

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2017-92**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A REQUEST BY WOLFE UNLIMITED LLC FOR A DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 102, ARTICLE 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (“THE CODE”) ENTITLED “DEVELOPMENT AGREEMENT,” FOR THE DEVELOPMENT OF SELF-SERVICE STORAGE UNITS AND ONE WORKFORCE HOUSING UNIT ON PROPERTY LOCATED AT 12575 & 12693 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS PART OF LOT 2, TOWNSHIP 66, SECTION 5, RANGE 33; FAT DEER KEY, MARATHON, FLORIDA; HAVING REAL ESTATE NUMBERS 00100340-000000 & 00100260-000600. NEAREST MILE MARKER 54.**

**WHEREAS**, Request By Wolfe Unlimited LLC (The “Applicant”) filed an Application on July 13, 2017 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 8 and 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant proposes to develop additional Self-Storage Units split between two buildings, a workforce housing unit, and a covered outdoor storage area; and

**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 21<sup>st</sup> day of August, 2017, 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 of the LDRs; and

**WHEREAS**, and on the 12<sup>th</sup> day of September, 2017 and the 26<sup>th</sup> day of September, 2017 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 Conditional Use Permit, 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 the redevelopment of properties within the City of Marathon and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS,** the purpose of the Conditional Use Permit is to allow for the integration of certain land uses and structures within the City of Marathon, based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

**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 the document attached hereto as Exhibit "A", granting a Development Agreement to Wolfe Unlimited LLC. subject to the Conditions imposed.

**Section 3.** This resolution shall take effect immediately upon its adoption by the City of Marathon and after review and approval by the Department of Economic Opportunity pursuant to Chapters 163 and 380, *Florida Statutes*.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2017.**

**THE CITY OF MARATHON, FLORIDA**



**Michelle Coldiron, Mayor**

AYES: Senmartin, Bartus, Cook, Zieg, 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

**EXHIBIT A  
DEVELOPMENT AGREEMENT**

Doc# 2149311  
Ekt# 2885 Pg# 872

THIS INSTRUMENT PREPARED BY:  
George Garrett, Planning Director  
City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050

Doc# 2149311  
Bk# 2385 Pg# 873

Parcel ID Nos:  
00100260-000600, 00100340-000000

Development Agreement for  
Michael Puto, Trustee of the Katharine S. Gradick Revocable Trust dated August 5, 1994,  
Wolfe Unlimited LLC and Lively Cove LLC  
Marathon, Florida

This Development Agreement (“Agreement”) is entered into by and between the City of Marathon, a Florida Municipal Corporation (herein referred to as “City”), and Michael Puto, Trustee of the Katharine S. Gradick Revocable Trust dated August 5, 1994, 700 89<sup>th</sup> Street Ocean, Marathon, FL 33050 (herein referred to as the “Trust”), Wolfe Unlimited LLC, a Florida limited liability company, 2949 Overseas Highway, Marathon, FL 33050 (herein referred to as “Wolfe”), and Lively Cove LLC, a Florida limited liability company, 2949 Overseas Highway, Marathon, FL 33050 (herein referred to as “Lively”) (the Trust, Wolfe, and Lively, sometimes hereinafter collectively referred to as “Owner”, and City and Owner herein referred to as the “Parties”), 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 as set forth herein.

WITNESSETH:

WHEREAS, the Trust and Lively are the owners of approximately 3.346 acres (above MHWL) located in the City on Vaca Key, approximate Mile Marker 54, as more particularly described in Exhibit 1 attached hereto, which is the subject of this Agreement (hereinafter, the “Property”)

WHEREAS, the Trust is the owner of approximately 1.186 acres (above MHWL) of the Property, as more particularly described in Exhibit 2 attached hereto (hereinafter, the “Trust Property”); and

WHEREAS, Lively is the owner of approximately 2.16 acres (above MHWL) of the Property, as more particularly described in Exhibit 3 attached hereto (hereinafter, the “Lively Property”);

WHEREAS, Wolfe has contracted with the Trust to purchase the Trust Property pursuant to that certain Commercial Contract dated February 6, 2017, as amended (the “Contract”);

WHEREAS, The Trust has previously obtained approval of a simple subdivision pursuant to which a 14,442 square foot (above MHWL) parcel located south of the Trust Property was created

which contains a single-family residence and which is intended to remain a residential property (the "Residential Parcel"), and which Wolfe has also contracted to purchase pursuant to the Contract;

WHEREAS, the Lively Property is currently developed with two storage buildings totaling approximately 16,384 square feet and seven storage containers totaling approximately 1,761 square feet; the existing structures and the rights associated with the Property as recognized by the City are set forth in Section IV. C. of this Agreement; and

WHEREAS, though the Trust Property and the Lively Property are under separate ownership and control, the existing development and rights complement and enhance the proposed redevelopment of the Property, and the proposed redevelopment, which will require certain easements concerning use can best be ensured by entering into this Agreement with the City to provide for an orderly development process within the timelines set forth herein; and

