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**CITY OF MARATHON, FLORIDA
RESOLUTION 2015-122**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY AND THE CITY OF MARATHON TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL ALLOCATIONS FOR A PROJECT KNOWN AS WOB BENEFICIAL DEVELOPMENT; AND PROVIDING 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 Transferring affordable housing unit allocations; and

WHEREAS, the Interlocal Agreement with the County is in the best interest of Monroe County and the City of Marathon for the purposes of providing opportunities for affordable housing,

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

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

Section 2. The Interlocal Agreement (ILA) attached hereto as Exhibit "A", between Monroe County and the City of Marathon Transferring Affordable Housing Residential Allocations For A Project Known As WOB Beneficial Development is hereby approved. The Mayor is authorized to sign the ILA on behalf of the City, and the City Manager is authorized to expend budgeted funds on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13th DAY OF OCTOBER, 2015.

THE CITY OF MARATHON, FLORIDA



Mayor Chris Bull

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

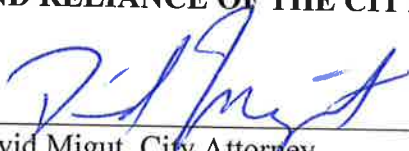
ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



David Migut, City Attorney

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

This Agreement (“Agreement”) is made and entered into this ____ day of _____, 2015, 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 Concern, if accomplished through an interlocal agreement between the sending and receiving local governments; and

WHEREAS, Chapter Five (5) of the City Comprehensive Plan identifies goals, objectives and policies to provide for development pursuant to intergovernmental coordination and interlocal agreements; and

WHEREAS, Monroe County and the City of Marathon have previously entered into Interlocal Agreements to transfer ROGOs; and

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

WHEREAS, this Agreement is entered into according to the authority of Florida Statutes, Section 163.01, *et seq.*, Florida Interlocal Cooperation Act of 1969, which states:

“It is the purpose of this section to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities”; and

WHEREAS, the comprehensive plans of Monroe County and the City of Marathon expressly identify interlocal agreements as a means of resolving issues mutually affecting their respective jurisdictions; and

WHEREAS, the State of Florida Housing Finance Corporation (FHFC) Low Income Housing Tax Credits (LIHTC) application deadline is October 15, 2015; and

WHEREAS, Beneficial Development 16, LLC, will be an applicant for FHFC LIHTC funding for 46 affordable housing units (hereinafter referred to as “project”) expected to be ranked and approved by the spring of 2016, with closing on the project expected to occur by the Fall of 2016; and

WHEREAS, Beneficial Development 16, LLC, is an applicant for a Major Conditional Use to obtain approval for a project that includes forty-six (46) affordable housing units expected to be heard and approved by the City of Marathon Planning Commission on September 21, 2015, after the Monroe County Board of County Commission is expected to consider this Agreement at the following site: See **Exhibit “A”** (Legal Description of the Subject Project Property).

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 forty-one (41) low-income category and five (5) very low income category ROGO allocations from Monroe County to the City of Marathon for allocation, pursuant to this Agreement, and subject to the conditions contained therein, including but not limited to:

- a. Beneficial Development 16, LLC, or its assignee, obtaining a Conditional Use approval prior to March 15, 2016.
- b. Beneficial Development 16, LLC, or its assignee, constructing and obtaining a certificate of occupancy for the affordable units related to such allocations prior to December 31, 2019.
- c. The filing of a 99 year Affordable Housing Deed Restriction on the new affordable housing units pursuant to this Agreement and the applicable requirements of the Code of Ordinances, City of Marathon, Florida.

Section 2. ASSIGNMENT: Monroe County has assigned its rights to the affordable allocations to the City, and the forty-six (46) affordable housing allocations are to be issued by the City to be used specifically by Beneficial Development 16, LLC, or its successor or assign (Assignment attached as **Exhibit “B”**), at the development in Marathon known as Vaca Bay Senior Apartments located as described in attached **Exhibit “A,”** Marathon, Florida 33050. In the event the subject project or, as applicable, Beneficial Development 16, LLC, or, as applicable, its assign(s) and successor(s) in interest or title, fail to obtain federal or state housing financial assistance and complete the construction as evidenced by issuance of a certificate of occupancy for all 46 units by the City of Marathon, any units which have not received a certificate of occupancy shall result in those allocations reverting to Monroe County and to their former status under the Agreement. No amendment to this agreement is necessary to necessitate the reverted clause.

Section 3. TERM: Subject to and upon the terms and conditions set forth herein, this Agreement shall continue in force until one of the following occur:

1. The project is not granted funding by FHFC LIHTC program in the FY15-16 or FY 16-17 competitive cycle; or
2. The project does not complete construction and does not obtain certificates of occupancy for 46 units by December 31, 2019. All units for which certificates are issued prior to December 31, 2019 shall remain subject to this agreement irrespective of whether all 46 units contemplated herein receive certificates of occupancy.

