

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2014-100**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF MARATHON, MONROE COUNTY AND THE CITY OF MARATHON TO ALLOW AFFORDABLE TRANSFERABLE BUILDING RIGHTS ACROSS JURISDICTIONAL BOUNDARIES BETWEEN THE COUNTY; AND THE CITY, AUTHORIZING THE CITY MANAGER AND THE CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF THE AGREEMENT, AUTHORIZING THE MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING FOR AND EFFECTIVE DATE**

**WHEREAS**, the City of Marathon (the "City") recognizes the value of regional partnerships in smart growth; and

**WHEREAS**, Monroe County and the City of Marathon have previously entered into Inter-local Agreements to accept ROGO units and Development Rights; and

**WHEREAS**, Monroe County has been approached by Little Palm Cottages, LLC to transfer nineteen (19) affordable ROGOs from Monroe County pursuant to Resolution No. 208A-2013 and the Agreement between Monroe County, Florida and Little Palm Cottages, LLC to Reserve Affordable Housing ROGO Allocations, Formalize an Alternative Compliance to the Inclusionary Housing Requirements/Linkage of Project Plan, and Provide Little Palm Cottages, LLC with Authorization to Qualify Applications for Affordable Housing Occupancy ("Linkage Agreement"), for a residential rental project in the City of Marathon; and

**WHEREAS**, the City of Marathon, Florida has recognized and conceptually authorized the transfer of affordable transferable building rights from Little Palm Cottages, LLC through the approval of a Conditional Use Permit (Resolution 2014-76), a Development Agreement (Resolution 2014-77), and the allocation of both affordable (19) and market rate (9) BPAS residential units (Resolution 2014-78) for Tarpon Harbour (Marathon Ocean Housing, LLC); and

**WHEREAS**, Monroe County and the City of Marathon recognize the potential economic value of such transferable rights; and

**WHEREAS**, this Agreement is entered into according to the authority of Florida Statutes, Section 163.01, *et. seq.*, Florida Inter-local 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 inter-local agreements as a means of resolving issues mutually affecting their respective jurisdictions; and

**WHEREAS**, the parties have determined that this Agreement is in the best interests of the public,

**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 by this reference.

**Section 2.** The City Council hereby approves the Inter-local Agreement between Monroe County and the City, a copy of which is attached hereto as Exhibit A. The City Council further authorizes the Mayor to execute the Inter-local Agreement on behalf of the City Council.

**Section 3.** The City Council hereby further approves the transfer of nineteen (19) affordable transferable building rights from the Little Palm Cottages, LLC within the jurisdiction of Monroe County, Florida to Tarpon Harbour (Marathon Ocean Housing, LLC.), within the jurisdiction of the City of Marathon, Florida.

**Section 4.** This resolution shall take effect immediately upon its adoption.

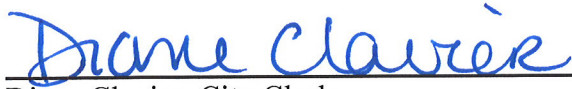
**PASSED AND APPROVED** by the City Council of the City of Marathon, Florida, this 27<sup>th</sup> day of August, 2014.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
Dick Ramsay, Mayor

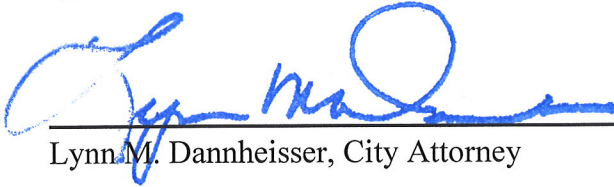
AYES: Bartus, Bull, Keating, Senmartin, Ramsay  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**



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

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



\_\_\_\_\_  
Lynn M. Dannheisser, City Attorney

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

This Agreement ("Agreement") is made and entered into this 17<sup>th</sup> day of September, 2014, 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**, Monroe County and the City of Marathon have previously entered into Interlocal Agreements to transfer ROGOs; and

**WHEREAS**, Monroe County and Little Palm Cottages, LLC entered into an agreement on July 17, 2013, entitled "Agreement between Monroe County, Florida and Little Palm Cottages, LLC to Reserve Affordable Housing ROGO Allocations, Formalize an Alternative Compliance to the Inclusionary Housing Requirements/Linkage of Project Plan, and Provide Little Palm Cottages, LLC with Authorization to Qualify Applications for Affordable Housing Occupancy" ("Linkage Agreement") attached as **Exhibit A**; and

