

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-37**

A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, PROVIDING AN AMENDMENT DOCUMENT FOR EXTENSION OF THE TERM SPECIFIED IN SECTION 3, "TERM" OF THE INTERLOCAL AGREEMENT BETWEEN THE MONROE COUNTY AND THE CITY OF MARATHON TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL DWELLING UNIT ALLOCATIONS FOR AN APPROVED PROJECT IN THE OWNERSHIP OF CRYSTAL COVE MARKET SITE LLC (FORMERLY HTG CRYSTAL COVE), TO BE LOCATED 4900 OVERSEAS HIGHWAY, MARATHON, FLORIDA ON PROPERTIES INCLUDING REAL ESTATE NUMBERS 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, AND 00328030-000000. NEAREST MILE MARKER 50; RESCINDING RESOLUTION 2017-106; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, On or about December of 2016, the City of Marathon and Monroe County entered into an Interlocal Agreement (ILA) (Resolution 2016-125) transferring forty-six (46) affordable housing residential dwelling units to the City to be utilized in a project in the ownership of HTG Crystal Cove, LLC; and

WHEREAS, the subject project sought and has ultimately received tax credit funding through the Florida Housing Finance Corporation; and

WHEREAS, the project known as Crystal Cove Market Site LLC (originally HTG Crystal Cove) and Key Vaca LLC have submitted building plans jointly to complete a combined project; and

WHEREAS, the building plans should be approved within the next several weeks (approximately April 30, 2019); and

WHEREAS, the ILA provides a "reverter clause" and a term which specifies that:

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

The project is not granted funding by FHFC LIHTC/WORKFORCE program in the FY16-17 or FY 17-18 competitive cycle; or

The project does not complete construction and does not obtain Certificates of Occupancy for all forty-six (46) affordable housing units contemplated herein by December 31, 2019. All affordable housing units for which Certificates of Occupancy are issued prior to December 31, 2019 shall remain subject to this Interlocal Agreement irrespective of whether all 46 affordable housing units contemplated herein receive Certificates of Occupancy.”

WHEREAS, the City requests that the term specified in Section 3 of the ILA be extended to through the physical year of 2021 to allow appropriate time for the combined projects to be completed and to receive a Certificate of Occupancy; and

WHEREAS, a request to extend the ILA was made in Resolution 2019-28; and

WHEREAS, this Resolution provides the Amendment Document that the County requires in order to carry out the extension request,

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

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

Section 2. The City requests that the term specified in Section 3 of the ILA (Resolution 2016-125) be extended through the physical year of 2021, December 31, 2021 and that the attached Amendment Document be conveyed to Monroe County for review and approval.

Section 3. The City Clerk shall forward a certified copy of this Resolution to appropriate individuals at Monroe County, Florida, the Florida Department of Economic Opportunity, the Florida Housing Finance Corporation, the Florida Task Force on Affordable Housing, and the Executive Offices of the Governor.

Section 4. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 9TH DAY OF APRIL, 2019.

THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

AYES: Cook, Gonzalez, Senmartin, Zieg, Bartus
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

AMENDMENT 1 TO
INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY AND THE CITY
OF MARATHON TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL
DWELLING UNIT ALLOCATIONS

This Amendment ("Amendment") to an Interlocal Agreement ("Agreement") is made and entered into this 17th day of April, 2019, 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, Policy 101.2.15 of the Year 2010 Monroe County Comprehensive Plan allows Rate of Growth Ordinance building permit allocations (hereinafter "affordable housing ROGO allocations" or "affordable 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 affordable ROGOs; and

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

WHEREAS, this Agreement is entered into pursuant to 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, Monroe County and the City of Marathon recognize the value of regional partnerships in smart growth and the need in this instance to extend this Interlocal Agreement (ILA) as previously approved; and

WHEREAS, property in the ownership of HTG Crystal Cove pursuant to City Resolution 2016-122 has an approved Conditional Use Permit for a project that includes fifty-five (55) affordable housing/workforce housing pertaining to the following site; and

WHEREAS, HTG Crystal Cove has submitted plans for construction which the City has reviewed and is nearing approval for building permits; and

WHEREAS, on or about December 14, 2016 the City of Marathon and Monroe County entered into an ILA in order to provide forty-six (46) affordable ROGO allocations for the Key Vaca, LLC project; and

WHEREAS, Section 15. of the Agreement provides the mechanism to amend the Agreement, providing further that, "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,

WHEREAS, such a request is codified in Resolution 2019-28 of the City of Marathon, Florida; and

WHEREAS, this Resolution provides the Amendment Document that the County requires in order to carry out the extension request,

WHEREAS, the parties have determined that this Amendment to this Agreement is in the best interests of the public and the public health, safety, and welfare; and

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. AMENDMENT: Pursuant to this Amendment to the existing Agreement, Section 3, the "Term" of the Agreement is hereby amended to become December 31, 2021 with terms as follows:

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

The project is not granted funding by FHFC LIHTC/WORKFORCE program by at least the FY18-19 competitive cycle; or

The project does not complete construction and does not obtain Certificates of Occupancy for all 46 affordable housing units contemplated herein by December 31, 2021. All affordable housing units for which Certificates of Occupancy are issued prior to December 31, 2021 shall remain subject to this Interlocal Agreement irrespective of whether all 46 affordable housing units contemplated herein receive Certificates of Occupancy."

Section 2. EFFECT ON THE AGREEMENT: In all other respects, the Agreement remains in full force and effect.

Section 3. EFFECTIVE DATE: This Agreement shall take effect on the date set forth above.

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



Doc# 2217041
Bk# 2960 Pg# 1973

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

ATTEST: KEVIN MADOK, CLERK

By: *Kevin Madok* o.c.
Clerk

By: *Sylvia J. Murphy*
Mayor Sylvia J. Murphy

Date: April 17, 2019

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: *Stacy Williams*
Assistant County Attorney

ATTEST:

By: *Diane Clavier*
DIANE CLAVIER
City Clerk

THE CITY OF MARATHON, FLORIDA

By: *John Bartus*
Mayor John Bartus
Date: 4-17-19

(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

MONROE COUNTY
OFFICIAL RECORDS

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-28**

A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, REQUESTING AN EXTENSION OF THE TERM SPECIFIED IN SECTION 3, "TERM" OF THE INTERLOCAL AGREEMENT BETWEEN THE MONROE COUNTY AND THE CITY OF MARATHON TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL DWELLING UNIT ALLOCATIONS FOR AN APPROVED PROJECT IN THE OWNERSHIP OF CRYSTAL COVE MARKET SITE LLC (FORMERLY HTG CRYSTAL COVE), TO BE LOCATED 4900 OVERSEAS HIGHWAY, MARATHON, FLORIDA ON PROPERTIES INCLUDING REAL ESTATE NUMBERS 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, AND 00328030-000000. NEAREST MILE MARKER 50; RESCINDING RESOLUTION 2017-106; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, On or about December of 2016, the City of Marathon and Monroe County entered into an Interlocal Agreement (ILA) (Resolution 2016-125) transferring forty-six (46) affordable housing residential dwelling units to the City to be utilized in a project in the ownership of HTG Crystal Cove, LLC; and

