

COUNCIL AGENDA STATEMENT



Meeting Date: December 8th, 2020
To: Honorable Mayor and City Council
From: Brian Shea, Planning Director
Through: George Garrett, City Manager

Agenda Item: **Resolution 2020-97**, Amending A Previously Approved Long-Term Lease Agreement Between The City Of Marathon, Florida And Habitat For Humanity Of The Middle Keys (H4H) For Two Properties In The Ownership Of The City; Located At 818 51st Street, Ocean (Re No. 00325410-000000) And 7931 Overseas Highway (Re No. 00347290-000000); Providing For The Terms Of Said Lease: Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

The City previously approved Resolution 2020-27, which entered the City into a lease agreement with Habitat for Humanity of the Middle Keys (H4H). The City acquired the properties, working with Habitat For Humanity Of The Middle Keys (H4H), in order to develop a total of fifteen (15) affordable housing units, four (4) at the 51st street site and eleven (11) at the 79th street site. H4H wishes to amend the Lease Agreement under the terms of the agreement.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	_____	_____

FISCAL NOTE:

Approved By Finance Director:

RECOMMENDATION:

Approval of Resolution

Sponsored by: Garrett

**CITY OF MARATHON, FLORIDA
RESOLUTION NO. 2020-97**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AMENDING A PREVIOUSLY APPROVED LONG-TERM LEASE AGREEMENT BETWEEN THE CITY OF MARATHON, FLORIDA AND HABITAT FOR HUMANITY OF THE MIDDLE KEYS (H4H) FOR TWO PROPERTIES IN THE OWNERSHIP OF THE CITY; LOCATED AT 818 51ST STREET, OCEAN (RE NO. 00325410-000000) AND 7931 OVERSEAS HIGHWAY (RE NO. 00347290-000000); PROVIDING FOR THE TERMS OF SAID LEASE: PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City acquired two properties through the efforts of the Monroe County Land Authority; and

WHEREAS, said properties are located at located at 818 51st, ocean (re no. 00325410-000000) and 7931 overseas highway (re no. 00347290-000000); and

WHEREAS, the City acquired the properties, working with Habitat For Humanity Of The Middle Keys (H4H), in order to develop a total of fifteen (15) affordable housing units, four (4) at the 51st street site and eleven (11) at the 79th street site; and

WHEREAS, the City entered into a long-term Lease Agreement with H4H providing terms and obligations under the Lease Agreement under Resolution 2020-27.

WHEREAS, H4H wishes to amend the Lease Agreement under the terms of the agreement. The Amended Lease Agreement is attached to the resolution approved as part of this item.

WHEREAS, the City Council has determined that the attached Lease Agreement is in the best interest of the City in its need to support affordable housing,

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

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

Section 2. The City Council hereby approves the Lease Agreement, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form by the City Attorney, is hereby approved. The Mayor is authorized to execute the lease.

Section 3. The City Mayor is hereby authorized to execute an affordable housing deed restriction in favor of the Land Authority as may be required.

Section 4. This resolution shall take effect immediately upon its adoption.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,
FLORIDA, THIS 8th DAY OF DECEMBER, 2020.**

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

**AYES:
NOES:
ABSENT:
ABSTAIN:
ATTEST:**

Diane Clavier, City Clerk
(City Seal)

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

Steven Williams, City Attorney

LEASE
BETWEEN
THE CITY OF MARATHON, FLORIDA
“LESSOR”
AND
HABITAT FOR HUMANITY OF THE MIDDLE KEYS, INC.
“LESSEE”
DATED _____, 2020

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GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (this “Lease”) is made and entered into in Marathon, Monroe County, Florida, on this ___ day of _____, 2020, by and between **THE CITY OF MARATHON, FLORIDA** (referred to as the “Lessor” or the “City”) and **HABITAT FOR HUMANITY OF THE MIDDLE KEYS, INC.**, a Florida Not-for-Profit Corporation authorized to do business in the State of Florida (referred to as the “Lessee”).

RECITALS

WHEREAS, Lessor is the owner in fee simple of the properties located at 7931 Overseas Highway, Marathon, Florida 33050, and 818 51st St. Ocean, Marathon, Florida 33050 and more particularly described on the attached Exhibit “A” (hereinafter “Demised Premises”); and

WHEREAS, it is Lessor’s intent that the Demised Premises be both operated as to current housing on the 818 51st St., Ocean premises until development and to develop both properties to provide affordable housing for the City and Monroe County; and

WHEREAS, Lessee desires to develop the Demised Premises for both ownership and rental use of fifteen (15) total attached affordable housing units: eleven (11) at the 7931 Overseas Highway property; and four (4) at the 818 51st St., Ocean property (provided allowed by City regulations and hereinafter the “Affordable Housing Units”) for qualified tenant occupants or owners; and

WHEREAS, in order to preserve the affordability of the Units to be developed on the Demised Premises, Lessor desires to lease the Demised Premises to Lessee for ninety-nine (99) years, subject to the Affordable Restrictions as set forth and further defined herein; and

NOW THEREFORE, in consideration of the mutual covenants and obligations contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

Definitions

“Affordable Housing Unit” shall mean a residential housing unit that meets middle-income requirements as set forth in Chapter 104, Land Development Regulations, Article 1, General Provisions, Chapter 103, Chapter 107, and any other applicable sections of the City Charter and Code of Ordinances and Regulations, as may be amended from time to time, without limitation of Lessor’s complete legislative prerogatives, said restrictions to encumber the Demised Premises for the term of the ninety-nine (99) year lease. However, nothing in this Lease shall (a) permit the Lessor to require the Lessee to comply with provisions of local ordinances that are in conflict with Low-Income Housing Tax Credits (“LIHTC”) requirements as may be applicable to the financing and leasing of the Project, or (b) materially and adversely alter the obligations or rights of Lessee under this Lease.

“Affordable Restrictions” shall mean the affordable or employee housing regulations as set forth in Chapter 104, Land Development Regulations, Article 1, General Provisions, Chapter 103,

Chapter 107, and any other applicable sections of the City Charter and Code of Ordinances and Regulations, as may be amended from time to time, without limitation of Lessor's complete legislative prerogatives, except that in no event shall the Lessor materially and adversely alter the obligations or rights of Lessee under this Lease or decrease the lawfully permissible sales price or rental rate for an Affordable Housing Unit to less than the specified sales price or rental rates for moderate income housing as set forth in the land development regulations in effect at the time of execution of this Lease where the effect upon an owner/Sublessee/mortgagee would be to divest such person or entity of value upon which such person reasonably and fairly relied to their detriment.

The substance of the Affordable Restrictions may be freely amended in the Lessor's legislative discretion, particularly with respect to administrative, monitoring and enforcement mechanisms, but any such amendment shall not materially diminish the lawfully established and equitably vested resale value or the reasonable alienability of "home-ownership" of the Affordable Housing Units, or in the case of rental-only units or projects, shall not materially and adversely diminish or interfere with the Lessee's substantive benefits conferred under this Lease or any of its non-administrative terms. It is the intent and purpose and shall be the effect of this Lease and any Affordable Restrictions to ensure that the affordability of Affordable Housing Units and dedicated real property upon which they are located is maintained and enforced such that any administrative rule, policy or interpretation thereof, made by Lessor or its designees relating to the maximum total amount of consideration and cost permitted to be in any way involved in a purchase or rental transaction (including but not limited to purchase price, lease assignment fees, rents or any other compensation given or received in or "outside" of a related transaction) shall never exceed the affordability criteria reasonably established by the City for the dwelling units involved. In every case, the construction and interpretation of terms, conditions and restrictions imposed by this Lease and the Affordability Restrictions shall be made in favor of ensuring that long term affordability benefits for the respective housing resources inure to the benefit of the City, its economy and its community character. In all cases of conflict between local and federal rental, tenant eligibility and other guidelines, Lessee shall be entitled to adhere to governing federal requirements without being deemed in breach of this Lease or the Affordable Restrictions.

"Association" shall mean any condominium, homeowners or similar community association customarily used in planned developments (whether or not expressly contemplated or authorized herein) to manage certain aspects of community or planned development living (e.g., infrastructure management, rules and regulations, enforcement mechanisms and recreational facilities).

"Commencement Date" shall mean the date when Initial Lessee receives a Certificate of Occupancy for the first Affordable Housing Unit.

"Demised Premises" shall mean the property leased pursuant to this Lease for development of the Affordable Housing Units. The Demised Premises are legally described on attached Exhibit "A" and shall be developed and constructed in substantial compliance with the approved Site Plan and depiction of the improvements as reflected on attached Exhibit "B". Demised Premises, where the context requires and the construction is most appropriate, shall also mean portions of the Demised Premises and any improvements erected thereon.

"Effective Date" shall mean the date this Lease is fully executed and delivered by all parties.

"Initial Lessee" means HABITAT FOR HUMANITY OF THE MIDDLE KEYS, INC., a Florida Not-For-Profit Corporation authorized to do business in the State of Florida, developer of the Affordable Housing Units.

“Lease” shall mean this lease for the development of the Affordable Housing Units on the Demised Premises, as may be amended from time to time by the parties. It is expressly contemplated and intended by Lessor, as fee title holder to the Demised Premises, and agreed to and accepted by Lessee, that any limitations, restrictions and/or other covenants of any nature, whether established pursuant to this Lease or by the Affordable Restrictions, be given the full force and effect of enforceable covenants running with the land, equitable servitudes and all other cognizable legal and equitable real property conventions so as to ensure the overall public affordable housing purposes intended to be served.

"Lease Year" shall mean the twelve (12) month period beginning on the Commencement Date and each twelve (12) month period thereafter throughout the Term of this Lease.

“Lessor” means THE CITY OF MARATHON, FLORIDA, or its assigns or designees. Lessor as used herein and where the context requires, shall mean an agency or party designated by the Lessor, by written notice to all parties, to administer or enforce some or any portion of the provisions of this Lease or the Affordable Restrictions.

