RESOLUTION NO. 14-08-57

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA APPROVING A DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163, FLORIDA STATUTES, BETWEEN THE VILLAGE AND ETC XII, LLC, FOR THE PROPERTY LOCATED AT 77521 OVERSEAS HIGHWAY, LOWER MATECUMBE KEY WITH REAL ESTATE NUMBER 00397140-000000; DETERMINING THE STATUS OF UNDEVELOPED UNITS ON THE PROPERTY AND PROVIDING FOR THE TRANSFER OF DEVELOPMENT RIGHTS; AUTHORIZING THE APPROPRIATE VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ANY OTHER REQUIRED DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Florida Local Government Development Agreement Act (the “Act”), Chapter 86-191, Laws of Florida, now codified at Sections 163.3220 through 163.3243, Florida Statutes, authorizes local governments to enter into development agreements with property owners subject to the procedures and requirements of the Act; and

WHEREAS, the lack of certainty in the approval of a development can result in a waste of economic land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development and discourage commitment to comprehensive planning; and

WHEREAS, assurance to a developer that upon receipt of a development permit that they may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring that there are adequate capital facilities for the development, encourages private participation in comprehensive planning and reduces the economic costs of development; and
WHEREAS, Islamorada, Village of Islands, Florida (the “Village”) and ETC XII, LLC, a Florida limited liability company (the “Owner”) have negotiated a development agreement under the authority of Chapter 163, Florida Statutes (the “Agreement”); and

WHEREAS, in accordance with Chapter 30, Article IV, Division 15 of the Village Code of Ordinances, the Village is required to hold public hearings for the Village Council to consider approval of a development agreement; and

WHEREAS, the Village Council has held public hearings to consider this Agreement, and has found and determined that execution of this Agreement will further the objectives of the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, the development contemplated and permitted by this Agreement is consistent with the Village’s Comprehensive Plan and Land Development Regulations; and

WHEREAS, the Village Council deems that approval of this Agreement in the best interest of the Village.

NOW THEREFORE BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Chapter 163 Development Agreement. The Village Council of Islamorada, Village of Islands, hereby approves the Development Agreement between the Village and the Owner, a copy of which is attached as Exhibit “A,” together with such non-material changes as may be acceptable to the Village Manager and approved as to form and legality by the Village Attorney.

Section 3. Authorization of Village Officials. The Village Manager or her designee and the Village Attorney are authorized to take all actions necessary to implement the terms and conditions of the Agreement.
Section 4. Execution of Documents. The Mayor is authorized to execute the Agreement and any other associated documents related to the Agreement.

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

The foregoing Resolution was offered by Councilman Mike Forster, who moved for its adoption. This motion was seconded by Vice Mayor Deb Gillis, and upon being put to a vote, the vote was as follows:

FINAL VOTE AT ADOPTION
VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Ted Blackburn  YES
Vice Mayor Deb Gillis  YES
Councilman Mike Forster  YES
Councilman Ken Philipson  YES
Councilman Dave Purdo  YES

PASSED AND ADOPTED ON THIS 21ST DAY OF AUGUST, 2014.

ATTEST:

TED BLACKBURN, MAYOR

KELLY TOTH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF ISLAMORADA, VILLAGE OF ISLANDS ONLY

ROGET V. BRYAN, VILLAGE ATTORNEY

This Resolution was filed in the Office of the Village Clerk on this 22 day of August 2014.

Kelly Toth, Village Clerk
DEVELOPMENT AGREEMENT PURSUANT TO
CHAPTER 163, FLORIDA STATUTES

THIS DEVELOPMENT AGREEMENT, executed by the Parties as of the ______________ day of _______ 2014, and having the Effective Date specified below, is entered into by and between:

ISLAMORADA, VILLAGE OF ISLANDS, a Florida municipal corporation ("Village")

and

ETC XII, LLC, a Florida limited liability company ("Owner"); and

RECITALS:

A. WHEREAS, the Florida Local Government Development Agreement Act (the "Act"), Chapter 86-191, Laws of Florida, now codified at Sections 163.3220 through 163.3243, Florida Statutes, authorizes local governments to enter into development agreements with property owners subject to the procedures and requirements of the Act; and

B. WHEREAS, the lack of certainty in the approval of a development can result in a waste of economic land resources, discourage sound capital improvement planning and financing and escalate the cost of housing and development and discourage commitment to comprehensive planning; and

C. WHEREAS, assurance to a developer that upon receipt of his or her development permit that he or she may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring that there are adequate capital facilities for the development, encourages private participation in comprehensive planning and reduces the economic costs of development; and

D. WHEREAS, Owner is the legal and equitable owner of the parcel of real property located in Monroe County, Florida, also located within the jurisdictional boundaries of the Village, described on attached Exhibit A (the "Property"); and
E. WHEREAS, pursuant to the Village’s adoption of Ordinance 05-12, which extended the moratorium on the conversion or change of use of existing transient dwelling unit/uses into non-transient dwelling unit/uses, the proposed development on the Property was specifically exempted from the moratorium, thereby allowing the conversion of transient (hotel/motel) units to market rate/non-transient dwelling units; and

F. WHEREAS, the Village previously recognized twenty-one (21) units at the Property and approved the redevelopment of twelve (12) units on the Property to single family residential dwelling units; and

G. WHEREAS, the Village subsequently recognized the nine (9) remaining undeveloped units associated with the Property may be transferred in accordance with the provisions of the Village’s Transferable Development Rights (“TDR”) Ordinance (Ordinance 07-32) in effect at the time of application (Exhibit “B”); however a disagreement has arisen between the parties about whether such units are transferrable as market rate dwelling units and/or hotel/motel dwelling units, and/or affordable dwelling units; and

H. WHEREAS, the development rights to these nine (9) units remain on the property with no specific time frame to construct, subject to the Village’s Comprehensive Plan Objective 1-3.1 and Policy 1-3.1.1 and that if the development rights are not constructed prior to the carrying capacity of Monroe County being exceeded then the construction of the units cannot be guaranteed; and

I. WHEREAS, Owner desires to be able to transfer the nine (9) remaining units on the property as transient (hotel/motel), market-rate (non-transient) dwelling units or affordable dwelling units; and

J. WHEREAS, to encourage development of the Property consistent with the Village’s Comprehensive Plan and Code of Ordinances, the Owner desires to agree upon and reduce to contractual terms, the existing development rights of the Owner with regard to the Property; and