WHEREAS, the subject project sought and has ultimately received tax credit funding through the Florida Housing Finance Corporation; and

WHEREAS, the project known as Crystal Cove Market Site LLC (originally HTG Crystal Cove) and Key Vaca LLC have submitted building plans jointly to complete a combined project; and

WHEREAS, the building plans should be approved within the next several weeks (approximately March 31, 2019); and

WHEREAS, the ILA provides a "reverter clause" and a term which specifies that:

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

The project is not granted funding by FHFC LIHTC/WORKFORCE program in the FY16-17 or FY 17-18 competitive cycle; or

The project does not complete construction and does not obtain Certificates of Occupancy for all forty-six (46) affordable housing units contemplated herein by December 31, 2019. All affordable housing units for which

Certificates of Occupancy are issued prior to December 31, 2019 shall remain subject to this Interlocal Agreement irrespective of whether all 46 affordable housing units contemplated herein receive Certificates of Occupancy.”

WHEREAS, the City requests that the term specified in Section 3 of the ILA (attached) be extended to through the physical year of 2021 to allow appropriate time for the combined projects to be completed and to receive a Certificate of Occupancy; and

WHEREAS, there is a previous request (Resolution 2017-106) for an extension which Monroe County determined to be unnecessary at the time, thus Resolution 2017-106 should also be rescinded in favor of the current proposed Resolution,

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. Rescind Resolution 2017-106.

Section 3. The City requests that the term specified in Section 3 of the ILA (Resolution 2016-125) be extended through the physical year of 2021 - December 31, 2021.

Section 4. The City Clerk shall forward a certified copy of this Resolution to appropriate individuals at Monroe County, Florida, the Florida Department of Economic Opportunity, the Florida Housing Finance Corporation, the Florida Task Force on Affordable Housing, and the Executive Offices of the Governor.

Section 5. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 12TH DAY OF MARCH, 2019.

THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

AYES: Cook, Gonzalez, Senmartin, Zieg, Bartus
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

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA
RESOLUTION 2016-125**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING MINOR REVISIONS TO THE INTERLOCAL BETWEEN MONROE COUNTY AND THE CITY OF MARATHON, APPROVED ORIGINALLY PURSUANT TO RESOLUTION 2016-104, TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL ALLOCATIONS FOR A PROJECT KNOW AS HTG CRYSTAL COVE APPROVED BY THE CITY UNDER RESOLUTIONS 2016-71 & 2016-72; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the "City") wishes to enter into an Inter-Local Agreement with Monroe County (the "County") for the purposes of Transferring affordable housing unit allocations; and

WHEREAS, the Monroe County requested minor and non-substantive modifications to the ILA approved by the City pursuant to Resolution 2016-104 and the City has made such minor modifications,

WHEREAS, the Inter-Local 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 Revised Inter-local 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 HTG Crystal Cove. (Resolutions 2016-71 & 2016-72 provided as Exhibits "B" & "C") is hereby approved.

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 DECEMBER, 2016.

THE CITY OF MARATHON, FLORIDA


Dr. Daniel Zieg, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

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
Interlocal Agreement

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

This Agreement ("Agreement") is made and entered into this ^{14th} day of December, 2016, 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 (hereinafter "affordable housing ROGO allocations" or "affordable 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 affordable ROGOs; and

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

WHEREAS, this Agreement is entered into pursuant to 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 January 6, 2017; and

WHEREAS, HTG Crystal Cove Resort, LLLP a Florida limited liability limited partnership and or their assigns will be an applicant for FHFC LIHTC/ WORKFORCE funding for Forty-six (46) affordable housing units (hereinafter referred to as "project") expected to be ranked and approved by the spring of 2017 (i.e., between March 20, 2017, and May 1, 2017), with closing on the project expected to occur by the fall of 2017 (i.e., between September 22, 2017, and December 20, 2017); and

WHEREAS, HTG Crystal Cove Resort, LLLP has received City of Marathon approval of a Conditional Use Permit by Resolution 2016-71 for a project that includes 46 affordable housing/workforce housing units pertaining to the following site:

Legal Description attached as Exhibit A

WHEREAS, the parties have determined that this Agreement is in the best interests of the public and the public health, safety, and welfare.

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. TRANSFER: The parties agree to permit the transfer of up to 46 affordable housing ROGO allocations, comprised of Twenty-three(23) low-income category, three (3) very-low income category, and twenty (20) moderate affordable housing ROGO allocations, from Monroe County to the City of Marathon for allocation, pursuant to this Agreement, and subject to the conditions contained herein, including but not limited to:

HTG Crystal Cove Resort, LLLP, or its assignee, constructing and obtaining a Certificate of Occupancy for all of the affordable housing units, situated upon the subject property described herein, related to the transferred affordable housing ROGO allocations subject of this Interlocal Agreement, prior to December 31, 2019; and

The recording of a 99-year Affordable Housing Deed Restriction on all of the affordable housing units contemplated herein, in accordance with this Agreement, and in accordance with the applicable requirements of the Code of Ordinances, City of Marathon, Florida and similar requirements of the Florida Building Code (FBC).

Section 2. ASSIGNMENT: Monroe County has assigned its rights to the affordable housing ROGO allocation contemplated herein to the City, and the 46 affordable housing ROGO allocations are to be issued by the City to be used specifically by HTG Crystal Cove Resort, LLLP, or its successor or assign, at the development in Marathon known as "Crystal Cove on 4900 Overseas Highway, Marathon" (Legal Description attached as Exhibit "A"). In the event the subject project or, as applicable, HTG Crystal Cove Resort, LLLP, 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 or required to trigger this automatic reverter clause.

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

The project is not granted funding by FHFC LIHTC/WORKFORCE program in the FY16-17 or FY 17-18 competitive cycle; or

The project does not complete construction and does not obtain Certificates of Occupancy for all 46 affordable housing units contemplated herein by December 31, 2019. All affordable housing units for which Certificates of Occupancy are issued prior to December 31, 2019 shall remain subject to this Interlocal Agreement irrespective of whether all 46 affordable housing units contemplated herein receive Certificates of Occupancy.

