

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-56**

**A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, APPROVING THE SECOND AMENDMENT TO THE INTERLOCAL AGREEMENT (ILA) BETWEEN THE CITY OF MARATHON AND MONROE COUNTY TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL DWELLING UNIT ALLOCATIONS FOR AN APPROVED PROJECT IN THE CURRENT OWNERSHIP OF CRYSTAL COVE HOUSING PARTNERS LP; SAID ILA ORIGINALLY APPROVED PURSUANT TO CITY RESOLUTION 2016-125 AND SUBSEQUENTLY AMENDED PURSUANT TO RESOLUTION 2019-28; THE SUBJECT AMENDMENT WILL UPDATE OF CURRENT OWNERSHIP IN THE PROJECT AND ADD A SECTION TITLED, "OWNER'S RIGHT TO TRANSFER; PERFORMANCE BY RECOGNIZED MORTGAGEE;" 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 (Original Applicant); and

**WHEREAS**, the project known as Crystal Cove Housing Partners LP (originally HTG Crystal Cove) and Marathon Key Housing Partner, LP (Originally 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 May 30, 2019); and

**WHEREAS**, a request to extend the ILA was made in Resolution 2019-28 and subsequently approved by the County; and

**WHEREAS**; the City sought the affordable allocations for the project through an interlocal agreement between the County and City, accepted through Resolution 2016-125 and thereafter extended through Resolution 2019-28; and

**WHEREAS;** Crystal Cove Housing Partners, LP (the "Applicant") has acquired or shall acquire the subject property and the allocable development rights previously owned by Original Applicant and the Applicant proposes to develop forty-six (46) affordable housing residential units; and

**WHEREAS,** this Resolution seeks a Second Amendment to the ILA in order to recognize a change in project ownership and to add a section titled, "Owner's Right To Transfer; Performance By Recognized Mortgagee,"

**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.

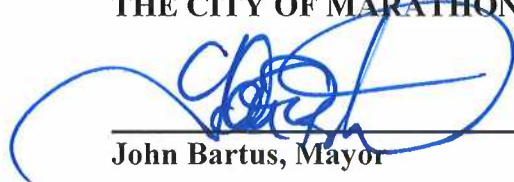
**Section 2.** The City requests that the ILA approved pursuant to Resolution 2016-125 and extended pursuant to Resolution 2019-28, be amended to reflect a change in project ownership and to add a section titled "Owner's Right To Transfer; Performance By Recognized Mortgagee" and provides the attached Amendment document for proposed execution (EXHIBIT A).

**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 28<sup>TH</sup> DAY OF MAY, 2019.**

**THE CITY OF MARATHON, FLORIDA**



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**John Bartus, Mayor**

<b>AYES:</b>	Cook, Gonzalez, Senmartin, Zieg, Bartus
<b>NOES:</b>	None
<b>ABSENT:</b>	None
<b>ABSTAIN:</b>	None

**ATTEST:**



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

(City Seal)

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



\_\_\_\_\_  
David Migut, City Attorney

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

This Agreement ("Agreement") is made and entered into this 19<sup>th</sup> day of JUNE, 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**, 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**, Crystal Cove Housing Partners, LP, a Florida limited partnership, has received an allocation from the State of Florida Housing Finance Corporation (FHFC) for Low Income Housing Tax Credits (LIHTC); and

**WHEREAS**, Crystal Cove Housing Partners, LP has received City of Marathon approval of a Conditional Use Permit by Resolution 2019-56 for a project that includes 46 affordable 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 low income 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:

Crystal Cove Housing Partners, LP, 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, 2021 (subject to extension for force majeure as approved by Monroe County); 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 Crystal Cove Housing Partners, LP, or its successor or assign, at the development in Marathon known as “Residences at Crystal Cove on 4900 Overseas Highway, Marathon.” In the event the subject project or, as applicable, Crystal Cove Housing Partners, LP, 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 (subject, however, to Section 25 below); 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 the following occurs:

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 (subject to extension for force majeure as approved by Monroe County). 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 4. NOTIFICATION:** The City of Marathon shall (1) Immediately notify Monroe County of any assignment(s) and successor(s) in interest or title to Crystal Cove Housing Partners, LP’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 33041

Mark A. Gould, Jr., Esq.  
Arnall Golden Gregory LLP  
171 17<sup>th</sup> Street, NW  
Suite 2100  
Atlanta, GA 30363-1031  
Attorney for Property Owner

Failure of the City of Marathon or Crystal Cove Housing Partners, LP 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 Crystal Cove Housing Partners, LP, 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 Crystal Cove Housing Partners, LP, 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 of violation of this provision, each party agrees that the other party shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

**Section 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 Interlocal Agreement or adopted after that date.

**Section 14. INCONSISTENCY:** If any item, condition, or obligation of this Agreement is in conflict with other items of this Agreement, the inconsistencies shall be construed so as to give meaning to those terms which limited the County's responsibility or liability.

**Section 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 Gastesi, 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 33041

Mark A. Gould, Jr., Esq.  
Arnall Golden Gregory LLP  
171 17<sup>th</sup> Street, NW  
Suite 2100  
Atlanta, GA 30363-1031  
Attorney for Property Owner



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

Mark A. Gould, Jr., Esq.  
Arnall Golden Gregory LLP  
171 17<sup>th</sup> Street, NW  
Suite 2100  
Atlanta, GA 30363-1031  
Attorney for Property Owner

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 19. 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 20. 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 21. 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 22. 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 23. 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 24. 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 25. OWNER'S RIGHT TO TRANSFER; PERFORMANCE BY RECOGNIZED MORTGAGEE:**

**A. Owner's Right to Transfer:** Crystal Cove Housing Partners, LP or its successors and assigns in interest or title, as applicable, may:

1. Mortgage its interest in the Property; and
2. Subject to providing written notice thereof to Monroe County, transfer and/or convey its interests in the Property or the affordable housing ROGO allocations contemplated herein pursuant to a bona fide foreclosure proceeding or a bona fide deed in lieu of foreclosure, to a Mortgagee (as hereinafter defined), or its designee or buyer in a bona fide foreclosure or of the deed in lieu of foreclosure or from the Mortgagee or its designee that initially acquired the Property via the bona fide foreclosure or the deed in lieu of foreclosure provided that such designee or buyer is a Permitted Developer (as hereinafter defined) and covenants to perform the construction work required to obtain a Certificate of Occupancy as required herein, and at all times following such transfer, comply with the use obligations herein.

**B. Performance by Recognized Mortgagee:**

1. If Owner shall fail to complete the construction of the Project (as hereinafter defined) and obtain a Certificate of Occupancy for the affordable housing units related to the affordable housing ROGO allocations on or before the date set forth in this Interlocal Agreement, as such date may be extended due to Unavoidable Delay (as hereinafter defined) or otherwise with the reasonable consent of Monroe County (an "Owner Default"), a Recognized Mortgagee (as hereinafter defined) shall have two hundred-seventy (270) days more than is given to Owner (the "Recognized Mortgagee Cure Extension Period") to cure, or cause to be cured, such Owner Default. In the event the Recognized Mortgagee cannot, through the use of commercially reasonable efforts, cure such Owner Default within the Recognized Mortgagee Cure Extension Period, the Recognized Mortgagee may have such longer period of time to complete the cure, subject to the terms herein, by notifying Monroe County and the City of Marathon in writing sixty (60) days before the end of the Recognized Mortgagee Cure Extension Period set forth herein, of its intent to (a) institute a Work Out Plan (hereinafter defined) or (b) institute a foreclosure proceeding. In the event that the Recognized Mortgagee notifies Monroe County and the City of Marathon of its intent to institute a Work Out Plan, by the end of the Recognized Mortgagee Cure Extension Period, the Recognized Mortgagee shall provide Monroe County and the City of Marathon with a plan for its review and reasonable approval setting forth how the Recognized Mortgagee proposes to