**WHEREAS**, pursuant to the County's inclusionary housing requirements, MCC §130-161(b)(2)b., 30% of the residential dwelling units developed by Little Palm Cottages, LLC are required to be developed as affordable housing (30% of 48 = 14.4); and

**WHEREAS**, Little Palm Cottages, LLC, had 48 market rate ROGO exemptions, has constructed 48 units, and has filed an affordable housing deed restriction insuring that 14 units will be affordable; and

**WHEREAS**, Little Palm Cottages, LLC may, through the Linkage Agreement, construct up to 19 affordable housing units off-site and link them to the market-rate housing units that are on-site and satisfy the 30% inclusionary housing requirements (48 on-site market-rate units + 14 off-site affordable units = 62 total units, 30% of 62 = 18.6); and

**WHEREAS**, by letter dated August 26, 2014 (**Exhibit B**), John F. Weir, Managing Member of Eastwind Little Palm, LLC, Managing Member of Little Palm Cottages, LLC, has requested that Monroe County transfer nineteen (19) affordable ROGO allocations from Monroe County pursuant to

the Linkage Agreement and Resolution No. 208A-2013, (attached as **Exhibit C**), to the City for an affordable (moderate income) and market rate residential rental project in the City of Marathon; and

**WHEREAS**, the Linkage Agreement allows the 14 affordable ROGO allocations to be removed from the Little Palm Cottages, LLC site, now known as Little Torch Cottages, and that the 14 units be allowed to revert to market rate units as long as 19 affordable housing units are constructed off site and deed restricted as affordable housing, thus fulfilling the County's inclusionary housing requirements for the 48 market rate residential units at Little Torch Cottages; and

**WHEREAS**, Monroe County and the City of Marathon recognize the potential economic value of such transferable 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**, 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 nineteen (19) affordable housing moderate income ROGO allocations from Monroe County to the City of Marathon for allocation, pursuant to the foregoing Linkage Agreement, and subject to the conditions contained therein, including but not limited to:

- a. Little Palm Cottages, LLC or its assignee constructing the affordable off-site units related to such allocations.
- b. the filing of an Affordable Housing Deed Restriction on the new affordable housing units pursuant to Paragraph III.G. of the Agreement.

**Section 2. ASSIGNMENT:** Little Palm Cottages, LLC has assigned its rights to the allocations to Marathon Ocean Housing, LLC, and the 19 affordable housing allocations are to be issued by the City to be used specifically by Marathon Ocean Housing, LLC at the development in Marathon known as Tarpon Harbour. (Assignment attached as **Exhibit D**.) In the event that the affordable component of

the Marathon Ocean Housing, LLC development is not completed for any reason within the time provided for in the City's Conditional Use Permit, the allocations revert to Monroe County and to their former status under the Agreement.

**Section 3. TERM:** Subject to and upon the terms and conditions set forth herein, this Agreement shall continue in force until otherwise retracted by action of the County or the City or until the termination of the Linkage Agreement and pursuant to Resolution 208A-2013, which is December 31, 2021.

**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. 1775, 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, Florida 33040

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: Michael Puto  
Interim City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050

With a copy to: Lynn Dannheisser, Esquire  
City Attorney  
GrayRobinson, P.A.  
1221 Brickell Avenue, Suite 1600  
Miami, Florida 33131

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.

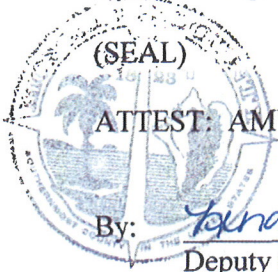
**Section 15. COUNTERPARTS:** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

**Section 16. 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)

ATTEST: AMY HEAVILIN, CLERK

By: Lindsay Ballas  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By: Stephen J. Murphy  
Mayor/Chairperson

Date: September 17th, 2014

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: Susan M. Sumley  
Assistant County Attorney

ATTEST:

Diane Clavier  
DIANE CLAVIER  
City Clerk

THE CITY OF MARATHON, FLORIDA

By: Dick Ramsay Date 8/27/14  
Mayor Dick Ramsay,

(City Seal)


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

By: Lynn Dannheisser  
Lynn Dannheisser  
City Attorney

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM  
Susan M. Sumley  
Date: SEPTEMBER 1, 2014

LITTLE PALM COTTAGES, LLC

BY: EASTWIND LITTLE PALM, LLC  
Managing Member

By:   
\_\_\_\_\_  
JOHN F. WEIR  
Managing Member