Section 4. NOTIFICATION: The City of Marathon shall **(1)** Immediately notify Monroe County of any assignment(s) and successor(s) in interest or title to HTG Crystal Cove Resort, LLLP's interest(s) in the affordable housing ROGO allocation contemplated herein, and **(2)** Shall immediately notify Monroe County of any assignment(s) and successor(s) in interest or title to the affordable housing ROGO allocations contemplated herein above at least thirty (30) business 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. The City of Marathon shall further provide prompt written notice to Monroe County of the extension, termination, or expiration of the aforesaid Conditional Use Permit for project contemplated herein. The City of Marathon shall further provide prompt written notice to Monroe County of the issuance of Certificates of Occupancy for the subject affordable housing units within thirty (30) business days after issuance of said Certificates. All such notices under this Section ("Section 4.") shall be sent to the following addresses:

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

Monroe County Planning & Environmental Resources Department
Attn: Senior Director
Subject: City of Marathon Interlocal Agreement
2798 Overseas Highway, Marathon, FL 33050; and

With a copy to:

Monroe County Attorney's Office
Attn: County Attorney

Subject: City of Marathon Interlocal Agreement
P.O. Box 1026
Key West, FL ~~33040~~ 33041

Thomas D. Wright, Esq.
Law Offices of Thomas D. Wright, Chartered
9711 Overseas Highway
Marathon, FL 33050
Attorney for Property Owners

Failure of the City of Marathon or HTG Crystal Cove Resort, LLLP or their assign(s) or successor(s) in interest or title, to perform any act required by this Interlocal Agreement shall neither impair nor limit the validity of this Agreement or limit its enforceability in any way.

Section 5. CONSTRUCTION AND INTERPRETATION: The construction and interpretation of this Interlocal Agreement and Monroe County Code(s) provisions in arising from, related to, or in connection with this Agreement, shall be deferred in favor of Monroe County and such construction and interpretation shall be entitled to great weight on trial and on appeal.

Section 6. NO WAIVER: Monroe County shall not be deemed to have waived any rights under this Interlocal Agreement unless such waiver has been expressly and specifically provided.

Section 7. LIMITATION OF LIABILITY: In the event of any litigation related to, arising from, or in connection with this Interlocal Agreement, the parties hereto and Keys Affordable Development III, LLC, and its assignees and successors-in-interest, hereby agree to expressly waive their right to a jury trial.

Section 8. DUTY TO COOPERATE: When required to under this Interlocal Agreement, the City of Marathon and Keys Affordable Development, III, LLC, and its assignees and successors-in-interest, shall, to ensure the implementation of the government purpose furthered by this Agreement, cooperate with Monroe County's reasonable requests, regarding the conditions and provisions contained herein.

Section 9. 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 10. NONDISCRIMINATION: The parties agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to

(1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin; (2) Section 504 of the Rehabilitation Act of 1973, as amended 3) U.S.C. s. 1975, as amended (42 U.S.C. ss. 6101-6107)), which prohibits discrimination on the basis of age; (4) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (5) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (6) The Public Health Service Act of 1912, ss. 523 and 527 (42 U.S.C. ss. 290 dd-3 and 290 ee(03), as amended, relating to confidentiality of alcohol and drug abuse patient records; (7) The Americans With Disabilities Act of 1990 (42 U.S.C. s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; (8) The Civil Rights Act of 1992 (Chapter 760, Florida Statutes, and Section 509.021, Florida Statutes), as may be amended from time to time, relating to non-discrimination; and (9) any other nondiscrimination provisions in any federal or state statutes or local ordinances which may apply to the parties to, or the subject matter of, this Agreement.

Section 11. 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 12. NO SOLICITATION/PAYMENT: The parties warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not been paid or agreed to pay any person, company, corporation, individuals, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, each party agrees that the other party shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

Section 13. 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 14. INCONSISTENCY: If any item, condition, or obligation of this Agreement is in conflict with other terms 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 15. 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 16. NON-RELIANCE BY THIRD-PARTIES: Other than as stated herein, no person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the parties agree that neither the County nor the City, or any agent, officer, or employee of each shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

Section 17. 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 18. NOTICES: In addition to those communications 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 Monroe County:

Roman Gastesl, Jr., County Administrator
Monroe County Historic Gato Building
1100 Simonton Street
Key West, Florida 33040; and

Planning & Environmental Resources Department
Attn: Senior Director
Subject: City of Marathon Interlocal Agreement
2798 Overseas Highway, Marathon, FL 33050; and

With a copy to:

Monroe County Attorney's Office
Attn: County Attorney
Subject: City of Marathon Interlocal Agreement
P.O. Box 1026
Key West, FL ~~33040~~ 33041

Thomas D. Wright, Esq.
Law Offices of Thomas D. Wright, Chartered
9711 Overseas Highway
Marathon, FL 33050

Attorney for Property Owners

If to the City:

City Manager
9805 Overseas Highway
Marathon, Florida 33050

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

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

Thomas D. Wright, Esq.
Law Offices of Thomas D. Wright, Chartered
9711 Overseas Highway
Marathon, FL 33050
Attorney for Property Owners

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 fee 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. Inconsistency, Partial Invalidity, Severability, and Survival of Provisions: If any condition or provision hereunder, or any portion thereof, is/are held to be invalid or unenforceable in or by any administrative hearing officer or court of competent jurisdiction, the invalidity or unenforceability of such condition(s) or provision(s) shall neither limit nor impair the operation, enforceability, or validity of any other condition or provision hereunder, or remaining portions thereof. All such other condition(s) or provision(s), or portions thereof, shall continue unimpaired in full force and effect.

Section 17. Captions and Paragraph Headings: Captions and paragraph headings, where used herein, are inserted for convenience only and are not intended to descriptively limit the scope and/or intent of the particular paragraph or text to which they refer.

Section 18. Authority to Attest: Each party to this Interlocal Agreement represents and warrants to the other that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary corporate and other organizational action, as required.

Section 19. 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 20. 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 21. EFFECTIVE DATE: This Agreement shall take effect on the date set forth above.

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



ALVIN MADOK, CLERK
By: Camille Stumacher D.C.
Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: George R. Neugent
Mayor George Neugent

Date: December 14, 2016

FILED FOR RECORD
2017 JAN 30 AM 2:40

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
St. Williams
STEVEN T. WILLIAMS
ASSISTANT COUNTY ATTORNEY
Date: 1/20/17

ATTEST:
By: Diane Claver
DIANE CLAVER
City Clerk

THE CITY OF MARATHON, FLORIDA

By: R. Daniel Ziegler
Mayor
Date: 19 Dec 2016

(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



STATE OF FLORIDA
COUNTY OF MONROE

This copy is a True Copy of the
Original on File in this Office. Witness
My hand and Official Seal
And that same is in full force and effect

This 31st day of January

A.D., 20 17

KEVIN MADOK, CPA
Clerk Circuit Court

By: *Kevin Madok*
Deputy Clerk

EXHIBIT "A"

LEGAL DESCRIPTION

Lots 5 and 6 of Thompson and Adams Subdivision of Government Lot 1, Section 10, Township 66 South, Range 12 East which plat is recorded in Plat Book 2, at Page 24 of the Public Records of Monroe County, Florida.