WHEREAS, the location of the Property at the Northerly entrance to the main business district of the City further dictates the importance of entering into this Agreement to enhance the use, appeal and attractiveness of the Property consistent with the City's community character goals as set forth in the City of Marathon Comprehensive Plan Effective July 5, 2005, as amended (the "Comprehensive Plan"); and

WHEREAS, the proposed additional development on the Property is permissible and appropriate for the Comprehensive Plan Future Land Use designation, Mixed Use Commercial, applicable to the Property, which provides for the establishment of mixed use development patterns and recognizes established mixed use development patterns within the City; and

WHEREAS, the Marathon Planning Commission held a public hearing on the 21st day of August, 2017, to consider this Agreement, and recommended approval of this Agreement; and

WHEREAS, the City Council of Marathon held public hearings on the 12th day of September, 2017, and the 26th day of September, 2017, to consider this Agreement; and

WHEREAS, the City has determined that this Agreement is in the public interest, is consistent with its policy to encourage the redevelopment of mixed use properties in Marathon, and will further the health, safety and welfare of the City's residents.

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 1-1.1 and Policy 1-1.1.1 of the Comprehensive Plan;
- B. To provide for an orderly development process consistent with provisions of Chapter 102, Article 8 of the City's Land Development Regulations;
- C. To recognize and approve the abatement of interior setbacks between the Lively Property and the Trust Property due to the differing ownership of the such properties while recognizing the compatibility of development;
- D. To recognize and approve the conjoined development of the Trust Property and the Lively Property pursuant to City development standards of density and intensity;
- E. To recognize the market rate transferable building right (TBR) associated with the Trust Property;
- F. To recognize the transfer of the non-residential BPAS (1,791 sq. ft.) associated with the storage containers to the proposed development on the Trust Property;
- G. Obtain a Commercial Building Permit Allocation System allocation for 20,677 square feet (22,468 new sq. ft. less 1,791 sq. ft. transferred from storage containers);
- H. To provide for an increased floor area ratio of up to 75% pursuant to Chapter 103, Article 3 of the City's Land Development Regulations, because a much needed deed-restricted affordable housing unit is being provided as part of the development;
- I. Rationalize the open space and mitigation requirements due to the preservation and enhancement of the remnant hammock located between the two commercial buildings to be constructed on the Trust Property;
- J. Provide in perpetuity Access and Utility easements for the Residential Parcel; and
- K. Allocate one (1) affordable BPAS allocation to the Trust Property for the construction of the proposed apartment.

## III. Definitions.

For the purposes of this Agreement, all terms shall have the definitions as found in the City's Land Development Regulations (the "LDRs"), the Comprehensive Plan and in Chapter 163, Florida Statutes, or in other applicable Florida Statutes, and if not defined in the Code, Comprehensive 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 163.3220, 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.

The Trust and Lively are the owners of the Property (as described in Exhibit 1), which is the Property subject of this Agreement. Wolfe is the Contract vendee of the Trust Property. There are no other legal or equitable owners of the Property known to the parties to this Agreement.

In order to accomplish the redevelopment contemplated hereby, the Trust and Lively will be granting certain easements to each other to rationalize the property boundaries and enable the redevelopment proposed herein. **The easements to be granted are described in Exhibit 4 attached hereto and made a part hereof.**

B. Duration of Agreement.

The duration of this Agreement shall be four (4) years from the Effective Date.

This Agreement may be renewed or extended as provided herein. If the Owner has not complied with the terms of this section, this Agreement may be subject to termination as provided herein.

C. Existing Development.

City has recognized the following existing development on the Property relevant to the proposed redevelopment and this Agreement:

Two buildings consisting of one at 6,954 square feet and one at 9,428 square feet for a total of 16,382 square feet of self-storage and seven storage containers consisting of 1,761 square feet on the Lively Property.

One (1) single family residence (aka market rate building right) on the Trust Property

One (1) single-family residence (aka market rate building right) on the Residential Parcel

D. Proposed Redevelopment.

The proposed redevelopment approved pursuant to this Agreement is as follows:

Construct one 6,276 square foot self-storage building including an office and one affordable housing unit and one 16,192 square foot self-storage building on the Trust Property. In order to construct the buildings, it will be necessary to obtain a Commercial Building Permit Allocation System allocation (the "CBPAS Allocation") from the City.



Construct all required utility, access, storm water management, landscape and vehicular and pedestrian travel ways.

Construct on the Lively Property a 2400 square foot covered storage structure;

Retain the two existing self-storage buildings on the Lively Parcel;

Remove the seven storage containers; and

Remove the one single-family residence on the Trust property.

The proposed redevelopment is depicted on the proposed site plan dated July 3, 2017 signed by William F. McCain, PE submitted by the parties to the City in connection with the Conditional Use Application for this redevelopment (the "Site Plan").

