

RESOLUTION NO. 19-11-104

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA CONSIDERING A DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163, FLORIDA STATUTES, BETWEEN THE VILLAGE AND THE MOORINGS ISLAMORADA, INC., WITNESS RESOURCES, INC., BALDWIN INDUSTRIAL PROPERTIES, INC., AND BALATE INTERNATIONAL LIMITED FOR THE PROPERTY LOCATED AT 123 BEACH ROAD, UPPER MATECUMBE KEY WITH REAL ESTATE NUMBERS 00401870-000000, 00095490-000000, 00095300-000000 AND 00095510-000000; 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 the entities The Moorings Islamorada, Inc., Witness Resources, Inc., Baldwin Industrial Properties, Inc., and

Balate International Limited (collectively referred to as 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 and Chapter 163 of Florida Statutes, 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 scheduled public hearings on October 24, 2019 and November 21, 2019 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 “1,” 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 Jim Mooney, who moved for its adoption. This motion was seconded by 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

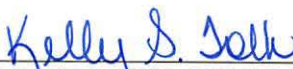
Mayor Deb Gillis	YES
Vice Mayor Mike Forster	NO
Councilman Ken Davis	YES
Councilwoman Jim Mooney	YES
Councilwoman Cheryl Meads	NO

PASSED AND ADOPTED on second reading this 21st day of November, 2019.



DEB GILLIS, MAYOR

ATTEST:



KELLY TOOTH, VILLAGE CLERK

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



ROGET V. BRYAN, VILLAGE ATTORNEY

----- [SPACE ABOVE THIS LINE FOR RECORDING DATA] -----

**DEVELOPMENT AGREEMENT
PURSUANT TO
CHAPTER 163, FLORIDA STATUTES**

THIS DEVELOPMENT AGREEMENT, executed by the Parties as of the 10th
day of December, 2019, and having the Effective Date specified below, is entered into
by and between:

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

and

**THE MOORINGS ISLAMORADA, INC., WITNESS RESOURCES, INC.,
BALDWIN INDUSTRIAL PROPERTIES, INC. and BALATE INTERNATIONAL LIMITED.**
hereinafter jointly referred to as ("Owner").

R E C I T A L S:

- A. WHEREAS, the four (4) entities collectively referred to as the Owner, are the legal and equitable owner of real property located in Monroe County, Florida, with a principal address of 123 Beach Road, Islamorada, Florida 33036 also located within the jurisdictional boundaries of Islamorada, Village of Islands (the "Village"), as described on attached **Exhibit "A"** (the "Property"); and
- B. 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
- C. 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
- D. 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 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

- E. 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 Islamorada, Village of Islands (the "Village"), with a principal address of 123 Beach Road, Islamorada, Florida 33036, as described on the attached Exhibit "A" (the "Property"); and
- F. WHEREAS, a hotel and business began operating from the Property in approximately the 1960's prior to Owner acquiring ownership of the Property in 1990's;
- G. WHEREAS, the Property thereafter became subject to the Village's Code of Ordinances after the Village's incorporation in 1997; and
- H. WHEREAS, the Owner has disputed the positions asserted and actions taken by the Village regarding the existing and proposed future uses and redevelopment of the Property; and
- I. WHEREAS, the Owner has submitted permit applications and at the request of the planning departments entering into this development agreement to establish for the record existing and proposed uses; and
- J. WHEREAS, to encourage future development of the Property consistent with the Village's Comprehensive Plan and Code of Ordinances, the Owner and the Village desire to agree upon and reduce to contractual terms, the status of the current and proposed site development regarding the Property; and
- K. WHEREAS, Village has determined that the provisions of 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
- L. WHEREAS, Village has provided its Notice of Intent to consider entering into this Development Agreement by advertisements published in 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 by announcing the date, time, and place of the second hearing during the first hearing; and
- M. 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 8.16.
 - 2.7. ***"Entitlements"*** – All heretofore established and future 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 development plans, existing as of the Effective Date of this Agreement under the provisions of the Village Laws and Policies.

- 2.8. ***"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).
- 2.9. ***"Party" or "Parties"*** – As applicable, either Owner or Village, or both Owner and Village.
- 2.10. ***"Property"*** – The real property owned by Owner located within the jurisdictional boundaries of Village also located in Monroe County, Florida, as described on attached **Exhibit "A"**.