That portion of a 66-Foot right-of-way of Old State Highway 4A, lying immediately South of Lot 5 of Thompson and Adams Subdivision according to the plat thereof recorded in Plat Book 2, Page 24, of the Public Records of Monroe County, Florida.

Together with a parcel of bay bottom land in the Bay of Florida, North of and adjacent to Lot 5 of Thompson-Adams Subdivision, as recorded in Plat Book 2, Page 24 of the Public Records of Monroe County, Florida. Said Subdivision also being in a part of Government Lot 1, Section 10, Township 66 South, Range 12 East, and being more particularly described by metes and bounds as follows:

BB 1

Commencing at the intersection of the East line of Section 10, Township 66 South, Range 12 East, and the northwesterly right-of-way line of Old State Highway No. 4A. Bear southwesterly along the northwesterly right-of-way line of Old State Highway No. 4A for a distance of 734.09 feet to the Southeast corner of said Lot 5; thence bear North along the East line of Lot 5 for a distance of 889.77 feet to the point of beginning of the parcel of bay bottom land hereinafter described, from said point of beginning, continue bearing North along the East line of Lot 5, extended, for a distance of 220 feet to a point, thence at right angles and West for a distance of 100.97 feet to a point on the West line of Lot 5, extended North, thence bear South along the West line of Lot 5, extended North, for a distance of 270 feet, more or less, to a point on the shoreline, thence meander the shoreline in a southerly and northeasterly direction for a distance of 220 feet, more or less, back to the point of beginning.

Together with a parcel of bay bottom land in the Bay of Florida North of and adjacent to Lot 6 of Thompson and Adams Subdivision as recorded in Plat Book 2, Page 24 of the Public Records of Monroe County, Florida, said subdivision also being in a part of Government Lot 1, Section 10, Township 66 South, Range 12 East and being more particularly described by metes and bounds as follows:

BB 2

Commencing at the intersection of the M.H.W.L. of the Gulf of Mexico and the West boundary of Lot 6 of said Thompson and Adams Subdivision of Government Lot 1, Section 10, Township 66 South, Range 12 East as per plat thereof in Plat Book 2, Page 24, of the Public Records of Monroe County, Florida, as and for the point of beginning of the property to be described. Run thence North into the waters of the Gulf of Mexico for a distance of 323 feet; thence at a right angle and East for a distance of 100.97 feet to a point; thence at a right angle and South to the M.H.W.L. at a point where it intersects the Eastern boundary of said Lot 6; thence meander said M.H.W.L. in a westerly direction to the point of beginning.

Lots 1 and 2, in Block 1 of Vasa Village, according to the plat thereof recorded in Plat Book 2, Page 106, a Re-Subdivision of Lot 7 and 8 of "Thompson and Adams Subdivision" as recorded in Plat Book 2, at Page 24, of the Public Records of Monroe County, Florida.

Lots 9, 10, 11, 12 and 13, Block 1, Vasa Village, a Subdivision as recorded in Plat Book 2, Page 106, of the Public Records of Monroe County, Florida.

Also

BB3

A parcel of bay bottom land in Section 10, Township 66 South, Range 32 East, North of and adjacent to Key Vasa described as: Commencing at the Section corner common to Sections 2, 3, 10 and 11 of Township 66 South, Range 32 East; thence South along the section line common to Sections 10 and 11, 1431.62 feet to the Northerly right of way line of Old State Highway 4A, as existing July 25, 1954; thence South $74^{\circ}20'00''$ West, 319.93 feet along said Northerly right of way line; thence North 1083.2 feet, more or less, to the M.H.W.L. of the Gulf of Mexico, the Point of Beginning; thence continuing North along said line, extended into the waters of the Gulf of Mexico, 100 feet, more or less; thence at a right angle and West, 186.94 feet; thence at a right angle and South, 323 feet, more or less, to the M.H.W.L. of the Gulf of Mexico where it intersects the West line of the Glenn H. Curries properties; thence meandering said M.H.W.L. in an Easterly and Northerly direction 325 feet, more or less, to the Point of Beginning.

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA
RESOLUTION 2016-125**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING MINOR REVISIONS TO THE INTERLOCAL BETWEEN MONROE COUNTY AND THE CITY OF MARATHON, APPROVED ORIGINALLY PURSUANT TO RESOLUTION 2016-104, TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL ALLOCATIONS FOR A PROJECT KNOWN AS HTG CRYSTAL COVE APPROVED BY THE CITY UNDER RESOLUTIONS 2016-71 & 2016-72; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the "City") wishes to enter into an Inter-Local Agreement with Monroe County (the "County") for the purposes of Transferring affordable housing unit allocations; and

WHEREAS, the Monroe County requested minor and non-substantive modifications to the ILA approved by the City pursuant to Resolution 2016-104 and the City has made such minor modifications,

WHEREAS, the Inter-Local 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 Revised Inter-local 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 HTG Crystal Cove. (Resolutions 2016-71 & 2016-72 provided as Exhibits "B" & "C") is hereby approved.

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 DECEMBER, 2016.

THE CITY OF MARATHON, FLORIDA


Dr. Daniel Zieg, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

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

Sponsored by: Lindsey

CITY OF MARATHON, FLORIDA
RESOLUTION 2016-71

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, APPROVING A REQUEST BY HTG CRYSTAL COVE RESORT, LLLP FOR A CONDITIONAL USE PERMIT PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED "CONDITIONAL USE PERMITS," AUTHORIZING THE DEVELOPMENT OF A TWENTY-EIGHT (28) UNIT RV PARK, FORTY-SIX AFFORDABLE HOUSING UNITS, AND 7,700 SQUARE FEET OF COMMERCIAL RETAIL ON PROPERTIES LOCATED AT AND ADJACENT TO 4900 OVERSEAS HIGHWAY; REAL ESTATE NUMBERS 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, AND 00328030-000000. NEAREST MILE MARKER 50

WHEREAS, HTG Crystal Cove, LLLP., (The "Applicant") filed an Application on June 30, 2016 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant proposes to develop twenty-eight (28) RV, forty-six (46) workforce and affordable housing residential units, and 7,700 square feet of commercial space; and

WHEREAS, City staff reviewed the Applicant's request for a Conditional Use Permit 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 15th day of August, 2015, 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 Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS, and on the 23rd day of August, 2016 and the 13th day of September, 2016, the City Council (the "Council") conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 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 Development Order 2016-07, a copy of which is attached hereto as Exhibit "A", granting a Conditional Use Permit to HTG Crystal Cove Resort, L.L.P., subject to the Conditions imposed. The Director of Planning is authorized to sign the development order on behalf of the City.