K. WHEREAS, Village has initiated the process of amending elements of Village’s Comprehensive Plan and Land Development Regulations to implement modifications related to the transfer of development rights, and recognizes that initiation of such process may result in the Owner of the Property requiring certainty as to land use, zoning and other development entitlements (collectively “Entitlements”, as further defined below) existing now, and in the future, with respect to parcels of the Property. Village and Owner have determined that it is in the best interests of Village and Owner to enter into this Agreement to confirm that although Village may modify its Comprehensive Plan and Land Development Regulations in the immediate future, and such modifications may be applicable to the Property or portions thereof, such modifications will not result in the termination, modification or loss of any existing Entitlements of the Property existing as of the date of this Agreement; and

L. WHEREAS, Village and Owner have additionally determined that it is in the best interest of Village and Owner that, in addition to the retention of any existing Entitlements of the Property in effect as of the date of this Agreement, the Property will have any additional Entitlements which result from any future Village modifications of the Future Land Use Map of the Village Comprehensive Plan, or modifications of the Village’s Land Development Regulations; and

M. WHEREAS, Village has held public hearings to accept and encourage public input with respect to the proposal of Owner contained in this Agreement, and has considered such public input; and

N. WHEREAS, Village has determined that the provisions of this Agreement and the contemplated vesting of development rights contemplated by this Agreement are consistent with, and not in contravention with, the provisions of Village’s Concurrency Management System and Building Permit Allocation System (“BPAS”); and

O. WHEREAS, Village has provided its Notice of Intent to consider entering into this Development Agreement by advertisements published in the Keynoter and Reporter newspapers of general
circulation and readership in Monroe County, Florida, on and, and by mailing a copy of the Notice of Intent to Owner, and to the persons and entities shown on the most recent Monroe County Tax Roll to be the owners of property lying within three hundred feet (300') of the boundaries of the Property which is the subject-matter of this Agreement, and by announcing the date, time, and place of the second hearing during the first hearing.

P. WHEREAS, the Village Council of Islamorada, Village of Islands has held public hearings to consider this Agreement, and has found and determined that its execution of this Agreement will further the objectives of the Local Government Comprehensive Planning and Land Development Regulation Act, and that the development contemplated and permitted by this Agreement is consistent with the Village's Comprehensive Plan and Land Development Regulations.

NOW THEREFORE, in consideration of the matters set forth above (which are incorporated herein by reference), the exchange of the mutual promises set forth herein, and other good and valuable consideration, the parties hereto agree as follows:

1. INCORPORATION OF RECITALS & EXHIBITS. The parties confirm and agree that the above recitals are true and correct and incorporate the terms and provisions herein for all purposes. All terms and provisions of all Exhibits which are attached to this Agreement and referenced in this Agreement are, by this reference, incorporated into this Agreement for all purposes.

2. DEFINITIONS. For the purposes of this Agreement, in addition to those terms which are specifically defined elsewhere in this Agreement the following terms shall have the following definitions:

2.1. "Agreement" - This Development Agreement, as the same may be subsequently amended, modified or supplemented pursuant to its terms and provisions and pursuant to the provisions of Sections 163.3161 through 163.3215, inclusive, of the Florida Statutes.

2.2. "Village" - Islamorada, Village of Islands, a Florida municipal corporation.

2.3. "Village Code" - The Village's Code of Ordinances, as the same may be subsequently amended, modified or supplemented.

2.4. "Village Laws and Policies" - The laws and policies of Village concerning development of real property arising under Village's Comprehensive Plan, the Village Code, policies approved by Village Council, and Resolutions approved by Village Council.

2.5. "County" - Monroe County, Florida, a political subdivision of the State of Florida.

2.6. "Effective Date" - The date the terms of this Agreement become effective, as set forth in paragraph 9.16.

2.7. "Entitlements" - All rights with respect to the Property, or any portion thereof, existing as of the Effective Date of this Agreement to develop the Property or any portion thereof for, under, or in accordance with a particular use, development intensity, requirements (or non-requirements) for site plan review, site and building design specifications and criteria, and requirements (or non-requirements) for public hearings concerning approvals of planned unit development conceptual plans, existing as of the Effective Date of this Agreement under the provisions of the Village Laws and Policies.

2.8. "Implementing Ordinance" - Village Ordinance No. 07-32 adopted by the Village on November 8, 2007, a copy of which is shown on attached Exhibit B. The Implementing Ordinance instituted a program to facilitate the transfer of development rights ("TDRs") that would allow the Village to permit and regulate the transfer of development rights for residential and nonresidential properties within the Village while protecting environmental
resources, encouraging the development of less environmentally sensitive parcels, facilitating the redevelopment and revitalization of the Village Center zoning district, and protecting private property rights. The terms and provisions of the Implementing Ordinance are, by this reference, incorporated into this Agreement.

2.9. “Parcel” or “Parcels” – One or more of the parcels of real property located in Monroe County, Florida, specifically described or referenced in this Agreement, including the Property (as defined below).

2.11. “Party” or “Parties” – As applicable, either Owner or Village, or both Owner and Village.

2.12. “Property” – The real property owned by Owner located in Monroe County, Florida, also located within the jurisdictional boundaries of Village, described on attached Exhibit A.

2.13 “Undeveloped Units” – The nine (9) remaining units associated with the Property and previously recognized by the Village.

3. REPRESENTATIONS AND WARRANTIES. As a material inducement to the other Party to enter into this Agreement, each Party makes the following representations and warranties regarding this Agreement:

3.1. Owner Representations and Warranties. Owner represents and warrants to Village that:

3.1.1. Owner is a validly organized and existing Florida limited liability company, in good standing under the laws of the State of Florida and authorized to transact business in the State of Florida.

3.1.2. Owner has taken all corporate actions requisite necessary for the execution and delivery of this Agreement, and upon the execution and delivery of this Agreement by Owner the obligations of Owner hereunder shall be valid and binding obligations of Owner. The entities or individuals executing this Agreement on behalf of Owner are duly authorized representatives of Owner, authorized to execute this Agreement in their respective capacities as set forth below.

3.1.3. Owner is the legal and equitable owner of the Property.

3.1.4. The execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of any agreement, covenant, Court Order, Judgment, or the Articles of Organization or Operating Agreement of Owner.

3.2. Village Representations and Warranties. Village represents and warrants to Owner that:

3.2.1. The actions by Village hereunder are consistent with the terms and provisions of the Village’s Comprehensive Plan and Village Code.