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 the legal and equitable owner of the Property.
- 3.1.2. Owner has taken all corporate actions prerequisite 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. 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 prerequisite 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 Ordinances, Land Development Regulations, or by the terms and provisions of any agreement, covenant, Court Order or Judgment to which Village is a party.

4. **DURATION OF THE AGREEMENT.** This Agreement shall have a term of four (4) years , with up to two (2) additional three-year periods upon approval of the Village Council which shall not be unreasonably withheld pursuant to procedures set forth in section 30-614 of the Village's Code of Ordinances.

5. **STATUS OF SITE DEVELOPMENT.** The Parties agree that as of the Effective Date of this Agreement and continuing thereafter in accordance with the provisions of paragraph 6 below, that the Property has heretofore been developed and is presently pursuing additional permitting for redevelopment.

5.1 The parties agree that the Owner has submitted a copy of the existing survey dated November 10, 2017 with an attached legend identifying all existing uses and structures. Such survey will serve as a site map of reference ("Site Map") for the purposes of this Agreement and the associated building permit applications PRBLD201800512 and PRCOB201701135 and is attached as Exhibit "B" hereto. The Site Map reflects nineteen (19) hotel units, four (4) market rate residential units, the non-residential square footage within the existing warehouse, office, photo-studio, fitness center and hurricane bunker, in addition to the multiple accessory structures and pools.

5.2 **Use Approval.** The Owner seeks to obtain approval for specific uses associated with the hotel and its related services, as well as redevelopment on the Property consistent with the following:

- (a) Ability to move exiting units from current locations identified on the Site Map attached as Exhibit "A" to other locations to be designated; and
 - (i) Ability to relocate an existing guest house identified as #28 (on the Site Map) to Lot 1 (#10 on the Site Map); and
 - (ii) Ability to relocate one (1) unit of an existing duplex identified as 3(b) (on #15 the Site Map to Lot 4 (#12)) on the Site Map; and
- (b) Ability to sell off units or parcels individually / or in bulk, subject to the terms of this Agreement and applicable Village land development regulations; and
- (c) Ability to replace all existing units; and
- (d) Ability to form a Homeowner's Association ("HOA") for all or a portion of the Property and create individually described lots for units within such HOA area to be created; and
- (e) Ability to apply for a requisite permit for a dock or observation platform pursuant to the Village Code and Land Development Regulations; and
- (f) Ability to apply for possible Lot line adjustments for lots 8-14 and subsequently, the addition of private pools for those units; and

- (g) Ability to add/redevelop restaurant facilities, gym facilities, studio facilities within the structure referenced as #9; and
- [h] Ability to add/redevelop the existing market rate single family unit structure identified as #2 on the site map into a spa facility or any other commercial use or otherwise relocate #2 within the Property in accordance with Section 5.2.5 herein. Any such conversion/redevelopment of #2 shall require an application and award of nonresidential square footage from BPAS and any further required applications from the Village.

5.2.1. The required Site Map referenced above reflects an inventory of the existing structures and uses within a tabular summary associating them with the corresponding lots, referencing the nineteen (19) units referenced as transient/hotel units, four (4) market-rate residential units, the existing non-residential square footage within the structure encompassing the warehouse, office, photo-studio, fitness center and hurricane bunker, in addition to the multiple accessory structures and pools.

5.2.2 The required Site Map reflects and indicates the location of all current structures and uses and the proposed relocation of any structures and uses, and their associated building permits if already applied for.

5.2.3 The required Site Map indicates the proposed location of the guard house and proposed traffic gate on Beach Road with scaled dimensions of the undulating dedicated public right-of-way, which will remain as a public dedicated right-of-way and be only utilized for pedestrian access.

5.2.4 Provisions for Off-Site/Property Transfer. All or part of the nineteen (19) hotel units, four (4) market rate residential units, as well as the non-residential square footage reflected within the existing warehouse, office, photo-studio, fitness center and hurricane bunker as referenced on the Site Map and on the future master Site Plan may be transferred off of the Property in accordance with the provisions within Article 1V, Division 12 the Village Code related to Transfer of Development Rights (TDR).

