential Allocations For A Project Known As C B Schmitt et al is hereby approved. The Mayor is authorized to sign the ILA on behalf of the City, and the City Manager is authorized to expend budgeted funds on behalf of the City.

**Section 3.** The Clerk is authorized to transmit this Resolution and attached ILA to the Monroe County Growth Management Division and the Attorney’s office.

**Section 4.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 28<sup>th</sup> DAY OF MAY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

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**John Bartus, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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Diane Clavier, City Clerk

(City Seal)

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

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David Migut, City Attorney

**INTERLOCAL AGREEMENT BETWEEN  
MONROE COUNTY AND THE CITY OF MARATHON  
TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL ALLOCATIONS**

This Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040 (“County”) and the City of Marathon, a municipal corporation of the State of Florida, whose address is 9805 Overseas Highway, Marathon, Florida 33050 (the “City”);

**WITNESSETH:**

**WHEREAS**, Monroe County and the City of Marathon recognize the value of regional partnerships in smart growth; and

**WHEREAS**, Policy 101.2.15 of the Year 2010 Monroe County Comprehensive Plan allows Rate of Growth Ordinance building permit allocations (ROGOs) for affordable housing projects to be pooled and transferred between local government jurisdictions within the Florida Keys Area of Critical State Concern, if accomplished through an interlocal agreement between the sending and receiving local governments; and

**WHEREAS**, Chapter Five (5) of the City comprehensive Plan identifies goals, objectives and policies to provide for development pursuant to intergovernmental coordination and interlocal agreements; and

**WHEREAS**, Monroe County and the City of Marathon have previously entered into Interlocal Agreements to transfer ROGOs; and

**WHEREAS**, Monroe County and the City of Marathon recognize the potential economic value of such transferable affordable allocations; and

**WHEREAS**, this Agreement is entered into according to the authority of Florida Statutes, Section 163.01, *et. seq.*, Florida Interlocal Cooperation Act of 1969, which states:

“It is the purpose of this section to permit local government units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities”; and



**WHEREAS**, the comprehensive plans of Monroe County and the City of Marathon expressly identify interlocal agreements as a means of resolving issues mutually affecting their respective jurisdictions; and

**WHEREAS**, KEY VACA, LLC, a Florida limited liability company; CALLIANASA CORP., a Florida corporation; DRIFTWOOD, LLC, a Florida limited liability company; CB SCHMITT REAL ESTATE COMPANY, INC., a Florida corporation; and TWENTY-THIRD STREET, LLC, a Florida limited liability company (collectively “Property Owners”), wish to deed restrict up to thirty-four (34) units that currently are market rate units as affordable housing, and

**WHEREAS**, the owner and legal descriptions of the units are as follows:

**KEY VACA, LLC** – Parcel ID No. 00327140-000100; Alt. Key No. 8758961  
4800 Overseas Highway, Apts. 1, 2, 3, 4 – Four (4) Units  
Marathon, FL 33050

Situated in the County of Monroe and State of Florida and known as being a part of Lot 4 of Thompson and Adams Subdivision of a part of Government Lot 1, Section 10, Township 66 South, Range 32 East on Key Vaca as shown by plat recorded in Plat Book 2, Page 24, of Monroe County, Florida Public Records and more particularly described as follows:

Commencing on the northerly right-of-way line of Old State Highway 4-A at the southeasterly corner of Lot 4 of Thompson and Adams Subdivision as shown by plat recorded in Plat Book 2, Page 24 of Monroe County, Florida Public Records, bear North along the East line of said Lot 4, 230.29 feet to THE POINT OF BEGINNING of that portion of Lot 4 herein intended to be described, from said Point of Beginning bear northwesterly on the arc of a curve, deflecting to the left, 79.31 feet, said curve having a radius of 50.49 feet, the chord of which bears North 45 degrees, 00 minutes, 00 seconds West 71.40 feet to a point of inflection; thence continue northwesterly on the arc of a curve, deflecting to the right, 40.03 feet, said curve having a radius of 25.49 feet the chord of which bears North 45 degrees, 00 minutes, 00 seconds West 36.05 feet to a point of tangency; thence bear North 342.55 feet; thence bear East 75.97 feet to a point on the East line of said Lot 4; thence bear south along the East line of said Lot 4, 418.55 feet back to the Point of Beginning, subject to Easements set forth in Grant of Easement of even date herewith, executed by Grantee in favor of Grantor.

**CALLIANASA CORP.** – Parcel ID No. 00340030-000000; Alt. Key No. 1417645  
489 63<sup>rd</sup> Street, Apts. 1-8 – Eight (8) Units  
Marathon, FL 33050

Lots 8 and 9, Block C, SHERYL SUBDIVISION #2, according to the Plat thereof as recorded in Plat Book 4, Page 43 of the Public Records of Monroe County, Florida, together with improvements thereon.

**DRIFTWOOD, LLC** – Parcel ID No. 00326380-000000; Alt. Key No. 1400416

10875 Overseas Highway, Apts. 201, 202, 203, 204 – Four (4) Units  
Marathon, FL 33050

All that tract or parcel of land situate in Section 6, Township 66 South, Range 33 East, being part of “KEY COLONY TRACT” as surveyed by John P. Goggin, P.E. & P.L.S., dated May 20, 1955 and filed August, 1955 at Plat Book 3, Page 108, bounded and described as follows:

BEGINNING at a point in the North line of said Key Colony Tract, 4.72 feet Easterly as measured along said North line, from the West line of said KEY COLONY TRACT; thence, Northerly 77 degrees, 51 minutes East, along the North line of said KEY COLONY TRACT, a distance of 182.80 feet to an iron rod; thence Southerly 11 degrees, 23 minutes, 07 seconds East, a distance of 71.96 feet to an iron rod; thence Southerly 4 degrees, 39 minutes 26 seconds West, a distance of 14.35 feet to an iron rod; thence southerly 47 degrees, 35 minutes, 34 seconds West, a distance of 123.35 feet to an iron rod; thence southerly 77 degrees, 12 minutes, 16 seconds West, a distance of 96.09 feet to an iron rod; thence Southerly 64 degrees 43 minutes West, a distance of 61.36 feet to an iron rod; thence Northerly 48 degrees, 38 minutes, 40 seconds West, a distance of 20.60 feet to an iron rod; thence Northerly 30 degrees, 48 minutes West, a distance of 19.25 feet to an iron rod; thence Northerly 6 degrees 25 minutes 47 seconds West a distance of 72.50 feet to an iron rod, back to the POINT OF BEGINNING.

**C B SCHMITT REAL ESTATE COMPANY, INC.**

Parcel ID No. 00334490-000200; Alt. Key No. 8902026  
11085 1<sup>st</sup> Ave., Gulf, East and West – Two (2) Units  
Marathon, FL 33050

A portion of:

The Northerly 100 feet of Lot 1, Block 1, KEY COLONY SUBDIVISION #3, according to the Plat thereof as recorded in Plat Book 4, Page 10, of the Public Records of Monroe County, Florida.

AND

The Southerly 33.85 feet of the Northerly 133.85 feet of Lot 1, and the Southerly 58.85 feet of the Northerly 133.85 feet of Lot 2, Block 1, KEY COLONY SUBDIVISION #3, according to the Plat thereof as recorded in Plat Book 4, Page 10, of the Public Records of Monroe County, Florida.

AND

The Northerly 75 feet of Lot 2, Block 1, KEY COLONY SUBDIVISION #3, according to the Plat thereof as recorded in Plat Book 4, Page 10, of the Public Records of Monroe County, Florida.

AND

The Northerly 75 feet of Lot 3, Block 1, KEY COLONY SUBDIVISION #3, according to the Plat thereof as recorded in Plat Book 4, Page 10, of the Public Records of Monroe County, Florida.

AND

The Northerly 75 feet of Lot 4, Block 1, KEY COLONY SUBDIVISION #3, according to the plat thereof as recorded in Plat Book 4, Page 10, of the Public Records of Monroe County, Florida.

**TWENTY THIRD STREET, LLC** – Parcel ID No. 00320860-000000; Alt. Key No. 1395170  
152 23<sup>rd</sup> Street, Ocean, Units 1 through 5 – Five (5) Units  
Marathon, FL 33050

Lot 3, Block 2, SOMBRERO SUBDIVISION NO. 1, according to the Plat thereof as recorded in Plat Book 2, Page 31, of the Public Records of Monroe County, Florida.

**TWENTY THIRD STREET, LLC** – Parcel ID No. 00320840-000100; Alt. Key No. 1395153  
150 23<sup>rd</sup> Street, Ocean, Units 1 through 3 – Three (3) Units  
Marathon, FL 33050

Situated on Key Vaca in the County of Monroe, State of Florida, and known as being a part of Lot 1, Block 2, SOMBRERO SUBDIVISION NO. 1, within Government Lot No. 1, Section 9, Township 66 South, Range 32 East, as shown by Plat recorded in Plat Book 2, Page 31, of the Public Records of Monroe County, Florida, and bounded and described as follows:

BEGINNING at the southwesterly corner of Lot 1, Block 2, of said SOMBRERO SUBDIVISION NO. 1, bear North along the West line of said Lot 1 of Block 2, 40.91 feet; thence bear East 60.00 feet to a point on the Easterly line of said Lot 1; thence bear South 40.91 feet along the said Easterly line of Lot 1 to the Southeasterly corner thereof; thence bear West along the Southerly line of said Lot 1, 60.00 feet back to the POINT OF BEGINNING.

**TWENTY THIRD STREET, LLC** – Parcel ID No. 00320730-000000; Alt. Key No. 1395030  
393 23<sup>rd</sup> Street, Ocean, Units 1 through 5 – Five (5) Units  
Marathon, FL 33050

Lot 5, Block 1, SOMBRERO SUBDIVISION NO. 1, according to the Plat thereof as recorded in Plat Book 2, Page 31, of the Public Records of Monroe County, Florida.

**TWENTY THIRD STREET, LLC** – Parcel ID No. 00320730-000000; Alt. Key No. 1395030  
169, 171, & 167 23<sup>rd</sup> Street, Ocean – Three (3) Units  
Marathon, FL 33050

Lot 2, Block 1, SOMBRERO SUBDIVISION NO. 1, according to the Plat thereof as recorded in Plat Book 2, Page 31, of the Public Records of Monroe County, Florida.

**WHEREAS**, County hereby agrees to transfer to City thirty-four (34) affordable housing allocations to allow Marathon to secure the above properties as deed restricted affordable housing.

**WHEREAS**, the parties have determined that this Agreement is in the best interests of the public.

**NOW, THEREFORE**, the parties hereto agree as follows:

**Section 1. TRANSFER:** The parties agree to permit the transfer of up to thirty-four (34) affordable housing ROGO allocations from Monroe County to the City of Marathon, and subject to the conditions contained therein, including but not limited to:

a. The filing of a 99 year Affordable Housing Deed Restriction on all of the thirty-four (34) affordable housing units pursuant to this Agreement and the applicable requirements of the Code of Ordinances, City of Marathon, Florida and the applicable provisions of the Florida Building Code.

b. The affordable housing shall be solely in the categories of low income housing. Renters of said units shall qualify as earning at least seventy percent (70%) of their income within Monroe County.

c. The transfer of the market rate rights from the properties to a receiver site(s) approved by the City of Marathon and/or Monroe County under a separate agreement with the Property Owners (See Section 2 below).

