

RESOLUTION NO. 20-09-94

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA,
VILLAGE OF ISLANDS, FLORIDA, APPROVING THE FIRST
AMENDMENT TO GROUND LEASE AGREEMENT BETWEEN
ISLAMORADA, VILLAGE OF ISLANDS, AND HABITAT FOR
HUMANITY OF THE UPPER KEYS, INC. FOR THE DEVELOPMENT
OF AFFORDABLE HOUSING; AUTHORIZING VILLAGE OFFICIALS
TO IMPLEMENT THE TERMS AND CONDITIONS OF THE FIRST
AMENDMENT; AUTHORIZING THE VILLAGE MANAGER TO
EXPEND BUDGETED FUNDS; AUTHORIZING THE MAYOR TO
EXECUTE THE FIRST AMENDMENT; AND PROVIDING FOR AN
EFFECTIVE DATE**

WHEREAS, on July 23, 2018, Islamorada, Village of Islands (the "Village") entered into a Ground Lease Agreement with Habitat for Humanity of the Upper Keys, Inc. ("Lessee") to develop an affordable housing project on the Windley Key site (the "Lease"); and

WHEREAS, pursuant to the Lease and the Village's Utility Policy, Lessee is responsible to pay wastewater system development charges in the amount of Six Thousand Three Hundred Ninety-two Dollars and no/100 (\$6,392.00) for each of the sixteen (16) units residential single family; and

WHEREAS, Chapter 180 of *Florida Statutes* provides that municipalities may establish a program of monthly payments through the water/wastewater utility bill for payment of utility fees over a period of time; and

WHEREAS, the Lessee has requested that the wastewater system development charge applicable to each unit be amortized over a ten (10) year/one hundred twenty (120) month period and billed on a monthly basis for through the water/wastewater bill produced by the Florida Keys Aqueduct Authority ("FKAA") payment by the unit occupants; and

WHEREAS, the Village and the Lessee wish to amend the Lease to reflect the aforementioned payment arrangement; and

WHEREAS, the Village Council finds that approval of the First Amendment to the Lease between Lessee and the Village attached hereto is 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 incorporated into this Resolution by this reference.

Section 2. **Approval of First Amendment.** The First Amendment to the Lease between Lessee and the Village, 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, is approved.

Section 3. **Authorization of Village Officials.** The Village Manager and/or his/her designee and the Village Attorney are authorized to take all actions necessary to implement the terms and conditions of the First Amendment.

Section 4. **Authorization of Fund Expenditure.** Notwithstanding the limitations imposed upon the Village Manager pursuant to the Village's Purchasing Procedures Ordinance, the Village Manager is authorized to expend budgeted funds to implement the terms and conditions of the First Amendment.

Section 5. **Execution of First Amendment.** The Mayor is authorized to execute the First Amendment on behalf of the Village, to execute any required agreements and/or documents to implement the terms and conditions of the First Amendment and to execute any extensions and/or amendments to the First Amendment, subject to the approval as to form and legality by the Village Attorney.

Section 6. **Effective Date.** This Resolution shall take effect immediately upon adoption.

Motion to adopt by Councilman Jim Mooney, second by Councilwoman Deb Gillis.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Mike Forster YES

Councilwoman Deb Gillis YES

Councilman Jim Mooney YES

Councilman Chris Sante YES

Seat 4 Vacant

PASSED AND ADOPTED THIS 17TH DAY OF SEPTEMBER, 2020.



MIKE FORSTER, MAYOR

ATTEST:



KELLY TOTH, VILLAGE CLERK

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



ROGET V. BRYAN, VILLAGE ATTORNEY

**FIRST AMENDMENT TO GROUND LEASE AGREEMENT BETWEEN
ISLAMORADA, VILLAGE OF ISLANDS, AS LESSOR, AND
HABITAT FOR HUMANITY OF THE UPPER KEYS, INC., AS LESSEE**

This First Amendment to the Ground Lease Agreement is made and entered into this 22ND day of September, 2020, by and between **Islamorada, Village of Islands**, (the “Lessor” or the “Village”) and **Habitat for Humanity of the Upper Keys, Inc.**, a Florida Not-for-Profit Corporation authorized to do business in the State of Florida (the “Lessee”).

WITNESSETH

WHEREAS, on July 23, 2018, the Village and Lessee entered into that certain Ground Lease Agreement (hereinafter the “Lease”) for lease of certain property located within Islamorada, Village of Islands, for the development of affordable housing (hereinafter the “Demised Premises”); and

WHEREAS, the parties wish to amend certain provisions of the Lease to reflect the modification in payments by Lessee to the Village; and

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration and the mutual covenants set forth in this First Amendment, the receipt and adequacy of which are hereby acknowledged, the Village and Lessee agree as follows:

Section 1. First Amendment Controls; Defined Terms. In the event of any conflict between this First Amendment and the Lease, it is agreed that this First Amendment shall govern and control. This First Amendment shall be construed as part of the Lease. All defined terms in this First Amendment shall have the same meaning as in the Lease, except as otherwise noted.