Section 4. NOTIFICATION: The City of Marathon shall (1) notify Monroe County of any assignment(s) and successor(s) in interest or title to Beneficial Development 16, LLC for the duration of Beneficial Development 16, LLC's interest(s) in the ROGO allocations described in **Section 1. ("Transfer")** above, and (2) shall notify Monroe County of any assignment(s) and successor(s) in interest or title to the ROGO allocations described in **Section 1. ("Transfer")** above at least thirty (30) days prior to the date of such transfer or succession by certified U.S. Postal Service Certified mail to the Monroe County Planning & Environmental Resources Senior Director. City of Marathon shall provide written notice to Monroe County of the extension, termination, or expiration of the Conditional Use Permit for the Beneficial Development 16, LLC, project. City of Marathon shall provide written notice to Monroe County of the issuance of Certificates of Occupancy for the affordable units within thirty (30) days after issuance of said certificates.

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

Monroe County County Administrator
1100 Simonton Street, Key West, FL 33040

Planning & Environmental Resources Department
Attn: Senior Director
2798 Overseas Highway, Marathon, FL 33050

Failure of the City of Marathon or Beneficial Development 16, LLC, or its assign(s) or successor(s) in interest or title to perform any act required by this Section or any other requirement of this Agreement shall neither impair nor limit the validity of this interlocal agreement or limit its enforceability in any way.

Section 5. GOVERNING LAWS/VENUE: This Agreement shall be construed in accordance with and governed by the laws of the State of Florida and the United States. Exclusive venue for any dispute arising under this Agreement shall be in the Sixteenth Judicial Circuit in and for Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs. This Agreement is not subject to arbitration.

Section 6. NONDISCRIMINATION: The parties agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent

jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin; (2) Section 504 of the Rehabilitation Act of 1973, as amended (20 U.S.C. s. 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 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 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 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 of violation of this provision, each party agrees that the other party shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

Section 9. SUBORDINATION: This Agreement is subordinate to the laws and regulations of the United States and the State of Florida, whether in effect on commencement of this Agreement or adopted after that date.

Section 10. INCONSISTENCY: If any item, condition, or obligation of this Agreement is in conflict with other items of this Agreement, the inconsistencies shall be construed so as to give meaning to those terms which limited the County's responsibility or liability.

Section 11. PUBLIC ACCESS TO RECORDS: The parties shall allow and permit members of the public reasonable access to, and inspection of, all documents, papers, letters or

other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the parties in conjunction with this Agreement.

Section 12. NON-RELIANCE BY NON-PARTIES: Other than as stated herein, no person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the parties agree that neither the County nor the City, or any agent, officer, or employee of each shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

Section 13. NO PERSONAL LIABILITY: No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of a party in his or her individual capacity, and no member, officer, agent or employee of a party shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

Section 14. NOTICES: In addition to those communication and notice requirements set forth in Section 4 of this Agreement, all notices and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

If to County: Roman Gastesi, Jr., County Administrator
 Monroe County Historic Gato Building
 1100 Simonton Street
 Key West, Florida 33040

 Planning & Environmental Resources Department
 Attn: Senior Director
 2798 Overseas Highway, Marathon, FL 33050

With a copy to: Robert B. Shillinger, Jr., Esquire
 Monroe County Attorney's Office
 P.O. Box 1026
 Key West, Florida 33041-1026

If to City: City Manager
 9805 Overseas Highway
 Marathon, Florida 33050

 George Garrett
 Planning Director
 City of Marathon
 9805 Overseas Highway
 Marathon, Florida 33050

With a copy to: David Migut, Esquire
City Attorney
City of Marathon
9805 Overseas Highway
Marathon, Florida 33050

Any notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered; or sent by overnight delivery service.

Section 15. ENTIRE AGREEMENT/MODIFICATION/AMENDMENT: This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

Section 16. MISCELLANEOUS: Each party represents and warrants to the other that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary corporate or other organizational action, as required.

Section 17. COUNTERPARTS: This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

Section 18. EFFECTIVE DATE: This Agreement shall take effect on the date set forth above.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE TO FOLLOW**

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

(SEAL)

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

ATTEST: AMY HEAVILIN, CLERK

By: _____
Clerk

By: _____
Mayor Danny L. Kolhage

Date: _____

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

By: _____
Assistant County Attorney

ATTEST:

THE CITY OF MARATHON, FLORIDA

By: *Diane Clavier*
DIANE CLAVIER
City Clerk

By: *Chris Bull*
Mayor Chris Bull

Date: 10-14-15

(City Seal)

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