**Section 2. ASSIGNMENT:** Monroe County has assigned its rights to the affordable allocations to the City and shall be designated as follows:

a. The thirty-four (34) affordable housing allocations are to be issued by the City to be used specifically by KEY VACA, LLC, a Florida limited liability company, at the development in Marathon known as 4800 Overseas Highway, Marathon, FL 33050; CALLIANASA CORP., a Florida corporation, at the development in Marathon known as 489 63<sup>rd</sup> Street, Ocean, Marathon, FL 33050; DRIFTWOOD, LLC, a Florida limited liability company, at the development in Marathon known as 10875 Overseas Highway, Marathon, FL 33050; CB

SCHMITT REAL ESTATE COMPANY, INC., a Florida corporation, at the development in Marathon known as 11085 Overseas 1<sup>st</sup> Ave., Gulf, Marathon, FL 33050; and TWENTY-THIRD STREET, LLC, a Florida limited liability company, at the development in Marathon known as 152 23<sup>rd</sup> Street, Ocean, Apts. 1-5, Marathon, FL 33050, 150 23<sup>rd</sup> Street, Ocean, Apts. 1-3, Marathon, FL 33050, 393 23<sup>rd</sup> Street, Ocean, Apts. 1-5, Marathon, FL 33050, and 167, 169, and 171 23<sup>rd</sup> Street, Ocean, Marathon, FL 33050.

b. The affordable housing allocations shall be applied and designated to low income housing for particular units as set forth in Exhibit “A” attached hereto.

c. Market rate residential units will become available for sale and transfer as a result of the deed restriction of said market rate residential units as low-income affordable housing provided through this ILA. Subject to the provisions of this ILA and by subsequent Agreement between the City of Marathon and the Corporate entities defined herein (KEY VACA, LLC, CALLIANASA CORP., CALLIANASA CORP., CB SCHMITT REAL ESTATE COMPANY, INC., and TWENTY-THIRD STREET, LLC), a minimum of 17 and up to one hundred percent or thirty-four (34) of the market rate residential units which become available after the deed restriction of the affordable units shall be sold by said corporate entities to owners whose receiver site properties exist within the unincorporated area of Monroe County, Lower Keys Subarea. Transfers shall be approved and documented pursuant to the relevant administrative procedures of the City of Marathon Comprehensive Plan and Land Development Regulations and the Monroe County Comprehensive Plan and Land Development Regulations, including Minor Conditional Use Permit approval. The decision on whether to transfer any market rate unit allocations for use on properties located in the unincorporated portion of the County in excess of the minimum of 17 units, shall be solely made by the Corporate owners based upon business considerations.

**Section 3. TERM:** Subject to and upon the terms and conditions set forth herein, this Agreement shall continue in force until fully performed by the parties and Property Owner. If any of the affordable allocations transferred to the City through this ILA are not transferred to the properties identified herein, then they shall be returned to the County within and not exceed one year from the date of the approval of this ILA.

**Section 4. NOTIFICATION:** The City of Marathon shall (1) notify Monroe County of any assignment(s) and successor(s) in interest or title to KEY VACA, LLC, a Florida limited liability company; CALLIANASA CORP., a Florida corporation; DRIFTWOOD, LLC, a Florida limited liability company; CB SCHMITT REAL ESTATE COMPANY, INC., a Florida corporation; and TWENTY-THIRD STREET, LLC, a Florida limited liability company; for the duration of the ROGO allocations described in **Section 1. (“Transfer”)** above, and (2) shall notify Monroe County of any assignment(s) and successor(s) in interest or title to the ROGO allocations described in **Section 1. (“Transfer”)** above at least thirty (30) days prior to the date of such transfer or succession by certified U. S. Postal Service Certified mail to the Monroe County Planning & Environmental Resources Senior Director.

All such notices under this Section (“**Section 4.**”) shall be sent to the following addresses:

Monroe County Administrator  
1100 Simonton Street  
Key West, FL 33040

Planning & Environmental Resources Department  
**Attn: Senior Director**  
2978 Overseas Highway  
Marathon, FL 33050

**Section 5. GOVERNING LAWS/VENUE:** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida and the United States. Exclusive venue for any dispute arising under this Agreement shall be in the Sixteenth Judicial Circuit in and for Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs. This Agreement is not subject to arbitration.

**Section 6. NONDISCRIMINATION:** The parties agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (2) Section 504 of the Rehabilitation Act of 1973, as amended (20 U.S.C. s. 1975, as amended (42 U.S.C. ss. 6101-6107)), which prohibits discrimination on the basis of age; (4) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (5) The Comprehensive Alcohol Abuse And Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (6) The Public Health Service Act of 1912, ss. 523 and 527, (42 U.S.C. ss. 290 dd-3 and 290 ee03), as amended, relating to confidentiality of alcohol and drug abuse patient records; (7) The Americans With Disabilities Act of 1990 (42 U.S.C. s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; (8) The Florida Civil Rights Act of 1992, (Chapter 760, Florida Statutes, and Section 509.021, Florida Statutes), as may be amended from time to time, relating to nondiscrimination; and (9) any other nondiscrimination provisions in any federal or state statutes or local ordinances which may apply to the parties to, or the subject matter of, this Agreement.

**Section 7. CODE OF ETHICS:** The parties agree that their officers and employees recognize and will be required to comply with the standards of conduct relating to public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

**Section 8. NO SOLICITATION/PAYMENT:** The parties warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee

working solely for it, to solicit or secure this Agreement and that it has not been paid or agreed to pay any person, company, corporation, individuals, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach of violation of this provision, each party agrees that the other party shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

**Section 9. SUBORDINATION:** This Agreement is subordinate to the laws and regulations of the United States and the State of Florida, whether in effect on commencement of this Agreement or adopted after that date.

**Section 10. INCONSISTENCY:** If any item, condition, or obligation of this Agreement is in conflict with other items of this Agreement, the inconsistencies shall be construed so as to give meaning to those terms which limited the County's responsibility and liability.

**Section 11. PUBLIC ACCESS TO RECORDS:** The parties shall allow and permit members of the public reasonable access to, and inspection of, all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the parties in conjunction with this Agreement.

**Section 12. NON-RELIANCE BY NON-PARTIES:** Other than as stated herein, no person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the parties agree that neither the County nor the City or any agent, officer, or employee of each shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

**Section 13. NO PERSONAL LIABILITY:** No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of a party in his or her individual capacity, and no member, officer, agent or employee of a party shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

**Section 14. NOTICES:** All notices and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

If to County: Roman Gastesi, Jr., County Administrator  
Monroe County Historic Gato Building  
1100 Simonton Street  
Key West, Florida 33040

Planning & Environmental Resources Department  
Attn: Senior Director  
2798 Overseas Highway  
Marathon, FL 33050

With a copy to: Robert B. Shillinger, Jr., Esquire  
Monroe County Attorney's Office  
P.O. Box 1026  
Key West, Florida 33041-1026

If to City: Charles Lindsay  
City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050

George Garrett  
Planning Director  
City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050

With a copy to: David Migut, Esquire  
City Attorney  
City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050

Thomas D. Wright, Esq.  
Law Offices of Thomas D. Wright, Chartered  
9711 Overseas Highway  
Marathon, FL 33050  
Attorney for Property Owners

Michael Halpern, Esq.  
Michael Halpern, P.A.  
209 Duval St., 2 Fl D  
Key West, FL 33040  
Attorney for Property Owners



Any notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered, or sent by overnight delivery service.

**Section 15. ENTIRE AGREEMENT/MODIFICATION/AMENDMENT:** This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

**Section 16. MISCELLANEOUS:** Each party represents and warrants to the other that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary corporate or other organizational action, as required.

**Section 17. COUNTERPARTS:** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

**Section 18. SEVERABILITY:** The provisions of this ILA are declared to be severable, and if any sentence, section, clause or phrase of this ILA shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 19. EFFECTIVE DATE:** This Agreement shall take effect on the date set forth above.

SIGNATURES ON FOLLOWING PAGES

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

(SEAL)

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

ATTEST: KEVIN MADOK, CLERK

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mayor/Chairperson

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

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Assistant County Attorney

ATTEST:

THE CITY OF MARATHON, FLORIDA

\_\_\_\_\_  
DIANE CLAVIER  
City Clerk

By: \_\_\_\_\_  
Dr. R. Daniel Zieg, Mayor

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

(City Seal)

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

By: \_\_\_\_\_  
David Migut  
City Attorney

We hereby consent to this Agreement and agree to abide by all terms and requirements herein.

KEY VACA, LLC,  
a Florida limited liability company

By \_\_\_\_\_  
DENISE H. HOLLAND  
Manager

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

CALLIANASA CORP.,  
a Florida corporation

By \_\_\_\_\_  
DENISE H. HOLLAND  
President

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

DRIFTWOOD, LLC,  
a Florida limited liability company

By \_\_\_\_\_  
DENISE H. HOLLAND  
Manager

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

C B SCHMITT REAL ESTATE COMPANY, INC.,  
a Florida corporation

By \_\_\_\_\_  
BRIAN C. SCHMITT  
President

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

TWENTY THIRD STREET, LLC,  
a Florida limited liability company

By \_\_\_\_\_  
DENISE H. HOLLAND  
Manager

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

CITY COUNCIL AGENDA STATEMENT



**Meeting Date:** May 28, 2019  
**To:** Honorable Mayor Council Members  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

**Agenda Item:** **Resolution 2019-58**, Approving Minor Revisions To An Interlocal Agreement Between Monroe County And The City Of Marathon Transferring Affordable Housing Residential Allocation For A Project In The Names Of Seaward Landings LLC And Seaward Pointe LLC; And Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

At its December 13, 2016 Council meeting, the City Council approved Resolution 2016-123; a Conditional Use Permit for the development of forty-five (45) workforce and ten (10) market rate housing units for a project known as Seaward Properties, LLC (now Seaward Landing, LLC and Seaward Pointe, LLC). This project was linked, through the affordable housing component to the project approved by the City for the Golf Course. In that project, the City approved the re-development of eight affordable housing units.

Through Resolution 2016-114, the City requested approval of an ILA between the County and the City for fifty-three (53) affordable housing allocations. The County approved the ILA with minor revisions. This Resolution seeks to adopt the ILA approved by the County so that the Clerk of Courts may close out the County’s Resolution on the matter.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u>  X  </u>	<u>      </u>
2. Other –Sewer Mandate	<u>      </u>	<u>  X  </u>

FISCAL NOTE:

Not Applicable

APPROVED BY FINANCE DIRECTOR:

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RECOMMENDATION:

Approval of Resolution

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-58**

**A RESOLUTION OF THE CITY OF MARATHON, FLORIDA APPROVING  
MINOR REVISIONS TO AN INTERLOCAL AGREEMENT BETWEEN  
MONROE COUNTY AND THE CITY OF MARATHON TRANSFERRING  
AFFORDABLE HOUSING RESIDENTIAL ALLOCATION FOR A  
PROJECT IN THE NAMES OF SEAWARD LANDINGS LLC AND  
SEAWARD POINTE LLC; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon (the “City”) wishes to revise an Interlocal Agreement with Monroe County (the “County”) originally approved under Resolution 2016-114 for the purposes of Transferring affordable housing unit allocations; and

**WHEREAS**, the Interlocal Agreement with the County is in the best interest of Monroe County and the City of Marathon for the purposes of providing opportunities for affordable housing,

**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 Revised Interlocal Agreement (ILA) attached hereto as Exhibit “A”, between Monroe County and the City of Marathon Transferring Affordable Housing Residential Allocations For A Project Known As Seaward Properties LLC is hereby approved. The Mayor is authorized to sign the ILA on behalf of the City, and the City Manager is authorized to expend budgeted funds on behalf of the City.