#### E. Density.

The proposed development is comprised of non-residential and residential uses. Based upon the City Code standard of fifteen (15) units per acre, the residential use, one deed restricted affordable apartment, represents 2.6% of the allowable site density. The City Code standard for the office use is a 60% Floor Area Ratio (FAR), the 1,077 square foot office represents 1.7% of the allowable site intensity. The self-storage buildings are considered light industrial uses. The City Code allows for a 30% FAR; however, a FAR of up to 75% may be permitted with the development of affordable housing. The self-storage facility (both existing and proposed) total 37,425 square feet and represent a 36% FAR. This FAR is consistent with the City Code for an increased FAR that is mitigated with the development of deed restricted affordable housing.

#### F. 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 Nearshore Waters.

8. Fire Protection. In connection with the Owners' development of the Property, Owners 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 identified above are available as of the date of this Agreement.
10. Impact Fees. Any increased impacts on public facilities or public services attributable to the buildings to be 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.

#### G. 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 or access agreements necessary for the provision of stormwater, utility and wastewater services to the Property.

#### H. 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. BPAS Allocation for Affordable Housing Unit
4. CBPAS Allocation for commercial square footage.
5. Building and related construction permits for all structures contemplated by this Agreement and all infrastructure improvements, 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.
6. Local Permits for Stormwater Runoff. 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.

#### I. 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).

Doc# 2149311  
Bk# 2385 P# 879

**J. Mutual Cooperation.**

City and Owner agree to cooperate fully and assist each other in the performance of the provisions of this Agreement.

**K. Development to Comply with Permits and Comprehensive Plan and City Code Provisions.**

The redevelopment shall be developed in accordance with all required permits and in accordance with all applicable provisions of the Comprehensive Plan and LDRs 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.

**L. 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.

**M. 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 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:

- i. 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;
- ii. 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;
- iii. The new laws and policies are specifically anticipated and provided for in this Agreement;

- iv. The City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or
- v. The Agreement is based on substantially inaccurate 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.

Doc# 2149311  
Bk# 2385 Pg# 880

N. 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.

O. 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:

- (i) Failure to comply with the provisions of this Agreement;
- (ii) 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:

- (i) Failure to comply with the provisions of this Agreement;
- (ii) 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 Agreement to the contrary, neither party hereto shall be deemed to be in default under this Agreement where delay in the construction or performance of the obligations imposed by this 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 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.

**P. 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:

Michael Puto, Trustee of the Katharine S. Gradick Revocable Trust  
700 89<sup>th</sup> Street Ocean  
Marathon, FL 33050

Lively Cove LLC  
2949 Overseas Highway  
Marathon, FL 33050

Wolfe Unlimited LLC  
2949 Overseas Highway  
Marathon, FL 33050

With a copy by regular U.S. Mail to:

John J. Wolfe  
John J. Wolfe, P.A.  
2955 Overseas Highway  
Marathon, FL 33050

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:

David Migut, Esq.  
City Attorney  
City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050  
(305) 289-4130

Q. 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.

R. 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.

S. Binding Effect.

This Agreement shall be binding upon the Parties, their successors in interest, heirs, assigns, and personal representatives.

T. Assignment.

This Agreement may not be assigned without the written consent of the Parties, which consent shall not be unreasonably withheld.

U. 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.

V. 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.

W 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.

X. 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.

Y. Use of Singular and Plural.

Where the context requires, the singular includes the plural, and plural includes the singular.

Z. 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.

A.A. 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.

B.B. 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.

C.C. 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 Economic Opportunity, 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.

D.D. 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:

[Signature]  
Signature  
Lisa Zeles  
Name of witness (printed or typed)

[Signature]  
Signature  
TODD ZELES  
Name of witness (printed or typed)

[Signature]  
Signature  
Lisa Zeles  
Name of witness (printed or typed)

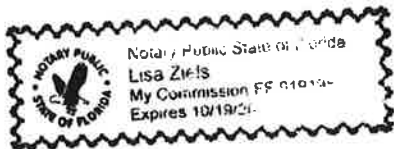
[Signature]  
Signature  
TODD ZELES  
Name of witness (printed or typed)

[Signature]  
Signature  
Lisa Zeles  
Name of witness (printed or typed)

[Signature]  
Signature  
TODD ZELES  
Name of witness (printed or typed)

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me on this 5 day of DEC., 2017, by Michael Puto, Trustee of the Katharine S. Gradick Revocable Trust dated August 5, 1994, who is personally known to me or who produced \_\_\_\_\_ as identification, and who did/did not take an oath.



OWNER:  
KATHARINE S. GRADICK REVOCABLE  
TRUST DATED AUGUST 5, 1994

By: [Signature]  
Michael Puto, Trustee

Doc# 2149311  
Bk# 2385 Pg# 885

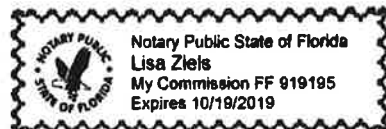
OWNER:  
LIVELY COVE LLC

By: [Signature]  
Alex Wolfe, Manager

OWNER:  
WOLFE UNLIMITED LLC

By: [Signature]  
Karen Wolfe, Manager

[Signature]  
Notary Public, State of Florida At Large  
My commission expires:



STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me on this 04 day of DEC, 2017, by Alex Wolfe, Manager of Lively Cove LLC, who is personally known to me or who produced \_\_\_\_\_ as identification, and who did/did not take an oath.