3.2.2. Village has taken all necessary actions requisite to the execution and delivery of this Agreement, including but not limited to the necessary public hearings, providing proper notice of the public hearings, and conducting public hearings related thereto.

3.2.3. Upon the execution and delivery of this Agreement by the Village, the obligations of Village shall be valid and binding obligations of Village.

3.2.4. Execution and delivery of this Agreement is not in contravention with, or prohibited by, the terms and provisions of the Village’s Charter, Code of
4. **DURATION OF THE AGREEMENT.** This Agreement shall have an initial term of four (4) years commencing on the Effective Date, with up to two (2) additional three-year renewal periods contingent upon approval of the Village Council pursuant to the procedures set forth in Section 30-614 of the Village's Code of Ordinances.

5. **CONFIRMATION OF EXISTING ENTITLEMENTS.** The Parties agree that as of the Effective Date of this Agreement and continuing thereafter in accordance with the provisions of paragraph 6 below, all of the Property, and any portions thereof, shall continue to have, in addition to any additional Entitlements which Property may obtain as set forth in paragraph 6.4, the following:

5.1 All or part of the nine (9) remaining Undeveloped Units on the Property may hereby be classified as transient (hotel/motel), market rate (non-transient) dwelling units or affordable dwelling units and transferred pursuant to the Implementing Ordinance, as set forth under the following Table 1 and the remaining subsections of Section 5, or any amendments thereto which may be applicable pursuant to the terms of this Agreement. The Owner shall identify the character of the Undeveloped Units being transferred (i.e. transient (hotel/motel), market rate (non-transient) dwelling units or affordable units) in the application for the transfer and such election shall become final immediately after the transfer has been approved by the Village and any other government agency (e.g. Department of Economic Opportunity) that is required to approve or consent to the transfer.

### Table 1

<table>
<thead>
<tr>
<th>Residential Sender Sites</th>
<th>Zoning Districts Eligible as Receiver Sites</th>
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<tbody>
<tr>
<td>Conservation (C)</td>
<td>NR, RE, R1, R1M, RMH, R2, R3, R4, MF, MH, SR, VC, TC, NC, I*, TA, M*</td>
</tr>
<tr>
<td>Native Residential (NR)</td>
<td>NR, RE, R1, R1M, RMH, R2, R3, R4, MF, MH, SR, VC, TC, NC, I*, TA, M*</td>
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<tr>
<td>Residential Estate (RE)</td>
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<td>Residential Single Family (R1)</td>
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<tr>
<td>Residential Single Family (R1M)</td>
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<tr>
<td>Residential Mobile Home (RMH)</td>
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<td>Residential Duplex (R2)</td>
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<tr>
<td>Residential Triplex (R3)</td>
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<tr>
<td>Residential Fourplex (R4)</td>
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<td>Settlers Residential (SR)</td>
<td>RMH, R1, R1M, R2, R3, R4, MF, MH, SR, VC, TC, I*, TA, M*</td>
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<tr>
<td>Settlers Residential (SR)+</td>
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<tr>
<td>Village Center (VC)</td>
<td>VC</td>
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<td>Tourist Commercial (TC)</td>
<td>VC, TC, NC, I*, M*</td>
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<td>Commercial Fishing (CF)</td>
<td>VC, TC, CF, MR, NC, I*, M*</td>
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<tr>
<td>Marine Use (MR)</td>
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<tr>
<td>Highway Commercial (HC)</td>
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</tr>
<tr>
<td>Neighborhood Commercial (NC)</td>
<td>VC, NC, I*, M*</td>
</tr>
<tr>
<td>Industrial (I)</td>
<td>I*, M*</td>
</tr>
</tbody>
</table>
Tavernaero Airstrip (TA)  | MF, MH, SR+, VC, TC, NC, I, TA, M
Mariculture (M) | M

*Limited to caretaker’s cottage.
**Limited to affordable residential dwelling unit.
+ Limited to lots of record within Mixed Use FLUM.

5.2 Hotel/motel units.

a. The transfer of four or less hotel or motel unit(s) shall be reviewed using the procedures for minor conditional use review pursuant to Section 30-217 of the Village Code and shall be noticed pursuant to the procedures in subsection 30-213(h) of the Village Code.

b. The transfer of five or more hotel or motel units shall be reviewed using the procedures for major conditional use review pursuant to Section 30-218 of the Village Code and shall be noticed pursuant to the procedures in subsection 30-213(i) of the Village Code.

c. The receiver site shall be located in either the village center (VC), tourist commercial (TC) or highway commercial (HC) zoning district.

5.3 Development of the receiver site shall not exceed the greater of either one market rate dwelling unit or the densities provided for within Article V, Division 2 of the Village Code.

5.4 The structure cannot be placed in a VE flood zone on the receiver site.

5.5 Regardless of the on-site allocated densities available on a lot, exercising the TDR process to remove dwelling units, transfer building permits or density from a lot shall, result in a permanent reduction of density, and no additional density to that remaining on the sender site after the transfer takes place shall be permitted on the sender site. Notwithstanding the foregoing, affordable housing and/or nonresidential floor area may be provided only through the Building Permit Allocation System in instances following the transfer of a hotel or motel unit, but in no case shall the sender or receiver site exceed the permitted density or intensity provided for within division 2 of article V of this chapter. Each TDR shall require that a declaration of covenants, conditions and restrictions, as approved by the village attorney, be placed on the sender site, restricting densities to the number of market-rate, hotel or motel units remaining on the sender site after the transfer takes place.

5.6 The following restrictions on residential dwelling unit transfers shall apply:

a. Hotel and motel unit TDRs shall be transferable only to hotel and motel units, and furthermore parcels not containing any shoreline shall be prohibited from transferring to parcels containing shorelines;

b. Market rate dwelling unit TDRs shall be transferable only to market rate dwelling units or affordable dwelling units, and furthermore parcels not containing any shoreline shall be prohibited from transferring to parcels containing shorelines; and

c. Affordable dwelling unit TDRs, including all mobile homes and recreational vehicle spaces from approved mobile home parks, shall be transferable only as affordable dwelling units, in accordance with affordability standards and definitions specified in Section 30-32 of the Village Code.
6. **VILLAGE LAWS AND POLICIES GOVERNING DEVELOPMENT**

6.1. Village has initiated the process of amending its Comprehensive Plan and portions of the Village Code concerning development of real property. It is the intention of the Parties hereto that such actions by the Village shall not operate to result in the termination, modification or loss of any of the Entitlements existing for the Property as of the date of this Agreement under the current Village Laws and Policies.