achieve, or cause the achievement of, completion of construction the Project, including details of any new or restructured financings, and a revised construction schedule highlighting the new dates for completion and obtaining a Certificate of Occupancy (the "Work Out Plan"). Monroe County and the City of Marathon shall have thirty (30) days from the date of receipt of the Work Out Plan to review and approve the Work Out Plan, which Work Out Plan shall be approved if the Work Out Plan shows no substantial deviation from the Project contemplated herein (other than any deviation necessary for the correction of any work in place at the time of the Work Out Plan that is required to be corrected). Once the Work Out Plan is approved by Monroe County and the City of Marathon, the Recognized Mortgagee shall be granted an additional cure period equal to the amount of time provided for in the final Work Out Plan, subject to Unavoidable Delay. The Recognized Mortgagee shall promptly commence, or cause commencement, of, such remedies and cure, and diligently pursue such remedies and cure to completion.

2. In the event that a Recognized Mortgagee notifies Monroe County and the City of Marathon of its intent to institute a foreclosure proceeding, the Recognized Mortgagee shall have sixty (60) days from such notice to institute foreclosure proceedings, shall prosecute the foreclosure proceedings in good faith continuously and with reasonable diligence and expedition to obtain possession of the Property. Upon obtaining possession of the Property through a foreclosure, or transfer in lieu of foreclosure, the Recognized Mortgagee or its designee (the "Subsequent Owner") shall, within one hundred-twenty (120) days, send to Monroe County and the City of Marathon details of any new or restructured financings, and a revised construction schedule highlighting the new dates for completion and obtaining a Certificate of Occupancy (the "Completion Plan"). Monroe County and the City of Marathon shall have thirty (30) days to from the date of receipt to review and approve the Completion Plan, which Completion Plan shall be approved if the Completion Plan shows no substantial deviation from the Project contemplated herein (other than any deviation necessary for the correction of any work in place at the time of the Completion Plan that is required to be corrected). Once the Completion Plan is approved by Monroe County and the City of Marathon in their reasonable discretion, the Recognized Mortgagee or Subsequent Owner, as may be applicable, shall be granted an additional cure period equal to the amount of time provided for in the final Completion Plan, subject to Unavoidable Delay. The Recognized Mortgagee or Subsequent Owner, as may be applicable, shall promptly commence or cause commencement of such remedies and cure, and diligently and continuously pursue such remedies and cure to completion.

**C. Definitions:** The following capitalized terms shall have the respective meanings specified below for purposes hereof:

1. "Institutional Lender" means (a) any bank, savings bank, savings and loan association, commercial bank or trust company (whether acting individually or in a fiduciary capacity) or an entity controlled by, controlling or under common control with any of the foregoing, (b) an insurance company organized and existing under the laws of the United States or any state thereof, (c) a real estate investment trust, a trustee or issuer of collateralized mortgage obligations, a loan conduit or other similar investment entity

which (1) is regularly engaged in the business of providing debt or equity financing and (2) acts through an institutional trustee, (d) a religious, educational or eleemosynary institution, a federal, state, or municipal employee's welfare, benefit, pension or retirement fund, any governmental agency, quasi-governmental entity or government sponsored entity (e.g., Fannie Mae and/or Freddie Mac), (e) any brokerage or investment banking organization regularly engaged in the business of providing debt financing, or (f) any combination of the foregoing entities. It is acknowledged and agreed that Citibank, N.A. is an Institutional Lender.

2. "Mortgage" means any mortgage, deed of trust, deed to secure debt, security agreement, collateral assignment or similar instrument encumbering the Property.

3. "Mortgagee" means the holder of a Mortgage.

4. "Permitted Developer" means an entity that as of the relevant date of inquiry (a) is controlled by one or more principals who have at least five (5) years of experience in developing residential buildings of a similar nature and size as the Project, (b) is (or has an affiliate which is) a developer, construction manager or general contractor (or engages a construction manager or general contractor) with at least five (5) years of experience in developing residential buildings of a similar nature and size as the Project, and (c) is a Permitted Person.