“Lessee” means the Initial Lessee and its successors and assigns, including an Association which may be created by Initial Lessee for the Unit Owners, if any, as well as the individual Unit Owners.

“Possession Date” shall mean the date that the Lessee occupies and takes possession of the Demised Premises, which shall be considered the date that the Lease is signed by the City

“Project” shall mean the required development of the Demised Premises, primarily the operation and required construction of Affordable Housing Units, but also including related infrastructure, securing of required development approvals and permits, financing for the construction of the Affordable Housing Units, marketing/renting of the Affordable Housing Units and creation of any required governing Association.

“Rent” shall mean any sum of money due to the Lessor under this Lease for any reason. The term Rent as used herein, should not be misconstrued to preclude definition and distinguishing of rent, rental rates and other such other terms as may be provided for in Subleases and/or the Affordable Restrictions.

“Sale” and “Sell” as used herein shall be broadly and liberally construed so as to encompass, where contextually appropriate, any ground subleasing, sale, grant, assignment or other conveyance of an interest in any portion of the Demised Premises authorized pursuant to this Lease, but excluding any rental of an Affordable Housing Unit (which may be more particularly discussed herein or in the Affordable Restrictions) and any granting of any security, mortgage, note or other interest of a form and type customarily used with purchase money or home equity loans.

“Site Plan” shall mean the approved Site Plan for the Demised Premises attached hereto as Exhibit “B” governing the development and construction of the Demised Premises and imposing conditions for development, together with any amendments thereto.

“Sublease” shall mean any combination of instruments that grant, convey or otherwise transfer a possessory use to any portion of the Demised Premises, including rental agreements with

tenants or renters of an Affordable Housing Unit (which may be more particularly discussed herein or in the Affordable Restrictions). The title or exact nomenclature used to describe such instruments may vary to suit particular circumstances and shall lie within Initial Lessee's reasonable discretion and still remain within the meaning herein intended. It is intended that the term Sublease encompasses such instruments that effectuate qualified end-user, possession and/or use of Affordable Housing Units developed on the Demised Premises. A Sublease, as used herein, regardless of final form and substance, must be approved by the Lessor, which approval shall not be unreasonably withheld. However, sublease forms which conform to LIHTC or Florida Housing Finance Corporation requirements and that otherwise conform to the Affordable Restrictions need not be approved by the Lessor.

"Sublessee" or "Owner" shall be broadly and liberally construed so as to mean an individual Affordable Housing Unit tenant or owner who, as of the date such person(s) acquire(s) or renews their interest(s) in the Affordable Housing Unit, qualifies for "Affordable Housing" as defined under Chapter 104, Land Development Regulations, Article 1, General Provisions, Chapter 103, Chapter 107, and any other applicable sections of the City Charter and Code of Ordinances and Regulations, as may be amended from time to time.

"Term" shall mean the Commencement Date, and continuing for ninety-nine (99) years thereafter, plus any agreed upon extension of this Lease, and unless otherwise permitted by Lessor, all Subleases and rights or interests granted thereunder shall terminate at the end of the Term.

ARTICLE II

Demised Premises

Section 2.01 Lessor's Demise. Upon the terms and conditions hereinafter set forth, and in consideration of the payment of Rent and the prompt and full performance by the Initial Lessee of these covenants, to be kept and performed by the Initial Lessee, the Lessor does lease, let, and demise to the Initial Lessee (and permitted successor Lessees) and the "Initial Lessee" hereby leases from the Lessor, the following described premises, situate, lying and being in the The City of Marathon, Florida, Monroe County, Florida:

See attached Exhibit "A"

Section 2.02 Conditions. The demise is likewise made subject to the following:

(a) Conditions, instruments, restrictions and limitations, if any, appearing of record;

(b) Laws, statutes, codes, regulations, resolutions, ordinances and zoning ordinances of the City, and any other applicable governmental authority, and the Monroe County Comprehensive Plan Land Authority Ordinance, now existing or which may hereafter exist by reason of any legal authority during the Term of this Lease;

(c) Site Plan Approval of the City approving the Site Plan with conditions imposed on the development of the Demised Premises, together with any amendments thereto;

(d) The conditions, restrictions and limitations set forth in the in any deeds and land use restrictions agreements as to the properties.

(e) The proper performance by the Lessee of all of the terms and conditions contained in this Lease and the Affordable Restrictions.

Section 2.03 Incorporation of Interim Operating Agreement. Notwithstanding any contrary provisions contained in the Lease, the Interim Operating Agreement between the City and Habitat entered into in February 2020 as to the Demised Premises located at 7931 Overseas Highway is hereby incorporated into this lease as to Responsibilities of City and Habitat: Management of Property, Collection of Rents, Insurance, Indemnification, Records, and Assignment. It is the intent of the City that Habitat continue to manage and operate the current rentals until Habitat decides to cease use of the rental properties. Habitat will abide by Florida law as to tenant interactions, including termination of leases.

ARTICLE III

Term

Section 3.01 Term. To have and to hold the Demised Premises for a term of ninety-nine (99) years commencing on the Commencement Date, and ending ninety-nine (99) years thereafter, both dates inclusive, unless sooner terminated, or extended, as hereinafter provided (the "Termination Date"). The terms and conditions of this Lease set forth herein shall be binding on the parties as of the Effective Date. Lessee shall be given possession of the Demised Premises on the Possession Date and Lessee shall occupy the Demised Premises as of the Possession Date in order to allow Lessee to commence construction, as well as other activities related to the development and construction of the Project. As herein set forth, the Term will not commence until the first Affordable Housing Unit is completed and a Certificate of Occupancy has been issued for that Affordable Housing Unit, said date to be evidenced by the Commencement Date Agreement that the parties will, upon completion of construction of the first Affordable Housing Unit, execute in substantially the same form as that set forth in Exhibit "C" hereto.

ARTICLE IV

Rent

Section 4.01 Payment of Rent.

(a) Annual Rent Payments. Lessee shall pay Lessor Rent in the total amount of \$10.00 payable annually as set forth in this Section. Lessee covenants and agrees that Lessee shall pay to Lessor, promptly when due, without notice or demand, commencing on the first day of the third month following the first anniversary of the Commencement Date, and annually thereafter for the initial fifteen (15) years of the Lease (the "Payment Date"), annual rent in an amount calculated to be up to the first \$1,000.00 of Available Cash Flow, per year (the "Annual Rent Payment"). Available Cash Flow is defined as the amount of cash derived by subtracting all Project expenses, including but not limited to, direct maintenance and management costs, utilities, debt service, required reserves and such other direct costs and expenses incurred in operating, maintaining and repairing the Project, from all Project income and revenue. The determination of Available Cash Flow shall occur annually at least (30) days prior to the Payment Date and shall be subject to verification and audit by the Lessor. Notwithstanding the foregoing, should Available Cash Flow be insufficient to allow for the payment of an Annual Rent Payment to the Lessor on the Payment Date

during any year of the initial fifteen (15) year payment term of the Lease as required above, such Annual Rent Payment(s) shall continue to accrue so that any and all outstanding amounts and the balance of the total amount of Annual Rent Payments in the sum of \$10.00 shall be payable to Lessor by no later than the 20th anniversary date of the Commencement Date.

Section 4.02. All amounts payable under Section 4.01 hereof, as well as all other amounts payable by Lessee to Lessor under the terms of this Lease, shall be payable in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, each payment to be paid to Lessor at the address set forth herein or at such other place within the continental limits of the United States as Lessor shall from time to time designate by notice to Lessee. Lessee shall pay any and all taxes, including any local surcharge or other taxes, on the Rent payable pursuant to this Lease in addition to the sums otherwise set forth herein.

Section 4.03. It is intended that the Rent shall be absolutely net to Lessor throughout the Term, free of any taxes, costs, utilities, insurance expenses, liabilities, charges or other deductions whatsoever, with respect to the Demised Premises and/or the ownership, leasing, operation, maintenance, repair, rebuilding, use or occupation thereof.

Section 4.04. All amounts payable by Lessee to Lessor under any of the provisions of this Lease, if not paid when due as provided for in this Lease, shall bear interest at the highest rate allowable under Florida law from the time they become due until paid in full by Lessee. In addition, Lessee shall pay a late fee in the amount of ten (10%) percent of any amount due from Lessee to Lessor which is not paid within ten (10) days of the payment due date for any sums due for Rent and within thirty (30) days for any other sums due from Lessee pursuant to this Lease; provided, however, such payment shall not excuse or cure any default by Lessee under this Lease. It is agreed by the parties hereto that Lessee shall reimburse Lessor for collection charges incurred as a result of the overdue Rent which may include, but shall not be limited to, related attorneys' fees and costs, regardless of whether suit is brought. Such late fee shall be in addition to any interest payable by Lessee as set forth herein from Lessee's failure to pay any Rent due hereunder. In the event that any check, bank draft, order for payment or negotiable instrument given to Lessor for any payment under this Lease shall be dishonored for any reason whatsoever not attributable to Lessor, Lessor shall be entitled to charge Lessee an administrative charge for dishonored checks pursuant to Section 125.0105, Florida Statutes, and/or any other applicable law. In addition, Lessor shall be reimbursed by Lessee for any costs incurred by Lessor as a result of a payment instrument being dishonored (e.g., legal fees and costs).

ARTICLE V

Non-Subordination

Section 5.01 Non-Subordination. Notwithstanding anything to the contrary contained in this Lease, the fee simple interest in the Demised Premises shall not be subordinated to this Lease, or any leasehold mortgage, lien or encumbrance of any nature.

ARTICLE VI

Payment of Taxes and Utilities

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 either 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 that the City has adopted wastewater assessment(s) for the construction of centralized wastewater collection and treatment facilities to service properties within the City. The Demised Premises and its development for affordable housing units shall be subject to the wastewater assessment(s) and any subsequent phases or assessment programs adopted to fund the costs of the centralized wastewater collection and treatment facilities.