**Section 3.** The Clerk is authorized to transmit this Resolution and attached ILA to the Monroe County Growth Management Division and the Attorney’s office.

**Section 4.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 28<sup>th</sup> DAY OF MAY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

---

**John Bartus, 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:**

---

David Migut, City Attorney

**INTERLOCAL AGREEMENT BETWEEN  
MONROE COUNTY AND THE CITY OF MARATHON  
TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL ALLOCATIONS**

This Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040 (“County”) and the City of Marathon, a municipal corporation of the State of Florida, whose address is 9805 Overseas Highway, Marathon, Florida 33050 (the “City”);

**WITNESSETH:**

**WHEREAS**, Monroe County and the City of Marathon recognize the value of regional partnerships in smart growth; and

**WHEREAS**, Policy 101.2.15 of the Year 2010 Monroe County Comprehensive Plan allows Rate of Growth Ordinance building permit allocations (ROGOs) for affordable housing projects to be pooled and transferred between local government jurisdictions within the Florida Keys Area of Critical State Concern, if accomplished through an interlocal agreement between the sending and receiving local governments; and

**WHEREAS**, Chapter Five (5) of the City Comprehensive Plan identifies goals, objectives and policies to provide for development pursuant to intergovernmental coordination and interlocal agreements; and

**WHEREAS**, Monroe County and the City of Marathon have previously entered into interlocal agreements to transfer ROGOs; and

**WHEREAS**, Monroe County and the City of Marathon recognize the potential economic value of such transferable affordable allocations; and

**WHEREAS**, this Agreement is entered into according to the authority of Florida Statutes, Section 163.01, *et. seq.*, Florida Interlocal Cooperation Act of 1969, which states:

“It is the purpose of this section to permit local government units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities”; and



**WHEREAS**, the comprehensive plans of Monroe County and the City of Marathon expressly identify interlocal agreements as a means of resolving issues mutually affecting their respective jurisdictions; and

**WHEREAS**, SEAWARD PROPERTIES, LLC, a Florida limited liability company (hereafter “Property Owner”), has submitted an application for the construction of fifty-three (53) deed restricted affordable housing units; and

**WHEREAS**, the legal descriptions of the properties are attached hereto as Exhibit “A” and Exhibit “B” and by reference made a part hereof.

**WHEREAS**, County hereby agrees to transfer to City fifty-three (53) affordable housing allocations to allow Marathon to secure deed restricted affordable housing at the above properties.

**WHEREAS**, the parties have determined that this Agreement is in the best interests of the public.

**NOW, THEREFORE**, the parties hereto agree as follows:

**Section 1. TRANSFER:** The parties agree to permit the transfer of fifty-three (53) affordable housing ROGO allocations from Monroe County to the City of Marathon, and subject to the conditions contained therein, including but not limited to:

- a. The filing of a 99 year Affordable Housing Deed Restriction on all of the fifty-three (53) affordable housing units pursuant to this Agreement and the applicable requirements of the Code of Ordinances, City of Marathon, Florida.
- b. The affordable housing shall be solely in the categories of income as shown below and set forth in Section 104.03 of the City of Marathon Code.
- c. A detailed breakdown of the affordable housing allocations are set forth below:

- 8 Very Low – 50% of median income (located at the FKR)
- 8 Low – 80% of median income (1BR’s Seaward)
- 15 Median – 100% of median income (1 BR’s Seaward)
- 18 Median – 100% of median income (2 BR’s Seaward)
- 4 Moderate – 120% of median income (3 BR’s Seaward)

The breakdown by percentages is:

- 8 @ 50% median income = 15%
- 8 @ 80% median income = 15%
- 33 @ 100% median income = 62%
- 4 @ 120% median income = 8%

d. This transfer shall be considered to fulfill the requirement stated in item 4., page 3, of the 380 Agreement executed on December 21, 2017, between the State of Florida Department of Economic Opportunity, the County of Monroe, City of Key West, Islamorada, Village of Islands, City of Layton, and the City of Marathon for the transfer and distribution of BPAS units from the City of Key West to Monroe County and transfer and distribution of ROGO allocations from Monroe County to Islamorada, Village of Islands, City of Layton, and the City of Marathon, in which the County agrees to provide eleven (11) permanent ROGO units to the City of Marathon.

**Section 2. ASSIGNMENT:** Monroe County has assigned its rights to the affordable allocations to the City and shall be designated as follows:

a. The fifty-three (53) affordable housing allocations are to be issued by the City to be used specifically by Property Owners.

b. The affordable housing allocations shall be applied and designated as affordable housing for the fifty-three (53) units to be constructed by the Property Owners.

**Section 3. TERM:** Subject to and upon the terms and conditions set forth herein, this Agreement shall continue in force until fully performed by the parties and Property Owner.

**Section 4. NOTIFICATION:** The City of Marathon shall (1) notify Monroe County of any assignment(s) and successor(s) in interest or title to the Property Owner for the duration of the ROGO allocations described in **Section 1. (“Transfer”)** above, and (2) shall notify Monroe County of any assignment(s) and successor(s) in interest or title to the ROGO allocations described in **Section 1. (“Transfer”)** above at least thirty (30) days prior to the date of such transfer or succession by certified U. S. Postal Service Certified mail to the Monroe County Planning & Environmental Resources Senior Director.

All such notices under this Section (**“Section 4.”**) shall be sent to the following addresses:

Monroe County Administrator  
1100 Simonton Street  
Key West, FL 33040

Planning & Environmental Resources Department  
**Attn: Senior Director**  
2978 Overseas Highway  
Marathon, FL 33050

**Section 5. GOVERNING LAWS/VENUE:** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida and the United States. Exclusive venue for any dispute arising under this Agreement shall be in the Sixteenth Judicial Circuit in and for Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney’s fee and costs. This Agreement is not subject to arbitration.

**Section 6. NONDISCRIMINATION:** The parties agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (2) Section 504 of the Rehabilitation Act of 1973, as amended (20 U.S.C. s. 1975, as amended (42 U.S.C. ss. 6101-6107)), which prohibits discrimination on the basis of age; (4) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (5) The Comprehensive Alcohol Abuse And Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (6) The Public Health Service Act of 1912, ss. 523 and 527, (42 U.S.C. ss. 290 dd-3 and 290 ee03), as amended, relating to confidentiality of alcohol and drug abuse patient records; (7) The Americans With Disabilities Act of 1990 (42 U.S.C. s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; (8) The Florida Civil Rights Act of 1992, (Chapter 760, Florida Statutes, and Section 509.021, Florida Statutes), as may be amended from time to time, relating to nondiscrimination; and (9) any other nondiscrimination provisions in any federal or state statutes or local ordinances which may apply to the parties to, or the subject matter of, this Agreement.

**Section 7. CODE OF ETHICS:** The parties agree that their officers and employees recognize and will be required to comply with the standards of conduct relating to public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

**Section 8. NO SOLICITATION/PAYMENT:** The parties warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not been paid or agreed to pay any person, company, corporation, individuals, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach of violation of this provision, each party agrees that the other party shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

**Section 9. SUBORDINATION:** This Agreement is subordinate to the laws and regulations of the United States and the State of Florida, whether in effect on commencement of this Agreement or adopted after that date.

**Section 10. INCONSISTENCY:** If any item, condition, or obligation of this Agreement is in conflict with other items of this Agreement, the inconsistencies shall be construed so as to give meaning to those terms which limited the County's responsibility and liability.

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**Section 13. NO PERSONAL LIABILITY:** No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of a party in his or her individual capacity, and no member, officer, agent or employee of a party shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

**Section 14. NOTICES:** All notices and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

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Monroe County Historic Gato Building  
1100 Simonton Street  
Key West, Florida 33040

Planning & Environmental Resources Department  
Attn: Senior Director  
2798 Overseas Highway  
Marathon, FL 33050

With a copy to: Robert B. Shillinger, Jr., Esquire  
Monroe County Attorney's Office  
P.O. Box 1026  
Key West, Florida 33041-1026

If to City: Charles Lindsay  
City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050

George Garrett  
Planning Director  
City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050

With a copy to: David Migut, Esquire  
City Attorney  
City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050

Thomas D. Wright, Esq.  
Law Offices of Thomas D. Wright, Chartered  
9711 Overseas Highway  
Marathon, FL 33050  
Attorney for Property Owner

Any notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered, or sent by overnight delivery service.

**Section 15. ENTIRE AGREEMENT/MODIFICATION/AMENDMENT:** This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

**Section 16. MISCELLANEOUS:** Each party represents and warrants to the other that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary corporate or other organizational action, as required.

**Section 17. COUNTERPARTS:** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

**Section 18. EFFECTIVE DATE:** This Agreement shall take effect on the date set forth above.

SIGNATURES ON FOLLOWING PAGES

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

(SEAL)

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

ATTEST: AMY HEAVILIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mayor/Chairperson

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

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Assistant County Attorney

ATTEST:

THE CITY OF MARATHON, FLORIDA

\_\_\_\_\_  
DIANE CLAVIER  
City Clerk

By: \_\_\_\_\_  
Mayor Daniel Zieg                      Date

(City Seal)

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

By: \_\_\_\_\_  
David Migut  
City Attorney

**Council Agenda Statement**



**Meeting Date:** May 28, 2019  
**To:** Honorable May and Council Members  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

**Agenda Item:** **Resolution 2019-59** Approving The Release Of A Unity Of Title In The Name Of Jo-Jo’s Of The Florida Keys, LLC As Recorded With The Monroe County Clerk Of Courts, Book 2469, Page 2156; And Providing For An Effective Date

**RECOMMENDATION:**

Staff recommends that City Council approve Resolution 2019-59 to dissolve the unity of title recorded in 2010 with the Clerk of Court in the official records Book 2469, at Page 2156.

**BACKGROUND**

In 2010 a unity of title was created and recorded for properties in the ownership of Jo-Jo’s of the Florida Keys, LLC. A project including Jo-Jo’s and Nomad on a contiguous parcel was approved pursuant to Resolutions 2014-75 and 76. Transfer of property between the two owners, commitment of easements, and a unity of title for the Jo-Jo’s property was required.

According to the recorded unity of title, this unity of title may only be released by the City Council. As noted in Mr. Wolfe’s request to dissolve the unity, the transfer of property between Nomad and Jo-Jo’s as part of the approved Development Agreement creates a potential title issue for both entities.

**CONSISTENCY CHECKLIST:**

	Yes	No
1. Comprehensive Plan	<u>  X  </u>	<u>      </u>
2. Other –Sewer Mandate	<u>      </u>	<u>  X  </u>

**FISCAL NOTE:**

Not Applicable

**APPROVED BY FINANCE DIRECTOR:**

**RECOMMENDATION:**

Approval of Resolution

VIA HAND DELIVERY

May 20, 2019

George Garrett  
Planning Director  
City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050

Re: Release of Unity of Title Properties – JoJo’s/Nomad Development Agreement

Dear George,

As you will recall, in 2014 JoJo’s of the Florida Keys, LLC (“JoJo’s”) and Nomad Outfitters LLC (“Nomad”), among other entities, entered into a Development Agreement with the City of Marathon, a copy of which is attached. As part of the Development Agreement, Nomad agreed to convey a parcel of land to JoJo’s and JoJo’s agreed to convey two parcels of land to Nomad. These conveyances took place. The parcels conveyed to Nomad’s are labelled the “Boat Parking Parcel” and the “Boat Ramp Parcel”. They are highlighted on the attached Sketch.

However, it was not realized at the time that JoJo’s had recorded a Unity of Title encompassing its entire parcel for purposes of the City of Marathon wastewater assessment so that the two parcels conveyed to Nomad were still subject to the Unity of Title despite the fact that JoJo’s no longer owned the parcels. A copy of the Unity of Title is attached.