- a. If the Owner elects to pursue such off-site transfer, 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.
- b. In order to ensure compliance with the TDR provisions referenced above, Owner recognizes and acknowledges that if

the Owner elects to pursue such off-site transfer in conjunction with the sale of one or more lots within the Property, Owner shall be required to submit a requisite application for such TDR and obtain formal from the Village in accordance with the requisite procedures set forth in the Village Code prior to closing on such sale of lots within the Property.

5.2.4.1 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.
- d. 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.
- e. The structure cannot be placed in a VE flood zone on the receiver site.

5.2.4.2 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.

5.2.4.3 The following restrictions on residential dwelling unit transfers shall also 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.

5.2.5 Provisions for On-Site Relocation of Units. All or part of the nineteen (19) hotel units, four (4) market rate residential units, as well as the non-residential square footage reflected within the existing warehouse, office, photo-studio, fitness center and hurricane bunker as referenced on the Site Map and on the future master Site Plan may be relocated within the Property in accordance with the provisions set forth within Section 5 of Development Agreement and the regulations set forth within Article 1V, Division 2 the Village Code related to Site Plan Approval/Review.

5.3 The Owner recognizes and acknowledges that the Site Map referenced in this Section and attached as Exhibit "A" hereto does not constitute a formal or approved site plan for the Village.

5.4 Owner shall be required to submit an application for and obtain formal Site Plan Approval from the Village in accordance with the requisite procedures set forth in the Village land development regulations. Owner shall submit such application for Site Plan Approval within twelve (12) months of the execution date of this Agreement and receive approval of the Site Plan prior to the expiration of the initial term of this Agreement.

5.5. Final Approval of pending permitting application(s) shall be obtained in accordance with the Village Code of Ordinances and by the Village, which shall not be unreasonably withheld.

6. VILLAGE LAWS AND POLICIES GOVERNING DEVELOPMENT.

6.1. The 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 provisions of this Agreement under the current Village Laws and Policies.

6.2. The Village Laws and Policies governing the development of the Property on the Effective Date of this Agreement shall govern the future development of the Property for the duration of this Agreement. The Property shall retain, without modification or limitation, all development currently existing and options currently available under the Village Laws and Policies, notwithstanding any future amendment of the Village Laws and Policies.

6.3. Notwithstanding anything above, in the event that the Village, subsequent to the Effective Date, modifies Village Laws and Policies and includes the Property within such modifications, in a manner that provides the Property with additional options 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.

6.4 Development Permits. Certain provisions of this Agreement will require that the Village and/or its boards, departments, or agencies take certain governmental actions, acting in their governmental capacity, and issue Development Permits in order to accomplish and satisfy the authorization and construction of the Owner's Project.

6.5 Applications for Development Approvals. Promptly after the Effective Date hereof, the Owner initiate and diligently pursue any necessary Development Approval applications. The Village shall process all Development Permit applications in a timely fashion and the Village shall cooperate with the Owner (at no cost to the Village) in processing all necessary Development Approvals from federal, State and County agencies, as needed.

7. RIGHT OF TERMINATION.

Notwithstanding anything to the contrary contained herein, if Owner fails to timely comply with the provisions of Section 5, Village shall have the right to terminate this Agreement and be released from any liability and obligations hereunder in accordance with Section 30-616 of the Village Code of Ordinances.

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:

AS TO THE VILLAGE:

Attn: Director of Planning
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, Florida 33036

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

a. AS TO OWNER:

Attn: The Moorings Islamorada, Inc.
C/o Witness Resources, Inc.,
Baldwin Industrial Properties, Inc.
Balate International Limited
200 Industrial Drive
Islamorada, Florida 33036,

1) With Copy To:
Jim Lupino, Esq.
Hershoff Lupino & Yagel, LLP
88539 Overseas Highway
Tavernier, Florida 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 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.**

8.4.1. 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 8.4.5), 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.

8.4.2. 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 8.4.5).

8.4.3. 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 60 days of the effective date of the Default Notice. In the event the cure of a default reasonably requires greater than the 60 day time period specified, the grace period granted herein shall, if the defaulting Party has initiated cure of the default within the 60 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.

8.4.4. 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.

8.4.5. 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 8.4.2 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.**

8.11.1. 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. **Counterparts.** 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.**

8.16.1. 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.