[Signature]  
Notary Public, State of Florida At Large  
My commission expires:

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me on this 4<sup>th</sup> day of DECEMBER, 2017, by Karen L. Wolfe, Manager of Wolfe Unlimited LLC, who is personally known to me or who produced \_\_\_\_\_ as identification, and who did/did not take an oath.



[Signature]  
Notary Public, State of Florida At Large  
My commission expires:

On the 14<sup>th</sup> day of November 2017, the City Council of the City of Marathon approved this Agreement by Resolution No. 2017-92

ATTEST:

CITY OF MARATHON

[Signature]  
Diane Clavier, City Clerk

By: [Signature]  
Michelle Coldiron, MAYOR

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

[Signature]  
David Migut, City Attorney

EXHIBIT 1

PROPERTY SUBJECT TO DEVELOPMENT AGREEMENT

BEGINNING AT A POINT ON THE SOUTHERLY BOUNDARY OF U.S. HIGHWAY NO. 1 (OVERSEAS HIGHWAY) AT THE POINT OF INTERSECTION OF SAID SOUTHERLY BOUNDARY OF SAID HIGHWAY WITH THE EASTERLY BOUNDARY OF LANDS FORMERLY CONVEYED TO WILLIAM A. HESSE ET UX AND RECORDED IN THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, AS A POINT OF BEGINNING.

SAID POINT OF BEGINNING AND ALL OF THE LANDS HEREIN REFERRED TO LYING AND BEING IN GOVERNMENT LOT TWO (2) OF SECTION FIVE (5) OF TOWNSHIP SIXTY-SIX (66) SOUTH, RANGE THIRTY-THREE (33) EAST AND SAID POINT BEING TWO HUNDRED (200) FEET EASTERLY OF THE WESTERLY BOUNDARY OF THE LANDS OF THE SAID WILLIAM A. HESSE ET UX AND FIFTY (50) FEET SOUTHERLY OF-MEASURED AT RIGHT ANGLES TO-THE CENTER LINE OF THE SAID HIGHWAY. THENCE CONTINUING SOUTHERLY PERPENDICULAR TO THE SAID HIGHWAY SIX HUNDRED FIFTY (650) FEET MORE OR LESS TO A POINT, SAID POINT BEING ON THE SHORELINE OF BONEFISH BAY, WHICH HERE FORMS THE SOUTHERLY BOUNDARY OF THE PROPERTY HEREIN DESCRIBED. THENCE EASTERLY MEANDERING ALONG THE SAID SHORELINE ONE HUNDRED FIFTY (150) FEET, MORE OR LESS, TO A POINT. SAID POINT BEING IN A LINE ONE HUNDRED (100) FEET FROM-MEASURED AT RIGHT ANGLES TO-THE FIRST SAID COURSE. THENCE NORTHERLY PARALLEL TO THE FIRST SAID COURSE SEVEN HUNDRED FIFTY (750) FEET, MORE OR LESS, TO A POINT. SAID POINT BEING ON THE SAID SOUTHERLY BOUNDARY OF THE SAID HIGHWAY. THENCE WESTERLY, AT RIGHT ANGLES, ALONG THE SAID SOUTHERLY BOUNDARY OF THE, SAID HIGHWAY ONE HUNDRED (100) FEET TO THE POINT OF BEGINNING. CONTAINING 1.6 ACRES, MORE OR LESS.

LESS

COMMENCING AT A POINT ON THE SOUTHERLY BOUNDARY OF U.S. HIGHWAY NO. 1 (OVERSEAS HIGHWAY) AT THE POINT OF INTERSECTION OF SAID SOUTHERLY BOUNDARY OF SAID HIGHWAY WITH THE EASTERLY BOUNDARY OF LANDS FORMERLY CONVEYED TO WILLIAM A. HESSE ET UX AND RECORDED IN THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, SAID POINT BEING THE POINT OF BEGINNING OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 1321, PAGE 0003, AS A POINT OF COMMENCEMENT;

SAID POINT OF COMMENCEMENT AND ALL OF THE LANDS HEREIN REFERRED TO LYING AND BEING IN GOVERNMENT LOT 2 OF SECTION 5, TOWNSHIP 66 SOUTH, RANGE 33 EAST AND SAID POINT BEING 200 FEET EASTERLY OF THE WESTERLY BOUNDARY OF THE LANDS OF THE SAID WILLIAM A. HESSE ET UX AND FIFTY (50) FEET SOUTHERLY OF MEASURED AT RIGHT ANGLES TO THE CENTER LINE OF THE SAID HIGHWAY. THENCE CONTINUING SOUTHERLY PERPENDICULAR TO THE SAID HIGHWAY(SOUTH 12 DEGREES 09 MINUTES 00 SECONDS EAST CALCULATED) SOUTH 12 DEGREES 08 MINUTES 24 SECONDS EAST, 516.38 FEET (MEASURED) TO THE POINT OF BEGINNING OF SAID RESIDENTIAL PARCEL; THENCE CONTINUE (SOUTH 12 DEGREES 9 MINUTES 00 SECONDS EAST CALCULATED) SOUTH 12 DEGREES 08 MINUTES 24 SECONDS EAST, 124.19 FEET, MORE OR LESS (MEASURED), TO A POINT, SAID POINT BEING ON THE SHORELINE OF BONEFISH BAY, WHICH HERE FORMS THE SOUTHERLY BOUNDARY OF THE PROPERTY HEREIN DESCRIBED. THENCE EASTERLY MEANDERING ALONG THE SAID SHORELINE ON THE FOLLOWING COURSES;