The Unity of Title provides that it shall stay in effect until released in writing by the City Council, and that no portion of the property subject to the Unity of Title shall be transferred without such approval. The Development Agreement specifically states in Section IV A. that JoJo’s will be conveying certain portions of the property to Nomad, and the parcels being conveyed are described in Exhibit 4, which are the Boat Parking Parcel and the Boat Ramp Parcel. The City approved the conveyances in the Development Agreement, but no one thought to also request that the parcels be released from the Unity of Title.

Due to the fact that JoJo’s no longer owns the parcels which results in the original purpose no longer being served, and to avoid title issues for Nomad, we are requesting that the City release these parcels from the Unity of Title,

Very truly yours,

  
John J. Wolfe  
[wolfe@marathonlaw.com](mailto:wolfe@marathonlaw.com)



DEVELOPMENT AGREEMENT

Prepared by  
and return to:  
John J. Wolfe, Esq.  
John J. Wolfe, P.A.  
2955 Overseas Hwy.  
Marathon, FL 33050

Doc# 1996036 08/29/2014 11:18AM  
Filed & Recorded in Official Records of  
MONROE COUNTY AMY HEAVILIN

Doc# 1996036  
Bk# 2700 Pg# 2344

Doc# 2008637 12/12/2014 2:32PM  
Filed & Recorded in Official Records of  
MONROE COUNTY AMY HEAVILIN

Parcel ID Nos:  
00100110-000000, 00100110-000200,  
00100110-000300, 00100130-000000

Doc# 2008637  
Bk# 2716 Pg# 268

✱ **Corrective**  
Development Agreement for

JoJo's of The Florida Keys, LLC, Harwin-Tobin Keys, LLC & Nomad Outfitters LLC  
Marathon, Florida

This Development Agreement ("Agreement") is entered into by and between the City of Marathon, a Florida Municipal Corporation (herein referred to as "City"), and JoJo's of The Florida Keys, LLC, a Florida limited liability company, 1101 Ben Tobin Drive, Hollywood, FL 33021 (herein referred to as "JoJo's"), Harwin-Tobin, LLC, a Florida limited liability company, 1101 Ben Tobin Drive, Hollywood, FL 33021 (herein referred to as "Harwin"), and Nomad Outfitters LLC a Florida limited liability company, 59740 Overseas Highway, Marathon, FL 33050 (herein referred to as "Nomad") (JoJo's, Harwin, and Nomad, sometimes hereinafter collectively referred to as "Owner", and City and Owner herein referred to as the "Parties"), pursuant to *Chapter 102, Article 8* of the Land Development Regulations of the City of Marathon, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes, and is binding on the effective date as set forth herein.

WITNESSETH:

WHEREAS, JoJo's, Harwin and Nomad are the owners of approximately 5.1 acres located in the City on Grassy Key, approximate Mile Marker 60, as more particularly described in Exhibit 1 attached hereto, which is the subject of this Agreement (hereinafter, the "Property")

WHEREAS, JoJo's and Harwin are the owners of approximately 4.2 acres of the Property, as more particularly described in Exhibit 2 attached hereto (hereinafter, the "JoJo's Property"); and

WHEREAS, Nomad is the owner of approximately .9 acres of the Property, as more particularly described in Exhibit 3 attached hereto (hereinafter, the "Nomad Property").

WHEREAS, the Property is currently developed with existing structures, most of which have reached functional obsolescence and need to be demolished; the existing structures and the rights associated with the Property as recognized by the City are set forth in Section IV, C. of this Agreement; and

WHEREAS, JoJo's and Nomad have entered into various agreements relating to conveyances of portions of the Property to each other, joint use of certain facilities, granting of necessary easements and related matters to provide for the joint redevelopment of the Property consistent with the redevelopment proposed in this Agreement; and

✱ This Development Agreement is being re-recorded to correct a scrivener's error in the legal descriptions on Exhibits 1 & 2 for the property listed under Official Records Book 1815, Page 1844; the correct Exhibits are now attached. *JFW*

WHEREAS, though the JoJo's Property and the Nomad property are under separate ownership and control, the existing development and rights complement and enhance the proposed redevelopment of the Property, and the proposed redevelopment, which will require cross conveyances of certain portions of the Property as well as easements and agreements concerning use can best be ensured by entering into this Agreement with the City to provide for an orderly development process within the timelines set forth herein; and

WHEREAS, the location of the Property at the Northeasterly entrance to the City further dictates the importance of entering into this Agreement to enhance the use, appeal and attractiveness of the Property consistent with the City's community character goals as set forth in the City of Marathon Comprehensive Plan Effective July 5, 2005, as amended (the "Comprehensive Plan"); and

WHEREAS, the proposed redevelopment of the property is permissible and appropriate for the Comprehensive Plan Future Land Use designation, Mixed Use Commercial, applicable to the Property, which provides for the establishment of mixed use development patterns and recognizes established mixed use development patterns within the City; and

WHEREAS, the Marathon Planning Commission held a public hearing on the 16<sup>th</sup> day of June, 2014, to consider this Agreement, and recommended approval of this Agreement; and

WHEREAS, the City Council of Marathon held public hearings on the 8<sup>th</sup> day and 22<sup>nd</sup> day of July, 2014, to consider this Agreement; and

WHEREAS, the City has determined that this Agreement is in the public interest, is consistent with its policy to encourage the redevelopment of mixed use properties in Marathon, and will further the health, safety and welfare of the City's residents.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. Recitals.

The foregoing recitals are a part of this Agreement on which the Parties have relied and are incorporated into this Agreement by reference.

II. Purposes of Agreement.

The purposes of this Agreement are as Follows:

- A. To encourage Redevelopment of the Property consistent with Objective 1-1.1 and Policy 1-1.1.1 of the Comprehensive Plan;
- B. To provide for an orderly development process consistent with the provisions of Chapter 102, Article 8 of the City's Land Development Regulations.

PTJ

III. Definitions.

For the purposes of this Agreement, all terms shall have the definitions as found in the City's Land Development Regulations (the "LDRs"), the Comprehensive Plan and in Chapter 163, Florida Statutes, or in other applicable Florida Statutes, and if not defined in the Code, Comprehensive Plan, or Statute, the term shall be understood by its usual and customary meaning.

IV. Statutory and Code Requirements.

The Parties recognize the binding effect of the Florida Local Government Development Agreement Act, Sections 163.3220, et seq., Florida Statutes, as to the form and content of this Agreement and in accordance therewith set forth and agree to the following:

A. Legal Description and Ownership.

JoJo's, Harwin and Nomad are the owners of the Property (as described in Exhibit 1), which is the Property subject of this Agreement. There are no other legal or equitable owners of the Property known to the parties to this Agreement.

In order to accomplish the redevelopment contemplated hereby, JoJo's will be conveying to Nomad and Nomad will be conveying to JoJo's certain portions of the Property and will be granting certain easements to each other to rationalize the property boundaries and enable the redevelopment proposed herein. The parcels to be conveyed and the easements to be granted are described in Exhibit 4 attached hereto and made a part hereof.

B. Duration of Agreement.

The duration of this Agreement shall be seven (7) years from the Effective Date.

This Agreement may be renewed or extended as provided herein. If the Owner has not complied with the terms of this section, this Agreement may be subject to termination as provided herein.

C. Existing Development.

City has recognized the following existing development on the Property relevant to the proposed redevelopment and this Agreement:

- 2,400 square foot convenience store and six station fuel dispensers on the Nomad property
- Four (4) market rate building rights on the Nomad Property
- Ten (10) market rate building rights on the JoJo's Property

The City has recognized certain additional development rights as existing on the Property, but such development rights are not necessary for the redevelopment proposed herein

*[Handwritten signature]*

D. Proposed Redevelopment.

The proposed redevelopment approved pursuant to this Agreement is as follows:

Rebuild the 2,400 square foot convenience store and six station fuel dispensers on the Nomad property;

Construct fourteen (14) single-family market rate homes and accessory pools/amenities using the existing entitlements from the Nomad Property and the JoJo's Property. The four (4) market rate building rights from the Nomad Property will be conveyed to JoJo's with the conveyance of the portion of the Nomad's Property by Nomad to JoJo's. The fourteen (14) single-family market rate homes will be subject to a mandatory homeowner's association in accordance with state law.

Construct the boat/trailer parking facility on the Nomad property as shown on the site plan.

Construct all required utility, access, storm water management, landscape and vehicular and pedestrian travel ways.

The proposed redevelopment is depicted on the proposed site plan dated April 29, 2014 signed by Richard J. Milelli, PE submitted by the parties to the City in connection with the Conditional Use Application for this redevelopment (the "Site Plan"). See Exhibit 5.

E. Density and Building Height.

Use and Intensity. The Owner plans a minor rearrangement of the Property boundaries as described in Section IV. A. above. The resulting JoJo's parcel area will be 182,086 square feet or 4.18 acres, and the Nomad parcel will be 39,602 square feet or 0.91 acres. The following table shows the development uses permitted on the Property, including population densities, and building intensities and height, and demonstrates that the project is compliant with Table 103.15.2 Density, Intensity, and Dimensions outlined in the LDRs.

	Jojo's Parcel		NOMAD Outfitter's Parcel	
	City Code Std	Proposed	City Code Std	Proposed
Density	Market Rate 6 units /acre	14 units = 56% 6 x 4.18 = 25 14 ÷ 25 = 56	Convenience Store w/Fuel FAR .25	2,400 s.f. = 24.3% FAR 39,602 x .25 = 9,900 2,400 ÷ 9,900 = .24
Lot Area per Unit	N/A		N/A	
Setbacks Front	0 to 30	25'	0 to 30	25'
Setbacks Rear	20'	30' (shoreline)	20'	30' (shoreline)
Setbacks Side 1	0 to 10'	15'	0 to 10'	10'
Setbacks Side 2	5'	10'	5'	30'

*ACT*



Height	37'	32' ¾"	37'	21'
Open Space	20% 36,417 s.f.	49.9% 90,810 s.f.	20% 7,920 s.f.	50% 19,908 s.f.

F. Public Facilities, Concurrency, Impact Fees.

The following identifies the public facilities that are required that will service the development of the Property; who shall provide the facilities; what new facilities, if any, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of development.

1. Potable Water. Domestic potable water is provided by the Florida Keys Aqueduct Authority.
2. Electric Service. Electric service is provided by Florida Keys Electric Service.
3. Solid Waste. Solid waste service is provided by Marathon Garbage Service or its successors and assigns, as determined by the City Council.
4. Fire Service. Fire service is provided by the Marathon Fire Department.
5. Wastewater, Sewage Collection and Disposal. Wastewater and sewage collection, treatment and disposal shall be done by connection to the City sewer system.
6. Public Recreational Facilities. Public recreational facilities shall be addressed through impact fees, if any.
7. Stormwater Management. A stormwater management system that meets all applicable local, state and federal requirements shall be constructed on site as part of the site development of the Property. This system will retain, detain and treat stormwater on the Property and therefore will provide a substantial benefit to water quality in the area. There shall be no direct discharge to the City Nearshore Waters.
8. Fire Protection. In connection with the Owners' development of the Property, Owners 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 as required by City Code.
9. Concurrency. All public facilities identified above are available as of the date of this Agreement.
10. Impact Fees. Any increased impacts on public facilities or public services attributable to each unit developed on the Property, and the cost of capital improvements to meet the associated increased demand on such facilities or services, shall be assured by payment to the City, concurrent with the issuance of the building permits for each unit, of any applicable City of Marathon impact fees required by ordinance then in effect, as well as by payment by 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 Effective Date of this Agreement, provided such ordinance applies equally and uniformly to all redevelopment in the City of Marathon.