8.16.2. 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.

(This Space is intentionally left blank)

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

**SIGNATURE PAGE(S) OF
ISLAMORADA, VILLAGE OF ISLANDS AND
THE MOORINGS ISLAMORADA, INC.
WITNESS RESOURCES, INC.
BALDWIN INDUSTRIAL PROPERTIES, INC. AND
BALATE INTERNATIONAL LIMITED**

ATTEST:

**ISLAMORADA, VILLAGE OF ISLANDS,
FLORIDA**

Kelly S Toth
KELLY TOTH, VILLAGE CLERK

By: Deb Gillis
DEB GILLIS, MAYOR

APPROVED AS TO FORM AND
LEGALITY:

Date: Nov 22, 2019

[Signature]
ROGET V. BRYAN, VILLAGE ATTORNEY

APPROVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS ON
November 21, 2019.

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing **DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163, FLORIDA STATUTES** was acknowledged before me this 22 day of November, 2019, by Deb Gillis, as Mayor of Islamorada, Village of Islands, Florida, a Florida municipal corporation, on behalf of the Village.

Stephanie Conde
Notary Public, State of Florida
Name: Stephanie Conde

(Please print or type)
Commission Number:
Commission Expires:

Notary: Check one of the following:

OR ☒ Personally known
OR ☐ Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: _____



SIGNATURE PAGE(S) OF
ISLAMORADA, VILLAGE OF ISLANDS AND
THE MOORINGS ISLAMORADA, INC.
WITNESS RESOURCES, INC.
BALDWIN INDUSTRIAL PROPERTIES, INC.
AND BALATE INTERNATIONAL LIMITED

THE MOORINGS ISLAMORADA, INC.

By: [Signature]

Date: 12/10/2019, 2019

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing **DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163, FLORIDA STATUTES** was acknowledged before me this 10 day of December, 2019, by Hubert Baudoin.

[Signature]
Notary Public, State of Florida

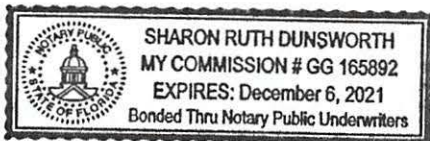
Name: Sharon Dunsworth
(Please print or type)

Commission Number: GC 165892

Commission Expires: 12/6/21

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

Type of Identification Produced: _____



SIGNATURE PAGE(S) OF
ISLAMORADA, VILLAGE OF ISLANDS AND
THE MOORINGS ISLAMORADA, INC.
WITNESS RESOURCES, INC.
BALDWIN INDUSTRIAL PROPERTIES, INC. AND
BALATE INTERNATIONAL LIMITED

WITNESS RESOURCES, INC.

By: 

Date: 12/10/2019, 2019

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163,
FLORIDA STATUTES was acknowledged before me this 10 day of December
2019, by Hubert Baudoin.

Sharon Dunsworth
Notary Public, State of Florida

Name: Sharon Dunsworth

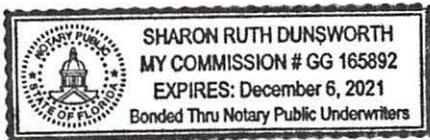
(Please print or type)

Commission Number: GG 165892

Commission Expires: 12/6/21

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

Type of Identification Produced: _____



SIGNATURE PAGE(S) OF
ISLAMORADA, VILLAGE OF ISLANDS AND
THE MOORINGS ISLAMORADA, INC.
WITNESS RESOURCES, INC.
BALDWIN INDUSTRIAL PROPERTIES, INC. AND
BALATE INTERNATIONAL LIMITED

BALDWIN INDUSTRIAL PROPERTIES,
INC.

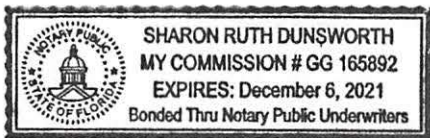
By: [Signature]

Date: 12/10/2019, 2019

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing **DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163, FLORIDA STATUTES** was acknowledged before me this 10 day of December, 2019, by Hubert Baudoin.