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 13th day of September, 2016.

THE CITY OF MARATHON, FLORIDA



Mark Senmartin, Mayor

AYES: Zieg, Bartus, Kelly, Coldiron, Senmartin
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



**CITY OF MARATHON, FLORIDA
CONDITIONAL USE
DEVELOPMENT ORDER # 2016-07**

A DEVELOPMENT ORDER APPROVING A REQUEST BY HTG CRYSTAL COVE RESORT, LLLP FOR A CONDITIONAL USE PERMIT PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED "CONDITIONAL USE PERMITS," AUTHORIZING THE DEVELOPMENT OF A TWENTY-EIGHT (28) UNIT RV PARK, FORTY-SIX AFFORDABLE HOUSING UNITS, AND 7,700 SQUARE FEET OF COMMERCIAL RETAIL ON PROPERTIES LOCATED AT AND ADJACENT TO 4900 OVERSEAS HIGHWAY; REAL ESTATE NUMBERS 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, AND 00328030-000000. NEAREST MILE MARKER 50

WHEREAS, HTG Crystal Cove, LLLP., (The "Applicant") filed an Application on June 30, 2016 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant proposes to develop twenty-eight (28) RV, forty-six (46) workforce and affordable housing residential units, and 7,700 square feet of commercial space; and

WHEREAS, City staff reviewed the Applicant's request for a Conditional Use Permit 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 15th day of August, 2015, 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 Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS, and on the 23rd day of August, 2016 and the 13th day of September, 2016, the City Council (the "Council") conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 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,

FINDINGS OF FACT:

1. The applicant will develop twenty-eight (28) unit RV park, forty-six (46) workforce and affordable housing units, and 7,700 square feet of Commercial Floor Area, and accessory structures as may be appropriate (See Attached Site Plan as Attachment 1).
2. In accordance with Section 102.77 of the Code, the Commission and Council considered and determined the Applicant met the following criteria:
 - a. The proposed use is consistent with the Comprehensive Plan and LDRs;
 - b. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;
 - c. The proposed use shall not adversely affect the health, safety, and welfare of the public; and
 - d. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and
 - e. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:
 1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
 2. Off-street parking and loading areas where required, with particular attention to item 1 above;
 3. The noise, glare or odor effects of the conditional use on surrounding properties;
 4. Refuse and service areas, with particular reference to location, screening and Items 1 and 2 above;
 5. Utilities, with reference to location and availability;
 6. Screening and buffering with reference to type, dimensions and character;
 7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;

8. Required yards and other open space;
9. General compatibility with surrounding properties; and

CONDITIONS IMPOSED:

Granting approval of the Application is subject to the following conditions:

Conditions of Approval

1. A final lighting plan must be submitted prior to permit issuance.
2. A final landscape plan must be submitted prior to permit issuance.
3. Dumpsters are to be screened per code.
4. All conditions of the Fire Marshall must be met prior to permit issuance.
5. Where the project boundary buffer is reduced, thicker landscaping and screening is required.
6. Additional screening is to be created along the canal facing RV lots. The criteria established in Section 107.66 F shall be applied to this area with the additional height needed to screen headlights.
7. All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
8. Each RV site shall comply with all hurricane evacuation requirements set forth for City transient uses.
9. Existing entitlements include thirty (30) transient residential units (TRUs), one (1) market rate residential unit, and 1,633 square feet of commercial square footage. These entitlement shall be utilized to complete the project as approved. The approval of this Development Agreement does not convey or grant a vested right or entitlement to future allocations of affordable residential units by the City for the forty-six (46) affordable residential units referenced and approved in this Development Agreement. Such allocations shall be made at a future date consistent with the comprehensive plan amendments and LDR amendments. It is the intent of the applicant, with the support of the City, to seek the necessary affordable residential unit allocations through an Inter-local Agreement transferring the units from Monroe County to the City of Marathon.
10. Dwelling units shall contain less than or equal to 1,800 square feet of habitable space. Occupancy of affordable housing units is limited to those meeting the following income requirements:
 - a. Very-low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 50 percent of the median adjusted gross annual income for households within the county;
 - b. Low-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 80 percent of the median adjusted gross annual income for households within the county;
 - c. Median-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 100 percent of the median adjusted gross annual income for households within the county;

- d. Moderate-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 120 percent of the median adjusted gross annual income for households within the county;
 - e. Middle-income. A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 160 percent of the median adjusted gross annual income within the county;
11. The monthly rent shall not exceed 30 percent of that amount which represents the income bracket of the household, i.e., very low, low, median, moderate or middle, divided by 12. In no case shall the monthly rent exceed 160 percent of the median adjusted gross annual income for households within the county, divided by 12.
 12. Annual income qualification, lease or employment verification, as applicable, by the City, or its designee, shall be limited to rental and employee housing dwelling units. Income verification for owner occupied dwellings shall be performed and approved by the City or its designee prior to the sales closing and occupancy of the dwelling unit.
 13. For any community workforce units the following requirements shall be met:
 - a. Affordable housing criteria set forth in above and Chapter 110 "Definitions";
 - b. Shall be permanently deed-restricted as affordable;
 - c. Shall be restricted to occupancy to households that derive at least 70 percent of their household income from gainful employment in Monroe County;
 - d. Shall be restricted to occupancy for 28 consecutive days or longer;
 - e. Shall not be used for vacation rental use; and
 - f. Shall not be sold separately as a condominium.
 14. The total area of the mixed-use or commercial apartments, including patios and access way shall not exceed the area covered by the ground floor and any covered walks or arcades.
 15. Each unit shall have access to a balcony or patio that is separate from the access to the unit, provides adequate privacy and the size shall be two-tenths (2/10) of unit floor area or a minimum of 60 square feet in size.
 16. The patio area may be wholly or partially replaced by the provision of a recreation yard provided on site. Recreational yards shall be a minimum one-tenth (1/10) of unit floor area.
 17. The developer and the City shall enter into a Development Agreement which at a minimum promulgates a requirement that necessary workforce housing units, pursuant to Chapter 104 Article 1, Section 104.25 and the City's Zoning in Progress concerning affordable housing, be complete prior to the Certificate of Occupancy for all RV units. In the alternative, the will accept a bond for the value of the units or an irrevocable letter of credit which shall only be released upon completion of the required units.
 18. For RV lots 1-10: The owner has agreed to locate an opaque fence no less than 42" high, and buffered on the canal side by landscaping suitable to the City of Marathon. The location of

the fence sections will extend for twelve feet (12') on the canal front sides of the lot to be located in front of the RV parking to shield headlights from shining across the canal.