G. Reservations or Dedications of Land for Public Purposes.

The parties anticipate that Owner may reserve or dedicate land for public purposes in connection with the development of the Property, but is currently unaware of the specifics of such reservation(s) or dedication(s). Reservations and dedications for public purposes in connection

*Handwritten initials/signature*

with this Agreement may be requested by the City's Comprehensive Plan and City Code. Such reservations or dedications may include, by way of example, easements necessary for the provision of stormwater, utility and wastewater services to the Property.

#### H. Local Development Permits

The following City development approvals are required for the development of the Property:

1. This Development Agreement.
2. Building and related construction permits for all structures contemplated by this Agreement and all infrastructure improvements, land clearing and landscaping. At any time any building permit is applied for, Owner shall demonstrate compliance with all applicable Federal, State and Municipal Disabled Access Regulations in effect at the time of application.
3. Local Permits for Stormwater Runoff. Nothing in this Agreement shall preclude the parties from applying conditions in addition to Federal, State and regional permits, by mutual agreement, during final site plan review or permitting.

#### I. Finding of Consistency.

By entering into this Agreement, the City finds that the development permitted or proposed herein is consistent with and furthers the Comprehensive Plan, applicable LDRs and the Principles for Guiding Development set forth in Section 380.0552(7).

#### J. Mutual Cooperation.

City and Owner agree to cooperate fully and assist each other in the performance of the provisions of this Agreement.

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

The redevelopment shall be developed in accordance with all required permits and in accordance with all applicable provisions of the Comprehensive Plan and LDRs in effect on the effective date of this Agreement. No Certificate of Occupancy for an individual building shall be issued until all plans for that building are approved by the City and Owner has complied with all conditions in permits issued by the City and the other regulatory entities for that building. The City agrees that any permits or certificates of occupancy to be issued by the City shall not be unreasonably withheld or delayed.

#### L. Compliance With Permit, Terms, Conditions, and Restrictions Not Identified Herein.

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

#### M. Laws Governing.

AS

1. For the duration of this Agreement, all approved development of the Property shall comply with and be controlled by this Agreement and provisions of the Comprehensive Plan and City Code in effect on the date of execution of this Agreement, inclusive of text changes and rezoning approved by the City Council on the date of the City's approval of this Agreement, if any. The parties do not anticipate that the City will apply subsequently adopted laws and policies to the Property, except as expressly provided in this Agreement.
2. Pursuant to Section 163.3233, Florida Statutes, the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that:
  - i. 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;
  - ii. 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 development that is subject to this Agreement;
  - iii. The new laws and policies are specifically anticipated and provided for in this Agreement;
  - iv. The City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or
  - v. The Agreement is based on substantially inaccurate information supplied by Owner.

Provided, however, nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

3. If state or federal laws enacted after the Effective Date of this Agreement preclude any party's compliance with the terms of this Agreement, it shall be modified as 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 law.

N. Amendment, Renewal and Termination.

This Agreement may be amended, renewed, or terminated as follows:

1. As provided in Section 163.3237, Florida Statutes, this Agreement may be amended by mutual consent of the parties to this Agreement or by their successors in interest. Amendment under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.
2. As provided in Section 163.3237, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirement in Section 163.3225, Florida Statutes, and applicable LDRs. The City shall conduct at least two (2) public hearings,

*AM*



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 fifteen (15) days before each public hearing in a newspaper of general circulation and readership in Marathon, 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.

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

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

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

O. Breach of Agreement and Cure Provisions.

1. If the City concludes that there has been a material breach in this Agreement by Owner, prior to revoking this Agreement, the City shall serve written notice on Owner identifying the term or condition the City contends has been materially breached and providing Owner with ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Agreement. Each of the following events shall be considered a material breach of this Agreement:

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

2. If Owner concludes that there has been a material breach in the terms of this Agreement by the City, Owner shall serve written notice on the City identifying the term or condition Owner contends has been materially breached and providing the City with ninety (90) days from the date of receipt of the notice to cure the breach, or negotiate an amendment to this Agreement. The following events shall be considered a material breach of this Agreement:

- (i) Failure to comply with the provisions of this Agreement;
- (ii) Failure to timely process any application for Site Plan approval or other development authorized by this Agreement.

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

4. Notwithstanding any other provisions of this Agreement to the contrary, neither party hereto shall be deemed to be in default under this Agreement where delay in the construction or

*AKJ*

performance of the obligations imposed by this Agreement are caused by war, revolution, labor strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions, embargoes, litigation (excluding litigation between the City and the Owner), tornadoes, hurricanes, tropical storms or other severe weather events, or any other causes beyond the control of such party. The time of performance hereunder, as well as the term of this Agreement, shall be extended for the period of any forced delays or delays caused or resulting from any of the foregoing causes. The Owner must submit evidence to the City's reasonable satisfaction of any such delay.

P. 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 anyone of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Services as certified or registered mail, return receipt requested, postage prepaid; or (c) by deposit with an overnight express delivery service with a signed receipt required. Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

TO OWNER:

Jo-Jo's of the Florida Keys, LLC  
1101 Ben Tobin Drive  
Hollywood, FL 33021

Harwin Tobin Keys, LLC  
1101 Ben Tobin Drive  
Hollywood, FL 33021

Nomad Outfitters LLC  
59740 Overseas Highway  
Marathon, FL 33050

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

John J. Wolfe  
John J. Wolfe, P.A.  
2955 Overseas Highway  
Marathon, FL 33050

TO THE CITY:

City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
(305) 743-0033

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

Lynn M. Dannheisser, Esq.  
City Attorney, City of Marathon

AD

Gray Robinson, PA  
1221 Brickel Ave  
Miami, FL 33131  
(305) 416-6880

Doc# 2008637  
Bk# 2716 Pg# 277

Q. Annual Report.

On each anniversary date of the Effective Date of this Agreement, Owner shall provide the City with a report identifying (a) the amount of development authorized by this Agreement that has been completed, (b) the amount of development authorized by this Agreement that remains to be completed, and (c) any changes to the plan of development 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.

R. Enforcement.

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

S. Binding Effect.

This Agreement shall be binding upon the Parties, their successors in interest, heirs, assigns, and personal representatives.

T. Assignment.

This Agreement may not be assigned without the written consent of the Parties, which consent shall not be unreasonably withheld.

U. 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.

V. 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 validity of the remaining provisions of this Agreement.

W Applicable Laws.

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.

AMS

X. Litigation/Attorneys Fees; Venue: Waiver of Right to Jury Trial.

As between the City and Owner, in the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorney's fees. This includes, but is not limited to, reimbursement for reasonable attorney's 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 THIS AGREEMENT.

Y. Use of Singular and Plural.

Where the context requires, the singular includes the plural, and plural includes the singular.

Z. 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.

A.A. 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 this Agreement.

B.B. 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.

C.C. Recording; Effective Date.

The Owner shall record this Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date the last party signs 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 at the Department of Community Affairs, Division of Community Planning, 2555 Shumard Oak Boulevard, Tallahassee FL 32399-2100 by hand delivery or 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 and received by the Owner or his agents. Owner shall also provide a copy of the recorded Agreement to the City at

9805 Overseas Highway, Marathon, Florida 33050, within the same time period. This Agreement shall become effective thirty (30) days after the date the State Land Planning Agency receives its copy pursuant to Section 163.3239, Florida Statutes.

D.D. 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 have set their hands and seals on the day and year below written. Signed, sealed, and delivered in the presence of:

WITNESSES:

OWNER:

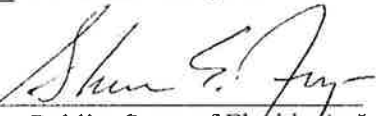
JO-JO'S OF THE FLORIDA KEYS, LLC  
By: HARWIN-TOBIN KEYS, LLC  
Its Sole Manager

  
\_\_\_\_\_  
Signature  
Victor Lopez  
\_\_\_\_\_  
Name of witness (printed or typed)

By:   
\_\_\_\_\_  
Herbert A. Tobin, Chief Executive Officer

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me on this 12 day of August, 2014, by Herbert A. Tobin as Chief Executive Officer of Harwin Tobin Keys, LLC, the Manager of Jo-Jo's of the Florida Keys, LLC, who is personally known to me or who produced N/A as identification, and who did/did not take an oath.

  
\_\_\_\_\_  
Notary Public, State of Florida/At Large  
My commission expires: 4-7-16





[Signature]  
Signature  
Victor Lopez

Owner:  
HARWIN-TOBIN KEYS, LLC

By: [Signature]  
Herbert A. Tobin, Chief Executive Officer

Name of witness (printed or typed)  
[Signature]  
Signature  
Lena Lee Quintana  
Name of witness (printed or typed)

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me on this 12 day of August, 2014, by Herbert A. Tobin as Chief Executive Officer of Harwin Tobin Keys, LLC, who is personally known to me or who produced NTA as identification, and who did/did not take an oath.

[Signature]  
Notary Public, State of Florida At Large  
My commission expires: 4-7-16



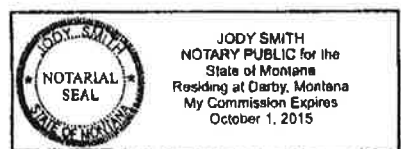
[Handwritten mark]

Courtney Cords  
Signature  
Courtney Cords  
Name of witness (printed or typed)  
Breanna Meechel  
Signature  
Breanna Meechel  
Name of witness (printed or typed)

OWNER:  
NOMAD OUTFITTERS LLC  
By: [Signature]  
Carter Bates, Managing Member

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me on this 22<sup>nd</sup> day of Aug, 2014, by Carter Bates as Managing Member of Nomad Outfitters LLC. who is personally known to me or who produced MID and Cert of Acknowledgement by Nomad Outfitters LLC as identification, and who did not take an oath.



Jody Smith  
Notary Public, State of Florida At Large  
My commission expires: 10-01-2015

On the 22<sup>nd</sup> day of July, 2014, The City Council of the City of Marathon approved this Agreement by Resolution No. 2014-75.