[Signature]
Notary Public, State of Florida



Name: Sharon Dunsworth
(Please print or type)

Commission Number: GG 165892

Commission Expires: 12/6/21

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

Type of Identification Produced: _____

SIGNATURE PAGE(S) OF
ISLAMORADA, VILLAGE OF ISLANDS AND
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BALATE INTERNATIONAL LIMITED

BALATE INTERNATIONAL LIMITED.

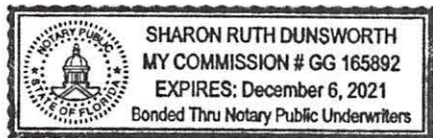
By: 

Date: 12/10/2019, 2019

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing **DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163, FLORIDA STATUTES** was acknowledged before me this 10 day of December, 2019, by Hubert Baudoin.


Notary Public, State of Florida



Name: Sharon Dunsworth

(Please print or type)

Commission Number: GG 165892

Commission Expires: 12/6/21

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

Type of Identification Produced: _____

CORRECTED
EXHIBIT "A"

Property Addresses and Parcel Identification Numbers:

123 Beach Road, Islamorada, Florida 33036
Real Estate No.: 00401870-000000
Alternative Key No.: 1494208

FULL LEGAL DESCRIPTION(S) TO BE DETERMINED

The Southeasterly one-half of Lots 1 and 2, Square 3, Matecumbe Beach, according to the plat thereof, recorded in Plat Book 1, Page 133, of the Public Records of Monroe County, Florida.

Lots 2 and 3, less and except the Northwesterly 20 feet of Lot 3, Square 10, GROVE PARK ADDITION, UPPER MATECUMBE, according to the Plat thereof, as recorded in Plat Book 1, Page 196 of the Public Records of Monroe County, Florida.

Property Addresses and Parcel Identification Numbers:

123 Beach Road, Islamorada, Florida 33036
Real Estate No.: 00095490-000000 and 00095230-000000
Alternative Key No.: 1110825 and 1110515

Property Addresses and Parcel Identification Numbers:

250 Industrial Boulevard (a/k/a Morada Way), Islamorada, Florida 33036
Real Estate No.: 00095300-000000
Alternative Key No.: 1110852

32 63 37 ISLAND OF UPPER MATECUMBE PB1-41 PT LOT 1 OR595-831/32 OR600-185
OR790-183 OR961-716/18 OR1042-492/94 OR1049-2287/89C OR1401-1111/15
OR1703-1509/13C

Property Addresses and Parcel Identification Numbers:

329 Atlantic Street, Islamorada, Florida 33036
Real Estate No.: 00095510-000000
Alternative Key No.: 1110841

FULL LEGAL DESCRIPTION(S) TO BE DETERMINED

SEE ATTACHMENT "1"

Summary of Comments on Survey.Site Map.Moorings.Annotated.100719.R5.pdf

Page: 1

Number: 1 Author: Melissa Subject: Sticky Note Date: 10/9/2019 2:14:54 PM
105 Preston Street

Pt Lots 1 & 2, all of Lot 3, Block 3, Matecumbe Beach

Folio: 1494208
RE:000401870-000000

(1) Residential Market Rate Unit
(1,270 sq ft)

2 bedroom/1 bath

Existing employee housing

Number: 2 Author: Melissa Subject: Sticky Note Date: 10/9/2019 2:15:01 PM
123 Beach Road

Pt Lots 1 & 2, all of Lot 3, Block 3, Matecumbe Beach

Folio: 1494208
RE:000401870-000000

(1) Residential Market Rate Unit
(1,251 sq. ft)

3 bedroom/1bath

Spa Treatment House

Current Use:
Temporary employee housing

Proposed Use: Spa

Number: 3 Author: Melissa Subject: Sticky Note Date: 10/18/2019 9:38:38 AM
Beach Road - Approximate location of Guard/Gatehouse

Accessory structure

Number: 4 Author: Melissa Subject: Sticky Note Date: 10/9/2019 12:22:17 PM
Manager's office

(1) Non-Residential Unit
(433 sq. ft)

Lot 4, Block 3, Matecumbe Beach

Number: 5 Author: Melissa Subject: Sticky Note Date: 10/9/2019 12:22:25 PM
Accounting office

(1) Non-Residential Unit
(489 sq. ft)

Lot 5, Block 3, Matecumbe Beach

Number: 6 Author: Melissa Subject: Sticky Note Date: 10/18/2019 9:38:21 AM
Storage shed

Comments from page 1 continued on next page

Lot 4, Block 3, Matecumbe Beach

Accessory structure (140 sq. ft.)

