

**CITY OF MARATHON, FLORIDA
RESOLUTION 2018-102**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY AND THE CITY OF MARATHON RESERVING SIXTY-FOUR (64) AFFORDABLE HOUSING RESIDENTIAL ALLOCATIONS FOR A PROJECT KNOWN AS SEAVIEW COMMONS LLC; ESTABLISHING THAT SAID UNITS ARE A “PLACEHOLDER” FOR THE PROJECT TO BE ABLE TO SUBMIT IN THE CURRENT CYCLE (FALL 2018) TO FLORIDA HOUSING FINANCE WITH THE NECESSARY COMPLIMENT OF AFFORDABLE ALLOCATIONS; AND AGREEING THAT, IF THE CITY’S FAILS TO FULLY ADOPT ITS COMPREHENSIVE PLAN AND LAND DEVELOPMENT REGULATION PROVIDING FOR THE ACCEPTANCE OF 300 AFFORDABLE – EARLY EVACUATION UNITS AS PROVIDED FOR IN THE ADMINISTRATION COMMISSION’S WORKFORCE-AFFORDABLE HOUSING INITIATIVE, THEN SEAVIEW COMMONS WILL DROP PURSUE THE PROJECT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the “City”) wishes to enter into an Interlocal Agreement with Monroe County (the “County”) for the purposes of Reserving 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 Interlocal Agreement (ILA) attached hereto as Exhibit “A”, between Monroe County and the City of Marathon Reserving sixty-four (64) Affordable Housing Residential Allocations for a project known as Seaview Commons LLC is hereby approved and the City Clerk is directed to transmit this Resolution and the attached ILA to the appropriate person(s) at Monroe County.

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 25th DAY OF SEPTEMBER, 2018.

THE CITY OF MARATHON, FLORIDA



Michelle Coldiron, Mayor

AYES: Cook, Senmartin, Zieg, Coldiron
NOES: None
ABSENT: Bartus
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

**INTERLOCAL AGREEMENT BETWEEN
MONROE COUNTY AND THE CITY OF MARATHON
RESERVING AFFORDABLE HOUSING RESIDENTIAL ALLOCATIONS**

This Agreement ("Agreement") is made and entered into this 17th day of October, 2018, by and between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040 ("County"), the City of Marathon, a municipal corporation of the State of Florida, whose address is 9805 Overseas Highway, Marathon, Florida 33050 (the "City"), and Seaview Commons, LLC (Seaview), whose address is 11100 Overseas Highway, Marathon, FL 33050;

WITNESSETH:

WHEREAS, Monroe County and the City of Marathon recognize the value of regional partnerships in smart growth; and

WHEREAS, Policy 101.3.10 of the Year 2030 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 of Marathon 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, on June 13, 2018, the Governor and Cabinet sitting as the Administration Commission established the Workforce-Affordable Housing Initiative whereby the City may establish a new limited category of BPAS Workforce Dwelling Units to be known as the “Affordable - Early Evacuation Pool” which will provide 300 workforce-affordable building permit allocations for the Workforce-Affordable Housing Initiative within the City of Marathon; and

WHEREAS, pursuant to the provisions of Chapters, 163, 166 and 380 Florida Statutes, the City has proposed to amend Chapter 1, “Future Land Use Element,” of the Comprehensive Plan adding Goal 1-4, “Workforce-Affordable Housing Initiative,”; and

WHEREAS, pursuant to Chapter 163, *Florida Statutes*, and Sections 101.02 and 102.22 of the Code, the Planning Commission sitting as the Local Planning Agency publicly considered the proposed text amendment on August 20, 2018 at a duly noticed public hearing, and has recommended approval of the proposed amendment to the City Council; and

WHEREAS, the City Council reviewed and approved transmittal of this Ordinance to the Florida Department of Economic Opportunity and other required agency reviewers on September 11, 2018; and

WHEREAS, the City Council intends to adopt the amendment on or about October 23, 2018, but no later than November 13, 2018, predicated upon ORC affirming the Ordinance; and

WHEREAS, Seaview applied for and obtained conditional use approval to redevelop its property located at 100 Avenue D 1 - 7, Coco Plum Key, Marathon, Florida, RE Numbers 00363700-000000, 00363710-000000 & 00363720-000000 into Sixty-Four (64) workforce housing dwelling units conditioned on Seaview obtaining the building permit affordable allocations; and

WHEREAS, Seaview desires to apply for tax credit financing from the Florida Housing Finance Corp. which application deadline is November 8, 2018; and

WHEREAS, DEO is the State of Florida department designated with implementing the Workforce-Affordable Housing Initiative, including review of the amendments of each local governments Comprehensive Plan and Land Development Regulation; and