ATTEST:  
Diane Claver  
City Clerk

CITY OF MARATHON  
By: Dick Ramsay  
Dick Ramsay, MAYOR

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND RELIANCE OF THE  
CITY OF MARATHON, FLORIDA ONLY.  
[Signature]  
Lynn M. Dannheisser, City Attorney

Doc# 2008637  
Bk# 2716 Pgm 282



Doc# 1996036  
Bk# 2700 Pgm 2358

EXHIBIT 1



EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO DEVELOPMENT AGREEMENT

Official Record Book 1815, Page 1844

A parcel of land in Government Lot 5, Section 20, Township 65 South, Range 34 East, Grassy Key, Monroe County, Florida, being more particularly described as follows:

BEGINNING at the intersection of the West line of said Government Lot 5 with the southeasterly right of way line of State Road No. 5 (US Highway No. 1), run thence North 68°38'00" East, along said Right of Way line for a distance of 332.20 feet; run thence South 21°22'00" East for a distance of 198.65 feet to a point; run thence for the following three (3) courses: 1). North 65°20'00" East, 26.65 feet; 2). South 75°05'40" East, 34.00 feet; 3). North 29°54'20" East, 40.00 feet to a point on the Mean High Water Line of the Atlantic Ocean; thence along the Mean High Water Line of the Atlantic Ocean for the following thirty-one courses:

1). South 0°30'18" West, 3.97 feet; 2). South 15°18'55" West, 16.66 feet; 3). South 65°32'55" East, 31.97 feet; 4). South 75°57'54" East, 41.09 feet; 5). South 76°44'19" East, 30.01 feet; 6). South 68°01'46" East, 17.94 feet 7). South 75°49'49" East, 42.08 feet; 8). South 79°59'37" East, 16.13 feet; 9). South 81°22'42" East, 8.01 feet; 10). South 50°52'22" East, 10.76 feet; 11). South 9°24'53" East, 10.89 feet; 12). South 66°41'17" West, 14.08 feet; 13). North 57°13'49" West, 8.91 feet; 14). North 79°44'29" West, 20.53 feet; 15). North 75°38'15" West, 18.91 feet; 16). North 82°05'40" West, 18.42 feet; 17). South 73°46'38" West, 9.36 feet; 18). South 64°21'01" West, 8.71 feet; 19). South 46°17'09" West, 12.23 feet 20). South 29°24'20" West, 25.13 feet; 21). South 52°03'17" West, 24.85 feet; 22). North 74°52'47" West, 22.30 feet; 23). North 67°48'27" West, 17.71 feet; 24). North 72°14'26" West; 19.18 feet; 25). North 74°40'26" West, 15.80 feet; 26). North 84°47'44" West, 17.91 feet; 27). South 71°11'58" West, 19.03 feet; 28). South 50°18'29" West, 12.61 feet; 29). South 28°55'09" West, 25.67 feet; 30). South 4°30'14" East, 8.41 feet; 31). South 57°08'46" West, 15.67 feet to an intersection with the original mean high water line of the Atlantic Ocean; Thence meander along the shoreline of the Atlantic Ocean in a Southwesterly direction for 287 feet more or less to an intersection with the Northeasterly line of the lands described by deed recorded in Official Record Book 927 at Page 1143 of the Public Records of Monroe County, Fla.; run thence North 60°48'17" West for a distance of 152.59 feet to a point; run thence South 39°35'00" West for a distance of 93.55 feet to a point; run thence North 61°57'00" West for a distance of 13.86 feet to a point; run thence North 42°20'00" West for a distance of 72.85 feet more or less, to the intersection with the West line of Government Lot 5; run thence North 0°40'00" West for a distance of 389.34 feet more or less, to the POINT OF BEGINNING.

AND

OFFICIAL RECORDS BOOK 2186, PAGE 653

A PARCEL OF LAND IN GOVERNMENT LOT 5, SECTION 20, TOWNSHIP 65 SOUTH, RANGE 34 EAST, ON GRASSY KEY, MONROE COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE WEST LINE OF THE SAID GOVERNMENT LOT 5, WITH THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF STATE ROAD NUMBER 5, (U.S. HIGHWAY NO. 1), RUN N 68°38' E ALONG SAID RIGHT-OF-WAY LINE FOR 332.2 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND. FROM THE SAID POINT OF BEGINNING RUN S 21° 22' E ALONG THE EASTERLY LINE OF THE LANDS DESCRIBED BY DEED RECORDED IN MONROE

COUNTY, FLORIDA OFFICIAL RECORDS BOOK 494 AT PAGES 1039 AND 1040 FOR 198.65 FEET TO THE POINT OF BEGINNING OF THE PROPERTY BOUNDARY DESCRIBED BY QUIT CLAIM DEED AND FINAL JUDGMENT, (CASE NO. 80-157-CA-8), RECORDED IN MONROE COUNTY, FLORIDA OFFICIAL RECORDS BOOK 780 AT PAGE 3 AND 820 AT PAGES 1613 AND 1614; THENCE ALONG SAID PROPERTY BOUNDARY FOR THE FOLLOWING THREE (3) COURSES:

(1). N 65° 20' E, 26.65 FEET; (2). S 75°05'40" E, 34.00 FEET; (3). N29°54'20" E, 40.00 FEET TO THE POINT OF ENDING OF SAID PROPERTY BOUNDARY, THE SAME BEING A POINT ON THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN; THENCE ALONG SAID MEAN HIGH WATER LINE FOR THE FOLLOWING SEVEN (7) COURSES:

(1). N 5°48'33" W, 16.92 FEET; (2). S 62°38'36" E, 3.11 FEET; (3). N 31°22'52" E, 68.32 FEET; (4). N 31°56'01" E, 42.33 FEET; (5). N 33°25'40" E, 21.49 FEET; (6). N 30°48'08" E, 46.12 FEET; (7). N 36°41'58" E, 31.09 FEET; THENCE ALONG THE "ORIGINAL MEAN HIGH WATER LINE" OF GRASSY KEY FOR THE FOLLOWING TWO (2) COURSES:

(1). N 27°59'58" E, 65.22 FEET; (2). N 42°06'23" E, 26.87 FEET TO THE SAID SOUTH-EASTERLY RIGHT-OF-WAY LINE; THENCE S 66°38' W ALONG SAID RIGHT-OF-WAY LINE FOR 334.00 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND, CONTAINING 0.91 ACRES MORE OR LESS.

*AK*

EXHIBIT 2

*Ans*

EXHIBIT 2

LEGAL DESCRIPTION OF PROPERTY OWNED BY

JOJO'S OF THE FLORIDA KEYS, LLC

AND

HARWIN-TOBIN KEYS, LLC

Official Record Book 1815, Page 1844

A parcel of land in Government Lot 5, Section 20, Township 65 South, Range 34 East, Grassy Key, Monroe County, Florida, being more particularly described as follows:

BEGINNING at the intersection of the West line of said Government Lot 5 with the southeasterly right of way line of State Road No. 5 (US Highway No. 1), run thence North 68°38'00" East, along said Right of Way line for a distance of 332.20 feet; run thence South 21°22'00" East for a distance of 198.65 feet to a point; run thence for the following three (3) courses: 1). North 65°20'00" East, 26.65 feet; 2). South 75°05'40" East, 34.00 feet; 3). North 29°54'20" East, 40.00 feet to a point on the Mean High Water Line of the Atlantic Ocean; thence along the Mean High Water Line of the Atlantic Ocean for the following thirty-one courses:

- 1). South 0°30'18" West, 3.97 feet; 2). South 15°18'55" West, 16.66 feet; 3). South 65°32'55" East, 31.97 feet; 4). South 75°57'54" East, 41.09 feet; 5). South 76°44'19" East, 30.01 feet; 6). South 68°01'46" East, 17.94 feet; 7). South 75°49'49" East, 42.08 feet; 8). South 79°59'37" East, 16.13 feet; 9). South 81°22'42" East, 8.01 feet; 10). South 50°52'22" East, 10.76 feet; 11). South 9°24'53" East, 10.89 feet; 12). South 66°41'17" West, 14.08 feet; 13). North 57°13'49" West, 8.91 feet; 14). North 79°44'29" West, 20.53 feet; 15). North 75°38'15" West, 18.91 feet; 16). North 82°05'40" West, 18.42 feet; 17). South 73°46'38" West, 9.36 feet; 18). South 64°21'01" West, 8.71 feet; 19). South 46°17'09" West, 12.23 feet; 20). South 29°24'20" West, 25.13 feet; 21). South 52°03'17" West, 24.85 feet; 22). North 74°52'47" West, 22.30 feet; 23). North 67°48'27" West, 17.71 feet; 24). North 72°14'26" West, 19.18 feet; 25). North 74°40'26" West, 15.80 feet; 26). North 84°47'44" West, 17.91 feet; 27). South 71°11'58" West, 19.03 feet; 28). South 50°18'29" West, 12.61 feet; 29). South 28°55'09" West, 25.67 feet; 30). South 4°30'14" East, 8.41 feet; 31). South 57°08'46" West, 15.67 feet to an intersection with the original mean high water line of the Atlantic Ocean; Thence meander along the shoreline of the Atlantic Ocean in a Southwesterly direction for 287 feet more or less to an intersection with the Northeasterly line of the lands described by deed recorded in Official Record Book 927 at Page 1143 of the Public Records of Monroe County, Fla.; run thence North 60°48'17" West for a distance of 152.59 feet to a point; run thence South 39°35'00" West for a distance of 93.55 feet to a point; run thence North 61°57'00" West for a distance of 13.86 feet to a point; run thence North 42°20'00" West for a distance of 72.85 feet more or less, to the intersection with the West line of Government Lot 5; run thence North 0°40'00" West for a distance of 389.34 feet more or less, to the POINT OF BEGINNING.

Doc# 2008637  
Bk# 2716 Pg# 287

Doc# 1996036  
Bk# 2700 Pg# 2363

EXHIBIT 3

*WJH*

EXHIBIT 3

LEGAL DESCRIPTION OF PROPERTY OWNED BY  
NOMAD OUTFITTERS LLC

OFFICIAL RECORDS BOOK 2186, PAGE 653

A PARCEL OF LAND IN GOVERNMENT LOT 5, SECTION 20, TOWNSHIP 65 SOUTH, RANGE 34 EAST, ON GRASSY KEY, MONROE COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE WEST LINE OF THE SAID GOVERNMENT LOT 5, WITH THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF STATE ROAD NUMBER 5, (U.S. HIGHWAY NO. 1), RUN N 68°38' E ALONG SAID RIGHT-OF-WAY LINE FOR 332.2 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND. FROM THE SAID POINT OF BEGINNING RUN S 21° 22' E ALONG THE EASTERLY LINE OF THE LANDS DESCRIBED BY DEED RECORDED IN MONROE COUNTY, FLORIDA OFFICIAL RECORDS BOOK 494 AT PAGES 1039 AND 1040 FOR 198.65 FEET TO THE POINT OF BEGINNING OF THE PROPERTY BOUNDARY DESCRIBED BY QUIT CLAIM DEED AND FINAL JUDGMENT, (CASE NO. 80-157-CA-8), RECORDED IN MONROE COUNTY, FLORIDA OFFICIAL RECORDS BOOK 780 AT PAGE 3 AND 820 AT PAGES 1613 AND 1614; THENCE ALONG SAID PROPERTY BOUNDARY FOR THE FOLLOWING THREE (3) COURSES:

(1). N 65° 20' E, 26.65 FEET; (2). S 75°05'40"E, 34.00 FEET; (3). N29°54'20" E, 40.00 FEET TO THE POINT OF ENDING OF SAID PROPERTY BOUNDARY, THE SAME BEING A POINT ON THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN; THENCE ALONG SAID MEAN HIGH WATER LINE FOR THE FOLLOWING SEVEN (7) COURSES:

(1). N 5°48'33" W, 16.92 FEET; (2). S 62°38'36" E, 3.11 FEET; (3). N 31°22'52" E, 68.32 FEET; (4). N 31°56'01" E, 42.33 FEET; (5). N 33°25'40" E, 21.49 FEET; (6). N 30°48'08" E, 46.12 FEET; (7). N 36°41'58" E, 31.09 FEET; THENCE ALONG THE "ORIGINAL MEAN HIGH WATER LINE" OF GRASSY KEY FOR THE FOLLOWING TWO (2) COURSES:

(1). N 27°59'58" E, 65.22 FEET; (2). N 42°06'23" E, 26.87 FEET TO THE SAID SOUTH-EASTERLY RIGHT-OF-WAY LINE; THENCE S 66°38' W ALONG SAID RIGHT-OF-WAY LINE FOR 334.00 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND, CONTAINING 0.91 ACRES MORE OR LESS.