Number: 7 Author: Melissa Subject: Sticky Note Date: 10/9/2019 12:21:46 PM
Lots 8-14, Block 4, Matecumbe Beach

Folio # 1110515
RE#00095230-000000

(7) Transient Units
(1,468 sq. ft. each)

7 total 2 story rental units

2 bedroom/2 bath each

"Parker", "Cothron", "Pinder", "WACA", "Albury", "Eyster", "Russell"

Number: 8 Author: Melissa Subject: Sticky Note Date: 10/9/2019 12:22:33 PM
Reception office

(1) Non-Residential Unit
(1,420 sq. ft.)

Lot 5, Block 3, Matecumbe Beach

Number: 9 Author: Melissa Subject: Sticky Note Date: 10/9/2019 2:12:55 PM
250 Industrial Road a/k/a Morada Way

Parcel # 1110582
RE#00095300-000000

Pt. Lot 1, PB 1-41

(1) Non-Residential Unit [Multi-Purpose Warehouse]
(6,422 sq. ft)

Current Use:
Photo Studio
Guest Fitness
Owner's Office
Conference Room
Bunker/garage

Proposed Use:
1/3 of building to be used as restaurant on ground level OR build second level at 30% of 1st floor level square footage instead for restaurant upstairs.

Number: 10 Author: Melissa Subject: Sticky Note Date: 10/10/2019 7:45:23 AM
"Vera's Cottage" to be relocated here from #28

Lot 1, Block 5, Matecumbe Beach

(1) Transient Unit from transferred from #28

Number: 11 Author: Melissa Subject: Sticky Note Date: 10/18/2019 9:36:43 AM
Laundry Shed

Lot 1, Block 10, Grove Park Add'n

Folio #111825
RE#00095490-000000

Accessory structure
(136 sq. ft)

Number: 12 Author: Melissa Subject: Sticky Note Date: 10/10/2019 7:43:54 AM

Comments from page 1 continued on next page

Duplex 3B to be relocated here from #15 (Lot 1, Grove Park Addition to this Lot 4, Block 5, Matecumbe Beach)

(1) Transient Unit transferred here
(453 sq. ft.)

Number: 13 Author: Melissa Subject: Sticky Note Date: 10/9/2019 12:18:25 PM
Lot 1, Block 10, Grove Park Add'n

Folio #111825
RE#00095490-000000

(1) Transient unit
(855 sq. ft)

2 bedroom/1bath rental unit

"Tree House"

Number: 14 Author: Melissa Subject: Sticky Note Date: 10/9/2019 12:18:40 PM
Lot 1, Block 10, Grove Park Add'n

Folio #111825
RE#00095490-000000

(1) Transient Unit
(453 sq. ft)

Duplex Rental Unit 3A

1 bedroom/1bath

Number: 15 Author: Melissa Subject: Sticky Note Date: 10/10/2019 7:42:42 AM
Duplex Rental Unit 3B

Lot 1, Block 10, Grove Park Add'n
Folio #111825
RE#00095490-000000

(1) Transient Unit to be transferred to new location
(453 sq. ft)

1 bedroom/1 bath

#15 is where Duplex Unit 3B is currently located - will be relocated to #12 (Lot 4, Block 5, Matecumbe Beach)

Left (Lodge South)
Right (Lodge North)

Number: 16 Author: Melissa Subject: Sticky Note Date: 10/10/2019 7:19:41 AM
Folio# 110515
RE#00095230-000000

Located within Parcel III (legally described on survey provided)

(1) Transient Unit
(682 sq. ft)

1 bedroom/1bath rental

"Sifca House"

Number: 17 Author: Melissa Subject: Sticky Note Date: 10/9/2019 12:23:56 PM
Lot 2, Block 5, Matecumbe Beach
Folio #1110515
RE#00095230-000000

(1) Transient Unit
(682 sq. ft)

1 bedroom/1bath rental

"Orchid House"

☞ Number: 18 Author: Melissa Subject: Sticky Note Date: 10/18/2019 9:37:43 AM
Chickee

Accessory structure

☞ Number: 19 Author: Melissa Subject: Sticky Note Date: 10/18/2019 9:36:53 AM
Pool restrooms

Accessory structure

☞ Number: 20 Author: Melissa Subject: Sticky Note Date: 10/9/2019 12:19:02 PM
Grove Park Add'n/Matecumbe Beach

Folio #1110515
RE#00095230

(1) Transient Unit
(819 sq. ft.)

1 bedroom/1bath rental unit

"Honeymoon Cottage"

☞ Number: 21 Author: Melissa Subject: Sticky Note Date: 10/18/2019 9:37:01 AM
Chickee carport

Accessory structure

☞ Number: 22 Author: Melissa Subject: Sticky Note Date: 10/18/2019 7:06:03 AM
329 Atlantic Street, Islamorada

Folio # 1110841
RE#00095510-000000

(1) Residential Market Rate
(4,696 sq. ft.)

Islamorada Vacation Rental License held for this property

Owner's Family Residence "Blue Charlotte"
Private residence and adjacent owner's private pool *Pool new/complete RE Permit #PRBLD201702250

☞ Number: 23 Author: Melissa Subject: Sticky Note Date: 10/9/2019 12:21:27 PM
Folio #110515
RE#00095230-000000

(1) Transient Unit
(1,836)

2 bedroom/2 1/2 baths

Rental Unit

"Mango House"

☞ Number: 24 Author: Melissa Subject: Sticky Note Date: 10/9/2019 12:19:10 PM
Folio# 1110515
RE# 00095230-000000

(1) Transient Unit
(908 sq. ft)

1 bedroom/1 bath

Rental unit

Comments from page 1 continued on next page

"Maroni House"

⇒ Number: 25 Author: Melissa Subject: Sticky Note Date: 10/9/2019 12:21:37 PM
Folio #110515
RE#00095230-000000

(1) Transient Unit
(1,836 sq. ft.)

2 bedroom/2 1/2 baths

Rental unit

"Albright"

⇒ Number: 26 Author: Melissa Subject: Sticky Note Date: 10/9/2019 12:19:28 PM
Folio# 1110515
RE# 000-95230-000000

(1) Transient Unit
(2,541 sq. ft)

3 bedroom/3 1/2 bath

Rental Unit

"Plantation House"

⇒ Number: 27 Author: Melissa Subject: Sticky Note Date: 10/10/2019 7:18:22 AM
Folio # 110825
RE# 00095490-000000

(1) Residential Market Rate
(2,593 sq. ft.)

Owner's Residence
Private residence

⇒ Number: 28 Author: Melissa Subject: Sticky Note Date: 10/10/2019 7:33:18 AM
"Vera's Cottage"

Folio# 110515
RE#00095230-000000

#28 is where Vera's Cottage is currently located - will be relocated to #10 (Lot 1, Block 5, Matecumbe Beach)

(1) Transient Unit
(175 sq. ft)

1 bedroom/1 bath/no kitchen

Owner's guest cottage

⇒ Number: 29 Author: Melissa Subject: Sticky Note Date: 10/9/2019 12:23:35 PM
Folio #110515
RE #00095230-000000

2 bedroom/1 bath rental cottages

(1) Transient Unit

Already demolished under Demo permit #PRBLD201701180

New construction permit #201701135

⇒ Number: 30 Author: Melissa Subject: Sticky Note Date: 10/18/2019 9:38:08 AM
Chickee

Accessory structure

Number: 31 Author: Melissa Subject: Sticky Note Date: 10/18/2019 9:37:10 AM
(2) Chickees

Accessory structures

Number: 32 Author: Melissa Subject: Sticky Note Date: 10/18/2019 9:37:17 AM
Chickee

Accessory structures

Number: 33 Author: Melissa Subject: Sticky Note Date: 10/18/2019 9:37:28 AM
Chickee