L1) SOUTH 64 DEGREES 40 MINUTES 42 SECONDS EAST, 0.38 FEET;  
L2) SOUTH 15 DEGREES 13 MINUTES 47 SECONDS EAST, 9.38 FEET;  
L3) SOUTH 59 DEGREES 36 MINUTES 06 SECONDS EAST, 8.11 FEET;  
THENCE SOUTH 56 DEGREES 37 MINUTES 46 SECONDS EAST, 54.36 FEET;  
L17) SOUTH 58 DEGREES 38 MINUTES 48 SECONDS EAST, 73.49 FEET;  
L18) SOUTH 61 DEGREES 58 MINUTES 54 SECONDS EAST, 2.54 FEET, MORE OR LESS, TO THE EASTERLY LINE OF THOSE LANDS AS DESCRIBED IN SAID OFFICIAL RECORDS BOOK 1321,

PAGE 0003; THENCE NORTH 12 DEGREES 09 MINUTES 00 SECONDS WEST 230.30 FEET; THENCE (SOUTH 77 DEGREES 51 MINUTES 00 SECONDS WEST CALCULATED) SOUTH 77 DEGREES 50 MINUTES 19 SECONDS WEST 100.09 FEET, MEASURED, BACK TO THE POINT OF BEGINNING. CONTAINING AN AREA OF 18245.556, PLUS OR MINUS, SQUARE FOOT, 0.419 ACRES, MORE OR LESS (AREA ABOVE MEAN HIGH WATER 14441.866 PLUS OR MINUS, SQUARE FOOT, 0.332 ACRES, MORE OR LESS).

TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES

OVER AND UPON THE FOLLOWING DESCRIBED STRIP OF LAND, COMMENCING AT A POINT ON THE SOUTHERLY BOUNDARY OF U.S. HIGHWAY NO. 1 (OVERSEAS HIGHWAY) AT THE POINT OF INTERSECTION OF SAID SOUTHERLY BOUNDARY OF SAID HIGHWAY WITH THE EASTERLY BOUNDARY OF LANDS FORMERLY CONVEYED TO WILLIAM A. HESSE ET UX AND RECORDED IN THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, SAID POINT BEING THE POINT OF BEGINNING OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 1321, PAGE 0003, AS A POINT OF COMMENCEMENT.

SAID POINT OF COMMENCEMENT AND ALL OF THE LANDS HEREIN REFERRED TO LYING AND BEING IN GOVERNMENT LOT 2 OF SECTION 5, TOWNSHIP 66 SOUTH, RANGE 33 EAST AND SAID POINT BEING 200 FEET EASTERLY OF THE WESTERLY BOUNDARY OF THE LANDS OF THE SAID WILLIAM A. HESSE ET UX AND FIFTY (50) FEET SOUTHERLY OF MEASURED AT RIGHT ANGLES TO THE CENTER LINE OF THE SAID HIGHWAY; THENCE NORTH 77 DEGREES 51 MINUTES 00 SECONDS EAST, ALONG THE RIGHT-OF-WAY LINE, 100 FEET (NORTH 77 DEGREES 50 MINUTES 08 SECONDS EAST, 100.19' MEASURED), TO THE NORTHWESTERLY CORNER OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 1498, PAGE 94 AND

THE POINT OF BEGINNING OF OF THE EASEMENT HEREINAFTER DESCRIBED;

THENCE CONTINUE NORTH 77 DEGREES 51 MINUTES 00 SECONDS EAST, ALONG SAID RIGHT-OF-WAY LINE, 19.83 FEET;

THENCE SOUTH 15 DEGREES 16 MINUTES 12 SECONDS EAST, 180.46 FEET;

THENCE SOUTH 12 DEGREES 13 MINUTES 40 SECONDS EAST, 336.18 FEET, TO THE EASTERLY PROJECTION OF THE NORTHERLY LINE OF SAID RESIDENTIAL PARCEL;

THENCE SOUTH 77 DEGREES 50 MINUTES 19 SECONDS WEST, ALONG SAID PROJECTION, 67.69 FEET;

THENCE NORTH 12 DEGREES 09 MINUTES 00 SECONDS WEST, 33.00 FEET;

THENCE NORTH 77 DEGREES 50 MINUTES 19 SECONDS EAST, 40.00 FEET, TO THE SOUTHEASTERLY CORNER OF A CONCRETE WALK;