6.2. Except as set forth in paragraphs 6.3 and 6.4, the Village Laws and Policies governing the development of the Property on the Effective Date of this Agreement shall govern the development of the Property for the duration of this Agreement. Therefore the Property shall retain, without modification or limitation, all Entitlements currently existing under the Village Laws and Policies, notwithstanding any future amendment of the Village Laws and Policies.

6.3. Notwithstanding paragraph 6.2, Village may apply subsequently adopted Village Laws and Policies to the Property if Village has held a public hearing and determined:

6.3.1. They are not in conflict with the Village Laws and Policies as of the Effective Date of this Agreement and do not prevent development of the land uses, intensities, or densities for the Property as set forth in this Agreement;

6.3.2. They are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a development agreement under the Act (such as this Agreement);

6.3.3. They are specifically anticipated and provided for in this Agreement;

6.3.4. Village demonstrates that substantial changes have occurred in pertinent conditions existing at the Effective Date of this Agreement;

6.3.5. This Agreement is based on substantially accurate information supplied by Owner;

6.3.6. As set forth in an amendment to this Agreement executed by Owner; or

6.3.7. As set forth in paragraph 6.4.

6.4. Notwithstanding paragraph 6.2, in the event the Village, subsequent to the Effective Date, modifies its Village Laws and Policies and includes the Property within such modifications, in a manner that provides the Property with additional Entitlements that are reasonably expected to enhance the development of the Property, or decrease the time or expense associated with such development, such modified laws and policies shall apply to the Property.

6.5. Therefore, pursuant to the above provisions, the Property shall hereafter have the combination of the following Entitlements:

6.5.1. All Entitlements for the Property existing under the current terms of the Village Laws and Policies as of the Effective Date of this Agreement, all subject to, or (if applicable) modified by, the terms of this Agreement (except as set forth in paragraph 6.3); and
6.5.2. All additional Entitlements available for the Property under the terms of then-existing Village Laws and Policies, all subject to, or (if applicable) modified by, the terms of this Agreement

7. **Transfer Procedure.**

The procedure for Transfer of the Undeveloped Units shall be governed by Chapter 30, Land Development Regulations, Article IV-Administrative Procedures, Division 12, Transfer of Development Rights or any amendments thereto which may be applicable pursuant to the terms of this Agreement.

8. **GENERAL PROVISIONS.**

8.1. **Notices.**

8.1.1. All notices, requests, consents and other communications required or under this Agreement shall be in writing (including faxed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, faxed, or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed to the following or to such other addresses as any party may designate by notice complying with the terms of this paragraph:
a. **AS TO THE VILLAGE:**
   Attn: Director of Planning  
   Islamorada, Village of Islands  
   86800 Overseas Highway, Islamorada, FL 33036

   1). With Copy To:
   Attn: Village Attorney  
   Islamorada, Village of Islands  
   86800 Overseas Highway  
   Islamorada, FL 3303

b. **AS TO OWNER:**

c. Attn: David Rosseau, Manager  
   ETC XII, LLC  
   77521 Overseas Highway  
   Islamorada, FL 33036,

   1). With Copy To:
   Russel Yagel, Esq.  
   Hershoff Lupino & Yagel, LLP  
   90130 Old Highway  
   Tavernier, FL 33070

8.1.2. Each such notice shall be deemed delivered:

   a. On the date delivered if by personal delivery;

   b. On the date of facsimile transmission if by facsimile; and

   c. If the notice is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; (b) the date upon which delivery is refused; (c) the date upon which notice is designated by the postal authorities as not having been delivered; or (d) the third business day after mailing.

   d. Notwithstanding the foregoing, service by personal delivery delivered, or by facsimile sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.

8.1.3. If a notice is delivered by multiple means, the notice shall be deemed delivered upon the earliest date determined in accordance with the preceding subparagraph.

8.1.4. If the above provisions require notice to be delivered to more than one person (including a copy), the notice shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.

8.2. **Negation of Partnership.** None of the terms or provisions of this Agreement shall be deemed to create a partnership before Owner and Village in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprises. Each Party shall be considered a separate Party, no Party shall have the right to act as an agent for another Party and no Party shall have the right to act as an agent for another Party unless expressly authorized to do so in this Agreement.

8.3. **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided no right, privileges of immunities
of any Party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained in this Agreement.

8.4. **Default Provisions.**

9.4.1. The terms of this Agreement shall not entitle any Party to cancel, rescind, or otherwise terminate this Agreement. However, except as expressly set forth herein (e.g., in paragraph 9.4.5), such limitations shall not affect in any manner any other rights or remedies which a Party may have hereunder or under applicable law by reason of any such breach.

9.4.2. All easements, rights and covenants contained herein shall be enforceable by suit for specific performance and mandatory injunctive relief, in addition to any other remedies provided by law or equity except as expressly set forth herein (e.g., in paragraph 9.4.5).

9.4.3. No Party shall be entitled to pursue any action for specific performance, injunctive relief, or any other available remedy arising out of a default under this Agreement until the non-defaulting Party has provided to the Party alleged to be in default a written Default Notice specifying the specific nature of the default, and the alleged defaulting Party has failed to cure the default within thirty (30) days of the effective date of the Default Notice. In the event the cure of a default reasonably requires greater than the thirty (30) day time period specified, the grace period granted herein shall, if the defaulting Party has initiated cure of the default within the thirty (30) day time period and is continuing to pursue completion of the cure with due diligence, extend the reasonable time period required for the cure of the default to the period which is a reasonable time period.

9.4.4. In the event of a material default by Owner with respect to its obligations to Village under this Agreement, and failure of Owner to cure the default within the grace period set forth above, in addition to any other remedies available to them under the terms of this Agreement Village shall be entitled to withhold issuance of additional development permits or authorizations until the default has been cured. If Owner has, prior to the occurrence of the default, conveyed some or all of the Property to unrelated third parties (such parcel or parcels then becoming a "Third Party Parcel") and the default of Owner is not with respect to, or impact Village obligations regarding, the Third Party Parcel, the right of Village to withhold permits upon a default by Owner shall not extend to Village permits pending or to be issued with respect to a successor owner of such Third Party Parcel.

9.4.5. In the event of a material default by Village with respect to its obligations to Owner under this Agreement, and failure of Village to cure the default within the grace period set forth above, Owner may seek relief as set forth in paragraph 9.4.2 against Village but may not seek damages (including, without limitation, compensatory damages or lost profits), such relief being expressly waived by Owner.

8.5. **Estoppel Statements.** Each Party agrees that upon written request from time to time of any other Party it will timely issue at no charge to a current or prospective lender to such Party, or to a current or prospective purchaser or successor party to such other Party, or to another governmental entity requesting or requiring the same, an Estoppel Statement stating:

8.5.1. Whether the Party to whom the request has been directed knows of any default by any Party under this Agreement, and if there are known defaults, specifying the nature thereof.
8.5.2. Whether this Agreement has been assigned, modified or amended in any way by such Party (and if it has, stating the nature thereof).

8.5.3. That to the best of the requested Party's knowledge this Agreement, as of the Estoppel Statement date, is in full force and effect.

8.5.4. That (if known by the requested Party, if not known by the requested Party that Party shall reply only with respect to any monies owed to it) to the best of the requested Party's knowledge there are not any monies currently owed by any Party to another Party under the terms of this Agreement, or if there are monies owed, the amount and details of all monies owed.

8.5.5. That, as to the Project or as to a specific parcel therein (as applicable, based upon the request) there are no moratoriums or suspensions of the right to procure Development Orders, Building Permits, or Certificate of Occupancy or other development approvals in effect as of the date of the Estoppel Statement.

8.5.6. Such written statement shall act as a waiver of any claim by the Party furnishing it to the extent such claim is based on facts contrary to those asserted against a bona fide mortgagee or purchaser for value without knowledge of facts to the contrary of those contained in the Estoppel Certificate who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the Party furnishing it to any liability whatsoever, notwithstanding the negligent or other inadvertent failure of such Party to disclose correct and/or relevant information.

8.6. **Litigation.** 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 attorneys' fees, and including reimbursement for such reasonable attorneys' fees and costs incurred with respect to any bankruptcy, appellate or post-judgment proceeding related thereto.

8.7. **Binding Effect.** The parties to this Agreement represent to each other that each party fully understands the facts surrounding this Agreement and each is signing this Agreement fully and voluntarily, intending to be bound by it. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective spouses, heirs, executors, administrators and assigns. There are no representations or warranties other than those set forth herein.

8.8. **Headings.** The headings contained within this Agreement are for identification purposes only, and shall not be construed to amend, modify, or alter the terms of the Agreement.

8.9. **Severability.** Except as otherwise set forth herein, in the event any provision or paragraph of this Agreement is determined to be invalid or unenforceable, such determination shall not affect the enforceability or the validity of the remaining provisions of this Agreement.

8.10. **Survival of Representations and Warranties.** All representations and warranties contained herein are made in writing by the parties in connection herewith shall survive the execution and delivery of this Agreement.

8.11. **Successors and Assigns.**

9.11.1. All covenants and agreements in this Agreement made by or on behalf of any parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, whether so expressed or not.
8.11.2. Upon a sale or other transfer of a Parcel or a portion thereof, the terms and provisions of this Agreement, as applicable, shall remain in full force and effect as to the Parcel or a portion of the Parcel.

8.12. **Applicable Law.** This Agreement is being delivered in the State of Florida, and shall be construed and enforced in accordance with the laws of the State of Florida. The venue for any legal proceeding arising out of this Agreement shall be Monroe County, Florida.

8.13. **Countersign.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

8.14. **Amendment of Agreement.** This Agreement cannot be changed, modified or released orally, but only by an agreement in writing signed by the parties against whom enforcement of said change, modification or discharge is sought.

8.15. **Gender.** As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular as the context may require.

8.16. **Effective Date.**

9.16.1. This Agreement shall become effective upon completion of its execution by both Parties, and the recordation of the Agreement in the Public Records of Monroe County, Florida.

9.16.2. Notwithstanding the foregoing:

   a. The parties shall be obligated to perform any obligations hereunder that are required before such Effective Date; and

   b. In the event this Agreement is challenged, including a challenge pursuant to Section 163.3243, Florida Statutes, within thirty (30) days of the recordation of this Agreement in the Public Records of Monroe County, Florida, the obligations of the parties shall be suspended hereunder, except to the extent such suspension would be inconsistent with requirements of Florida Department of Economic Opportunity.
IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

SEE ATTACHED SEPARATE SIGNATURE PAGES OF
ISLAMORADA, VILLAGE OF ISLANDS AND ETC XII,
LLC

Doc# 1997669
Bk# 2703  Pg# 40
SIGNATURE PAGE OF THE ISLAMORADA, VILLAGE OF ISLANDS TO ENTITLEMENTS AGREEMENT BETWEEN ISLAMORADA, VILLAGE OF ISLANDS AND ETC XII, LLC

ATTEST:  

Kelly S. Toth  
VILLAGE CLERK

ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA

By:  

Ted Blackburn  
Title: Mayor, Islamorada, Village of Islands Council

Date: September 2, 2014

APPROVED AS TO FORM AND LEGALITY:  

Roget V. Bryan  
VILLAGE ATTORNEY

Doc# 1997669  
Bk# 2703  Pg# 41

APPROVED BY THE ISLAMORADA, VILLAGE OF ISLANDS COUNCIL ON August 21, 2014.

STATE OF FLORIDA  
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 2 nd day of September, 2014, by Ted Blackburn, as Mayor of Islamorada, Village of Islands, Florida, a Florida municipal corporation, on behalf of the Village.

Kelly S. Toth  
Notary Public, State of Florida  
Name: Kelly S. Toth

(Please print or type)

Commission Number:
Commission Expires:

Notary: Check one of the following:  
☐ Personally known OR  
☐ Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced:

Kelly S. Toth  
MY COMMISSION #FF132581  
EXPIRES June 15, 2018  
(607) 368-0183  
FloridaNotaryService.com
STATE OF MARYLAND
COUNTY OF ANN ARUNDEL

The foregoing DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163, FLORIDA STATUTES was acknowledged before me by David A. Rosseau as MANAGER of ETC XII, a Florida limited liability company, who is:

☑ Personally known by me, OR
☑ Produced a driver’s license as identification.

Dated: this 4 day of September, 2014.

Print Name: NICK ROUSSEAU
Notary Public, State of Maryland
Commission number: ____________________________
Commission expires: December 18, 2017
## SCHEDULE OF EXHIBITS

<table>
<thead>
<tr>
<th>EXHIBIT</th>
<th>REFERENCE</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Recital B</td>
<td>Legal Description – Property</td>
</tr>
<tr>
<td>B</td>
<td>§2.8</td>
<td>Copy – Implementing Ordinance No. 07-32</td>
</tr>
</tbody>
</table>

Doc# 1997669
Bkn 2703  Pgn 43
EXHIBIT "A"

A PORTION OF TRACT F AS SHOWN ON PLAT OF MATECUMBE OCEAN-BAY SUBDIVISION SECTION TWO ON LOWER MATECUMBE KEY, AS RECORDED IN PLAT BOOK 2, PAGE 98, TOGETHER WITH A PARCEL OF SUBMERGED LAND IN THE STRAITS OF FLORIDA FRONTING A PORTION OF TRACT F OF MATECUMBE OCEAN-BAY SUBDIVISION, SECTION TWO, ACCORDING TO THE PLAT RECORDED IN PLAT BOOK 2, PAGE 98, PUBLIC RECORDS OF MONROE COUNTY, FLORIDA
ORDINANCE NO. 07-32

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30 “LAND DEVELOPMENT REGULATIONS,” ARTICLE II “RULES OF CONSTRUCTION AND DEFINITIONS,” SECTION 30-32 “SPECIFIC DEFINITIONS” OF THE VILLAGE CODE OF ORDINANCES AND ESTABLISHING CHAPTER 30 “LAND DEVELOPMENT REGULATIONS,” ARTICLE IV “ADMINISTRATIVE PROCEDURES,” DIVISION 12 “TRANSFER OF DEVELOPMENT RIGHTS,” OF THE VILLAGE CODE OF ORDINANCES; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THE PROVISIONS OF THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF COMMUNITY AFFAIRS

WHEREAS, Islamorada, Village of Islands (the “Village”) has adopted a comprehensive set of Land Development Regulations (the “LDRs”) to implement the Village Comprehensive Plan (the “Comprehensive Plan”); and

WHEREAS, Policy 1-3.1.4 of the Comprehensive Plan dictates that the Village shall institute a program for the Transfer of Development Rights (“TDRs”); and


WHEREAS, the Village finds that regulations establishing a program for transfer of development rights between properties within the Village will aid in the protection of the natural environment and community character of the Village, the protection of individual
property rights, and the preservation and appropriate redevelopment of Village neighborhoods; and

WHEREAS, the Local Planning Agency has reviewed this Ordinance in accordance with the requirements of Chapter 163, Florida Statutes; and

WHEREAS, the provisions of this Ordinance are consistent with the Comprehensive Plan and the principles for guiding development in the Florida Keys Area of Critical State Concern.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Specific Definitions. Chapter 30 “Land Development Regulations,” Rules of Construction and Definitions,” Section 30-32 “Specific Definitions,” of the Village Code is hereby amended to read as follows:

Additional text is shown as underlined; deleted text is shown as strikethrough

*****

Development right means the right to use real property for uses or purposes permitted by the comprehensive plan and zoning district.

*****

Public use means administrative and cultural buildings, uses, and structures, including buildings, lots and facilities owned, used, or operated by any governmental agency.

*****
Receiver site means the designated lot to which development rights, density, or floor area may be transferred from a lot designated as a sender site.

Sender site means the designated lot from which development rights, density, or floor area may be severed to be transferred to a lot designated as a receiver site.

Transfer of development rights means the process by which development rights may be transferred from one lot within the Village to another lot within the Village.

Tourist housing—use or unit—means a dwelling unit used as transient housing for tenancies of less than 28 days' duration, such as a hotel or motel, public lodging establishment, roominghouse, vacation rental, room, or space for parking a recreational vehicle or travel trailer or units that are advertised and held out to the public for such use. Tourist housing—use shall include the rental, lease, sublease, or assignment of existing dwelling units for tenancies of less than 28 days' duration.


DIVISION 12. TRANSFER OF DEVELOPMENT RIGHTS

Section 30-501. Intent and purpose. The intent and purpose of this division is to permit and regulate the transfer of development rights (TDRs) between properties within the Village in order to ensure that all development is consistent with the goals, objectives and policies of the
Comprehensive Plan. Transfer of development rights will aid in the preservation of environmentaly sensitive lands through the removal of existing dwelling units or rights based on permitted densities, the redistribution of existing residential dwelling units to achieve planned densities, the retirement of development rights without increasing the overall amount of development, the encouragement of the placement of conservation easements on environmentaly sensitive and flood prone lands, the facilitation of appropriate redevelopment and revitalization of the Village Center (VC) zoning district by the concentration of mixed use activities, the preservation of existing affordable housing and encouragement of additional affordable housing, and a reduction of negative environmental impacts from development in balance with protection of private property rights.

Section 30-502. Specific Definitions. The words and phrases in this division shall have the meanings prescribed in this division, except as otherwise defined below:

*Off-site* means outside the limits of the area encompassed by the lot where a permitted activity is conducted.

*Receiver site* means the designated lot to which development rights, density, or floor area may be transferred from a lot designated as a sender site.

*Sender site* means the designated lot from which development rights, density, or floor area may be severed to be transferred to a lot designated as a receiver site.

*Transfer of development rights* means the process by which development rights may be transferred from one lot within the Village to another lot within the Village.

Section 30-503. Transfer of Development Rights (TDRs). The types of development rights that may be transferable are limited to the following activities:
(a) The transfer of floor area from vacant nonresidential and density from residential sender
sites to vacant nonresidential and residential receiver sites that meet minimum lot size but
are nonconforming as to density, so as to permit the development of the receiver site.

(b) The off-site transfer of existing nonresidential floor area from any lot to any other lot,
whereby the following conditions apply:

1. The following zoning districts are eligible as sender sites: VC+, TC, CF, MR, HC,
   NC, I, C, PS, R and M*; and

2. The following zoning districts are eligible as receiver sites: VC+, TC, CF, MR,
   HC, NC, I, PS, R and M*.

*Mariculture (M) zoning district is only eligible as a sender and receiver site if
located within the Industrial (I) FLUM category. +Village Center (VC) zoning
district is only eligible as a sender site when the receiver site is within the Village
Center (VC) zoning district.

(c) The off-site transfer and redevelopment of existing residential dwelling units, and the off-
site transfer of building permits for residential dwelling units.

Section 30-504. Transfer Procedure.

(a) The applicant(s) must provide documentation of ownership of sender and receiver sites
through the form of a deed or other legal documentation as approved by the Village
Attorney. For the purposes of this division, sender site and receiver site shall mean those
parcels of land as they legally existed on November 29, 2007.