Accessory structure

The Moorings

Application for Request for Development Agreement

123 Beach Road and 250 Morada Way/Industrial Drive; 329 Atlantic Street,

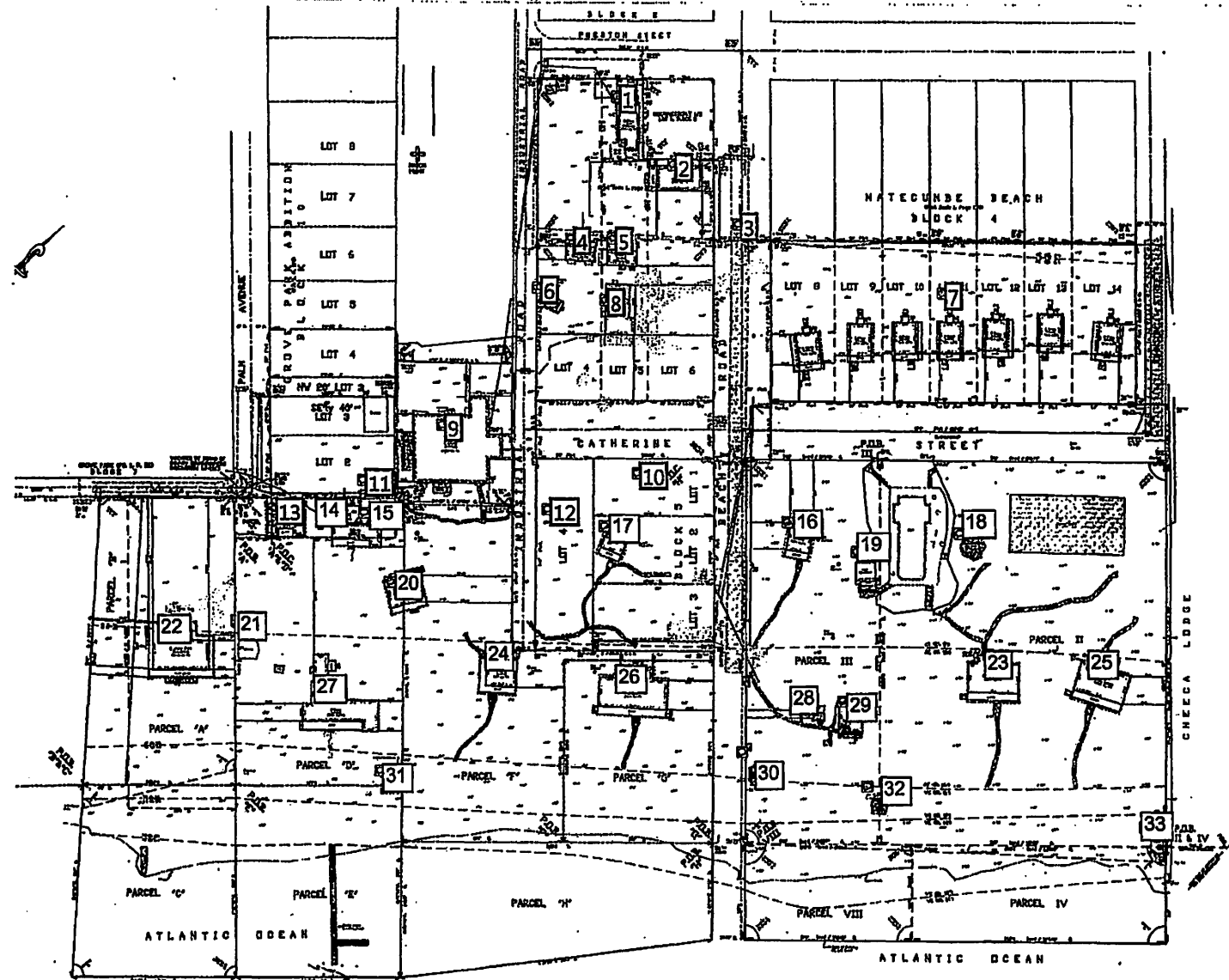
R.E. Nos. 00401870-000000 and 00095230-000000

00095490-000000 & 00095300-000000

Islamorada, Florida 33036

TOTAL RESIDENTIAL MARKET RATE UNITS	TOTAL TRANSIENT UNITS	TOTAL NON- RESIDENTIAL UNITS	TOTAL NON- RESIDENTIAL (MULTI- PURPOSE WAREHOUSE)	TOTAL ACCESSORY STRUCTURES
4	19	3	1	11

THE MOORINGS



Total Parcel per Acre = 734,283 (16.9 acres)
Total Island = 619,284 (14.8 acres)