THENCE NORTH 12 DEGREES 08 MINUTES 24 SECONDS WEST, ALONG SAID CONCRETE

THENCE SOUTH 77 DEGREES 51 MINUTES 00 SECONDS WEST, 17.47 FEET;

THENCE NORTH 12 DEGREES 09 MINUTES 00 SECONDS WEST, TO AND ALONG THE EASTERLY EDGE OF THE NORTHERLY CONCRETE WALK, 196.99 FEET;

THENCE SOUTH 77 DEGREES 51 MINUTES 00 SECONDS WEST, 19.48 FEET;

THENCE NORTH 12 DEGREES 09 MINUTES 00 SECONDS WEST, 10.00 FEET, TO THE SAID RIGHT-OF-WAY LINE;

THENCE NORTH 77 DEGREES 51 MINUTES 00 SECONDS EAST, 34.48 FEET, BACK TO THE POINT OF BEGINNING.

AND

A TRACT OF LAND IN A PART OF GOVERNMENT LOT 2, SECTION 5, T. 66 S., R. 33 E., ON CRAWL KEY NO. 2, MONROE COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE EAST LINE OF SECTION 5 AND THE SOUTHERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 1, BEAR S 67°38' W, ALONG THE SOUTHERLY RIGHT-OF WAY LINE OF U.S. HIGHWAY NO. 1, 1532.76 FEET TO A POINT OF CURVE, SAID CURVE HAVING A CENTRAL ANGLE OF 10°13' AND A RADIUS OF 2914.93 FEET; THENCE ALONG SAID CURVE IN A WESTERLY DIRECTION AND DEFLECTING TO THE RIGHT, 520.07 FEET TO A POINT OF TANGENT; THENCE BEAR S 77°51' W ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 1, 80.20 FEET TO A POINT; THENCE CONTINUE TO BEAR S 77°51' W FOR A DISTANCE OF 150 FEET TO A POINT;

Doc# 2149311  
BK# 2385 Pg# 888

THENCE BEAR S 12°09'00" E FOR A DISTANCE OF 155 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE TO BEAR S 12° 09'00" E FOR A DISTANCE OF 587.45 FEET, MORE OR LESS, TO THE SHORELINE OF BONEFISH BAY; THENCE MEANDER THE SHORELINE OF BONEFISH BAY IN A SOUTHEASTERLY DIRECTION 181 FEET, MORE OR LESS, TO A POINT THAT IS 150 FEET, MEASURED AT RIGHT ANGLES, FROM THE PRECEDING COURSE; THENCE BEAR N 12°09' W 713.33 FEET , MORE OR LESS; THENCE BEAR S 77°51' W, 150 FEET BACK TO THE POINT OF BEGINNING. CONTAINING 2.285 ACRES, MORE OR LESS, AND BEING THE SAME PARCEL DESCRIBED AS PARCEL B IN THAT CERTAIN QUIT CLAIM DEED FILED OF RECORD ON NOVEMBER 29, 1993, IN OFFICIAL RECORD BOOK 1282, PAGE 467, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA.

Doc# 2149311  
Blk# 2385 P# 889

TRUST PROPERTY

BEGINNING AT A POINT ON THE SOUTHERLY BOUNDARY OF U.S. HIGHWAY NO. 1 (OVERSEAS HIGHWAY) AT THE POINT OF INTERSECTION OF SAID SOUTHERLY BOUNDARY OF SAID HIGHWAY WITH THE EASTERLY BOUNDARY OF LANDS FORMERLY CONVEYED TO WILLIAM A. HESSE ET UX AND RECORDED IN THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, AS A POINT OF BEGINNING.

SAID POINT OF BEGINNING AND ALL OF THE LANDS HEREIN REFERRED TO LYING AND BEING IN GOVERNMENT LOT TWO (2) OF SECTION FIVE (5) OF TOWNSHIP SIXTY-SIX (66) SOUTH, RANGE THIRTY-THREE (33) EAST AND SAID POINT BEING TWO HUNDRED (200) FEET EASTERLY OF THE WESTERLY BOUNDARY OF THE LANDS OF THE SAID WILLIAM A. HESSE ET UX AND FIFTY (50) FEET SOUTHERLY OF-MEASURED AT RIGHT ANGLES TO-THE CENTER LINE OF THE SAID HIGHWAY. THENCE CONTINUING SOUTHERLY PERPENDICULAR TO THE SAID HIGHWAY SIX HUNDRED FIFTY (650) FEET MORE OR LESS TO A POINT, SAID POINT BEING ON THE SHORELINE OF BONEFISH BAY, WHICH HERE FORMS THE SOUTHERLY BOUNDARY OF THE PROPERTY HEREIN DESCRIBED. THENCE EASTERLY MEANDERING ALONG THE SAID SHORELINE ONE HUNDRED FIFTY (150) FEET, MORE OR LESS, TO A POINT. SAID POINT BEING IN A LINE ONE HUNDRED (100) FEET FROM-MEASURED AT RIGHT ANGLES TO-THE FIRST SAID COURSE. THENCE NORTHERLY PARALLEL TO THE FIRST SAID COURSE SEVEN HUNDRED FIFTY (750) FEET, MORE OR LESS, TO A POINT. SAID POINT BEING ON THE SAID SOUTHERLY BOUNDARY OF THE SAID HIGHWAY. THENCE WESTERLY, AT RIGHT ANGLES, ALONG THE SAID SOUTHERLY BOUNDARY OF THE, SAID HIGHWAY ONE HUNDRED (100) FEET TO THE POINT OF BEGINNING. CONTAINING 1.6 ACRES, MORE OR LESS.