(b) The receiver site shall be less environmentally sensitive than the sender site, according to
a vegetation survey and/or a habitat analysis conducted by a certified biologist, and
verified unless otherwise exempted or limited by the director of planning and
development services or his designee, pursuant to habitat classifications described in Section 30-1616(b)(2) of the Village Code, whereby the following conditions additionally apply:

(1) Transfer shall be permitted from Class I parcels to Class II or Class III parcels;

(2) Transfer shall be permitted from Class II parcels to Class II or Class III parcels; and

(3) Transfer shall be permitted from Class III parcels to Class III parcels.

c) Eligible receiver sites shall demonstrate compliance with all applicable criteria set forth in this chapter.

d) An application for transfer of development rights shall be submitted to the director of planning and development services, in accordance with the provisions of this section, accompanied by a cost recovery fee as established, and may be amended by resolution, by the village council. The application shall contain the information required on a form provided by the director of planning and development services.

e) No application for transfer of development rights (TDRs) shall be processed if the sender or receiver site has any open permits or active code violations; all bonds, assessments, back Village taxes, fees and liens (other than mortgages) affecting the lot(s) shall be paid in full prior to approval of transfer of development rights.

f) After the review and recommendation by the development review committee (DRC), the director of planning and development services and/or the village council, in accordance with the procedures, standards and limitations of this chapter, shall approve, approve with conditions, or deny an application for transfer of development rights (TDRs).
Section 30-505. Transfer of Development Rights (TDRs) for Nonresidential Floor Area. The off-site transfer of legally existing nonresidential floor area shall be subject to the following transfer conditions:

(a) Nonresidential

(1) The transfer of 4,999 square feet of nonresidential floor area or less shall require minor conditional use approval for both the sender and receiver site;

(2) The transfer of 5,000 square feet of nonresidential floor area or more shall require major conditional use approval for both the sender and receiver site; and

(3) The amount of nonresidential floor area transferred off-site shall be limited to that amount which exceeds the maximum floor area allowed on the sender site pursuant to division 2 of article V of this chapter.

(b) Both sender and receiver sites shall be in zoning districts that permit nonresidential floor area and shall be subject to the following restrictions:

<table>
<thead>
<tr>
<th>Nonresidential Sender Sites</th>
<th>Zoning Districts Eligible as Receiver Sites</th>
</tr>
</thead>
<tbody>
<tr>
<td>Village Center (VC)+</td>
<td>VC</td>
</tr>
<tr>
<td>Tourist Commercial (TC)</td>
<td>VC, TC, NC, I, M**</td>
</tr>
<tr>
<td>Commercial Fishing (CF)</td>
<td>CF</td>
</tr>
<tr>
<td>Marine Use (MR)</td>
<td>MR</td>
</tr>
<tr>
<td>Highway Commercial (HC)</td>
<td>VC, TC, HC, I, M**</td>
</tr>
<tr>
<td>Neighborhood Commercial (NC)</td>
<td>VC, NC, I, M**</td>
</tr>
<tr>
<td>Industrial (I)</td>
<td>I, M**</td>
</tr>
<tr>
<td>Public and Semi-Public Services (PS)*</td>
<td>PS*</td>
</tr>
<tr>
<td>Recreation (R)+</td>
<td>R</td>
</tr>
<tr>
<td>Mariculture (M)**</td>
<td>M**</td>
</tr>
</tbody>
</table>

+ Village Center (VC) zoning district is only eligible as a sender site when the receiver site is within the Village Center (VC) zoning district.
++ Recreation (R) zoning district is only eligible as a sender and receiver site if located within the Mixed Use (MU) FLUM category.
* Public and Semi-Public Services (PS) zoning district is only eligible as a sender and receiver site if located within the Mixed Use (MU) or Industrial (I) FLUM category.
** Mariculture (M) is only eligible as a sender and receiver site if located within the Industrial (I) FLUM category.

(c) The structure cannot be placed in a VE flood zone on the receiver site.
(d) Parcels not containing any shoreline shall be prohibited from transferring to parcels containing shorelines.

(e) A Declaration of Covenants, Conditions and Restrictions, as approved by the Village Attorney, shall be placed on the sender site indicating the recorded amount of nonresidential floor area remaining following the transfer and a Grant of Conservation Easement Agreement (GOCEA) shall be placed by the owner of the sender site, prohibiting any future development on all hammock areas of the property.

Section 30-506. Transfer of Development Rights (TDRs) for Residential Dwelling Units and Density. Off-site redevelopment of all residential TDRs, including building permit allocations for residential dwelling units, shall, at a minimum, be subject to the following transfer conditions:

(a) Dwelling Units and Density

(1) The transfer of four (4) or less dwelling units shall require minor conditional use approval for both the sender site and receiver site, except that hotels and motels shall not be considered a residential use;

(2) The transfer of five (5) or more dwelling units shall require major conditional use approval for both the sender and receiver site, except that hotels and motels shall not be considered a residential use; and