19. An emergency gate entry/exit gate is allowed for emergency vehicle access at the northeast corner of the project site for entry/exit to and from 50th Street. This gate shall be continuous secured except to allow emergency vehicle access. The use of the gate for general or routine access of owners or patrons of the RV or affordable housing project elements is prohibited.

VIOLATION OF CONDITIONS:

The applicant understands and acknowledges that it must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicant or its successor or designee is in non-compliance with this Resolution or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact, the Council does hereby make the following Conclusions of Law:

1. The Application has been processed in accordance with the applicable provisions of the City Code, and will not be detrimental to the community as a whole; and
2. In rendering its decision, as reflected in this Resolution, the Council has:
 - (a) Accorded procedural due process;
 - (b) Observed the essential requirements of the law;
 - (c) Supported its decision by substantial competent evidence of record; and
3. The Application for a conditional use is hereby GRANTED subject to the conditions specified herein.

EFFECTIVE DATE:

This development order shall not take effect for thirty (30) days following the date it is filed with the City Clerk, and during that time, the conditional use approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this development order until said appeal is resolved.

Date

11/1/2012

George Garratty
Director of Planning

George Garratty

This Development Order was filed in the Office of the City Clerk of this 1 day of Nov 2012.

Diane Clavier, City Clerk

Diane Clavier

NOTICE

Under the authority of Section 102.79(e) of the City of Marathon Land Development Regulations, this development order shall become null and void with no further notice required by the City, unless a business license has been issued for the use or a complete building permit application for site preparation and building construction with revised plans as required herein is submitted to the City of Marathon Building Official within one (1) year from the date of conditional use approval, or the date when the Department of Community Affairs waives its appeal and all required certificates of occupancy are procured within three (3) years of the date of this development order is approved by the City Council.

In addition, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Community Affairs. During that forty-five days, the Florida Department of Economic Opportunity may appeal this instrument to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to Jim Saunders, Agent
this 11 day of July, 2016. 38,57

Diane Clavier
Diane Clavier City Clerk

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA
RESOLUTION 2016-72**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, APPROVING A REQUEST BY HTG CRYSTAL COVE RESORT, LLLP FOR A DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 102, ARTICLES 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED "DEVELOPMENT AGREEMENT," AUTHORIZING THE DEVELOPMENT OF A TWENTY-EIGHT (28) UNIT RV PARK, FORTY-SIX AFFORDABLE HOUSING UNITS, AND 7,700 SQUARE FEET OF COMMERCIAL RETAIL ON PROPERTIES LOCATED AT AND ADJACENT TO 4900 OVERSEAS HIGHWAY; REAL ESTATE NUMBERS 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, AND 00328030-000000. NEAREST MILE MARKER 50

WHEREAS, HTG Crystal Cove, L.L.P., (The "Applicant") filed an Application on June 30, 2016 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant proposes to develop twenty-eight (28) RV, forty-six (46) workforce and affordable housing residential units, and 7,700 square feet of commercial space; 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 15th day of August, 2015, 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 23rd day of August, 2016 and the 13th day of September, 2016, 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 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:

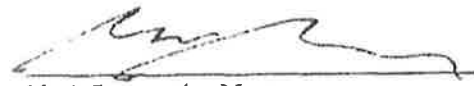
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves the Development Agreement, attached hereto as "Exhibit A."

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 13th day of September, 2016.

THE CITY OF MARATHON, FLORIDA



Mark Senmartin, Mayor


AYES: Zieg, Bartus, Coldiron, Kelly, Senmartin
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

Doc# 2109300
BKN 2837 Pgn 2075

**EXHIBIT A
DEVELOPMENT AGREEMENT**

RE Nos. 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000,
00328000-000000, 00328010-000000, 00328020-000000, AND 00328030-000000

(Space Reserved for Recording)

Development Agreement for
HTG Crystal Cove Resort, LLLP
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 HTG Crystal Cove Resort, LLLP, a Florida limited liability limited partnership, whose address is 3225 Aviation Avenue, Suite 602, Coconut Grove, Florida 33133 (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 as set forth herein.

WITNESSETH:

WHEREAS, Owner owns real property located in Marathon, Florida, described in Exhibit "A" hereto, which is the location of HTG Crystal Cove Resort LLLP and its proposed redevelopment; and

WHEREAS, said HTG Crystal Cove Resort LLLP hold entitlements to thirty-four (34) transient residential units, one (1) market rate residential units, and 1,633 square feet of commercial space; and

WHEREAS, the real property described in Exhibit "1" is designated on the City's Future Land Use Map (FLUM) as Mixed Use Commercial (MU-C), and is zoned as Mixed Use (MU), which land use designation and zoning allow the property to be used for transient rentals; and

WHEREAS, Owner desires to develop twenty-eight (28) RV sites and amenities in an RV Park, forty-six (46) workforce and affordable housing residential units, and 7,700 square feet of commercial development; and

WHEREAS, the City's affordable housing requirement for transient uses, as set out in Section 104.25 of the City of Marathon Land Development Regulations requires that new transient development provide affordable housing in an amount equal to 20% of the square footage of new transient development; and

WHEREAS, the Marathon Planning Commission held a public hearing on the 15th day of August, 2016, to consider this agreement and recommended approval of this agreement; and

WHEREAS, the City Council of Marathon held public hearings on the 23rd day of August and 13th day of September, 2016, 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 hotels and motels in Marathon, and will further the health, safety and welfare of the residents of Marathon.

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:

To re-develop the HTG Crystal Cove Resort L.L.P. site to include the development of twenty-eight (28) RV sites, forty-six (46) workforce and affordable housing residential units, and up to 7,700 square feet of commercial area, said Property noted in Exhibit A, consistent with the City of Marathon's Comprehensive Plan and Objective 1-3.4 of the City of Marathon's Comprehensive Plan;

III. Definitions.

For the purposes of this Agreement, all terms shall have the definitions as found in the City of Marathon's Land Development Regulations, 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.

HTG Crystal Cove Resort LLLP is the Owner of the Property identified by Real Estate Numbers 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, and 00328030-000000 which are the Properties the
603626040 2

subject of this Agreement, as described in Exhibit 2, Improvement Location and Boundary Survey. At time of development, there will be no other legal or equitable owners of the subject property known to the parties to this Agreement.

B. Duration of Agreement.

The Owner shall have a period of one (1) year from the Effective Date of this Agreement to obtain the first building permit for the RV Park site and three (3) years from the Effective Date of this Agreement to obtain the first permit for the workforce and affordable housing component of the project. All Certificates of Occupancy and/or Final Inspections for structures on the Property as shown on the Site Plan shall be obtained with seven (7) years.

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. Permitted Uses.

1. The Development permitted on the Property shall consist of those uses set forth herein, as identified on the conceptual site plan attached hereto as Exhibit 3, and incorporated herein by reference. The permitted uses are as follows:

- i. Twenty-eight (28) RV Park RV sites
- ii. Forty-six (46) workforce and affordable housing residential units; and
- iii. 7,700 square feet of commercial development.
- iv. Requirement to provide workforce housing pursuant to Section 104.25 A. of the LDRs.

2. Existing entitlements include thirty-four (34) transient residential units (TRUs), one (1) market rate residential unit, and 1,633 square feet of commercial square footage. These entitlement shall be utilized to complete the project as approved. The approval of this Development Agreement does not convey or grant a vested right or entitlement to future allocations of affordable residential units by the City for the forty-six (46) affordable residential units referenced and approved in this Development Agreement. Such allocations shall be made at a future date consistent with the comprehensive plan amendments and LDR amendments. It is the intent of the applicant, with the support of the City, to seek the necessary affordable residential unit allocations through and Inter-local Agreement transferring the units from Monroe County to the City of Marathon.

3. For the duration of this Agreement, the Parties agree that any and all of the approved development shall adhere to, conform to, and be controlled by this Agreement, the Exhibits attached hereto and incorporated by reference, the LDRs and the Comprehensive Plan governing the development of the subject property on the Effective Date of this Agreement. In the event that all or a portion of the existing or authorized development subject to this Agreement should

be destroyed by storm, fire or other disaster, the Owner, it's grantees, successors, or assigns shall have the absolute right to rebuild or repair the affected structure(s) and reinstate the prior approved use so long as such development is in compliance with this Agreement.

4. Through this Development Agreement and the approval of Resolution 2016-71 which provides a Conditional Use Permit for the project, the Developer agrees to all Conditions approved in the Conditional Use Permit.

5. Pursuant to this Development Agreement the Owner agrees that that required workforce housing units, pursuant to Chapter 104 Article 1, Section 104.25 and the City's Zoning in Progress concerning affordable housing, shall be complete prior to the Certificate of Occupancy for all RV units. In the alternative, the City will accept a bond for the value of the units or an irrevocable letter of credit which shall only be released upon completion of the required units.

6. The following documents are attached hereto and incorporated by reference, showing the Property Boundary and Existing and Proposed Uses:

Exhibit 1: Warranty Deed

Exhibit 2: Site Survey

Exhibit 3: Conceptual Site Plan as approved herein and pursuant to the City's approval of a Conditional Use Permit

7. Maximum Building Height shall be thirty-seven (37) feet, as provided in Future Land Use Element Policy 1-3.2.5 in the City's Comprehensive Plan and as defined by the LDRs.

8. The Owner shall execute and record in the public records of Monroe County a Declaration of Covenants and Restrictions in a form acceptable to the City ensuring that all Transient Units on the property comply with Hurricane Evacuation Requirements set forth in Policy 1-2.2.1 of the Future Land Use Element of City's Comprehensive Plan, in effect or as amended.

D. Public Facilities

1. The Florida Keys Aqueduct Authority provides domestic potable water.

2. Electric Service is provided by the Florida Keys Electric Co-op.

3. Solid Waste Service is provided by Marathon Garbage Service.

4. Owner shall provide wastewater and sewage collection and disposal by expanding its current connection to the City.

5. Educational Facilities. The redevelopment of transient use as contemplated by this Agreement

will not impact education facilities.

6. **Recreational Facilities.** The Property includes onsite recreational facilities for visitors and guests of the property. Therefore, redevelopment of the property will have no impact on public recreation facilities.

7. **Stormwater.** A Stormwater Management System which meets all applicable local, state and federal requirements shall be constructed onsite as part of the Site Redevelopment. 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. Any increased impacts on Public Facilities or Public Services attributable to each unit of the development, and the cost of capital improvement 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 City of Marathon Impact Fees required by the ordinance then in effect, as well as by payment by owner of any applicable utility system Development Fees. In addition, Owner agrees to be subject to any reasonable impact fee ordinance adopted by the City within twenty-four (24) months after the Effective Date of the Agreement, providing such ordinance applies equally and uniformly to all redevelopment in Marathon.

9. **Fire Protection.** The 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.

E. Local Development Permits.

The following is a list of all Development Permits approved or needed to be approved for the redevelopment of the Property as specified and requested in this Agreement:

1. This Development Agreement.
2. Conditional Use Approval.
3. The Final Site Plan, Landscape Plan, Drainage Plan, Building Elevations and Floor Plan approvals.
4. 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.

5. Federal, State, Regional, and Local Permits for Stormwater runoff.

Nothing in this Agreement shall preclude the parties from applying additional conditions, by mutual agreement, during Final Site Plan review or permitting.

F. Finding of Consistency.

By Entering into this Agreement, the City finds that the redevelopment permitted or proposed herein is consistent with and furthers the Comprehensive Plan (as defined herein), applicable LDRs and the Principles for Guiding Development set forth at Section 380.0552(7), Florida Statutes.

G. Existing BPAS Exempt Units and Square Footage

The Parties acknowledge that there exist on the Property:

| <u>Development Type</u> | <u>Existing</u> |
|--------------------------|---------------------------------|
| Transient Units: | 30 units |
| Single Family Dwellings: | 1 Market Rate Residential Units |
| Commercial Floor Area: | 1,633 Sq. Ft. |

H. 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 Redevelopment, 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 rededications may include, by way of example, easements necessary for the provision of stormwater, utility, and wastewater services to the Property.

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:

- 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 City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or
- iv. 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.

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:

- (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 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:

HTG Crystal Cove Resort I.LLP
3225 Aviation Avenue, Suite 602
Coconut Grove, Florida 33133

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

Thomas D Wright
Florida Board Certified Real Estate Attorney
9711 Overseas Highway
Marathon, Florida 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:
City Attorney
City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

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.

AA. 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.

BB. 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


CC. 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:

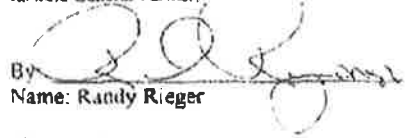

Signature
JOSE M. ROMERO III
Name of witness (printed or typed)


Signature
RICARDO A. MATOS
Name of witness (printed or typed)

OWNER

HTG Crystal Cove Resort LLLP,
A Florida Limited Liability Limited Partnership

By: HTG Crystal Cove Resort GP, LLC,
A Florida Limited Liability Company
Its Sole General Partner.


