

**CITY OF MARATHON, FLORIDA
RESOLUTION 2018-105**

A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, APPROVING A 380 AGREEMENT BETWEEN THE CITY OF MARATHON, FLORIDA, THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY, AND SEAVIEW COMMONS, LLC TO RESERVE SIXTY-FOUR (64) AFFORDABLE - EARLY EVACUATION RESIDENTIAL ALLOCATIONS; SAID ALLOCATIONS TO BE A PART OF THE ADMINISTRATIONS COMMISSION'S WORKFORCE-AFFORDABLE HOUSING INITIATIVE WHICH PROVIDED UP TO 300 ALLOCATIONS EACH TO THE COUNTY AND EACH MUNICIPALITY; FURTHER, SAID ALLOCATIONS TO BE ISSUED PURSUANT TO AMENDMENTS TO THE CITY'S COMPREHENSIVE PLAN AND LAND DEVELOPMENT REGULATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

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; 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; 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 380 Agreement to reserve sixty-four (64) Early Evacuation Workforce Housing Allocations for the purposes of allowing the City to sign the required FHFC RFA forms; and

WHEREAS, the Early Evacuation Workforce Housing Allocations may only be utilized pending the final approval by DEO and after passing all required due process dates without appeal; and

WHEREAS, the parties recognize that the City will obtain the Three Hundred (300) workforce-affordable building permit allocations for the Workforce-Affordable Housing Initiative from the pool; 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, 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 DEO become a signatory to the attached 380 Agreement in order to reserve Sixty-Four (64) of the Three Hundred (300) Affordable – Early Evacuation Residential Units for the project approved as Seaview Commons, LLC. Seaview, City, and DEO agree that the units allocated shall be subject to and bound by the City's Comprehensive Plan and Land Development Regulations proposed for adoption for implementing the Workforce-Affordable Housing Initiative. Said units may only be utilized pending final approval of the City's Comprehensive Plan and LDR amendments by DEO and only after passing all required due process dates without appeal.

Section 3. The City Clerk is directed to immediately transmit an original of this

Resolution and Agreement to Seaview Commons, LLC and the Florida Department of Economic Opportunity for review and signature.

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 9TH DAY OF OCTOBER, 2018.

THE CITY OF MARATHON, FLORIDA



Michelle Coldiron, Mayor

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

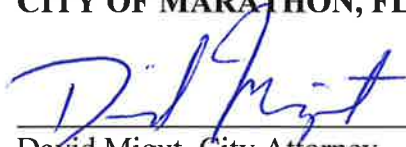
ATTEST:



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

380 AGREEMENT

This Florida Statute 380 Agreement ("Agreement") is made and entered into this 10 day of October, 2018, by and between The City of Marathon, a municipal corporation of the State of Florida, whose address 9805 Overseas Highway, Marathon Florida 33050 (the "City"), State of Florida Department of Economic Opportunity ("DEO") whose address is 107 E Madison Street, Tallahassee, Florida 32399 and Seaview Commons, LLC ("Seaview") whose address is 11100 Overseas Highway, Marathon, Florida 33050.

WITNESSETH:

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; 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; 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 6, 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 380 Agreement to reserve sixty-four (64) Early Evacuation Workforce Housing Allocations for the purposes of allowing the City to sign the required FHFC RFA forms; and

WHEREAS, the Early Evacuation Workforce Housing Allocations may only be utilized pending the final approval by DEO and after passing all required due process dates without appeal; and

WHEREAS, the parties recognize that the City will obtain the Three Hundred (300) workforce-affordable building permit allocations for the Workforce-Affordable Housing Initiative from the pool; 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. Allocation of Units: DEO agrees to immediately allocate Sixty-Four (64) of the Three Hundred (300) workforce-affordable building permit allocations that shall be issued to the City for the Workforce-Affordable Housing Initiative for City to allocate to Seaview through this Agreement. Seaview and City agree that the units allocated shall be subject to and bound by the City's Comprehensive Plan and Land Development Regulations proposed for adoption for implementing the Workforce-Affordable Housing Initiative. Said units may only be utilized pending final approval of the City's Comprehensive Plan and LDR amendments by DEO and only after passing all required due process dates without appeal.

Section 2. NOTIFICATION:

All such notices under this Section ("**Section 4.**") shall be sent to the following addresses:

City of Marathon
City Manager, City of Marathon and City Attorney's Office
9805 Overseas Highway, FL 33050; and

Seaview Commons, LLC
Attn: Brian Schmitt
11100 Overseas Highway
Marathon, FL 33050

Florida Department of Economic Opportunity
Attn: Florida Keys Area of Critical Concern

Section 3. CONSTRUCTION AND INTERPRETATION: The construction and interpretation of this Agreement and Code of Ordinance, Land Development Code, or Land Development Regulation provisions in arising from, related to, or in connection with this Agreement, shall be deferred in favor of the City and such construction and interpretation shall be entitled to great weight on trial and on appeal.

Section 4. WAIVER OF JURY TRIAL: In the event of any litigation related to, arising from, or in connection with this Agreement, the parties hereto and their assignees and successors-in-interest, hereby agree to expressly waive their right to a jury trial.

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 (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 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 or 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. 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 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 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. 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 14. 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 15. 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 16. Authority to Attest: Each party to this 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 17. 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 18. 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 19. EFFECTIVE DATE: This Agreement shall take effect on the date set forth above.

[Remainder of Page Intentionally Blank. Signature Page to Follow.]

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

SEAVIEW COMMONS, LLC

October 10th, 2018



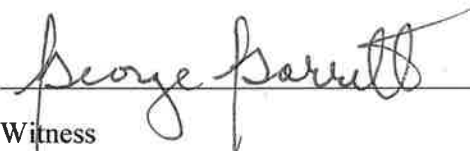
Brian Schmitt
President

October 10th, 2018



Witness

October 10th, 2018



Witness

CITY OF MARATHON, FLORIDA

ATTEST:

By: Diane Clavier
Diane Clavier, City Clerk

By: Michelle Celdiron
Mayor Michelle Celdiron

(SEAL)

Date: Oct 10, 2018

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: D. Migut
David Migut, City Attorney

STATE OF FLORIDA

DEPARTMENT OF ECONOMIC OPPORTUNITY

_____, 2018

By: _____
J. Thomas Beck, AICP
Director, Division of Community Development

Approved as to form and legal sufficiency,
Subject only to full and proper execution by all parties

Office of the General Counsel
Department of Economic Opportunity

By: _____
Assistant General Council