*WMT*

Doc# 2008637  
Bk# 2716 P# 289

Doc# 1996036  
Bk# 2700 P# 2365

EXHIBIT 4

*WHR*

EXHIBIT 4

CONVEYANCES AND EASEMENTS

BOAT PARKING PARCEL

JoJo's and Harwin will grant and convey to Nomad the enclosed site shown on the Site Plan as boat parking 12'x25', 7 spaces provided and boat parking 12'x32', 9 spaces provided, together with the area shown on the Site Plan

Access to the parking site shall be from the Nomad Property in the area of the Nomad Property closest to the boat ramp. Exit from the parking site shall be by the road way, which connects to the exit road from the JoJo's Property. JoJo's will execute an appropriate instrument granting such exit easement.

BOAT RAMP PARCEL

JoJo's is the owner of a portion of property which crosses over the boat ramp located on the Nomad property and as shown on the Site Plan.

The property contained therein, being a portion of the boat ramp and being necessary for the operation of the marina by Nomad, JoJo's will convey to Nomad, by Warranty Deed, the described property.

The Warranty Deed will make reference to a Use Agreement entered into by and between the parties hereto, and recorded in the Public Records of Monroe County, outlining the use of the conveyed property as a boat ramp and granting a non-exclusive easement across the Nomad Property for access to the boat ramp by JoJo's, Harwin and their assigns and their guests, licensees and invitees.

TRIANGLE PARCEL

The Site Plan shows a triangular piece of property, southwesterly of the wall dividing the Nomad property from the JoJo's Property. That triangular piece is presently owned by Nomad, but is essential to the development of the JoJo's Property. Nomad will convey to Tobin the triangular piece of property.

ACCESS TO FLOATING DOCK

In order to access the Floating Dock, the JoJo's and Harwin residents, their tenants, guests and licensees will need access across a portion of the Nomad property. Nomad will grant a perpetual access easement allowing the aforesaid parties to cross over from the JoJo's Property and to access the Floating Dock.



\*

\*

### PEDESTRIAN WALKWAY

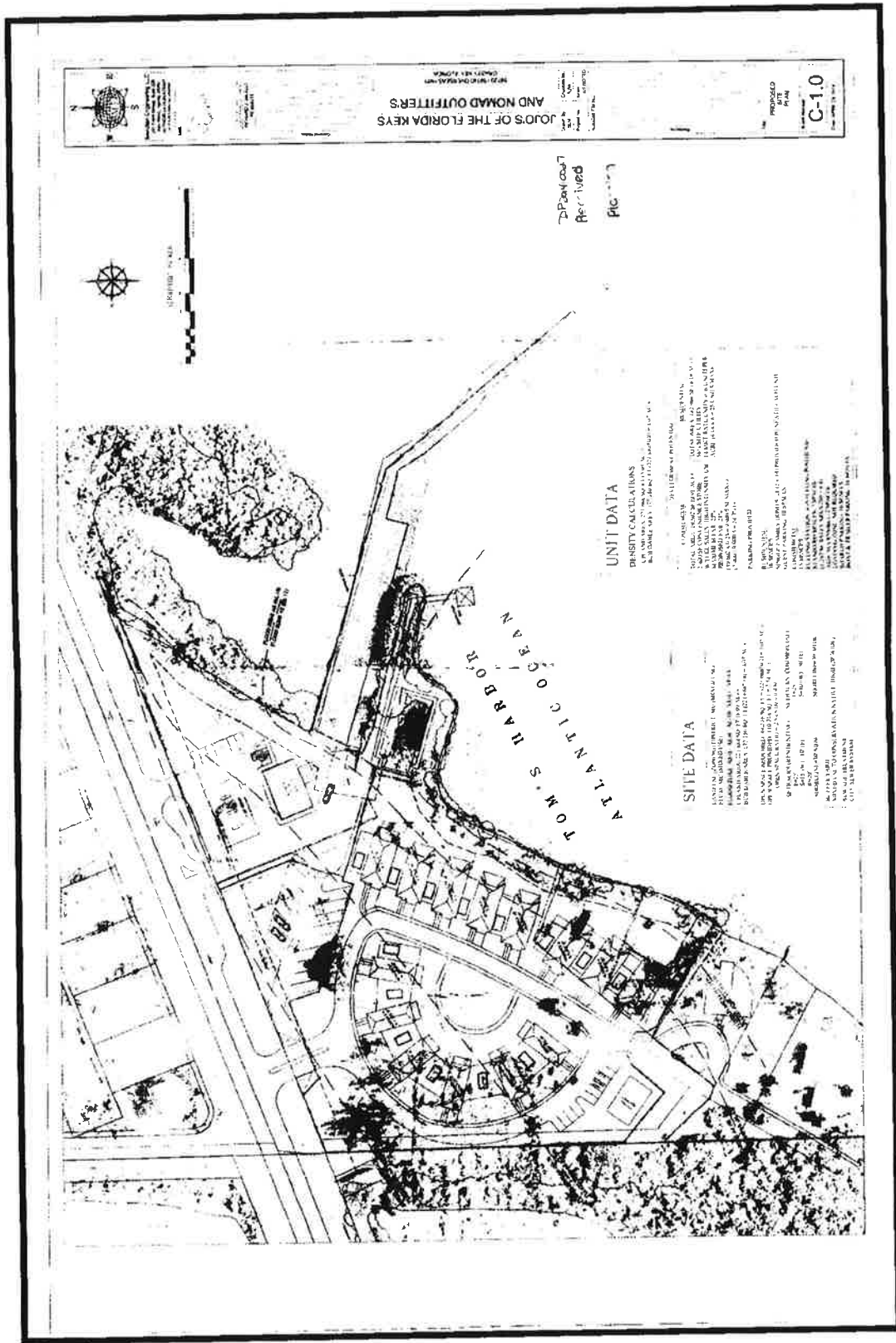
The Site Plan attached hereto contains a reference to a pedestrian walkway, which will be on the borderline of the JoJo's Property and Nomad Property, a gate which will open from the JoJo's Property on to the Nomad property. Nomad will grant an Easement for the opening of such gate on to the Nomad property and for pedestrian access across the Nomad property on to the boat ramp and the floating dock.

### VEHICULAR ACCESS TO BOAT RAMP & FLOATING DOCK

In order for the residents of the JoJo's Property and the Harwin Property, their successors and assigns, to access the boat ramp and floating dock by automobile, they will need to pass over the Nomad property. Nomad will grant to JoJo's, Harwin, and their successors and assigns and the residents entitled to access to the floating dock, their successor, assigns, guests and invitees, an automobile access easement from Highway U.S.1 across the designated areas of the Nomad property for access to the boat ramp and the floating dock.

*[Handwritten initials]*

EXHIBIT 5

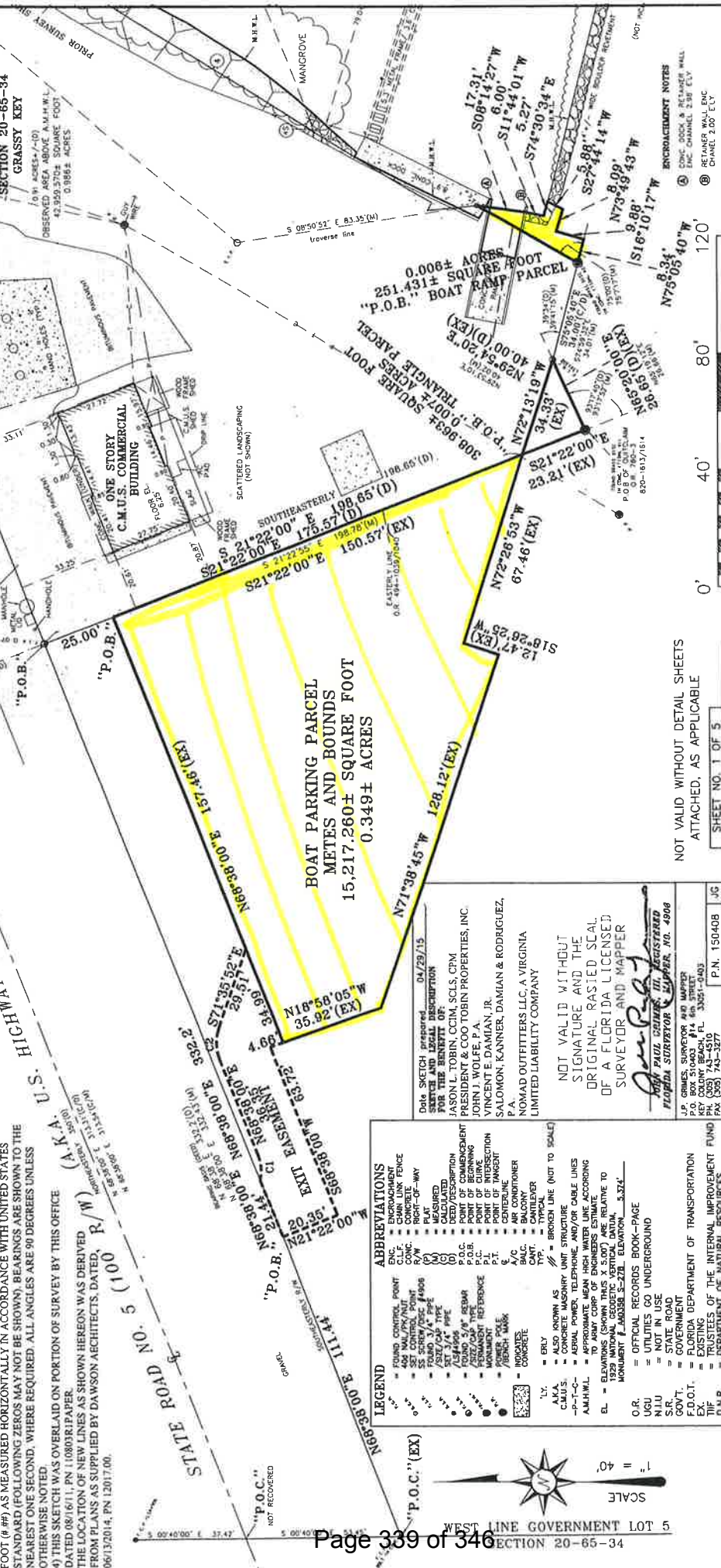


SKETCH OF BOAT PARKING PARCEL AND BOAT RAMP  
PARCELS

**SKETCH OF EXCHANGE LEGAL DESCRIPTIONS**

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD LENGTH	CHORD BEARING
C1	9.99'	15.22'	33°51'02"	8.86'	N85°03'12" E
C2	10.41'	15.00'	39°46'08"	10.20'	N86°31'04" E

**NOTES:**  
 1) NORTH ARROW AND BEARING BASIS N 66°38'00" E AS PER DEED AS NOTED.  
 2) ADDITIONS OR DELETIONS TO THIS SURVEY SKETCH BY OTHERS THAN THE SIGNING PARTY IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY.  
 3) DIMENSIONS (MEASUREMENTS) ARE SHOWN TO THE NEAREST ONE HUNDRETH OF A FOOT (# ##) AS MEASURED HORIZONTALLY IN ACCORDANCE WITH UNITED STATES STANDARD (FOLLOWING ZEROS MAY NOT BE SHOWN). BEARINGS ARE SHOWN TO THE NEAREST ONE SECOND, WHERE REQUIRED. ALL ANGLES ARE 90 DEGREES UNLESS OTHERWISE NOTED.  
 4) THIS SKETCH WAS OVERLAIN ON PORTION OF SURVEY BY THIS OFFICE DATED 08/16/11, PN 1108034/PAPER. THE LOCATION OF NEW LINES AS SHOWN HEREON WAS DERIVED FROM PLANS AS SUPPLIED BY DA WSON ARCHITECTS, DATED, R/W) 06/13/2014, PN 12017.00.