5. "Permitted Person" means any Person that (a) has not been convicted of a felony and/or any crime involving moral turpitude in the preceding ten (10) years; (b) has not, at any time in the three (3) preceding years, owned any property which, while in the ownership of such Person, was acquired by in rem tax foreclosure, other than a property that has been released or is in the process of being released to such Person; and (c) is not controlled (which in this instance shall mean the power, to direct the management and affairs of such Person's day to day operations, whether through the ability to exercise voting power, by contract or otherwise, including the right to make (or consent to) all capital and other major decisions to be made by such Person) by a Person described in subsections (a) or (b) above.

6. "Person" means an individual, corporation, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government, or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

7. "Project" means the multifamily residential project and other structures, improvements and appurtenances to be constructed on the Property.

8. "Property" means the property described on Exhibit "A" to this Interlocal Agreement.

9. “Recognized Mortgage” means a Mortgage (a) that is held by an Institutional Lender (or a corporation or other entity wholly owned by an Institutional Lender), and (b) which is recorded in the Official Records of Monroe County.

10. “Recognized Mortgagee” means the holder of a Recognized Mortgage.

11. “Unavoidable Delay(s)” means actual delays affecting the applicable work to be performed under this Interlocal Agreement from causes beyond Owner’s reasonable control, including delays due to acts of God (including earthquakes, floods and inordinately severe weather conditions of extended duration and impact), industry-wide strikes or other similar labor stoppages (not including labor actions specific to the Project or affecting a single group of contractors or suppliers), shortages or inability to obtain labor, fuel, steam, water, electricity, equipment, supplies, or materials (for which no substitute is readily available), inability to obtain labor, materials or permits due to unscheduled extraordinary governmental restrictions, governmental actions or orders of general applicability (not including actions or orders specific to the Project), any order or judgment that results in an injunction or a restraining order prohibiting or otherwise delaying the commencement or continuation of construction or other acts, provided such litigation was not instituted, financed or supported by the applicable party or any of its affiliates, enemy action or terrorism, civil commotion, fire, or unavoidable casualty; but in each case, only to the extent the same is not attributable to the acts or omissions of Owner and for which Owner has given Monroe County notice of such delay event within sixty (60) days after Owner became, or should have become, aware of same.

**Section 26. EFFECTIVE DATE:** This Agreement shall take effect on the date set forth above.

[signatures on following page]



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

ATTEST: KEVIN MADOK, CLERK

Kevin Madok D.C.

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By: Sylvia J. Murphy

Mayor Sylvia J. Murphy

Date: July 17, 2019

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: [Signature]  
Assistant County Attorney

ATTEST:

By: Diane Claver  
DIANE CLAVER  
City Clerk

THE CITY OF MARATHON, FLORIDA

By: [Signature]  
Mayor: John Bartus

Date: May 29, 2019

(City Seal)

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

By: [Signature]  
David Migut, City Attorney

FILED FOR RECORD  
2019 JUL 18 PM 1:10  
CLERK CIR. CT.  
MONROE COUNTY, FL

**EXHIBIT "A"**

**RE No. 00327150-000000**

THOMPSON AND ADAMS SUB PB2-24 OF GOV LT 1 SEC 10 TWP 66S R 32E PT LTS 5 -6  
AND PT LT 1 OVERSEAS HWY AND BK 1 LT 2 AND PT LT 1 VACA VILLAGE PB2-106  
(A RESUB OF LOTS 7-8 OF THOMPSON & ADAMS SUB IN SEC 10 TWP 66S R 32E KEY  
VACA PB2-24) A26-73/90 G39-185 G42-120 G50-321 G74-344 OR99-152(II DEED 21536)  
OR117-333 OR165-160 OR203-7 OR241-370 OR245-174 OR290-190(II DEED 21072) OR338-  
456 OR410-847 OR410-848 OR485-732 OR485-733/34 OR569-585 OR996-1833 OR1146-  
1759AFF OR1148-1299/1309 OR1189-2467 OR1323-1518/20 OR1366-1876/78 OR1368-777/79  
OR1373-2016/18 OR1374-1066/68C OR1378-1309/11 OR1565-543/46 OR2060-24/29(RES NO  
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