Section 2. First Amendment to Lease. The parties hereby agree that the following sections of the Lease are hereby restated¹ and replaced in their entirety:

Section 6.01 Lessee’s Obligations. As additional Rent, the Lessee shall pay and discharge, as they become due, promptly and before delinquency, all taxes, assessments, water and wastewater fees and assessments, rates and charges, transit taxes, charges for public utilities, excises, levies, licenses and permit fees and other governmental charges, general and special, ordinary and extraordinary, unforeseen and foreseen of any kind and nature whatsoever, which at any time from the Possession Date of this Lease and during the Term of this Lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or

become a lien on, the Demised Premises, or otherwise arise out of the revenues received by the Lessee from the rental of the Affordable Housing Units to Sublessees, or be associated with any document (to which the Lessee is a party) creating or transferring an interest or estate in the Demised Premises (hereinafter collectively, the "Charges"). With regard to special assessments, if the right is given to pay both in one sum or in installments, Lessee may elect either mode of payment and Lessee's election shall be binding on Lessor.

Lessor has represented to Lessee and Lessee acknowledges and agrees the Village has adopted wastewater assessment(s) for the construction of centralized wastewater collection and treatment facilities to service properties within the Village. The Demised Premises and its development for ~~66~~ 16 affordable housing units shall be subject to the wastewater assessments⁽²⁾ and any subsequent phases or assessment programs adopted to fund the costs of the centralized wastewater collection and treatment facilities.

Lessor has represented to Lessee and Lessee acknowledges and agrees the Village has adopted Ordinance No. 14-14 which adopted a new wastewater utility policy for the Village-wide centralized wastewater system. Pursuant to Section 62.42(e) of the utility policy, "new or extended, modified or expanded facilities that have the potential to increase the utilization of the Wastewater System shall contribute their fair and equitable share of the capital costs of the Wastewater System. Accordingly, in accordance with Division 7, of Chapter 30, of the Village's Code of Ordinances, the Village will impose a System Development Charge to existing and new Customers who add, extend, modify or expand facilities that impose a potential increase demand on the Wastewater System."

The Demised Premises shall be subject to a Wastewater System Development Charge of \$6,392.00 per each of the sixteen (16) affordable housing units for a total Wastewater System Development Charge of \$102,272.00. Lessor and Lessee agree that the Wastewater System Development Charge shall be paid by sublessees and/or property owners through the water / wastewater bill issued by the Florida Keys Aqueduct Authority ("FKAA") for each of the sixteen (16) affordable housing units when sublessees / property owners assume occupancy of the respective units. As long as units are occupied, the amount of \$54.08 will be reflected on the water / wastewater bill for the first month and \$53.26 will be reflected for the remaining 119 months to total \$6,392.00 paid per unit.

Through adoption of Ordinance No. 05-15, the Village Council imposed stormwater service assessments against real property in the Village specifically benefitted by the Village's stormwater management services. Through the stormwater service assessment levied annually on real property through the real estate tax bills, an equitable and efficient method of allocating and apportioning the cost of the Village's stormwater management services has been established. Beginning in November 2021, a stormwater service valorem assessment may be levied on the real estate tax bill for the common area of the Demised Premises. Lessee acknowledges that the assessment amount will be based upon equivalent stormwater units assigned to the entire property based on the new development and calculated by the Village's assessment consultant. Lessee

¹ Additions to Lease are shown by underline; deletions from Lease are shown by ~~strikethrough~~.

Further acknowledges that it will be responsible to pay the stormwater service assessment directly or will reimbursement the Village. Lessee plans to collect homeowners' association fees charged to occupants of the sixteen (16) affordable housing units on the Demised Premises sufficient to cover the annual stormwater services assessment.

Section 3. Amendment; Correction of Scrivener's Errors. In order to correct scrivener's errors, Exhibit "A" (legal description) and Exhibit "B" (site plan) to the Ground Lease are hereby restated and replaced in their entirety by Exhibits "A" and "B" to this First Amendment.

Section 4. No Further Modifications. All other provisions of the Lease, other than as specifically amended herein, shall remain in full force and effect and are hereby ratified.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this First Amendment upon the terms and conditions above-stated as of the day and year first above written.

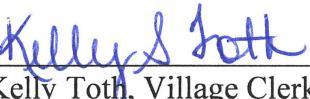
LESSOR/VILLAGE:

ISLAMORADA, VILLAGE OF ISLANDS,
A Florida municipal corporation


Mike Forster, Mayor

Date Executed: 9/21/2020

ATTEST:


Kelly Toth, Village Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:


Roget V. Bryan, Village Attorney

[LESSEE'S SIGNATURE CONTINUES ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this First Amendment upon the terms and conditions above stated on the day and year first above written.