(3) Both sender and receiver sites shall be in zoning districts that permit dwelling units and shall be subject to the following restrictions:
<table>
<thead>
<tr>
<th>Residential Sender Sites</th>
<th>Zoning Districts Eligible as Receiver Sites</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conservation (C)</td>
<td>NR, RE, R1, R1M, RMH, R2, R3, R4, MF, MH, SR, VC, TC, NC, I*, TA, M*</td>
</tr>
<tr>
<td>Native Residential (NR)</td>
<td>NR, RE, R1, R1M, RMH, R2, R3, R4, MF, MH, SR, VC, TC, NC, I*, TA, M*</td>
</tr>
<tr>
<td>Residential Estate (RE)</td>
<td>RE, R1, R1M, RMH, R2, R3, R4, MF, MH, SR, VC, TC, NC, I*, TA, M*</td>
</tr>
<tr>
<td>Residential Single Family (R1) and (R1M)</td>
<td>R1, R1M, RMH, R2, R3, R4, MF, MH, SR, VC, TC, NC, I*, TA, M*</td>
</tr>
<tr>
<td>Residential Mobile Home (RMH)</td>
<td>R1, R1M, RMH, R2, R3, R4, MF, MH, SR, VC, TC, NC, I*, TA, M*</td>
</tr>
<tr>
<td>Residential Duplex (R2)</td>
<td>R2, R3, R4, MF, MH, SR, VC, TC, NC, I*, TA, M*</td>
</tr>
<tr>
<td>Residential Triplex (R3)</td>
<td>R3, R4, MF, MH, SR, VC, TC, NC, I*, TA, M*</td>
</tr>
<tr>
<td>Residential Fourplex (R4)</td>
<td>R4, MF, MH, SR, VC, TC, NC, I*, TA, M*</td>
</tr>
<tr>
<td>Settlers Residential (SR)</td>
<td>RMH, R1, R1M, R2, R3, R4, MF, MH, SR, VC, TC, I*, TA, M*</td>
</tr>
<tr>
<td>Settlers Residential (SR)+</td>
<td>SR, VC, TC, NC, I*, TA, M*</td>
</tr>
<tr>
<td>Village Center (VC)</td>
<td>VC</td>
</tr>
<tr>
<td>Tourist Commercial (TC)</td>
<td>VC, TC, NC, I*, M*</td>
</tr>
<tr>
<td>Commercial Fishing (CF)</td>
<td>VC, TC, CF, MR, NC, I*, M*</td>
</tr>
<tr>
<td>Marine Use (MR)</td>
<td>VC, TC, MR, NC, I*, M*</td>
</tr>
<tr>
<td>Highway Commercial (HC)</td>
<td>VC, TC, HC, NC, I*, M*</td>
</tr>
<tr>
<td>Neighborhood Commercial (NC)</td>
<td>VC, NC, I*, M*</td>
</tr>
<tr>
<td>Industrial (I)*</td>
<td>I*, M*</td>
</tr>
<tr>
<td>Tavarnaero Airstrip (TA)</td>
<td>MF, MH, SR+, VC, TC, NC, I*, TA, M*</td>
</tr>
<tr>
<td>Mariculture (M)</td>
<td>M*</td>
</tr>
</tbody>
</table>

*Limited to a caretaker’s cottage.
**Limited to affordable residential dwelling unit.
+ Limited to lots of record within Mixed Use FLUM.

(b) Hotel/Motel Units

1. The transfer of four (4) or less hotel/motel units shall require minor conditional use approval for both the sender site and receiver site;

2. The transfer of five (5) or more hotel/motel units shall require major conditional use approval for both the sender and receiver site; and

3. The receiver site shall be located in either the Village Center (VC), Tourist Commercial (TC) or Highway Commercial (HC) zoning district.
(c) Development of the receiver site shall not exceed the greater of either one (1) market rate dwelling unit or the densities provided for within division 2 of article V of this chapter.

(d) The structure cannot be placed in a VE flood zone on the receiver site.

(e) Regardless of the on-site allocated densities available on a lot, exercising the TDR process to remove dwelling units, transfer building permits or density from a lot shall, result in a permanent reduction of density, and no additional density to that remaining on the sender site after the transfer takes place shall be permitted on the sender site. Each TDR shall require that a Declaration of Covenants, Conditions and Restrictions, as approved by the Village Attorney, be placed on the sender site, restricting densities to the number of units remaining on the sender site after the transfer takes place.

(f) A Grant of Conservation Easement Agreement (GOCEA), as approved by the Village Attorney, shall be placed by the owner of the sender site on all areas of the sender site determined to be tropical hardwood hammock and on all areas required to be restored as follows, restricting further development rights. The sender site shall be restored pursuant to a restoration plan approved by the Director and in accordance with sections 1615 and 1617 of this chapter at a density of no less than one (1) tree and two (2) shrubs per 100 square feet. The area to be restored on the sender site shall be proportional to the density of existing development at the time of transfer. For example, if an applicant has four (4) dwelling units and one (1) dwelling unit is transferred, then twenty-five (25%) percent of the disturbed area of the parcel shall be restored. The restoration shall be completed within six months from the issuance of the conditional use permit allowing the transfer and a biologist who has been approved by the Director shall certify the successful completion of the restoration plan. Notwithstanding, where
the sender site is within a platted subdivision and is a Class III parcel, such site may
retain rights to build non-habitable accessory structures such as sheds, swimming pools
and docks, if such structures cumulatively cover no more than fifty (50) percent of the
parcel, the structures are developed subject to the clustering provisions of this chapter,
and the remaining fifty (50) percent is restored pursuant to a restoration plan approved
by the Director and in accordance with sections 1615 and 1617 of this chapter at a
density of no less than one (1) tree and two (2) shrubs per 100 square feet.

(g) The following restrictions on residential dwelling unit transfers shall apply:

(1) Hotel and motel unit TDRs shall be transferable only to hotel and motel units and
furthermore parcels not containing any shoreline shall be prohibited from
transferring to parcels containing shorelines;

(2) Market rate dwelling unit TDRs shall be transferable only to market rate dwelling
units or affordable dwelling units and furthermore parcels not containing any
shoreline shall be prohibited from transferring to parcels containing shorelines;
and

(3) Affordable dwelling unit TDRs, including all mobile homes and recreational
vehicle spaces from approved mobile home parks, shall be transferable only as
affordable dwelling units, in accordance with affordability standards and
definitions as specified in Section 30-32 of the Village Code.

Section 30-507-550. Reserved.

and all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are
hereby repealed.
Section 5. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 6. Inclusion in the Code. It is the intention of the Village Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Islamorada, Village of Islands, Florida, that the sections of the Ordinance may be renumbered or relettered to accomplish to such intentions, and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

Section 7. Approval by the State Department of Community Affairs. The provisions of this Ordinance constitute a “land development regulation” as State law defines that term. Accordingly, the Village Clerk is authorized to forward a copy of this Ordinance to the State Department of Community Affairs for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

Section 7. Effective Date. This Ordinance shall be effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

The foregoing Ordinance was offered by Councilman Sante, who moved its adoption on first reading. This motion was seconded by Vice Mayor Hill, and upon being put to a vote, the vote was as follows:
Mayor Dave Boerner       YES
Vice Mayor Cathi Hill    YES
Councilman Don Achenberg YES
Councilman Michael Reckwerdt YES
Councilman Chris Sante   YES

PASSED on first reading this 8th day of November, 2007.

The foregoing Ordinance was offered by Councilman Sante, who moved for its adoption. This motion was seconded by Councilman Achenberg, and upon being put to a vote, the vote was as follows:

Mayor Dave Boerner       YES
Vice Mayor Cathi Hill    YES
Councilman Don Achenberg YES
Councilman Michael Reckwerdt YES
Councilman Chris Sante   YES

PASSED AND ADOPTED on second reading this 29th day of November, 2007.

DAVE BOERNER, MAYOR

ATTEST:

VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY.

VILLAGE ATTORNEY