Section 6.02 Sublessee’s Obligations. As additional Rent, any Sublessee, unless Lessee fulfills all such obligations pursuant to Section 6.01, above, shall pay and discharge, as they become due, promptly and before delinquency, all Charges, including taxes, assessments, water, sewer and wastewater charges 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 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 Sublessee’s interest in the Demised Premises, or otherwise arise out of the revenue received by Sublessee from the sale of their Affordable Housing Unit (if authorized under this Lease or the Affordable Restrictions), or be associated with any document (to which the Sublessee is a party) creating or transferring an interest or estate in the respective portion of the Demised Premises. Notwithstanding the foregoing, in the event that Sublessee fails to pay the Charges, Initial Lessee shall be required to timely pay and discharge all Charges.

Section 6.03 Obligations Altered. Nothing herein shall require the Lessee to pay municipal, state, or federal income taxes assessed against the Lessor, municipal, state, or federal capital levy, estate, gift, succession, inheritance or transfer taxes of the Lessor, or Lessor’s legal representative, corporate franchise taxes imposed upon any corporate owner of the fee of the Demised Premises; provided, however, that if at any time during the Term of this Lease the methods of taxation prevailing at the commencement of the Term hereof shall be altered so as to cause the whole or any part of the taxes, assessments, levies, impositions or charges now levied, assessed and imposed, wholly or partially as a capital levy, or otherwise, on the rents received therefrom, or of any tax, corporation franchise tax, assessments, levy (including, but not limited to any municipal, state or federal levy), imposition or charge, or any part thereof, shall be measured by or based in whole or in part upon the Demised Premises and shall be imposed upon the Lessor, then all such taxes, assessments, levies, impositions or charges, or the part thereof so measured or based, shall be paid and discharged by the Lessee. All rebates on account of any taxes, rates, levies, charges or assessments required to be paid shall belong to Lessee.

Section 6.04 Mode of Payment. The Lessee (and any Sublessee, as to their specific interests in the Demised Premises) shall promptly pay the taxes and Charges as enumerated in this Article VI and shall deliver official receipts evidencing such payment to the Lessor (Sublessees shall only deliver receipts as may be required by the Affordable Restrictions), which payment of taxes or Charges shall be made and the receipts delivered, at least thirty (30) days before the tax, itself, would become delinquent in accordance with the law then in force governing the payment of such tax or Charges. If, however, the Lessee desires to contest the validity of any tax or tax claim, the Lessee may do so without being in default hereunder, provided the Lessee gives the Lessor notice of the Lessee's intention to do so and furnishes the Lessor or the applicable governmental agency with a bond with a surety made by a surety company qualified to do business in the State of Florida or pays cash to a recognized escrow agent in Monroe or Miami-Dade County, one and one half (1 ½) times the amount of the tax item or items intended to be contested, conditioned to pay such tax or tax items when the validity thereof shall have been determined, and which written notice and bond or equivalent cash shall be given by the Lessee to the Lessor, not later than sixty (60) days before the tax proposed to be contested would otherwise become delinquent.

Section 6.05 Lessee's Default. If the Lessee shall fail, refuse or neglect to make any of the Charges required in this Article, then the Lessor may, but shall not be required to, pay the same and the amount or amounts of money so paid, including reasonable attorneys' fees and expenses which might be reasonably incurred because of or in connection with such payments, together with interest on all such amounts, at the highest rate allowed by law shall be repaid by the Lessee to the Lessor, upon the demand of the Lessor, and the payment thereof may be collected or enforced by the Lessor in the same manner as though such amount were an installment of Rent specifically required by the terms of this Lease to be paid by the Lessee to the Lessor, upon the day when the Lessor demands repayment thereof or reimbursement therefor of and from the Lessee; but the election of the Lessor to pay such Charges shall not waive the default thus committed by the Lessee. Notwithstanding the foregoing, Lessee shall have the right to contest any taxes and assessments levied against Lessee in accordance with paragraph 6.04, above; and provided Lessee files the appropriate documentation to contest said tax or assessment and furnishes the required bond or cash escrow, Lessee shall not be in default of this Lease or obligated to pay any interest or other penalties to Lessor. Nothing herein shall be construed to prevent or inhibit the tax or assessment measures and collection remedies lawfully available to any taxing authority.

Section 6.06 Sublessee's Default. If a Sublessee shall fail, refuse or neglect to make any of the Charges required in this Article, then the Lessor shall be required to pay the same, and the amount or amounts of money so paid, including reasonable attorneys' fees and expenses which might be reasonably incurred because of or in connection with such payments, together with interest on all such amounts, at the highest rate allowed by law shall be repaid by the Sublessee to the Lessor, upon the demand of the Lessor, and the payment thereof may be collected or enforced by the Lessor in the same manner as though such amount were an installment of Rent specifically required by the terms of this Lease to be paid by the Sublessee to the Lessor, upon the day when the Lessor demands repayment thereof or reimbursement therefor of and from the Sublessee; but the election of the Lessor to pay such taxes shall not waive the default thus committed by the Sublessee. Notwithstanding the foregoing, Sublessee shall have the right to contest any taxes and assessments levied against Sublessee; and provided Sublessee files the appropriate documentation to contest said tax or assessment, Sublessee shall not be in default of this Lease or obligated to pay any interest or other penalties to Lessor, provided the Sublessee gives the Lessor notice of the Sublessee's intention to do so and furnishes the Lessor or the applicable governmental agency with a bond with a surety made by a surety company qualified to do business in the State of Florida or pays cash to a

recognized escrow agent in Monroe or Miami-Dade County, one and one half (1 ½) times the amount of the tax item or items intended to be contested, conditioned to pay such tax or tax items when the validity thereof shall have been determined, and which written notice and bond or equivalent cash shall be given by the Sublessee to the Lessor, not later than sixty (60) days before the tax proposed to be contested would otherwise become delinquent. Nothing herein shall be construed to prevent or inhibit the assessment measures and collection remedies lawfully available to any taxing authority.

Section 6.07 Proration. The foregoing notwithstanding, the parties hereto understand and agree that the taxes, if any, for the first year of this Lease, beginning on the Possession Date and the last year of the Term shall be prorated proportionately between the Lessor and the Lessee.

Section 6.08 Appraiser to Respect Effect of Affordable Restrictions. It is the intent of the parties that any appraisal of any portion of the Demised Premises for taxation, public assessment or utility service purposes fully reflect the effect of this Lease and the Affordable Restrictions on the lawfully realizable value of relevant portion(s) appraised, or where permissible by state law, “income approach” or other method of calculation.

ARTICLE VII

Mechanic’s Liens

Section 7.01 No Lien. Neither the Lessee nor any Sublessee shall have the power to subject the in the Demised Premises to any mechanic’s or materialmen’s lien of any kind whether or not the improvements are made with the consent of the Lessor.

Section 7.02 Release of Lien. Neither the Lessee nor any Sublessee shall permit or suffer to be filed or claimed against the interest of the Lessor in the Demised Premises during the continuance of this Lease any encumbrance, lien or claim of any kind, and if such lien or claim be claimed or filed, it shall be the duty of the Lessee, or the Sublessee, to which the lien or claim is attributable, or both where the Affordable Housing Unit is a rental unit, within thirty (30) days after the filing of the lien or claim or within thirty (30) days after the Lessor shall have been given written notice of such claim and shall have transmitted written notice of the receipt of such claim unto the Lessee or Sublessee, as the case may be, (whichever thirty (30) day period expires earlier) to cause the respective portion of the Demised Premises to be released from such lien or claim, either by payment or by the posting of bond or by the payment to a court of competent jurisdiction of the amount necessary to relieve and release the relevant portion of the Demised Premises from such lien or claim, or in any other manner which, as a matter of law, will result, within such period of thirty (30) days, in releasing the lien or claim, and the Lessor and the title of the Lessor from such lien or claim; and the Lessee covenants and agrees, with respect to any lien or claim attributable to it, within such period of thirty (30) days, so as to cause the affected portion of the Demised Premises the lien or claim to be released and the Lessor’s interest therein to be released from the legal effect of such claim.

Section 7.03 Lessee’s Default. If the Lessee shall fail, refuse, or neglect to perform its obligations as required in this Article, then the Lessor may, but shall not be required to, pay any sums required to cause the lien or claim to be released or discharged, and the Demised Premises and the Lessor’s interest therein to be released from the legal effect of such lien or claim and the amount or amounts of money so paid, including reasonable attorneys’ fees and expenses which might be

reasonably incurred because of or in connection with such payments, together with interest on all such amounts at the highest rate allowed by law, shall be repaid by the Lessee to the Lessor, upon the demand of the Lessor, and the payment thereof may be collected or enforced by the Lessor in the same manner as though such amount were an installment of Rent specifically required by the terms of this Lease to be paid by the Lessee to the Lessor, upon the day when the Lessor demands repayment thereof or reimbursement therefor of and from the Lessee; but the election of the Lessor to pay such amount shall not waive the default thus committed by the Lessee.

ARTICLE VIII

Governing Law, Cumulative Remedies

Section 8.01 Governing Law. All of the rights and remedies of the respective parties relating to or arising under this Lease and any related documents shall be governed by and construed under the laws of the State of Florida.

Section 8.02 Cumulative Remedies. All rights and remedies accruing to the Lessor shall be assignable in whole or in part and be cumulative; that is, the Lessor may pursue such rights as the law and this Lease afford to it in whatever order the Lessor desires and the law permits. Lessor's resort to any one remedy in advance of any other shall not result in waiver or compromise of any other remedy.