LESSEE:

Signed, Sealed and Delivered
in the presence of two witnesses:


Print Name: Bobbie Fisher


Print Name: Stephanie Conde

HABITAT FOR HUMANITY OF THE
UPPER KEYS, INC., a Florida Not-for-
Profit Corporation

By: Jane Niedbalski
Print Name: JANE NIEDBALSKI
Title: Executive Director
Date Executed: 9-22-2020

EXHIBIT A

A triangular shaped portion of Lot 7, according to the "PLAT OF THAT LAND OF GOVERNMENT LOTS 1 and 2 and 3, OF SECTION 23, TOWNSHIP 63 SOUTH, RANGE 37 EAST", being South of the right-of-way of the Fla. East Coast Railway as platted by George L. MacDonald C.E." and recorded in Plat Book 1 at Page 50 of the Public Records of Monroe County, Florida, bounded by the following courses and lines; on the Southwesterly side by a line parallel to and 218.6 feet Northeasterly of the Southwesterly side of said Lot 7; on the Northwesterly side by the Southeasterly right-of-way line of State Road No. 5; and on the Southeasterly side by the Northwesterly right-of-way line of Old State Road 4-A; and the Westerly 218.6 feet of Lot 7, according to the "PLAT OF THAT LAND OF GOVERNMENT LOTS 1, 2 and 3, OF SECTION 23, TOWNSHIP 63 SOUTH, RANGE 37 EAST"; being South of the right-of-way of the Florida East Coast Railway" as recorded in Plat Book 1, Page 50 of the Public Records of Monroe County, Florida, lying between the Southerly right-of-way of State Road No. 5 (Overseas Highway) and the Northwesterly right-of-way line of Old State Road 4-A.

TOGETHER WITH:

Department of Transportation Parcel 6091:

A portion of Florida State Road No. 5 right-of-way in Section 23, Township 63 South, Range 37 East on Windley Key, Monroe County, Florida, being more particularly described as follows:

Commence at the intersection of the dividing line between Lots 6 and 7 of a plat of survey made by George L. MacDonald, recorded in Plat Book 1, at Page 50 of the Public Records of Monroe County, Florida, with the Southeasterly right-of-way line of State Road No. 5 as shown on Florida Department of Transportation right-of-way map for Section 90060-2516; thence run Northeasterly along said Southeasterly right-of-way line and along the Arc of a curve, concave to the South and having for its elements a Radius of 2,764.93 feet and a Central angle of $0^{\circ}06'51''$ for a distance of 5.52 feet to the Point of Tangency of said curve; thence run North $66^{\circ}29'49''$ East along a line parallel to and 100.00 feet Southeasterly of the centerline of the former Florida East Coast Railway for a distance of 95.73 feet to the Point of Beginning of the parcel hereinafter described; thence run North $20^{\circ}45'28''$ West for a distance of 8.80 feet; thence run North $69^{\circ}14'32''$ East along the face of an existing building for a distance of 52.25 feet; thence run South $20^{\circ}45'28''$ East for a distance of 6.29 feet; thence run South $66^{\circ}29'49''$ West for a distance of 52.31 feet to the Point of Beginning.

TOGETHER WITH:

Department of Transportation Parcel 4959, also appearing as Parcel 4507, as recited in Deed in Book 2666, Page 1959:

A portion of Florida State Road No. 5 Right of Way in Section 23, Township 63 South, Range 37 East on Windley Key, Monroe County, Florida being more particularly described as follows:

Begin at the intersection of the dividing line between Lots 6 and 7 of a Plat of Survey made by George L. MacDonald, recorded in Plat Book 1 at Page 50 of the Public Records of Monroe County, Florida with the Southeasterly right of way line of State Road No. 5 as shown on Florida Department of Transportation Right of Way Map for Section 90060-2516; thence run Northeasterly along said Southeasterly right of way line and along the arc of a curve, concave to the South and having for its elements a radius of 2764.93 feet and a central angle of 0°06'51" for a distance of 5.52 feet to the point of tangency of said curve; thence run North 66°29'49" East along a line parallel to and 100.00 feet Southeasterly of the centerline of the former Florida East Coast Railway for a distance of 95.91 feet to a point; thence run North 20°45'28" West for a distance of 8.80 feet to a point; thence run North 69°14'32" East along the face of an existing building for a distance of 52.25 feet to a point; thence run South 20°45'28" East for a distance of 6.29 feet to a point; thence run North 66°29'49" East for a distance of 76.27 feet to a point; thence run North 23°30'11" West for a distance of 40.00 feet to a point; thence run South 66°29'49" West for distance of 230.00 feet to a point; thence run South 23°30'11" East for a distance of 40.00 feet to the Point of Beginning.

Exhibit "B"