**THE SKETCH DEPICTED HERE IS NOT COVERED BY PROFESSIONAL LIABILITY INSURANCE**

NOT VALID WITHOUT DETAIL SHEETS ATTACHED, AS APPLICABLE

SHEET NO. 1 OF 5

**LEGEND**

FOUND CONTROL POINT	SET CONTROL POINT	CONC. FOUND	CONC. FOUND	CONC. FOUND	CONC. FOUND
SS SURVEY/ENGINEERING	SS SURVEY/ENGINEERING	SS SURVEY/ENGINEERING	SS SURVEY/ENGINEERING	SS SURVEY/ENGINEERING	SS SURVEY/ENGINEERING

**ABBREVIATIONS**

C.L.F.	CHAIN LINK FENCE	CONC.	CONCRETE	CONC.	CONCRETE
CONC.	CONCRETE	CONC.	CONCRETE	CONC.	CONCRETE

**NOT VALID WITHOUT DETAIL SHEETS ATTACHED, AS APPLICABLE**

WEST LINE GOVERNMENT LOT 5 SECTION 20-65-34

Date sketch prepared: 04/29/15  
 Surveyed and legal description: JASON L. TORIN, CCIM, SCLIS, CPM, PRESIDENT & COO TORIN PROPERTIES, INC.  
 JOHN J. WOLFE, P.A., VINCENT E. DAMIAN, JR., SALOMON, KANNER, DAMIAN & RODRIGUEZ, P.A., NOMAD OUTFITTERS LLC, A VIRGINIA LIMITED LIABILITY COMPANY.

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RASIED SCAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER  
**John Paul Graham, III**, REGISTERED FLORIDA SURVEYOR & MAPPER  
 P.O. BOX 510403, #14 6th FL, JACKSONVILLE, FL 32202-0403  
 PH: (904) 743-4510  
 FAX: (904) 743-3577

P.N. 15040B JG



UNITY OF TITLE

This instrument was Prepared by:

Record and Return To:  
Vincent E. Damian, Esq.  
Salomon, Kanner, Damian & Rodriguez, P.A.  
80 S.W. 8 Street; Suite 2550  
Miami, Florida 33130

RI# 00100110-000000  
RE# 00100110-000101  
RE# 00100110-000102  
RE# 00100130-000100

Doc# 1793242 06/14/2010 1:48PM  
Filed & Recorded in Official Records of  
MONROE COUNTY DANNY L. KOLHAGE

Doc# 1793242  
Bk# 2469 Pg# 2156

### UNITY OF TITLE

WHEREAS, Jo-Jo's of the Florida Keys, LLC is the fee simple owner (the "Owner") of the property located in Grassy Key, City of Marathon, Florida and as hereinafter described on Exhibit "A" (the "Property").

WHEREAS, the undersigned Owner recognizes and acknowledges that the herein described Property should not be divided into separate parcels owned by several owners as long as the same is put to the hereinafter use;

WHEREAS, the undersigned Owner hereby executes this document to effect to above stated purpose.

NOW, THEREFORE, in consideration of other goods and valuable considerations, the undersigned Owner hereby agrees to restrict the use of the herein described Property in the following manner:

1. That the property described herein as the "Property" on the attached "Exhibit A" shall be considered as one plot and parcel of land and that no portion of said plot and parcel of land shall be sold, transferred, devised, or assigned separately, except in its entirety as one plot or parcel
2. The undersigned Owner further agrees that this Unity of Title is being made for the purposes of City of Marathon wastewater assessment.
3. The undersigned Owner further agrees that this condition, restriction and limitation shall be deemed a covenant running with the land and shall be recorded, at Owner's expense, in the Public Records of Monroe County, Florida, and shall remain in full force and effect and be binding upon the Owner, his/her/its heirs, successors, personal representatives and assigns and upon all mortgages or lessees until such time as the same may be released in writing by the City of Marathon Council.

IN WITNESS WHEREOF, the undersigned has caused this Unity of Title to be executed as of this ~~2009~~ 9 day of June, 2010.

WITNESS OR ATTEST:

Property Owner:

By: JO-JO'S OF THE FLORIDA KEYS, LLC,  
by THE BEN TOBIN COMPANIES, LTD.,  
its sole Manager  
by THE BEN TOBIN COMPANIES, LLC,  
its sole General Partner  
by HERBERT A. TOBIN, its sole Manager

[Signature]  
Print Name HERBERT A. TOBIN III

By: [Signature]  
HERBERT A. TOBIN, Manager

[Signature]  
Print Name REBECA SAETA-OLORTEGUI

STATE OF FLORIDA        )  
  )SS  
COUNTY OF MIAMI-DADE)

Doc# 1793242  
Bk# 2469 Pg# 2157

The foregoing instrument was acknowledged before me by HERBERT A. TOBIN, the sole Manager of The Ben Tobin Companies, LLC, the sole General Partner of The Ben Tobin Companies, LTD., the sole Manager of JoJo's of the Florida Keys, LLC. He is personally known to me or has produced \_\_\_\_\_ as identification.

Witness my signature and official seal this 9 day of June, 2010, in the County and State aforesaid.



[Signature]  
NOTARY PUBLIC, State of Florida.  
Print Name: REBECA SAETA-OLORTEGUI  
Commission No.: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

1. TOBIN-087637-JoJo's General-Unity of Title.doc

495269 v1

Descriptions  
Subject Parcel

A parcel of land in Government Lot 5, Section 20, Township 65 South, Range 34 East, Grossy Key, Monroe County, Florida, being more particularly described as follows:

Beginning at the intersection of the west line of said Government Lot 5 with the southerly right of way line of State Road No. 5 (US Highway No. 1), run thence N 68°38'00"E along said right of way line for a distance of 332.20 feet; run thence S 21°22'00"E for a distance of 198.65 feet to the line described by final judgment in Case No. 80-157-CA-B; run thence the following three courses per said final judgment: 1) N 65°20'00"E, 26.65 feet; 2) S 75°05'40"E, 34.0 feet; 3) N 29°54'20"E, 40.0 feet to a point on the mean high water line of the Atlantic Ocean; thence run along the mean high water line of the Atlantic Ocean for the following thirty-one courses: according to Deed No. 28126, Trustees of the Internal Improvement Fund of the State of Florida: 1) S 0°30'18"W, 3.97 feet; 2) S 15°18'55"W, 16.66 feet; 3) S 65°32'55"E, 31.97 feet; 4) S 75°57'54"E, 41.09 feet; 5) S 76°44'19"E, 30.01 feet; 6) S 68°01'46"E, 17.94 feet; 7) S 75°49'49"E, 42.08 feet; 8) S 79°59'37"E, 16.13 feet; 9) S 81°22'42"E, 8.01 feet; 10) S 50°51'22"E, 10.76 feet; 11) S 9°24'53"E, 10.89 feet; 12) S 66°41'17"W, 14.08 feet; 13) N 57°13'49"W, 8.91 feet; 14) N 79°44'29"W, 20.53 feet; 15) N 75°38'15"W, 18.91 feet; 16) N 82°05'40"W, 18.42 feet; 17) S 73°46'38"W, 9.36 feet; 18) S 64°21'01"W, 8.71 feet; 19) S 46°17'09"W, 12.23 feet; 20) S 29°24'20"W, 25.13 feet; 21) S 52°03'17"W, 24.85 feet; 22) N 74°52'47"W, 22.30 feet; 23) N 67°48'27"W, 17.71 feet; 24) N 72°14'26"W, 19.18 feet; 25) N 74°40'26"W, 15.80 feet; 26) N 84°47'44"W, 17.91 feet; 27) S 71°11'58"W, 19.03 feet; 28) S 50°18'29"W, 12.61 feet; 29) S 28°55'09"W, 25.67 feet; 30) S 4°30'14"E, 8.41 feet; 31) S 57°08'46"W, 15.67 feet to an intersection with the original mean high water line of the Atlantic Ocean; thence meander along said original shoreline of the Atlantic Ocean, in a southwesterly direction, for 102 feet, more or less, to an intersection with the northeasterly line of the parcel of land described by deed recorded in Official Records Book 775, Page 1168 of Monroe County, Florida public records; run thence N 67°51'00"W along said northeasterly line for 94.13 feet, more or less, to the northwesterly line of said parcel; thence S 39°35'00"W along said line and along the northwesterly lines of the parcels of land described by deed recorded in Official Record Book 537, Page 956 and Official Record Book 861, Page 1061 of said public records, for 267.91 feet to the southwesterly corner of said parcel described in Official Record Book 861, Page 1061 of said public records; thence along the northeasterly lines of the parcel of land described by deed recorded in Official Record Book 900, Page 412 of said public records for the following two courses: N 61°57'00"W for 13.86 feet; and thence N 42°20'00"W for 72.85 feet to the said west line of Government Lot 5, Section 20, Township 65 South, Range 34 East; thence N 0°40'00"W along said Government Lot line for 389.34 feet to said southerly right of way line of State Road No. 5 (US Highway No. 1) and the Point of Beginning of the herein-described parcel of land, containing 157990 Square Feet more or less.

Doc# 1793242  
E# 2469 P# 2158

MONROE COUNTY  
OFFICIAL RECORDS





**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-59**

**A RESOLUTION OF THE CITY OF MARATHON FLORIDA APPROVING  
THE RELEASE OF A UNITY OF TITLE IN THE NAME OF JO-JO'S OF  
THE FLORIDA KEYS, LLC AS RECORDED WITH THE MONROE  
COUNTY CLERK OF COURTS, BOOK 2469, PAGE 2156; AND PROVIDING  
FOR AN EFFECTIVE DATE**

**WHEREAS**, the Agent for Jo-Jo's of the Florida Keys, LLC, John Wolfe, has requested a release of unity of title recorded in 2010, originally required as part of a Conditional Use Permit and Development Agreement approval; and

**WHEREAS**, the Unity of Title, recorded in the Official Records of Monroe County, Florida at book 2469, page 2256 states that the Unity of Title may only be released in writing through a written instrument executed by the City Manager after approval by the City Council.

**WHEREAS**, the City Council heard, reviewed and duly considered the reports, findings and recommendations of staff, and finds that the release of the Unity of Title is in the best interests of the citizens of 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 Manager is hereby authorized on behalf of the City of Marathon to execute a release of Unity of Title recorded in Official Records Book 2469, at Page 2156 of the Public Records of Monroe County, Florida, in substantially the same form and format as attached hereto.

**Section 3.** The City Manager is hereby authorized to do all things necessary and expedient in order to effectuate the release described in Section 2 above. The applicant shall record the releases at its cost and expense.

**Section 4.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 28<sup>th</sup> DAY OF MAY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

---

**John Bartus, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

---

Diane Clavier, City Clerk

(City Seal)

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

---

David Migut, City Attorney

**RELEASE OF UNITY OF TITLE**

**KNOW ALL MEN BY THESE PRESENTS:** The undersigned representative of the City of Marathon, a municipal corporation of the State of Florida, releases the UNITY OF TITLE recorded in Official Record Book 2469 at Page 2156 of the Public Records of Monroe County, Florida, relating to and pertaining to the property described in said UNITY OF TITLE being located in the City of Marathon, Monroe County, Florida.

All terms, conditions and provisions contained in the aforementioned UNITY OF TITLE are hereby released and canceled.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF MARATHON**

\_\_\_\_\_  
Chuck Lindsey, City Manager

WITNESSES:

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

STATE OF FLORIDA  
COUNTY OF MONROE

ACKNOWLEDGED before me, a Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, [ ] who is personally known to me or [ ] who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed name of Notary