ARTICLE IX

Indemnification of Lessor

Section 9.01 Indemnification by Lessee. Lessee hereby agrees that the Lessor shall not be (and Lessee hereby waives any rights to claim that the Lessor is) liable for any loss, injury, death or damage to any person or any property which at any time may be suffered or sustained by Lessee or by any person performing work or otherwise occupying or visiting the Demised Premises. From and after the Effective Date of this Lease and throughout the Term of this Lease during which time Affordable Housing Units are rented, Lessee will indemnify, defend and save harmless the Lessor against any and all suits, claims, debts, demands, liabilities, or obligations which may be made against the Lessor or against the Lessor's title in the Demised Premises, arising out of, or in connection with, or in any way related to this Lease or the Demised Premises or the challenge to this Lease or the Project by a third party through legal proceedings or otherwise, except to the extent such claims may be caused by the gross negligence or intentional misconduct of the Lessor with respect only to any duty or obligation Lessor expressly assumes with respect to any portion of the Demised Premises, none of which duties and obligations are so assumed herein. If it becomes necessary for the Lessor to respond to any suit, claim, demand or unanticipated matter or to defend any action seeking to impose any such liability, the Lessee will pay the Lessor all costs of court and reasonable attorneys' fees incurred by the Lessor in effecting and preparing for such response or the entry of a judgment against the Lessor in any proceeding in which such claim is asserted.

Notwithstanding the foregoing, it is hereby acknowledged that, except as otherwise provided in Section 12.01, upon the sale of the Project and Affordable Housing Units to Owners as home ownership in accordance with this Lease, Initial Lessee shall be released from any and all liability related to such transferred portions of the Demised Premises and the subsequent use thereof by the

Owner, their employees, agents, contractors, guests or invitees, including without limitation any death, injury or damage to person or property in or about the transferred portions of the Demised Premises, except as otherwise set forth herein. However, this release shall not constitute a release or waiver of Lessor's rights, if any, or possible entitlement to insurance coverages required by this Lease.

Lessor shall not be liable to Lessee, or to Lessee's assignees or Sublessees or owners or their employees, agents, contractors, guests or invitees for any death, injury or damage to person or property in, about or relating to the Demised Premises. Lessee, on its and its assignees' and their successors in interests' behalves, including any future Sublessees, or grantees or licensees of the Initial Lessee or the Association, or any guests, invitees or tenants of any of the foregoing, hereby assumes and covenants for its own and their own acceptance of sole responsibility and liability to all persons for death, injury or damage related to or arising from the ownership, possession, occupancy and for use of any portion of the Demised Premises, and also, for all such future occupants, owners, Lessees, Sublessees, owner, tenants, guests, invitees and licensees, waives and releases forever all claims, demands and causes of action against Lessor and its officers, employees, agents, successors, assigns, contractors and representatives for loss of life or injury to person or property, of whatever nature.

Section 9.02 Insurance. From and after the Possession Date of this Lease, the Lessee shall cause to be written and put in full force and effect a policy or policies of builder's risk and comprehensive liability and other insurances as noted in Article X insuring the Lessee against any and all claims and demands made by any person or persons whomsoever for death, injuries or damages received in connection with the possession, operation and maintenance of the Demised Premises. All such policies shall name the Lessee and the Lessor as additional insured (and any lender holding a mortgage on the Demised Premises), as their respective interests may appear, as the persons insured by such policies. Any loss adjustment shall require the written consent of both the Lessor and Lessee.

Section 9.03 Policy Limit Changes. The policy limits for the comprehensive liability insurance may be reviewed by Lessor every five (5) years and adjusted upward, if, in the reasonable discretion of Lessor such increase in coverage is prudent or if similar projects have begun to require greater insurance coverage.

ARTICLE X

Insurance

Section 10.01 Property Insurance. From and after the Possession Date, the Lessee will keep insured any and all buildings and improvements upon the Demised Premises against all loss or damage by fire, flood and windstorm, together with "all risks" "extended coverage," which said insurance will be maintained in an amount sufficient to prevent any party in interest from being or becoming a co-insurer on any part of the risk, which amount shall not be less than the full Replacement Cost value of the relevant portions of the Demised Premises, and all of such policies of insurance shall include the name of the Lessor as an additional insured and shall fully protect both the Lessor and the Lessee as their respective interests may appear.

In the event of the destruction or damage of the improvements located on the Demised Premises, or any part thereof, and as often as any portion of said Demised Premises shall be

destroyed or damaged by fire, flood, windstorm or other casualty, the Lessee shall, within fifteen (15) months (or twenty-four (24) months for a substantially total loss) from the date of such damage or destruction, rebuild and repair the same in such manner that the buildings or improvements so rebuilt and repaired, and the personal property so replaced or repaired, shall be of the same or of a value higher than were the buildings or improvements and the personal property prior to such damage or destruction, and Lessee shall diligently prosecute the reconstruction or repairs without delay and have the same rebuilt and ready for occupancy as soon as reasonably possible after the time when the loss or destruction occurred. The 15-month period (or twenty-four (24) month period for a substantially total loss) for reconstruction shall be enlarged for delays caused without fault or neglect on the part of the Lessee, by act of God, strikes, lockouts, or other force majeure conditions (other than matters of refinancing the property) beyond the Lessee's control. Notwithstanding the foregoing, and only with respect to insurance proceeds, the provisions of any leasehold mortgage substantially comporting with customary institutional lending industry standards and the foregoing Lessor's interests shall control as to the use and disbursement of insurance funds for reconstruction of the improvements in the event of any casualty or damage to such improvements.

While the Project, or any replacement thereof, is in the course of construction, and whenever appropriate while any alterations are in the course of being made, the aforesaid fire and extended coverage insurance shall be carried by Lessee in builder's risk form written on a completed value basis. During the course of construction or any alterations or improvements to the Demised Premises, Lessee shall also maintain worker's compensation insurance, with limits and coverage as required by Florida law.

Notwithstanding anything to the contrary in the immediately preceding paragraph, in case of destruction of all of the improvements on the Demised Premises from any cause so as to make all Affordable Housing Units untenable occurring during the last ten (10) years of the Term of this Lease, Lessee, if not then in default under this Lease and if there is no leasehold mortgage or other similar encumbrance on the Lessee's interest in the Demised Premises, may elect to terminate this Lease by written notice to Lessor within thirty (90) days after the occurrence of the destruction. In the event this Lease has been assigned to an Association authorized under this Lease or the Affordable Restrictions, the Association must obtain any necessary vote to terminate. In the event of termination, there shall be no obligation on the part of Lessee to restore or repair the improvements on the Demised Premises, nor any right of the Lessee to receive any proceeds collected under any insurance policies covering the improvements and all insurance proceeds shall be payable to the Lessor. If Lessee elects not to terminate this Lease in the event of destruction during the last ten (10) years of this Lease, the proceeds of all insurance covering the improvements shall be made available to Lessee for repairs, and Lessee shall be obligated to repair as set forth above.

Section 10.02 Commercial General Liability Insurance. The Initial Lessee and the Association (upon assignment to the Association as authorized by this Lease and in the event of home ownership) shall maintain Builder's Risk and Commercial General Liability Insurance beginning on the Possession Date and continuing during the entire Term of this Lease. The Commercial General Liability Insurance shall cover those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form [ISO Form CG 00-01] as filed for use in Florida without the attachment of restrictive endorsements other than the elimination of medical payments and fire damage legal liability.

General Aggregate	\$2,000,000
Products/Completed Operations	\$1,000,000

[coverage for one (1) year after project completion]	
Each Occurrence	\$1,000,000
Contractual Liability	\$1,000,000

Additional Named Insured: Lessor, or its assigns or designees, as from time to time designated by written notice to Lessee, shall be included as additional insureds for Commercial General Liability.

Section 10.03 Environmental Impairment Responsibility. The Lessee and/or its contractors acknowledge that the performance of this Lease is, or may be, subject to Federal, State and local laws and regulations enacted for the purpose of protecting, preserving or restoring the environment. The Lessee shall, at the sole cost of the Lessee or its contractors, be responsible for full compliance with any such laws or regulations.

Section 10.04 Other Insurance. Lessee shall maintain such other insurance and in such amounts as may from time to time be reasonably required by the Lessor against other insurable hazards which at the time are commonly insured against in the case of construction of buildings and/or in the case of premises similarly situated, due regard being or to be given to the location, construction, use and occupancy. In the event that the Lessee believes that Lessor's requirement for such additional insurance is unreasonable, the reasonableness of Lessor's request shall be determined in accordance with the rules of the American Arbitration Association. Such determination as to the requirement of coverage and the proper and reasonable limits for such insurance then to be carried shall be binding on the parties and such insurance shall be carried with the limits as thus determined until such limits shall again be changed pursuant to the provisions of this Section. The expenses of such determination shall be borne equally by the parties. This procedure may only be requested after the five (5) year anniversary date of the Lease.

Section 10.05 Proceeds Payable to Mortgagee. If any mortgagee holding a leasehold mortgage created pursuant to the provisions of Article XV elects, in accordance with the terms of such mortgage, to require that the proceeds of any casualty insurance be held by and paid out by the mortgagee, then such payment may be made, but in such event, it shall still be obligatory upon the Lessee to create the complete fund with the leasehold mortgagee in the manner set forth in this Article to assure complete payment for the work of reconstruction and repair. Any mortgagee holding insurance proceeds shall require that such proceeds are properly used to ensure repairs, but no mortgagee shall be liable for misuse of funds by Sublessee or Lessee.

Section 10.06 Any excess of money received from insurance remaining after the reconstruction or repair of such building or buildings, if the Lessee is not in default, shall be paid to the Lessee. Absent circumstances reasonably excused under the conditions set forth in paragraph 14.03, in the case of the Lessee not entering into the reconstruction or repair of the building or buildings within a period of six (6) months from the date of payment of the loss, after damage or destruction occasioned by fire, windstorm, flood or other cause, and diligently prosecuting the same with such dispatch as may be necessary to complete the same in as short a period of time as is reasonable under the circumstances after the occurrence of such damage or destruction, then the amount so collected, or the balance thereof remaining in the joint account, as the case may be, shall be paid to the Lessor and it will be at the Lessor's option to terminate the Lease, unless terminated by Lessee within the last ten (10) years of the Lease as set forth above, and retain such amount as liquidated and agreed upon damages resulting from the failure of the Lessee to promptly, within the time specified, complete such work of reconstruction and repair.