## LESS

COMMENCING AT A POINT ON THE SOUTHERLY BOUNDARY OF U.S. HIGHWAY NO. 1 (OVERSEAS HIGHWAY) AT THE POINT OF INTERSECTION OF SAID SOUTHERLY BOUNDARY OF SAID HIGHWAY WITH THE EASTERLY BOUNDARY OF LANDS FORMERLY CONVEYED TO WILLIAM A. HESSE ET UX AND RECORDED IN THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, SAID POINT BEING THE POINT OF BEGINNING OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 1321, PAGE 0003, AS A POINT OF COMMENCEMENT;

SAID POINT OF COMMENCEMENT AND ALL OF THE LANDS HEREIN REFERRED TO LYING AND BEING IN GOVERNMENT LOT 2 OF SECTION 5, TOWNSHIP 66 SOUTH, RANGE 33 EAST AND SAID POINT BEING 200 FEET EASTERLY OF THE WESTERLY BOUNDARY OF THE LANDS OF THE SAID WILLIAM A. HESSE ET UX AND FIFTY (50) FEET SOUTHERLY OF MEASURED AT RIGHT ANGLES TO THE CENTER LINE OF THE SAID HIGHWAY. THENCE CONTINUING SOUTHERLY PERPENDICULAR TO THE SAID HIGHWAY(SOUTH 12 DEGREES 09 MINUTES 00 SECONDS EAST CALCULATED) SOUTH 12 DEGREES 08 MINUTES 24 SECONDS EAST, 516.38 FEET (MEASURED) TO THE POINT OF BEGINNING OF SAID RESIDENTIAL PARCEL; THENCE CONTINUE (SOUTH 12 DEGREES 9 MINUTES 00 SECONDS EAST CALCULATED) SOUTH 12 DEGREES 08 MINUTES 24 SECONDS EAST, 124.19 FEET, MORE OR LESS (MEASURED), TO A POINT, SAID POINT BEING ON THE SHORELINE OF BONEFISH BAY, WHICH HERE FORMS THE SOUTHERLY BOUNDARY OF THE PROPERTY HEREIN DESCRIBED. THENCE EASTERLY MEANDERING ALONG THE SAID SHORELINE ON THE FOLLOWING COURSES;

L1) SOUTH 64 DEGREES 40 MINUTES 42 SECONDS EAST, 0.38 FEET;

L2) SOUTH 15 DEGREES 13 MINUTES 47 SECONDS EAST, 9.38 FEET;

L3) SOUTH 59 DEGREES 36 MINUTES 06 SECONDS EAST, 8.11 FEET;

THENCE SOUTH 56 DEGREES 37 MINUTES 46 SECONDS EAST, 54.36 FEET;

L17) SOUTH 58 DEGREES 38 MINUTES 48 SECONDS EAST, 73.49 FEET;

L18) SOUTH 61 DEGREES 58 MINUTES 54 SECONDS EAST, 2.54 FEET, MORE OR LESS, TO THE EASTERLY LINE OF THOSE LANDS AS DESCRIBED IN SAID OFFICIAL RECORDS BOOK 1321,

PAGE 0003; THENCE NORTH 12 DEGREES 09 MINUTES 00 SECONDS WEST 230.30 FEET; THENCE (SOUTH 77 DEGREES 51 MINUTES 00 SECONDS WEST CALCULATED) SOUTH 77 DEGREES 50 MINUTES 19 SECONDS WEST 100.09 FEET, MEASURED, BACK TO THE POINT OF BEGINNING. CONTAINING AN AREA OF 18245.556, PLUS OR MINUS, SQUARE FOOT, 0.419 ACRES, MORE OR LESS (AREA ABOVE MEAN HIGH WATER 14441.866 PLUS OR MINUS, SQUARE FOOT, 0.332 ACRES, MORE OR LESS).

TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES

OVER AND UPON THE FOLLOWING DESCRIBED STRIP OF LAND, COMMENCING AT A POINT ON THE SOUTHERLY BOUNDARY OF U.S. HIGHWAY NO. 1 (OVERSEAS HIGHWAY) AT THE POINT OF INTERSECTION OF SAID SOUTHERLY BOUNDARY OF SAID HIGHWAY WITH THE EASTERLY BOUNDARY OF LANDS FORMERLY CONVEYED TO WILLIAM A. HESSE ET UX AND RECORDED IN THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, SAID POINT BEING THE POINT OF BEGINNING OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 1321, PAGE 0003, AS A POINT OF COMMENCEMENT.