By
Name: Randy Rieger
Title: Authorized Person

STATE OF FLORIDA COUNTY OF MONROE

The following instrument was acknowledged before me on this 10th day of November, 2016, by Randy Rieger, as Authorized Person of HTG Crystal Cove Resort GP, LLC, who is personally known to me; or who produced _____ as identification, and who did/did not take an oath.


Notary Public, State of Florida At Large
My commission expires _____



PM QR

* Doc# 2109300
BK# 2837 P# 2088 *

Doc# 2100183
BK# 2826 P# 1963

On the 13th day of September, 2016, The City Council of the City of Marathon approved this Agreement by Resolution No. 2016-72

ATTEST:

Diane Clavie
City Clerk

CITY OF MARATHON

By: *[Signature]*
Mark Seemartin, Mayor

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

[Signature]
David Migut, City Attorney

Doc# 2109300
Bk# 2837 Pg# 2089

Doc# 2100183
Bk# 2826 Pg# 1964

EXHIBIT I

EXHIBIT "A"

LEGAL DESCRIPTION

Lots 5 and 6 of Thompson and Adams Subdivision of Government Lot 1, Section 10, Township 06 South, Range 32 East which plat is recorded in Plat Book 2, at Page 24 of the Public Records of Monroe County, Florida.

The position of a 66-Foot right-of-way of Old State Highway 4A lying immediately South of Lot 5 of Thompson and Adams Subdivision according to the plat thereof recorded in Plat Book 2, Page 24, of the Public Records of Monroe County, Florida.

Together with a parcel of bay bottom land in the Bay of Florida, North of and adjacent to Lot 5 of Thompson and Adams Subdivision, as recorded in Plat Book 2, Page 24 of the Public Records of Monroe County, Florida, said Subdivision also being in a part of Government Lot 1, Section 10, Township 06 South, Range 32 East, and being more particularly described by metes and bounds as follows:

Commencing at the intersection of the East line of Section 10, Township 06 South, Range 32 East, and the northwesterly right-of-way line of Old State Highway No. 4A, bear southwesterly along the northwesterly right-of-way line of Old State Highway No. 4A for a distance of 714.30 feet to the Southeast corner of said Lot 5; thence bear North along the East line of Lot 5 for a distance of 189.77 feet to the point of beginning of the parcel of bay bottom land hereinafter described, from said point of beginning, continue bearing North along the East line of Lot 5, extended, for a distance of 220 feet to a point, thence at right angles and West for a distance of 130.77 feet to a point on the West line of Lot 5, extended North, thence bear South along the West line of Lot 5, extended North, for a distance of 270 feet, more or less, to a point on the shoreline, thence meander the shoreline in a southerly and northwesterly direction for a distance of 220 feet, more or less, back to the point of beginning.

Together with a parcel of bay bottom land in the Bay of Florida North of and adjacent to Lot 6 of Thompson and Adams Subdivision as recorded in Plat Book 2, Page 24 of the Public Records of Monroe County, Florida, said subdivision also being in a part of Government Lot 1, Section 10, Township 06 South, Range 32 East and being more particularly described by metes and bounds as follows:

Commencing at the intersection of the M.H.W.L. of the Gulf of Mexico and the West boundary of Lot 6 of said Thompson and Adams Subdivision of Government Lot 1, Section 10, Township 06 South, Range 32 East as per plat thereof in Plat Book 2, Page 24, of the Public Records of Monroe County, Florida, as and be the point of beginning of the property to be described. Run thence North into the waters of the Gulf of Mexico for a distance of 323 feet; thence at a right angle and East for a distance of 100.97 feet to a point; thence at a right angle and South to the M.H.W.L. in a point where it intersects the Eastern boundary of said Lot 6; thence meander said M.H.W.L. in a westerly direction to the point of beginning.

TAL 437,479.332v2 7-30-08
603626040 2

MONROE COUNTY
OFFICIAL RECORDS

MONROE COUNTY
OFFICIAL RECORDS

**CITY OF MARATHON, FLORIDA
RESOLUTION 2017-106**

A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, REQUESTING AN EXTENSION OF THE TERM SPECIFIED IN SECTION 3, "TERM" OF THE INTERLOCAL AGREEMENT BETWEEN THE MONROE COUNTY AND THE CITY OF MARATHON TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL DWELLING UNIT ALLOCATIONS FOR AN APPROVED PROJECT IN THE OWNERSHIP OF HTG CRYSTAL COVE LLC, TO BE LOCATED 4900 OVERSEAS HIGHWAY, MARATHON, FLORIDA ON PROPERTIES INCLUDING REAL ESTATE NUMBERS 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, AND 00328030-000000. NEAREST MILE MARKER 50; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, On or about December 0f 2016, the City of Marathon and Monroe County entered into an Interlocal Agreement (ILA) transferring forty-six (46) affordable housing residential dwelling units to the City to be utilized in a project in the ownership of HTG Crystal Cove, LLC; and

WHEREAS, the ILA provided a "reverter clause" and a term which specified that:

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

The project is not granted funding by FHFC LIHTC/WORKFORCE program in the FY16-17 or FY 17-18 competitive cycle; or

The project does not complete construction and does not obtain Certificates of Occupancy for all 46 affordable housing units contemplated herein by December 31, 2019. All affordable housing units for which Certificates of Occupancy are issued prior to December 31, 2019 shall remain subject to this Interlocal Agreement irrespective of whether all 46 affordable housing units contemplated herein receive Certificates of Occupancy."

WHEREAS, subject project did not request FHFC LIHTC/WORKFORCE housing funding in the 2016-2017 competitive cycle, but did in the following cycle and did not qualify; and

WHEREAS, the City and the project owner remain resolute in the approved project as an FHFC LIHTC/WORKFORCE and wish to assure that it may continue to apply in future grant cycles; and

WHEREAS, further, with the impacts of Hurricane Irma in Marathon and on the Florida Keys in general, the imperative need for additional workforce housing is at a crisis level; and

WHEREAS, the City requests that the term specified in Section 3 of the ILA be extended to include the remainder of the 2018-2019 competitive cycle and extend through the physical year of 2020.

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

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

Section 2. The City requests that the term specified in Section 3 of the ILA be extended to include the remainder of the 2018-2019 competitive cycle and extend through the physical year of 2020.

Section 3. The City Clerk shall forward a certified copy of this Resolution to appropriate individuals at Monroe County, Florida, the Florida Department of Economic Opportunity, the Florida Housing Finance Corporation, the Florida Task Force on Affordable Housing, and the Executive Offices of the Governor.

Section 4. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 12TH DAY OF DECEMBER, 2017.

THE CITY OF MARATHON, FLORIDA



Michelle Coldiron, Mayor


AYES: Bartus, Cook, Senmartin, 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