Section 10.07 Repairs and Notice. . Lessee shall provide proof satisfactory to Lessor that repairs are completed as required within fifteen (15) months from the date of such damage or destruction, unless said period is enlarged by delays caused without fault or neglect on the part of the Lessee.

Section 10.08 General Requirements. All insurance to be provided by Lessee under this Lease shall be effected under valid and enforceable policies in such forms, issued by insurers of recognized financial responsibility and qualified to do business in Florida which have been approved by Lessor, which approval shall not be unreasonably withheld. All policies of insurance provided for in this Article shall, to the extent obtainable, contain clauses or endorsements to the effect that (i) no act or negligence of Lessee or anyone acting for Lessee or for any Sublessee or occupant of the Demised Premises which might otherwise result in a forfeiture of such insurance or any part thereof shall in any way affect the validity or enforceability of such insurance insofar as Lessor, and that (ii) such policy of insurance shall not be changed or cancelled without at least thirty (30) days written notice to the Lessor, and that (iii) the Lessor shall not be liable for any premiums thereon or subject to any assessments thereunder.

Section 10.09 Subsequent Lessees, Assignees, Sublessees and Grantees. Notwithstanding anything contained herein to the contrary, in the event an authorized Association fails to obtain insurance coverage to protect against loss or damage by fire, flood and windstorm for the individual Affordable Housing Units and therefore does not charge the Sublessees for said coverage as part of the Association fees to be paid by the individual Unit Owners (only in the event that this Project is expressly authorized as a home-ownership project); then, in such event Sublessees shall secure the above-described insurance coverage for their individual Affordable Housing Units. Therefore, Lessor shall be entitled to require replacement cost and other customary and reasonable insurance coverage(s) at least but only to the full replacement value of any Sublessees' and/or any governing Association's insurable interest in the Demised Premises. Any parties who subsequently become holders of any title or possessory interest to a portion of the Demised Premises, shall upon request provide, in a form satisfactory to Lessor, proof of customary and reasonable insurance adequate and sufficient to cover and protect all interests of the Lessor as set forth in this Article X, at least to the extent and value of that subsequent interest holder's insurable interest. The same or similar procedures for the use and application of insurance proceeds as set forth above may be required for subsequent interest holders and the same remedies available to Lessor for Initial Lessee's failure to comply with such insurance requirements shall be available to Lessor with respect to any future interest holders. Future interest holders (including all Sublessees) shall name Lessor as an additional insured on any required insurance policies.

ARTICLE XI

Insurance Premiums

Section 11.01 Insurance Premiums. The Lessee shall pay premiums for all of the insurance policies which the Lessee is obligated to carry under the terms of this Lease. In the event Lessee fails to obtain and pay for the necessary insurance, Lessor shall have the right, but not the obligation, without notice to Lessee, to procure such insurance and/or pay the premiums of such insurance, in which case Lessee shall repay Lessor immediately upon demand by Lessor as additional Rent. The Lessor shall have the same rights and remedies with respect to procurement of such insurance and/or payment of such insurance premiums in the event a future subsequent partial interest holder (e.g., Sublessee, Association) fails to obtain and pay for the necessary insurance.

ARTICLE XII

Assignment/Transfer

Section 12.01 Assignment by Initial Lessee. Notwithstanding anything in this Lease to the contrary, without the written consent of Lessor, which consent will not be unreasonably withheld, Initial Lessee shall not assign or sublet any portion of the Demised Premises, or change the management of the Demised Premises or the Managing Member of the Lessee, except as otherwise provided herein. The Affordable Housing Units may be sold, occupied and the Demised Premises sublet without the Initial Lessee obtaining consent from Lessor for such subletting, provided that Initial Lessee shall follow the guidelines set forth herein.

Section 12.02 Assignment/Transfer by Sublessees. Where Lessor consents and subsequently provides authority in writing or under the Affordable Restrictions for the Affordable Housing Units to be sold as homeownership units, at such time as any individual Unit Owner or Sublessee desires to sell, assign or otherwise transfer their Affordable Housing Units and interests, the Sublessee shall be required to follow the procedures set forth herein and any procedure that may be set forth in the Affordable Restrictions, and any conveyance, transfer or other disposition and the acceptance of such transfers shall be automatically deemed an agreement to the conditions set forth herein.

Section 12.03 Required Notice of Restrictions. Any conveyance, lease, assignment, grant or other disposition of any interest made with respect to any portion of the Demised Premises, including but not limited to any recorded Association governing documents, other than those mortgage interests provided for in Article XV, shall contain the following required Notice of Restrictions in a conspicuous location on the upper one-half of the first page of the relevant instrument effectuating the interest in bold capital typed letters greater than or equal to 14 point font:

NOTICE OF RESTRICTIONS

ANY INSTRUMENT OF CONVEYANCE, LEASE, ASSIGNMENT, GRANT OR OTHER DISPOSITION OF ANY INTEREST IN OR TO ANY PORTION OF THE DEMISED PREMISES OR TO ANY IMPROVEMENTS ERECTED THEREON WILL BE SUBJECT TO CERTAIN RESTRICTIONS INCLUDING BUT NOT LIMITED TO RIGHTS OF FIRST REFUSAL, USE, OCCUPANCY, INCOME, MEANS, RESALE PRICE, RENTAL AND MORTGAGE LIMITATIONS, INCLUDING BUT NOT LIMITED TO THOSE SET FORTH IN OFFICIAL RECORDS BOOK __, PAGE __ OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA.

The book and page numbers of the first recorded page of this Lease and the first recorded page of any recorded Association governing documents affecting the respective portion of the Demised Premises shall be set forth in the Notice of Restrictions. Any instrument of conveyance, lease, assignment or other disposition made without following the notice procedures set forth herein shall be void and confer no rights upon any third person, though such instruments may in some cases be validated by fully correcting them according to procedures established by Lessor, as determined in Lessor's sole discretion, so as to ensure compliance with the public affordability purposes furthered by this Lease and the Affordable Restrictions.

ARTICLE XIII

Condemnation

Section 13.01 Eminent Domain; Cancellation. If, at any time during the continuance of this Lease, the Demised Premises or any portion thereof is taken, appropriated or condemned by reason of eminent domain, there shall be such division of the proceeds and awards in such condemnation proceedings and such abatement of the Rent and other adjustments made as shall be just and equitable under the circumstances. If the Lessor and the Lessee are unable to agree upon what division, annual abatement of Rent or other adjustments as are just and equitable, within thirty (30) days after such award has been made, then the matters in dispute shall be determined in accordance therewith. If the legal title to the entire Demised Premises be wholly taken by condemnation, the Lease shall be cancelled.

Section 13.02 Apportionment. Although the title to the building and improvements placed by the Lessee upon the Demised Premises will on the Termination Date pass to the Lessor, nevertheless, for purpose of condemnation, the fact that the Lessee placed such buildings on the Demised Premises shall be taken into account, and the deprivation of the Lessee's use (and any use of a Sublessee) of such buildings and improvements shall, together with the Term of the Lease remaining, be an item of damage in determining the portion of the condemnation award to which the Lessee or Sublessee is entitled. In general, it is the intent of this Section that, upon condemnation, the parties hereto shall share in their awards to the extent that their interests, respectively, are depreciated, damaged, or destroyed by the exercise of the right of eminent domain. In this connection, if the condemnation is total, the parties agree that the condemnation award shall be allocated so that the then value of the property, as though it were unimproved property, shall be allocated to the Lessor, and the then value of the building or buildings thereon shall be allocated between the Lessor and Lessee after giving due consideration to the number of years remaining in the Term of this Lease and the condition of the buildings at the time of condemnation. The Lessee shall not be precluded from any condemnation remedy otherwise available to it by law.

ARTICLE XIV

Construction

Section 14.01 Requirement to Construct Project.

(a) Initial Lessee shall commence construction of the Project by one hundred twenty (120) days after the issuance of the building permits for the construction of the Project, and shall substantially complete construction and obtain Certificates of Occupancy for all Affordable Housing Units within eighteen (18) months thereafter. The foregoing limitation of time for the completion of the Project may be extended by written agreement between the parties hereto.

(b) During the course of construction of the Project, Initial Lessee shall provide to the Lessor quarterly written status reports on the Project. The Lessor and Initial Lessee shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in their possession or under their control where such information is subject to public disclosure under the provisions of Chapter 119, F.S., or successor or supplemental statutes. However, nothing contained herein shall be construed to render documents or records of Initial Lessee or any other

persons that would not be deemed public records under Chapter 119 to be such records only because of this provision. The Lessee (but not individual Sublessees occupying an Affordable Housing Unit as their primary residence) shall maintain all books, records, and documents directly pertinent to performance under this Lease in accordance with generally accepted accounting principles consistently applied. The City Clerk, City Auditor, or a designee of said officials or of the Lessor, shall, during the term of this Agreement and for a period of five (5) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Lessee involving transactions related to this Lease.

(c) The Project shall be constructed in accordance with the Site Plan, and all requirements of all laws, ordinances, codes, orders, rules and regulations of all governmental entities having jurisdiction over the Project, including, but not limited to, the City. Notwithstanding its applicability to this Project, Initial Lessee agrees to use its best efforts to honor all preferences for local businesses for the purchase of or contract for, materials, supplies, equipment, improvements, labor or services.

(d) The Initial Lessee shall, at its sole cost and expense, apply for and prosecute, with reasonable diligence, all necessary approvals, permits and licenses and impact fees required by applicable governmental authorities for the construction, development, zoning, use and occupation of the Project. Lessor agrees to cooperate with and publicly support the Initial Lessee's effort to obtain such approvals, permits and licenses, provided that such approvals, permits and licenses shall be obtained at Initial Lessee's sole cost and expense. Nothing in this Lease is intended to or shall be construed to obviate or lessen any requirements for customary development approvals from any permitting authority, including the City. Nothing in this Lease shall be construed as the City's delegation or abdication of its zoning authority or powers and no zoning approval that Initial Lessee may require to complete its performance under this Lease has been or shall be deemed agreed to, promise or contracted for by this Lease.

(e) Construction of the Project on the Demised Premises prior to and during the Term of this Lease shall be performed in a good and workmanlike manner, pursuant to written contracts with licensed contractors and in accordance with any and all requirements of local ordinances and with all rules, regulations and requirements of all departments, boards, officials and authorities having jurisdiction thereof. It is understood and agreed that the plans and specifications for all construction shall be prepared in accordance with the Site Plan and by duly qualified architects/engineers licensed in the State of Florida.

(f) Prior to commencement of construction on the Demised Premises, Lessee shall obtain, or cause its general contractor to obtain, a payment and performance bond in favor of the City as dual obligee from a surety in an amount equal to the cost of construction of the improvements or Project and in form reasonably satisfactory to the Lessor.

(g) At all times and for all purposes hereunder, the Initial Lessee is an independent contractor/lessee and not an employee of the City or any of its agencies or departments. No statement contained in this Lease shall be construed as to find the Initial Lessee or any of its employees, contractors, servants or agents to be employees of the City, and they shall be entitled to none of the rights, privileges or benefits of City employees. No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of the City or the Initial Lessee or Lessee in his or her individual capacity, and no member, officer, agent or employee of the City or the Initial Lessee or Lessee shall be liable personally on this Lease

or be subject to any personal liability or accountability by reason of the execution of this Lease.

(h) Initial Lessee agrees that it will not discriminate against any employees, applicants for employment, prospective Sublessees or other prospective future subinterest holders or against persons for any other benefit or service under this Lease because of their race, color, religion, sex, sexual orientation, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

(i) Lessee shall be entitled during the full term of this Lease to make alterations to the Demised Premises in accordance with the requirements set forth in this Section 14.01.

14.02 Access to the Project and Inspection. The Lessor and/or its duly appointed agents shall have the right, at all reasonable times upon the furnishing of reasonable notice under the circumstances (except in an emergency, when no notice shall be necessary), to enter upon the common areas of the Demised Premises to examine and inspect said areas to the extent that such access and inspection are reasonably justified to protect and further the Lessor's continuing interest in the Demised Premises, as determined in Lessor's reasonable discretion. Lessor's designees, for purposes of this Article 14.02, shall include City, County or State code or building inspectors, and the like, without limitation. Initial Lessee shall permit building and code inspectors' access customary to the performance of their duties related to projects of the nature contemplated herein, said notice requirements notwithstanding.

14.03 Forced Delay in Performance. Notwithstanding any other provisions of this Lease to the contrary, the Initial Lessee shall not be deemed to be in default under this Lease where delay in the construction or performance of the obligations imposed by this Lease are caused by war, revolution, labor strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, labor disputes, embargoes, tornadoes, hurricanes, tropical storms or other severe weather events, or inability to obtain or secure necessary labor, materials or tools, or unreasonable acts or failures to act by the Lessor, or any other causes deemed Force Majeure Events beyond the reasonable control of the Lessee. The time of performance hereunder shall be extended for the period of any forced delay or delays caused or resulting from any of the foregoing Force Majeure Events.

14.04 Easements. Lessee is authorized to grant reasonable and necessary easements for access and utilities customary for similar land uses and construction projects in the City subject to Lessor's attorney's review and approval for substance and form of easement instruments, which approval shall not be unreasonably withheld. Lessor shall make objection to any proposed easement instruments within fifteen (15) business days of receipt of copies thereof, or Lessor's approval shall be deemed granted.

ARTICLE XV

Default

Section 15.01 Default. In the event of any material breach of this Lease by Lessee, Lessor, and after the necessary notice and cure opportunity provided to Initial Lessee and other parties, in addition to the other rights or remedies it may have, shall have the immediate right to

terminate this Lease according to law. Any determination of “material breach” for termination of this Lease by Lessor shall be judicially made in a court of competent jurisdiction in Monroe County, Florida. However, notwithstanding the prior two sentences, during the initial eighteen (18) years of the Term, Lessor shall have no right to terminate this Lease, but shall have all other rights and remedies available at law or in equity including, without limitation, specific performance and injunction (the Lessor’s exercise of its other rights at law or equity, including specific performance and injunctive relief, shall not require a material breach of this Lease). In any action by Lessor asserting a violation of the Affordable Restrictions, Lessee shall have the burden of reasonable proof with respect to such matter. Termination of the Lease, under such circumstances, shall constitute effective, full and immediate conveyance and assignment to Lessor of all of the Demised Premises, improvements and materials and redevelopment rights to and associated with the Demised Premises and the Project, subject to mortgagee protection as provided herein. Furthermore, in the event of any breach of this Lease by Lessee, Lessor, in addition to the other rights or remedies it may have, shall have the immediate right of re-entry (as may be lawfully conditioned per application of Chapter 83, Florida Statutes, as amended) and may remove all persons and personal property from the affected portions of the Demised Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Lessee, or where statutory abandonment or unclaimed property law permits, disposed of in any reasonable manner by Lessor without liability or any accounting therefore.

Included in this right of reentry, and subject to Initial Lessee’s rights, if any, shall be any instance wherein a Sublessee renounces the Lease or a Sublease or abandons all or any portion of the Demised Premises, in which case Lessor may, at its option, in an appropriate case and subject to any rights of a mortgage holder, obtain possession of the abandoned property in any manner allowed or provided by law, and may, at his option, re-let the repossessed property for the whole or any part of the then unexpired term, receive and collect all Rent payable by virtue of such reletting, and hold Sublessee liable for any difference between the Rent that would have been payable under this Lease and the net Rent for such period realized by Lessor, by means of such reletting. However, such Lessor rights shall not abrogate a mortgagee’s rights to the extent those rights do not conflict with or injure Lessor’s interests as established under this Lease. Personal property left on the premises by a Sublessee may be stored, sold, or disposed of by Lessor, and Lessor accepts no responsibility other than that imposed by law.

Should Lessor elect to re-enter, as herein provided, or should Lessor take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Lessor may either terminate this Lease or it may from time to time, without terminating this Lease, re-let the Demised Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such Rent or Rents and on such other terms and conditions as Lessor in its sole reasonable discretion may deem advisable with the right to make alterations and repairs to the Demised Premises. On each such re-letting, Lessee shall be immediately liable to pay to Lessor, in addition to any indebtedness other than Rent due under this Lease, the expenses of such re-letting and of such alterations and repairs, incurred by Lessor, and the amount, if any, by which the Rent reserved in this Lease for the period of such re-letting (up to but not beyond the term of this Lease) exceeds the amount agreed to be paid as Rent for the Demised Premises for such period of such re-letting.

Notwithstanding any such re-letting without termination, Lessor may at any time thereafter elect to terminate this Lease for such previous breach. Should Lessor at any time terminate this Lease for any breach, in addition to any other remedy it may have, Lessor may recover from Lessee

all damages incurred by reason of such breach, including the cost of recovering the Demised Premises, which amounts shall be immediately due and payable from Lessee to Lessor.

Section 15.02 Lessor's Right to Perform. In the event that Lessee, by failing or neglecting to do or perform any act or thing herein provided by it to be done or performed, shall be in default under this Lease and such failure shall continue for a period of thirty (30) days after receipt of written notice from Lessor specifying the nature of the act or thing to be done or performed, then Lessor may, but shall not be required to, do or perform or cause to be done or performed such act or thing (entering on the Demised Premises for such purposes, with notice, if Lessor shall so elect), and Lessor shall not be or be held liable or in any way responsible for any loss, inconvenience or annoyance resulting to Lessee on account thereof, and Lessee shall repay to Lessor on demand the entire expense thereof, including compensation to the agents and employees of Lessor. Any act or thing done by Lessor pursuant to the provisions of this section shall not be construed as a waiver of any such default by Lessee, or as a waiver of any covenant, term or condition herein contained or the performance thereof, or of any other right or remedy of Lessor, hereunder or otherwise. All amounts or Charges payable by Lessee to Lessor under any of the provisions of this Lease, if not paid when the amounts become due as provided in this Lease, shall bear interest from the date they become due until paid at the highest rate allowed by law. Lessor shall have the same rights set forth in this Section with respect to any future subinterest holder's respective portion of the Demised Premises.

Section 15.03 Default Period. All default and grace periods shall be deemed to run concurrently and not consecutively.

Section 15.04. Affordable Restrictions. In the event that four (4) or more of the Affordable Housing Units are failing to comply with the Affordable Restrictions at any given time, such an occurrence will be considered a material default by the offending party, subject to Lessor's compliance with any applicable default notice provisions provided elsewhere in this Lease and Lessee's Mortgagees applicable cure rights, if any. Lessee hereby agrees that all occupants shall use the Leased Premises and Improvements in accordance with the Affordable Restrictions for affordable residential purposes only and any incidental activities related to the residential use as well as any other uses that are permitted by applicable zoning law and approved by Lessor.

ARTICLE XVI

Additional Covenants of Lessee/Lessor

Section 16.01 Legal Use. The Lessee covenants and agrees with the Lessor that the Demised Premises will be used for the construction and operation of a multi-unit affordable housing complex and the other matters as may be set forth in this Lease, with related amenities and facilities, and for no other purposes whatsoever without Lessor's written consent.

Section 16.02 Termination. Upon termination of this Lease, the Lessee will peaceably and quietly deliver possession of the Demised Premises, unless the Lease is extended as provided herein. Therefore, Lessee shall surrender all improvements together with the Demised Premises. Ownership of all improvements shall thereupon revert to Lessor.

Section 16.03 Recovery of Litigation Expense. In the event of any suit, action or proceeding, at law or in equity, by either of the parties hereto against the other, or any other person having, claiming or possessing any alleged interest in the Demised Premises, by reason of any matter or thing arising out of or relating to this Lease, including any eviction proceeding, the prevailing party shall recover not only its legal costs, but reasonable attorneys' fees and costs, including appellate, bankruptcy and post-judgment collection proceedings for the maintenance or defense of said action or suit, as the case may be. Any judgment rendered in connection with any litigation arising out of this Lease shall bear interest at the highest rate allowed by law. Lessor may recover reasonable legal and professional fees attributable to administration, enforcement and preparation for litigation relating to this Lease or to the Affordable Restrictions from any person or persons from or to whom a demand or enforcement request is made, regardless of actual initiation of an action or proceeding.

Section 16.04 Condition of the Demised Premises; Lessee's Rights to Inspect the Demised Premises. Lessee agrees to accept the Demised Premises in its presently existing "As-Is" condition, "Where-Is" condition and "with all faults" as of the Possession Date, and without any warranties or representations of any kind whatsoever from the Lessor, and subject to all matters of record or applicable to the Demised Premises

Section 16.05 Hazardous Materials. Lessee, its Sublessees, Owners and assignees shall not permit the presence, handling, storage or transportation of hazardous or toxic materials or medical waste ("Hazardous Waste") in or about the Demised Premises, except in strict compliance with all laws, ordinances, rules, regulations, orders and guidelines of any government agency having jurisdiction and the applicable board of insurance underwriters. In no event shall Hazardous Waste be stored or disposed of in or about the Demised Premises. For purposes herein, the term Hazardous Waste or Hazardous Materials or Substances shall mean any hazardous, toxic or radioactive substance material, matter or waste which is or becomes regulated by any federal, state or local law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement and shall include petroleum products and asbestos as well as improper or excessive storage or use of common household cleaning and landscaping chemicals, pesticides, batteries and the like, and those materials defined as hazardous substance or hazardous waste in the Comprehensive Environmental Response Compensation and Liability Act and/or the Resource Conservation and Recovery Act.

Lessee shall notify Lessor immediately of any known storage, discharge or discovery of any Hazardous Waste at, upon, under or within the Demised Premises. Lessee shall, at its sole cost and expense, comply with all remedial measures required by any governmental agency having jurisdiction, unless such discharge is caused by Lessor or any of its agents or employees.

Lessee shall be liable for environmental damages according to the extent made so by law for periods following its taking possession of the Demised Premises upon the Possession Date. Lessee agrees to indemnify, defend and hold the Lessor harmless from any and all claims, liabilities, costs, losses or damages whatsoever arising out of or in any way connected with the presence of Hazardous Materials or Substances on the Demised Premises from and after the Possession Date. The Lessee's obligation to indemnify the Lessor expressly excludes any claims, liabilities, costs, losses or damages relating to Hazardous Materials or Substances in, on, under or about the Demised Premises, whether known or unknown, which existed prior to the Possession Date. Such indemnification shall survive the expiration or earlier termination of this Lease.

Section 16.06 Recordation. Lessee, within five (5) business days after execution of this Lease, at its sole cost and expense, shall record a complete, true and correct copy of the Lease and any addenda or exhibits thereto, in the Public Records of Monroe County, Florida and shall provide

Lessor with the written Clerk's receipt of the official book and page number where recorded and the original Lease after recordation.

ARTICLE XVII

Representations, Warranties of Title and Quiet Enjoyment and No Unlawful or Immoral Purpose or Use

Section 17.01 Representations, Warranties of Title and Quiet Enjoyment. Except as to matters set forth in this Lease, Lessor represents and warrants that to the best of its knowledge, there are no material claims, causes of action or other proceedings pending or threatened in respect to the ownership, operation or environmental condition of the Demised Premises or any part thereof. Additionally, the Lessor and Lessee covenant and agree that so long as the Lessee keeps and performs all of the covenants and conditions required by the Lessee to be kept and performed, the Lessee shall have quiet and undisturbed and continued possession of the Demised Premises from claims by Lessor.

Section 17.02 No Unlawful or Immoral Purpose or Use. The Lessee, as long as it has any interest in or to any portion of the Demised Premises, its successors and/or assigns, and all Subleases and Owners, shall not occupy or use such portion for any unlawful or immoral purpose and will, at Lessee's sole cost and expense, during such period of interest, conform to and obey any present or future ordinance and/or rules, regulations, requirements and orders of governmental authorities or agencies respecting the use and occupation of the Demised Premises.

ARTICLE XVIII

Miscellaneous

Section 18.01 Covenants Running with Land. All covenants, promises, conditions and obligations contained herein or implied by law are covenants running with the land and, except as otherwise provided herein, shall attach and bind and inure to the benefit of the Lessor and Lessee and their respective heirs, legal representatives, successors and assigns, though this provision shall in no way alter the restrictions on assignment and subletting applicable to Lessee hereunder. The parties agree that all covenants, promises, conditions, terms, restrictions and obligations arising from or under this Lease and the Affordable Restrictions benefit and enhance the communities and neighborhoods of the City and the private and public lands thereof, and have been imposed in order to assure these benefits and enhancements for the full Term of this Lease. It is intended, where appropriate and to serve the public purposes to be furthered by this Lease, that its provisions be construed, interpreted, applied and enforced in the manner of what is commonly referred to as a "deed restriction."

Section 18.02 No Waiver. Time is of the essence in the performance of the obligations of the parties hereto. No waiver of a breach of any of the covenants in this Lease shall be construed to be a waiver of any succeeding breach of the same covenant.

Section 18.03 Written Modifications. No modification, release, discharge or waiver of any provisions hereof shall be of any force, effect or value unless in writing signed by the Lessor and Lessee, or their duly authorized agents or attorneys, and if a material modification, release, discharge

or waiver signed also by any mortgagee, or their duly authorized agents or attorneys, as long as such mortgagee both (i) filed with the City and in Public Records of Monroe County, Florida, a “Certificate of Notice” of their interest in this Lease and or the Demised Premises, said certificate setting forth complete and current contact information, the real estate parcel number assigned to the Demised Premises and the Official Records Book and Page Number of the first recorded page of this Lease, and (ii) provided a copy of the recorded Certificate of Notice to the Lessor at its notice address(es) via certified mail, return receipt requested, or by national overnight tracked and delivery-receipt courier service, and unless otherwise required to be “received”, it shall be deemed given when deposited in the United States mails or with the courier service with postage or courier fees prepaid.

Section 18.04 Entire Agreement. This Lease, including the Preamble and any written addenda and all exhibits hereto (all of which are expressly incorporated herein by this reference) shall constitute the entire agreement between the parties with respect to this instrument as of this date. No prior written lease or prior or contemporaneous oral promises or representations shall be binding.

Section 18.05 Notices. If either party desires to give notice to the other in connection with and/or according to the terms of this Lease, such notice shall be given by certified mail return receipt requested or by national overnight tracked and delivery-receipt courier service, and unless otherwise required to be “received”, it shall be deemed given when deposited in the United States mails or with the courier service with postage or courier fees prepaid. Nothing herein contained shall be construed as prohibiting the parties respectively from changing the place at which notice is to be given, or the addition of one additional person or location for notices to be given, but no such change shall be effective unless and until it shall have been accomplished by written notice given in the manner set forth in this Section. Notification of default or requests to modify this Lease shall also be provided according to the foregoing methods to any mortgagee or designated Investor Member of the Lessee that has complied with the provisions of Section 20.03, above. Notification to Lessor and Initial Lessee shall be as set forth herein, to both of the following offices, unless a different method is later directed as prescribed herein or by the Affordable Restrictions:

<p style="text-align: center;">Initial Lessee:</p> <p>Habitat for Humanity of the Middle Keys, Inc. Attention: Executive Director</p> <p>With a copy to: Christopher B. Waldera, Esq Christopher B. Waldera P.A. 5800 O/S Hwy Suite 7 Marathon, FL 33050</p>	<p style="text-align: center;">Lessor:</p> <p>The City of Marathon, Florida Attention: City Manager</p> <p>With a copy to: Steven T. Williams, Esq. City Attorney 9805 Overseas Highway Marathon, FL 33050</p>
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Section 18.06 Joint Liability. If the parties upon either side (Lessor and Lessee) consist of more than one person, such persons shall be jointly and severally liable on the covenants of this Lease.

Section 18.07 Liability Continued; Lessor Liability. All references to the Lessor and Lessee mean the persons who, from time to time, occupy the positions, respectively, of Lessor and Lessee. In the event of an assignment of this Lease by the Lessor, except for liabilities that may have been incurred prior to the date of the assignment or as specifically dealt with differently herein, the Lessor's liability and obligations under this Lease shall terminate upon such assignment. In addition, the Lessor's liability and obligations under this Lease, unless specifically dealt with differently herein, shall be at all times limited to the Lessor's interest in the Demised Premises.

Section 18.08 Captions. The captions used in this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of or in any way affect this Lease.

Section 18.09 Table of Contents. The index preceding this Lease under the same cover is for the purpose of the convenience of reference only and is not to be deemed or construed in any way as part of this Lease, nor as supplemental thereto or amendatory thereof.

Section 18.10 Governing Law, Venue. This Agreement shall be construed under the laws of the State of Florida, and the venue for any legal proceeding to enforce or determine the terms and conditions of this Lease shall be Monroe County, Florida.

Section 18.11 Brokers. Lessor and Lessee covenant, warrant and represent that no broker was instrumental in consummating this Lease, and that no conversations or negotiations were had with any broker concerning the renting of the Demised Premises. Lessee and Lessor agree to hold one another harmless from and against, and agree to defend at its own expense, any and all claims for a brokerage commission or other fees by either of them with any brokers.

Section 18.12 Severability; Partial Invalidity. If any provision of this Lease or the application thereof to any person or circumstance shall at any time or to any extent be held invalid or unenforceable, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby.

Section 18.13 Force Majeure. If either party shall be delayed, hindered or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor trouble, inability to procure material, failure of power, riots, insurrection, severe tropical or other severe weather events, war or other reasons of like nature not the fault of the party delayed, in performing work or doing acts required under this Lease, the period for the performance of any such act shall be extended for a reasonable period.