SAID POINT OF COMMENCEMENT AND ALL OF THE LANDS HEREIN REFERRED TO LYING AND BEING IN GOVERNMENT LOT 2 OF SECTION 5, TOWNSHIP 66 SOUTH, RANGE 33 EAST AND SAID POINT BEING 200 FEET EASTERLY OF THE WESTERLY BOUNDARY OF THE LANDS OF THE SAID WILLIAM A. HESSE ET UX AND FIFTY (50) FEET SOUTHERLY OF MEASURED AT RIGHT ANGLES TO THE CENTER LINE OF THE SAID HIGHWAY; THENCE NORTH 77 DEGREES 51 MINUTES 00 SECONDS EAST, ALONG THE RIGHT-OF-WAY LINE, 100 FEET (NORTH 77 DEGREES 50 MINUTES 08 SECONDS EAST, 100.19' MEASURED), TO THE NORTHWESTERLY CORNER OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 1498, PAGE 94 AND

THE POINT OF BEGINNING OF OF THE EASEMENT HEREINAFTER DESCRIBED;

THENCE CONTINUE NORTH 77 DEGREES 51 MINUTES 00 SECONDS EAST, ALONG SAID RIGHT-OF-WAY LINE, 19.83 FEET;

THENCE SOUTH 15 DEGREES 16 MINUTES 12 SECONDS EAST, 180.46 FEET;

THENCE SOUTH 12 DEGREES 13 MINUTES 40 SECONDS EAST, 336.18 FEET, TO THE EASTERLY PROJECTION OF THE NORTHERLY LINE OF SAID RESIDENTIAL PARCEL;

THENCE SOUTH 77 DEGREES 50 MINUTES 19 SECONDS WEST, ALONG SAID PROJECTION, 67.69 FEET;

THENCE NORTH 12 DEGREES 09 MINUTES 00 SECONDS WEST, 33.00 FEET;

THENCE NORTH 77 DEGREES 50 MINUTES 19 SECONDS EAST, 40.00 FEET, TO THE SOUTHEASTERLY CORNER OF A CONCRETE WALK;

THENCE NORTH 12 DEGREES 08 MINUTES 24 SECONDS WEST, ALONG SAID CONCRETE

THENCE SOUTH 77 DEGREES 51 MINUTES 00 SECONDS WEST, 17.47 FEET;

THENCE NORTH 12 DEGREES 09 MINUTES 00 SECONDS WEST, TO AND ALONG THE EASTERLY EDGE OF THE NORTHERLY CONCRETE WALK, 196.99 FEET;

THENCE SOUTH 77 DEGREES 51 MINUTES 00 SECONDS WEST, 19.48 FEET;

THENCE NORTH 12 DEGREES 09 MINUTES 00 SECONDS WEST, 10.00 FEET, TO THE SAID RIGHT-OF-WAY LINE;

THENCE NORTH 77 DEGREES 51 MINUTES 00 SECONDS EAST, 34.48 FEET, BACK TO THE POINT OF BEGINNING.

Doc# 2149311  
BK1 2885 Pg# 891

EXHIBIT 3

LIVELY PROPERTY

A TRACT OF LAND IN A PART OF GOVERNMENT LOT 2, SECTION 5, T. 66 S., R. 33 E., ON CRAWL KEY NO. 2, MONROE COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE EAST LINE OF SECTION 5 AND THE SOUTHERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 1, BEAR S 67°38' W, ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 1, 1532.76 FEET TO A POINT OF CURVE, SAID CURVE HAVING A CENTRAL ANGLE OF 10°13' AND A RADIUS OF 2914.93 FEET; THENCE ALONG SAID CURVE IN A WESTERLY DIRECTION AND DEFLECTING TO THE RIGHT, 520.07 FEET TO A POINT OF TANGENT; THENCE BEAR S 77°51' W ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 1, 80.20 FEET TO A POINT; THENCE CONTINUE TO BEAR S 77°51' W FOR A DISTANCE OF 150 FEET TO A POINT; THENCE BEAR S 12°09'00" E FOR A DISTANCE OF 155 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE TO BEAR S 12° 09'00" E FOR A DISTANCE OF 587.45 FEET, MORE OR LESS, TO THE SHORELINE OF BONEFISH BAY; THENCE MEANDER THE SHORELINE OF BONEFISH BAY IN A SOUTHEASTERLY DIRECTION 181 FEET, MORE OR LESS, TO A POINT THAT IS 150 FEET, MEASURED AT RIGHT ANGLES, FROM THE PRECEDING COURSE; THENCE BEAR N 12°09' W 713.33 FEET, MORE OR LESS; THENCE BEAR S 77°51' W, 150 FEET BACK TO THE POINT OF BEGINNING. CONTAINING 2.285 ACRES, MORE OR LESS, AND BEING THE SAME PARCEL DESCRIBED AS PARCEL B IN THAT CERTAIN QUIT CLAIM DEED FILED OF RECORD ON NOVEMBER 29, 1993, IN OFFICIAL RECORD BOOK 1282, PAGE 467, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA.