

**CITY OF MARATHON, FLORIDA
RESOLUTION 2015-003**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A REQUEST BY KEYS AFFORDABLE DEVELOPMENT, LLC. FOR DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 102, ARTICLES 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED "DEVELOPMENT AGREEMENT", AUTHORIZING THE DEVELOPMENT OF FIFTY-ONE (51) ONE, TWO AND THREE BEDROOM APARTMENTS ON PROPERTIES LOCATED AT 73RD STREET OCEAN, WHICH ARE LEGALLY DESCRIBED AS LOTS 2,3,4,10,11 AND 16 OF REIMANN'S SUB PB2-145 AND LOTS 7, 8, 9 AND 10 OF FIELD'S SUBDIVISION, KEY VACA, MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBERS 00342030-000000, 00342040-000000, 00342050-000000, 00342110-000000, 00342160-000000, 00342290-000000, 00342300-000000, 00342310-000000 AND 00342320-000000. NEAREST MILE MARKER 51.

WHEREAS, Keys Affordable Development, LLC (The "Applicant") filed an Application on September 19th, 2014 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 13 and 8 respectively of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant has proposed to develop fifty-one (51) one, two and three bedroom affordable apartments on sites previously developed as a non-transient motel/apartments; and

WHEREAS, the Applicant has entitlements on the project site for thirty-four (34) market rate residential units existing on site; and

WHEREAS, the Applicant must obtain fifty-one (51) 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 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 20th day of October 2014, 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 respectively of the LDRs; and

WHEREAS, and on the 11th day of November, 2014 and the 13th day of January, 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 redevelopment in Marathon, and will further the health, safety and welfare of the residents of Marathon,

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

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

Section 2. The City Council hereby approves this Development Agreement, a copy of which is attached hereto as Exhibit "A", to redevelop the project site as set out in the project site plan allowing the Applicant to construct fifty-one (51) affordable units, to include an office, pool, gazebo, and covered picnic area subject to conditions imposed and as further described in the Agreement. The Mayor is authorized to sign the development order on behalf of the City.

Section 3. This Resolution shall take effect upon approval by the State Department of Economic Opportunity.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 13th day of January, 2015.

THE CITY OF MARATHON, FLORIDA



Chris Bull, Mayor


AYES: Zieg, Senmartin, Keating, Kelly, Bull
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:


for _____
Diane Clavier
City Clerk

(City Seal)

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



Lynn M. Dannheisser, City Attorney

EXHIBIT A

Parcel I.D. Nos.:

RE# 00342030-000000, 00342040-000000, 00342050-000000, 00342110-000000, 00342160-000000, 00342290-000000, 00342300-000000, 00342310-000000 AND 00342320-000000

(Space reserved for recording)

**DEVELOPMENT AGREEMENT FOR
KEYS AFFORDABLE DEVELOPMENT, LLC
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 KEYS AFFORDABLE DEVELOPMENT LLC, a Florida 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” (legal description), attached hereto and incorporated herein by reference; and

WHEREAS, Owner has submitted a proposal to develop, construct, a residential community comprised of fifty-one (51) affordable rate residential units. This project consists of fifty-one (51) affordable residential, one office space as well as site amenities including a clubhouse and pool; and

WHEREAS, the Owner has entitlements on the project site for thirty-four (34) market rate residential units on properties identified in nine (9) Real Estate numbers (RE Nos. 00342030-000000, 00342040-000000, 00342050-000000, 00342110-000000, 00342160-000000, 00342290-000000, 00342300-000000, 00342310-000000 & 00342320-000000); and

WHEREAS, the Owner must obtain and transfer fifty-one (51) market rate 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 AFFORDABLE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT.**

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 20th day of October, 2014, to consider this Agreement, and recommended approval of this Agreement; and

WHEREAS, the City Council of Marathon held public hearings on the 11th day of November, 2014 and the 13th day of January, 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 and will further the health, safety, and welfare of the residents of Marathon; 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 fifty-one (51), one office space, and other amenities and accessories for the residents of the development, including pool and docking facilities. The approved project site plan is attached as Exhibit "C," the Conditional Use Permit as promulgated in City of Marathon Resolution 2014-XXX, and all other plans submitted as part of the Conditional Use / Development Agreement approval are incorporated herein by reference.

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. Keys Affordable Development LLC, 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. The duration of the Development Agreement shall be seven (7) years. The Owner has phased the project into four (4) components based on the four (4) pods of properties totally nine (9) parcels in order to preserve current overall tenancy of residents living within the existing project sites. Phase one will consist of seven (7) residential units and an office space. Phase two shall consist of twenty-four (24) residential units. Phase three shall consist of sixteen (16) residential units. Phase four shall consist of four (4) residential units. Amenities, parking, landscaping and other site requirements will be attendant to each of these phases in accordance with the approved site plan.

The Owner chooses to develop a phased project in four (4) discrete phases and project areas along 73rd Street, Ocean, Marathon. The Owner shall have a maximum of eighteen (18) months from the date of approval of this Agreement by the State Department of Economic Opportunity (DEO) to submit and have approved complete building plans to construct the first phase totaling seven (7) residential units and an office space. Each succeeding phase shall be initiated within a time frame at the Owners discretion. However, project building plans shall all be submitted to the City for approval by the City within four (4) years. Project construction shall be completed within (seven (7) years

Should the City Allocate any Building Permit Allocation System affordable units to the project, Owner purchased affordable development rights must be utilized first and such City allocated units must be through the building approval and permitting process and under construction within three (3) years.

C. Building Right and Commercial Floor Area Allocations. The City recognizes that the subject property currently possesses thirty-four (34) market rate residential entitlements. The City recognizes that the project requires fifty-one (51) affordable residential building allocations. Applicant must obtain and transfer fifty-one (51) market rate units in excess of what the City has recognized as legally established on the property (which could be deed restricted as affordable residential 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.

Should the Owner acquire all or a part of the required fifty-one (51) affordable residential units on the open market, the equivalent in market rate residential unit entitlements may be transferred from the project properties without the transfer fee required pursuant to Chapter 107, Article 2, Chapter 107.18. C.

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

E. 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 of Marathon Nearshore Waters.
8. Fire Protection. In connection with the Owner's development of the Property, 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.

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.** 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.

City shall grant developer a credit for impact fees for any residential entitlements for which rights previously existed and continue to exist on the site.

F. **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 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.

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

1. This Development Agreement.
2. Conditional Use Approval.
3. Building and related construction permits for all structures utilized for principal use or accessory use, 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.
4. Local Permits for Stormwater Runoff and connection to the City's Sewer System. 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.

H. **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.

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'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.

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:

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.

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:

Manager
Keys Affordable Development, LLC
4488 Heaton Park Trail
Viera, Florida 32955

With a copy by regular U.S. Mail to:
Larry Pino, Esq.
189 S. Orange Avenue, Suite 1650
Orlando, Florida 32801

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:

Valerie Haber, Esq.
Gray Robinson, P.A.
333 SE 2nd Ave, Suite 3200
Miami, FL 33131
(305) 416-6880

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.

A.A. 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.

B.B. 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.

C.C. 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:



Wit. #1 - Signature

Lydia White
Printed Name of Wit. #1



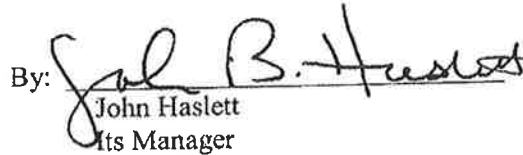
Wit. #2 - Signature

Matthew Sobaree
Printed Name of Wit. #2

OWNER

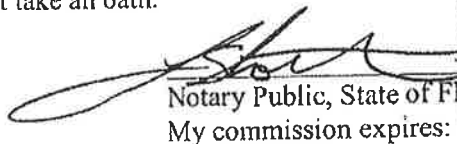
Keys Affordable Development, LLC

By: 
John Haslett
Its Agent

By: 
John Haslett
Its Manager

STATE OF FLORIDA
COUNTY OF MONROE

The following instrument was acknowledged before me on this 16 day of January, 2015, by John Haslett, as Agent of Keys Affordable Development, LLC, who is personally known to me or who produced FL DL identification, and who did/did not take an oath.


Notary Public, State of Florida
My commission expires:



On the 13th day of January, 2015, The City Council of the City of Marathon approved this Agreement by Resolution No. 2015-003.

ATTEST:

CITY OF MARATHON

Hillary Palmer
for Diane Clavier, City Clerk

By: Chris Bull
Chris Bull, Mayor

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

Lynn M. Dannheisser
Lynn M. Dannheisser, Esq
City Attorney

Doc# 2013386
Bk# 2721 Pg# 2032

EXHIBIT "A"

Exhibit A

Lots 2, 3, 4, 10, 11 and 16, REIMANN'S SUBDIVISION, a subdivision according to the plat thereof as recorded in Plat Book 2, Page 145, of the Public Records of Monroe County, Florida.

AND

Lots 7, 8, 9 and 10, FIELD'S SUBDIVISION, a subdivision according to the Plat thereof as recorded in Plat Book 3, Page 78, of the Public Records of Monroe County, Florida.

EXHIBIT "B"

**Doc# 2013386
Bk# 2721 Pg# 2034**

Doc# 2013386
 BK# 2721 Pgt 2035

Exhibit B

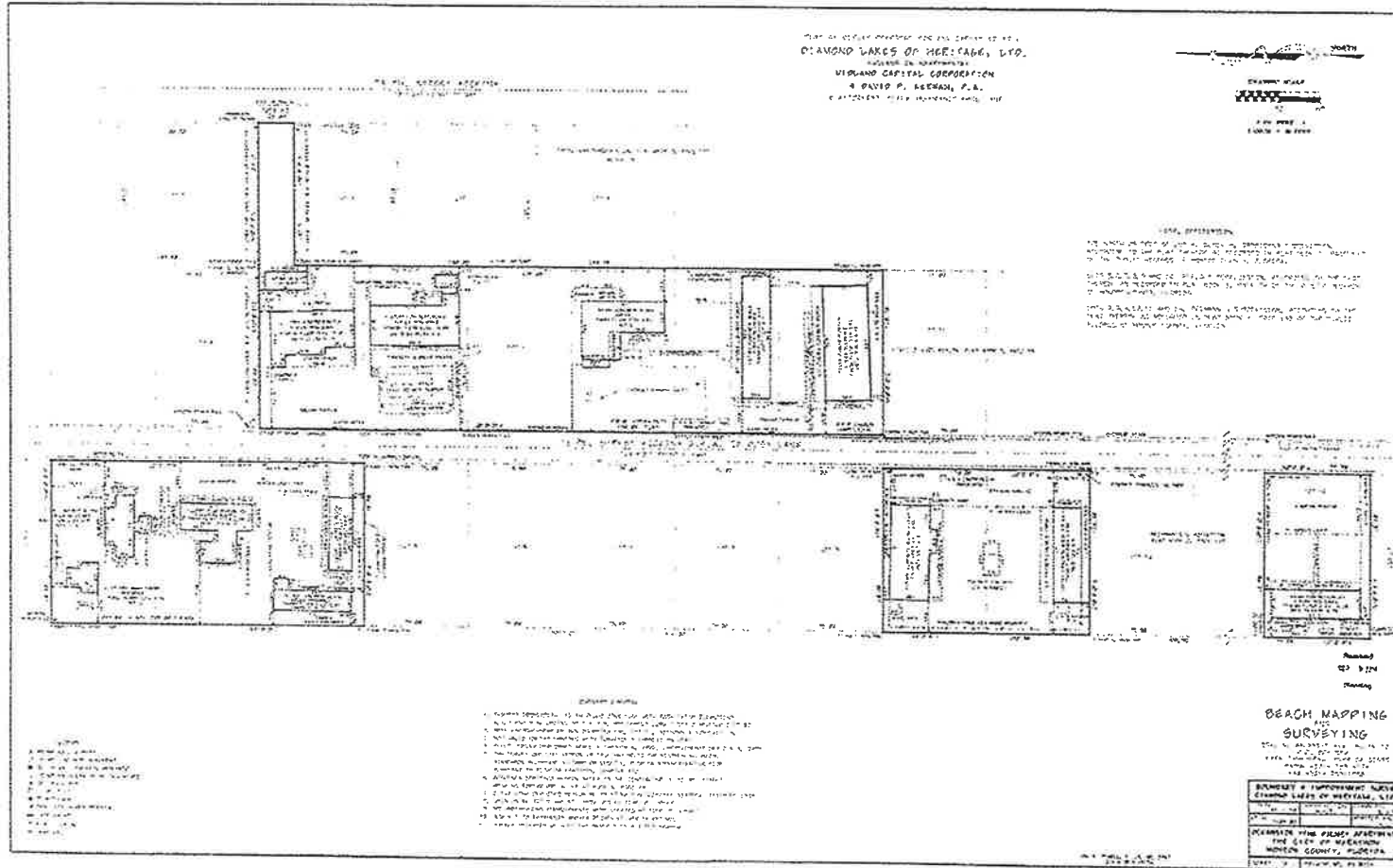
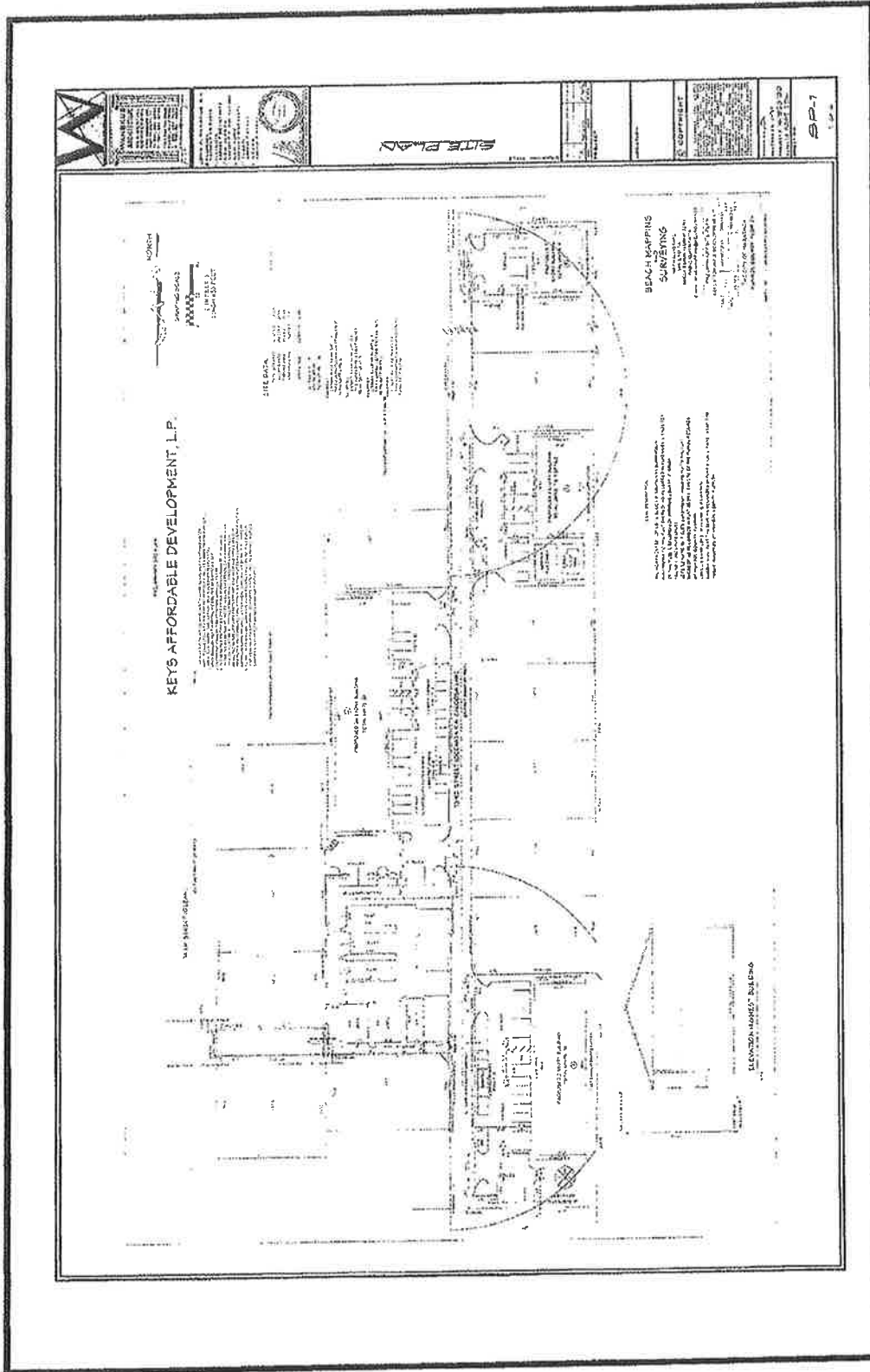


EXHIBIT "C"



MONROE COUNTY
OFFICIAL RECORDS

**This instrument prepared by,
and after recording return to:**

City of Marathon, Florida
Planning Department
9805 Overseas Highway
Marathon, Florida 33050

AGREEMENT AND DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS

THIS AGREEMENT AND DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS ("Declaration") is made and entered into this 6 day of March, 2017 by and between **Keys Affordable Development LLC**, whose principal mailing address is 422 S. Hunt Club Blvd., Apopka, FL 32703 (Declarant") and the **City of Marathon**, a Florida municipal corporation, whose principal mailing address is 9805 Overseas Highway, Marathon, Florida 33050 (the "City").

RECITALS:

1. Declarant is the fee simple title owner to certain real property (the "Property") located in the City of Marathon, Monroe County, Florida, which is more particularly described as:

SEE LEGAL DESCRIPTION PAGE 8 ATTACHED AS EXHIBIT "A"

2. Declarant is the recipient of **25** RBPAS Exempt Affordable Housing Residential Units which must follow the Affordable Housing requirements pursuant to **Section 104.01 "Affordable Housing" and 107.06. (c) of the City of Marathon Land Development Regulations.**
3. In consideration of the Declarant's receipt of its Affordable Housing Residential Unit Allocation award, and the waiver of fees as set forth herein, and for other good and valuable consideration, Declarant hereby covenants with the City of Marathon, a political subdivision of the State of Florida, its successors or assigns, for itself, its heirs and successors that the property described herein is subject to and bound by the Affordable Housing Restrictions hereinafter set forth, each and all of which is and are for the benefit of the Property, shall run with the land, and are enforceable by the City, its successors and assigns.

NOW, THEREFORE, the Declarant agrees that the Property shall be held and conveyed

subject to the following Affordable Housing Restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title or interests in the Property or any part thereof, their heirs, successors and assigns for the entire term of this Declaration.

THE DECLARANT AGREES AND CERTIFIES THAT AS THE OWNER OF THE PROPERTY DESCRIBED HEREIN, THERE IS A CAP AND RESTRICTION UPON THE SALE OR OTHER CONVEYANCE OF THE SUBJECT PROPERTY. IN ORDER TO CONVEY THE PROPERTY, THE DECLARANT, HIS/HER/ITS SUCCESSORS OR ASSIGNS MUST COMPLY WITH THE FOLLOWING:

- A. The prospective purchaser or occupant must be a qualified purchaser or occupant under the City of Marathon Affordable Housing Restrictions as set forth in Section 104.01 "Affordable Housing" and 107.06 (c) of the City of Marathon Land Development Regulations (as may be amended), or the City's successors or assigns, as a precondition of the purchase or other conveyance of the subject property. A valid Certificate of Compliance issued by the City of Marathon, its successors or assigns, within 30 days of the prospective conveyance must be recorded in the Public Records of Monroe County contemporaneously with the recording of the deed of conveyance.**
 - B. The Deed, or other document of conveyance must make specific reference to this document by name and the OR Book and Page where it is recorded in the Public Records of Monroe County.**
 - C. The Deed, or other document of conveyance, must state, in bold print of at least 14 point font, on the first page of the document, immediately following the legal description the phrase, "THIS PROPERTY IS SUBJECT TO AFFORDABLE HOUSING RESTRICTIONS WHICH MAY EFFECT ITS SALE OR CONVEYANCE".**
1. **Restrictions.** Declarant hereby covenants, agrees and certifies, in so far as the rights, powers, interests and authority of the Declarant is concerned, that development, sale, lease, or other conveyance of the Property shall be in accordance with the City's Affordable Housing Restrictions as set forth in the provisions of Section 104.01 "Affordable Housing" and 107.06 (c) of the City of Marathon Land Development Regulations (as may be amended).
 2. **Impact Fees.** Under the provisions set forth in Chapter 111 of the City Code, any persons, including any governmental agency, prior to receiving a building permit for any new land development activity shall pay "Fair Share Impact Fees".
 3. **Waiver of Impact Fees.** Under the Affordable Housing Provisions set forth in Chapter 111 of the City Code, the owner or owners of the above described real Property have

been exempted from payment of "Fair Share Impact Fees" for a (check one) ___ a single family, XX multi-family unit, _____ a mobile home dwelling to be constructed on said real property.

4. **City.** This Declaration is intended to benefit and run in favor to the City.
5. **Enforcement.** This Declaration may be enforced by the City at law or in equity or as a code compliance action against any party or person violating, or attempting to violate, any of the covenants and restrictions contained herein. The remedies available to the City shall include, but are not limited to, obtaining a court order requiring the Declarant or his/her successor or assigns to comply with the City's affordable housing regulations in effect at the time of such order, and compelling the Property's continuing compliance with the affordable housing regulations until this Declaration has expired. The prevailing party in any action or suit pertaining to or arising out of this Declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, reasonable attorneys' fees and costs as well as attorneys' fees and cost incurred in enforcing this prevailing parties attorneys' fees provision. This enforcement provision shall be in addition to any other remedies available at law or in equity.
6. **Term.** The restrictions, covenants and conditions of this Declaration shall run with the land for a term of fifty (50) years from the date of the issuance of a Certificate of Occupancy issued by City of Marathon, its successors or assigns, for the dwelling unit or units to which this covenant applies. If any provision or application of this Declaration would prevent this Declaration from running with the land as aforesaid, such provision and/or application shall be judicially modified, if possible, to reflect the intent of such provision or application and then shall be enforced in a manner allowing the covenant, conditions, and restrictions to so run with the land.
7. **Amendments.** All amendments hereto shall be in writing and must be signed by the Declarant and the City. All amendments hereto shall be recorded in the Public Records of Monroe County, Florida, and shall not be valid until recorded.
8. **Paragraph Headings.** Paragraphs headings, where used herein, are inserted for the convenience only and are not intended to be a part of this Declaration or in any way defined, limited or described to be a part of this Declaration in the Public Records of Monroe County, Florida, and shall not be valid until recorded.
9. **Effective Date.** This Declaration shall become effective upon the date of execution by both parties hereto or the date of recordation of this Declaration in the Public Records of Monroe County, Florida, which ever is later.
10. **Governing Law.** This Declaration and the enforcement of the rights and obligations established hereby shall be subject to and governed by the laws of the State of Florida.

11. **Recordation.** Declarant shall at its sole cost and expenses, record this Declaration in the Public Records of Monroe County, Florida within fifteen (15) days of the execution hereof by both the Declarant and the City. Declarant shall provide the City with proof of the recording of the Declaration in accordance with the provisions of this paragraph. Failure to record these restrictions shall entitle the City to refuse to issue the Certificate of Occupancy for the dwelling unit or units to which this covenant applies, and to other remedies, legal or equitable, available to the City to assure compliance with these Restrictions.

12. **Authorization for City to Withhold Permits and Inspections.** If the terms of this Declaration are not being complied with, in addition to any other remedies available at law or in equity, the City is hereby authorized after notice and an opportunity to cure, to withhold any permits regarding the Property or any portion thereof, and to refuse to make any inspections or grant any approvals for the Property or any portion thereof, until such time as the Declarant or its successor or assigns is in compliance with the covenants of this Declaration. The determination of non-compliance and to withhold permits, inspections, or approvals shall be by the Director of Planning and shall be subject to the appeal provision of the City's land development regulations.

IN WITNESS WHEREOF, Declarant, has caused these presents to be executed on the day and year first above written.

Signed, sealed and delivered in the presence of:

DECLARANT

Jazmin A Lopez
Printed Name: JAZMIN G LOPEZ

By: [Signature]
Printed Name: JEFF KAMMERUDE

Printed Name: _____

By: _____
Printed Name: _____

STATE OF FL
COUNTY OF Monroe

The foregoing instrument was acknowledged before me this 8th day of Dec, by Jeff Kammerude, who personally appeared before me, and is/are personally known to me or have produced _____ as identification and acknowledged executing the foregoing document.

[Signature]
Notary Public, State of FL
Printed Name: Lorie Mullins
My commission expires:



Agreed and accepted this 6 day of March, 2017

THE CITY OF MARATHON, a Florida Municipal Corporation

By: 
Charles Lindsey, City Manager

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:

BY:


CITY ATTORNEY

JOINDER, CONSENT, AND SUBORDINATION

The undersigned hereby certifies that _____
is the holder of a mortgage, lien or other encumbrance upon the above-described Property, and
that the undersigned hereby joins in and consents to the foregoing instrument by the Owner
thereof (the "Declarant") and agrees that its mortgage, lien or other encumbrance, which is
recorded in Official Records Book _____ at Page _____ of the Public Records of Monroe
County, Florida, shall be subordinated to the foregoing Declaration of Covenants, Conditions,
and Restrictions (the "Declaration") for the two affordable housing dwelling units.

Signed, sealed, and delivered
in the presence of:

Print Name: _____

By _____
Name: _____
Its: _____

Print Name: _____

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by
_____, who is personally known to me or who produced
_____ as identification, and who did/did not take an
oath.

Notary Public, State of _____
Printed Name:
My commission expires:

Exhibit A

Lots 2,3,4, And 5 Of Reimanns Subdivision Plat Book 2-145, Key Vaca, Monroe County, Florida; Having Real Estate Numbers 00342030-000000, 00342040-000000, 00342050-000000, And 00342060-000000; Which Have Been Combined Under The Main Real Estate Number Of 00342030-000000