

POINCIANA GARDENS FUNDING
INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT is made and entered into this ___th day of _____, 2024 by and between MONROE COUNTY, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, FL, 33040, (hereinafter “COUNTY”), the CITY OF KEY WEST, a municipal corporation of the State of Florida, whose address is 1300 White Street, Key West, Florida 33040 (hereinafter “CITY”), and the HOUSING AUTHORITY OF THE CITY OF KEY WEST, a body politic created by the City of Key West through F.S. 421.05 under the laws of the State of Florida, whose address is 1400 Kennedy Drive, Key West, Florida 33040 (hereinafter “KWA”).

WHEREAS, at the CITY’s request, KWA constructed an Adult Assisted Living Facility (ALF) known as Poinciana Gardens; and

WHEREAS, Poinciana Gardens was constructed on property owned by the KWA known as Poinciana Plaza; and

WHEREAS, KWA owns the land and improvements and administers the operation of Poinciana Gardens; and

WHEREAS, the CITY, the KWA and the COUNTY have expressed a shared interest in providing an ALF facility for the residents of the CITY and COUNTY; and

WHEREAS, Poinciana Gardens provides the senior citizens of Monroe County with the ability to age in place, by assisting with elder care needs such as well-being checks, around the clock caregiver services and supervision of medications; and

WHEREAS, Monroe County finds that providing these elder care services serve an invaluable public purpose for the senior citizens of Monroe County; and

WHEREAS, on January 20, 2021 the COUNTY previously approved an initial interlocal agreement with the CITY and the KWA to provide funds for one (1) year (fiscal year 2021) for the operation of Poinciana Gardens; and

WHEREAS, the CITY, the KWA, and the COUNTY entered into a three (3) year funding agreement (the “Former ILA”) for the continued operation of Poinciana Gardens for fiscal years 2022, 2023, and 2024 on August 18, 2021. And in light of that, the COUNTY closed Bayshore Manor Assisted Living Facility in exchange for KWA accepting the residents of Bayshore Manor

Assisted Living Facility at below market rents with the understanding that the rent may be raised over time; and

WHEREAS, the Former ILA terminates on September 30, 2024, and the parties desire to continue their partnership in this project for one (1) more year; and

WHEREAS, the CITY, the KWAH, and the COUNTY possess the requisite powers and authorities to contract in this manner pursuant to Section 163.01, et seq. "Florida Interlocal Cooperation Act of 1969;" and

WHEREAS, upon execution by all parties, this ILA or Agreement (used interchangeably throughout) shall be filed with the Clerk of the Circuit Court of Monroe County, Florida, pursuant to Section 163.01(11), Fla. Stat., as may be amended from time to time; and

WHEREAS, the CITY, the KWAH, and the COUNTY find and determine the continuation of an assisted and independent living facility at Poinciana Gardens serves a vital community need and is in the best interest of public health, safety, and welfare.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties agree as follows:

1. **TERM.** The term of this ILA shall be for a period of one (1) year, beginning October 1, 2024 and terminating on September 30, 2025. Notwithstanding the date(s) of execution, this ILA shall relate back to October 1, 2024.
2. **FUNDING AND PAYMENT.** Contributions by the parties shall be as further described herein. KWAH shall submit to COUNTY and CITY invoices with current financial statements acceptable to the County Clerk (for COUNTY) and the CITY on a MONTHLY schedule in arrears. Acceptability to the County Clerk and City is based on generally accepted accounting principles and such laws, rules and regulations as may govern the County Clerk's and City's disbursement of funds. To the extent required by law, each party's performance and obligation to pay under this ILA is contingent upon annual appropriations by that party's respective governing body.
 - a. The COUNTY shall provide \$600,000 payable to the KWAH for ALF operations during fiscal year 2025. Said payments shall be made in 1/12 increments not later than 30 days after presentation of the invoice by KWAH.
 - b. The CITY shall pay \$300,000 payable to the KWAH for ALF operations during fiscal year 2025. Said payments shall be made in 1/12 increments not later than 30 days after presentation of the invoice by KWAH.

- c. The KWHA shall contribute a minimum of \$300,000 during fiscal year 2025 for ALF operations. To the extent additional funding is required, the KWHA shall contribute additional funds towards ALF operations.
3. **MANAGEMENT.** The KWHA shall be solely responsible for the operation, management and administration of the Poinciana Gardens ALF facility. The COUNTY's and CITY's sole obligation and duty pursuant to this agreement is to provide the funding as set forth in the terms of this agreement.

The management and use/employment of COUNTY employees by KWHA shall require, and be governed by, a separate bi-lateral agreement between the COUNTY and the KWHA. Such agreement shall not be subject to approval by the City.

4. **RECORDS ACCESS AND AUDITS.** All parties shall maintain adequate and complete records for a period of five (5) years after termination of this Agreement. Each party, its officers, employees, agents and auditors shall have access to the other parties' books, records, and documents, related to this Agreement upon request. The access to and inspection of such books, records, and documents by the parties shall occur during regular office hours or as agreed.
5. **RELATIONSHIP OF PARTIES.** The parties to this ILA are independent of each other and shall at no time be legally responsible for any negligence on the part of the other parties, their employees, agents, or volunteers resulting in either bodily or personal injury or property damage to any individual, property or corporation.
6. **TAXES.** The parties are not subject to taxes and assessments.
7. **INSURANCE.** The parties to this agreement stipulate that each is a state or governmental entity as defined by the Florida Statutes and represents to the other that it has purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims under federal or state actions for civil rights violations, which are not limited by Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes Sections 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes arising out of the activities governed by this agreement.
8. **PUBLIC RECORDS.** The parties are public agencies subject to Chapter 119, Florida Statutes, as amended from time to time. To the extent one of the parties is acting on behalf of another pursuant to Section 119.0701, Florida Statutes, as amended from time to time, that party must comply with all public records laws in accordance with Chapter 119, Florida Statutes. In accordance with state law, each party agrees to:
 - a. Keep and maintain all records that ordinarily and necessarily would be required by the public agency in order to perform the services.
 - b. Upon request from a party's custodian of public records, provide the requesting party with a copy of the requested records or allow the records to be inspected or

copies within a reasonable time at a cost that does not exceed the costs provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

- c. Ensure that public records that are exempt, or confidential and exempt, from public records disclosure are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the record-possessing party does not transfer the records to the other parties.
- d. Upon termination of this ILA, at no cost, either transfer to the other parties all public records or keep and maintain public records required by law to carry out the purposes of this ILA.

IF THE PARTIES HAVE QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, FOR COUNTY -- BRIAN BRADLEY AT PHONE NO. 305-292-3470, BRADLEY-BRIAN@MONROECOUNTY-FL.GOV, MONROE COUNTY ATTORNEY'S OFFICE, 1111 12TH STREET, SUITE 408, KEY WEST, FL 33040; FOR KEY WEST – KERI O'BRIEN AT 305-809-3832, CLERK@CITYOFKEYWEST-FL.GOV, 1300 WHITE STREET, KEY WEST, FL 33040; FOR KEY WEST HOUSING AUTHORITY – LISSETTE CAREY AT 305-296-5621, CAREYL@KWAH.ORG, 1400 KENNEDY DRIVE, KEY WEST, FL 33040.

If a party does not comply with this section, the non-breaching parties will enforce the Agreement provisions in accordance herewith and may unilaterally cancel this Agreement in accordance with state law.

9. **E-VERIFY REQUIREMENTS.** All parties acknowledge and confirm compliance with the requirements of Section 448.095, Florida Statutes, as amended, in relation to utilizing the E-verify system.
10. **HOLD HARMLESS.** COUNTY, as a state agency or subdivision defined in Section 768.28, Florida Statutes, agrees to be fully responsible to the limits set forth in such statute for its own negligent acts or omissions, which result in claims or suits against either COUNTY, KWAH or CITY, and agrees to be liable to the statutory limits for any damages proximately caused by said acts or omissions.

KWAH, as a political subdivision of the State of Florida, as defined in Section 768.28, Florida Statutes, agrees to be fully responsible to the limits set forth in such statute for its own negligent acts or omissions which result in claims or suits against either the KWAH, CITY or COUNTY and agrees to be liable to the statutory limits for any damages proximately caused by said acts or omissions.

CITY, as a political subdivision of the State of Florida, as defined in Section 768.28, Florida Statutes, agrees to be fully responsible to the limits set forth in such statute for its own negligent acts or omissions which result in claims or suits against either the CITY, COUNTY or KWAH, and agrees to be liable to the statutory limits for any damages proximately caused by said acts or omissions.

Nothing contained in this Section shall be construed to be a waiver by any party hereto of any protections under sovereign immunity, Section 768.28, Florida Statutes, or any other similar provision of law or common law. Nothing contained herein shall be construed to be a consent by any party hereof to be sued by third parties in any matter arising out of this or any other Agreement.

11. **NON-DISCRIMINATION.** The parties, each for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that no person shall be discriminated against in the provision of services or award of contracts under this Agreement as provided under Federal and State law, and applicable local ordinance on the grounds of race, color, or national origin.

The Parties agree that there will be no discrimination against any person, and it is expressly understood that upon determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The Parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VII of the Civil Rights Act of 1964 (PL 88-352), which prohibit discrimination in employment on the basis of race, color, religion, sex, and national origin; 2) The title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss, 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to the nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 12101), as amended from time to time, relating to nondiscrimination in employment on the basis of disability; 10) The Pregnant Workers Fairness Act (PWFA) pursuant to 42 U.S.C. 2000gg et seq., relating to protections surrounding pregnancy; 11) Monroe County Code Chapter 14, Article II, which prohibits

discrimination on the basis of race, color, sex, religion, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; 12) Code of Ordinance of the City of Key West Section 38 Article III and Section 38-260; and 13) any other nondiscrimination provision in any Federal or state statutes which may apply to the parties to, or the subject matter of the Agreement.

12. **ASSIGNMENT.** No Party may assign this Agreement or assign or subcontract any of its obligations under this Agreement other than as specified without the approval of the governing boards of the other Parties. All the obligations of this Agreement will extend to and bind the legal representatives, successors and assigns of the Parties.
13. **GOVERNING LAWS / VENUE / ATTORNEYS FEES.** This Agreement is governed by the laws of the State of Florida and the United States. Venue for any dispute arising under this Agreement shall be exclusively in Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs subject to the limitations of Section 768.28, Florida Statutes.
14. **ETHICS CLAUSE.** KWHHA and the CITY each warrant that it has not employed, retained or otherwise had act on its behalf any former COUNTY officer or employee subject to the prohibition of Section 2 of Ordinance No. 010-1990 or any COUNTY officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision the COUNTY may, in its discretion, from the agreed payments or otherwise recover the full amount of any fee, commission, percentage, gift or consideration paid to the former COUNTY officer or employee.
15. **CONSTRUCTION.** This Agreement has been carefully reviewed by each of the parties. Therefore, this Agreement is not to be construed against any party on the basis of authorship.
16. **NOTICES.** Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

COUNTY:
County Administrator
1100 Simonton Street
Key West, FL 33040

CITY OF KEY WEST:
City Manager
1300 White Street
Key West, Florida 33040

KWHA:
Executive Director
1400 Kennedy Drive
Key West, Florida 33040

17. **FULL UNDERSTANDING.** This Agreement is the parties' final mutual understanding. It replaces any earlier agreements or understanding, whether written or oral. This Agreement cannot be modified or replaced except by another written or signed agreement.

18. **FILING.** Upon execution by all parties, this ILA must be filed with the Clerk of the Circuit Court of Monroe County, pursuant to Section 163.01(11), Fla. Stat., as may be amended from time to time.

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

(SEAL)
ATTEST: KEVIN MADOK, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Mayor

Approved as to legal form & sufficiency:

County Attorney

(SEAL)
ATTEST:

CITY OF KEY WEST

By: _____
Deputy Clerk

By: _____ *RR*
Mayor

HOUSING AUTHORITY OF THE CITY
OF KEY WEST, FLORIDA

By: _____

Title: _____

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 20____, by Randy Sterling, Executive Director of the Key West Housing Authority. He is personally known to me/or has produced _____ (type of identification) as identification.

Signature of Notary Public

(Print/Stamp Name of Notary Public)