Section 18.14 Lessor/Lessee Relationship, Non-Reliance by Third Parties. This Lease creates a lessor/lessee relationship, and no other relationship, between the parties. This Lease is for the sole benefit of the parties hereto and, except for assignments or Subleases permitted hereunder and to the limited extent thereof, no other person or entity shall be a third party beneficiary hereunder. Except as expressly provided under this Lease or under the Affordable Restrictions, no person or entity shall be entitled to rely upon the terms, or any of them, of this Lease to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the Lessor and the Lessee agree that neither the Lessor nor the Lessee or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or

benefits under this Lease separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Lease.

Section 18.15 Contingencies. Initial Lessee's obligations to proceed with and complete the Project under this Lease Agreement are contingent upon Initial Lessee obtaining construction financing for the Project; all necessary permits to build the Affordable Housing Units described herein; Initial Lessee obtaining adequate access or other customary easements (e.g., utility) necessary or convenient for a project of this type; and satisfactory completion of all inspections and due diligence on the Demised Premises; all to be performed and completed on or before Construction Commencement Date. Lessor shall grant Lessee or its affiliates reasonable and customary easements required for Lessee or its affiliates to proceed with the development as contemplated herein. Lessor's obligation to grant such easements shall be subject to Lessor's attorney's review and approval for substance and form of easement instruments, which approval shall not be unreasonably withheld. Lessor shall make objection to any proposed easement instruments within fifteen (15) business days of receipt of copies thereof, or Lessor's approval shall be deemed granted.

Section 18.16 Subsequent Changes in Law or Regulation. Where a change can reasonably be applied to benefit, enhance or support Lessor's affordable housing goals, objectives and policies, Lessor shall have the right to claim the benefit from any subsequent change to any applicable state or federal law or regulation that might in any way affect this Lease, the Affordable Restrictions, or their respective application and enforceability, without limitation. In such instance, this Lease shall be construed or, where necessary, may be reformed or modified to give effect to this provision, but such construction shall not permit a fundamentally inequitable result for any party.

Section 18.17 Government Purpose. Lessor, through this Lease and the Affordable Restrictions, furthers a government affordable housing purpose, and, in doing so, expressly reserves and in no way shall be deemed to have waived, for itself or its assigns, successors, employees, officers, agents and representatives any sovereign, quasi-governmental and any other similar defense, immunity, exemption or protection against any suit, cause of action, demand or liability.

Section 18.18 Supplemental Administrative Enforcement. Lessor, or its appropriate agency, may establish under the Affordable Restrictions, as amended from time to time during the Term of this Lease, such rules, procedures, administrative forms of proceedings and such evidentiary standards as deemed reasonable within Lessor's legislative prerogative, to implement enforcement of the terms of this Lease and similar leases and the Affordable Restrictions, but such mechanisms and code enforcement proceedings, if any, shall not conflict with or require Lessee to act contrary to LIHTC requirements. Such forums may include but in no way be limited to use of Code Enforcement procedures pursuant to Chapter 162, Florida Statutes, to determine, for and only by way of one example, and not as any limitation, the facts and legal effect of an allegedly unauthorized "offer to rent", or, for another example, an unauthorized "occupancy." However, nothing herein shall be deemed to limit Lessor, Initial Lessee or any mortgagee or the single allowed designated Investor Member from access to an appropriate court of competent jurisdiction where the resolution of any dispute would be beyond the competence or lawful jurisdiction of any administrative proceeding.

Section 18.19 Drafting of Lease. The parties acknowledge that they jointly participated in the drafting of this Lease with the benefit of counsel, or had the opportunity to receive such benefit of counsel, and that no term or provision of this Lease shall be construed in favor of or against either party based solely on the drafting of this Lease.

Section 18.20 Lessor's Duty to Cooperate. Where required under this Lease, Lessor shall, to ensure the implementation of the public affordability purpose furthered by this Lease, cooperate with reasonable requests of Initial Lessee, Sublessees, mortgagees, title insurers, closing agents, government agencies and the like regarding any relevant terms and conditions contained herein.

Section 18.21 Prior Agreements. This agreement supersedes and replaces that Agreement made between the same parties as approved by the City of Marathon and signed by Mayor Steve Cook on May 13, 2020.

(Remainder of the page intentionally left blank)

IN WITNESS WHEREOF, the Lessor and the Lessee have hereunto set their hands and seals, as of the day and year above written.

LESSOR:

**THE CITY OF MARATHON,
FLORIDA, a Florida municipal
corporation**

Steve Cook, Mayor

Date: _____

ATTEST:

Diane Clavier, City Clerk

Approved as to Form and Legal Sufficiency
for the Use of the City:

Steven T. Williams, City Attorney

[LESSEE'S SIGNATURE CONTINUES ON THE NEXT PAGE]

IN WITNESS WHEREOF, the Lessor and the Lessee have hereunto set their hands and seals, as of the day and year above written.

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

LESSEE:

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

Printed Name _____

By: _____
Christine Todd Young, Executive Director

Printed Name _____

STATE OF FLORIDA

COUNTY OF MONROE

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, as Executive Director of Habitat for Humanity of the Upper Keys, Inc., a Florida Not-for-Profit corporation, who is [] personally known to me, or who [] has produced a _____ drivers license as identification.

Notary Public
Print Name: _____
My Commission expires:
(seal)

EXHIBIT A

LEGAL DESCRIPTION

Lot 8 and the South 50 feet of Lot 9, Block B, WOODBURN'S SUBDIVISION, according to the Plat thereof as recorded in Plat Book 2, Page 29, of the Public Records of Monroe County, Florida.

Also described as:

South 75 feet of Lot 8, Block B, WOODBURN'S SUBDIVISION, according to the plat thereof as recorded in Plat Book 2, Page 29, of the Public Records of Monroe County, Florida and the South 1/2 of Lot 9, Block B, and the North 25 feet of Lot 8, Block B, WOODBURN'S SUBDIVISION, according to the Plat thereof as recorded in Plat Book 2, Page 29, of the Public Records of Monroe County, Florida, being a re-subdivision of Lots 10, 11 and 12 of Thompson and Adams Subdivision of Government Lot 1, Section 10, Township 66 South, Range 32 East as recorded in Plat Book 2, Page 24 of the Public Records of Monroe County, Florida.

Parcel Identification Number: 00325410-000000

And

Lot 29 and 30, ATLANTIC SHORES SUBDIVISION, according to the Plat thereof as recorded in Plat Book 3, Page 5, of the Public Records of Monroe County, Florida.

EXHIBIT B
APPROVED SITE PLAN

EXHIBIT C

This Instrument Prepared By:

COMMENCEMENT DATE AGREEMENT

This Agreement is made as of _____, 20__ by and between _____ (“Lessor”) and _____ (“Lessee”).

WHEREAS, Lessor and Lessee have entered into a Ground Lease Agreement (the “Lease”) dated _____, 2020 for the Demised Premises designated on **Exhibit A** attached to the Lease, which was duly recorded at Official Records Book __, Page __, of the Public Records of Monroe County, Florida.

WHEREAS, the Commencement Date, as further defined in Article III of the Lease, has occurred; and pursuant to the Lease, Lessor and Lessee desire to confirm the Commencement Date of the Lease Term and the expiration of the Term relating to the Lease.

NOW THEREFORE, Lessor and Lessee agree and acknowledge that the information set forth below is true and accurate.

Commencement Date: _____, 20__

Term Expiration Date: _____, 20__

EXECUTED as a sealed instrument on the date first set forth above.

LESSOR:

LESSEE:

By: _____

By: _____

Attest: _____, Clerk

Print Name: _____

Title: _____

Witness 1

Witness 1

Witness 2

Witness 2

EXHIBIT D

LETTER OF ACKNOWLEDGEMENT

TO: Initial Lessee, or its assigns
Address of Initial Lessee, or its assigns

DATE: _____

This letter is given to (.....Initial Lessee....) as an acknowledgement in regard to the Affordable Housing Unit that I am purchasing. I hereby acknowledge the following:

- That I meet the requirements set forth in the Affordable Restrictions to purchase an affordable unit. I understand that the unit I am buying is being sold to me at a price restricted below fair market value for my, future similarly situated persons and The City of Marathon, Florida' benefits.
- That the Affordable Housing Unit that I am purchasing is subject to a 99-year ground lease by and between the City of Marathon, Florida, and _____ (hereinafter "Lease") and therefore I will be subleasing a parcel of land.
- That my legal counsel, _____, has explained to me the terms and conditions of the Lease, including without limitation the meaning of the term "Affordable Restrictions", and other legal documents that are part of this transaction. If I have not had legal counsel, I state here that I have had an opportunity to have obtain such counsel, understand its importance, and have knowingly proceeded to closing without it.
- That I understand the terms of the Lease and how the terms and conditions set forth therein will affect my rights as an owner of the Affordable Housing Unit, now and in the future.
- That I agree to abide by the Affordable Restrictions, as defined in the Lease, and I understand and agree for myself and my successors in interest that the City of Marathon may change some of the Affordable Restrictions over the 99-year term of the Lease and that I will be expected to abide by any such changes.
- That I understand and agree that one of the goals of the Lease is to keep the Affordable Housing Units affordable from one owner to the next, and I support this goal.
- That in the event I want to sell my Affordable Housing Unit, I must comply with the requirements set forth in the Lease, including but not limited to the price at which I might be allowed to sell it, the persons to whom I might be allowed to sell it to and that the timing and procedures for sales will be restricted.
- That my lease prohibits me from severing the improvements from the real property.
- That my family and I must occupy the Affordable Housing Unit and that it cannot be rented to third parties without the written approval of the City of Marathon, Florida.
- I understand that in the event that I die, my home may be devised and occupied by my wife, my children or any other heirs so long as they meet the requirements for affordable housing as set forth in the Lease.
- That I have reviewed the terms of the Lease and transaction documents and that I consider said terms fair and necessary to preserve affordable housing and of special

benefit to me.

- I hereby warrant that I have not dealt with any broker other than _____ in connection with the consummation of the purchase of the Affordable Housing Unit.

Occupant Signature

Occupant Signature