WHEREAS, DEO will not have completed their review of the proposed amendments to City’s Comprehensive Plan and Land Development Regulations prior to the deadline to apply for tax credit financing from FHFC and therefore the amendments to City’s Comprehensive Plan and Land Development Regulations which would allow the City to directly allocate the Sixty-Four (64) workforce building permit allocations; and

WHEREAS, FHFC will not award tax credit financing to a project in the Florida Keys that does not have its building permit allocations reserved; and

WHEREAS, it is the purpose of this ILA to reserve through Monroe County, sixty-four (64) Early Evacuation Workforce Housing Allocations for the purposes of allowing the City to sign the required FHFC RFA forms and Seaview to submit a timely application to FHFC in the current funding cycle; and

WHEREAS, it IS NOT the intent to transfer the affordable allocations from the County to the City, but simply to RESERVE them for the purposes of Seaview's application to the FHFC; and

WHEREAS, the Early Evacuation Workforce Housing Allocations, as provided for through a proposed amendment to the City's Comprehensive Plan and Land Development Regulations, may only be utilized after the final approval by DEO and after passing all required due process dates without appeal; and

WHEREAS, the parties recognize that the City will allocate the Three Hundred (300) workforce-affordable building permit allocations for the Workforce-Affordable Housing Initiative from the pool; and

WHEREAS, the City fails to adopt its Comprehensive Plan Amendment and complimentary amendment to the Land Development Regulations in a reasonable time frame, (one year from the approval of the ILA by both parties), then Seaview agrees to drop its pursuit of the project as an affordable project and will no longer request affordable allocation through this vehicle; and

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. RESERVATION: The parties agree that the County will reserve sixty-four (64) affordable housing allocations for the sole purposes of allowing Seaview Commons, LLC to submit a timely application to Florida Housing Finance Corporation (FHFC) in the Fall 2018 funding cycle subject to the following conditions.

a. The terms of this Agreement are that the Reservation will remain in place for one year from the date of this Agreement.

b. If, the City of Marathon has not completed both its Comprehensive Plan and LDR amendments to receive up to 300 Affordable - Early Evacuation Units through the Administration Commission's Workforce-Affordable Housing Initiative, including any challenge and appeal, within one year from the date of this Agreement, then the reservation of the County's ROGO allocations will expire, this ILA and the project will become null and void, and the County will be free to reserve and/or award the sixty-four (64)

allocations, which are reserved under the Agreement, to other projects in the unincorporated areas of the County.

c. If the City successfully completes its Comprehensive Plan and LDR amendments to receive the 300 Affordable – Early Evacuation Units through the Administration Commission’s Workforce-Affordable Housing Initiative prior to the one (1) year expiration period of this Agreement, the City shall award sixty-four (64) of those allocations it receives from the State to Seaview for use on the subject project and the reservation of the County’s sixty-four (64) allocation shall immediately expire and the County will be free to reserve and/or award the sixty-four (64) allocations, which are reserved under this Agreement, to other projects in the unincorporated areas of the County.

Section 2. TERM: Subject to and upon the terms and conditions set forth herein, this Agreement shall continue in force for one year from the date that the last party signs this Agreement..

Section 3. 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. (“Reservation”)** 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. (“Reservation”)** 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

Monroe County Attorney
1111 12th Street, Suite 408
Key West, FL 33040

Section 4. 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 5. 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 6. 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 7. 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 8. 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 9. 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 10. 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 11. 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 12. 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 13. 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, FL 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, FL 33041-1026

If to City: Charles Lindsey
City Manager
City of Marathon
9805 Overseas Highway
Marathon, FL 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

If to Seaview Mr. Brian Schmitt
Seaview Commons, LLC
11100 Overseas Highway
Marathon, FL 33050

With a copy to: 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 14. 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 15. 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 16. 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 17. EFFECTIVE DATE: This Agreement shall take effect on the date that the last party signs this Agreement.


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: October 17, 2018

APPROVED AS TO FORM AND
LEGALITY FOR THE USE AND
RELIANCE OF MONROE COUNTY,
FLORIDA:

By: 
Robert B. Shillinger
County Attorney

ATTEST:

Diane Clavier
DIANE CLAVIER
City Clerk

(City Seal)

THE CITY OF MARATHON, FLORIDA

By: *Michelle Coldiron*
Mayor Michelle Coldiron

Date: 11-8-18

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

By: *David Migut*
David Migut
City Attorney

WITNESSES:

Joanna M Williams
Signature
Joanna M Williams
Name of witness (printed or typed)

Hillary Palmer
Signature
Hillary Palmer
Name of witness (printed or typed)

SEAVIEW


By:
Name: Brian Schmitt
Title: Owner