

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED ADDENDUM 2 TO THE COMMERCIAL CONTRACT BETWEEN THE CITY OF KEY WEST AND THE HOUSING AUTHORITY OF THE CITY OF KEY WEST FOR 5220, 5224, 5228 and 5230 COLLEGE ROAD; AUTHORIZING THE CITY MANAGER TO EXECUTE NECESSARY DOCUMENTS UPON ADVICE AND CONSENT OF THE CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 19-086 pursuant to Section 7.03(a) of the City Charter, the City Commission authorized the conveyance of the College Road property to the KWHHA, for the purpose of constructing low and very low-income housing, conditioned upon the receipt of acquisition funding through the CDBG-DR program, to expedite this important project and expand funding/finance options for development of 104 units of affordable housing; and

WHEREAS, the attached Addendum 2 to the Commercial Contract between City of Key West and Key West Housing Authority corrects scribes' errors and waives delayed execution by the Buyer (KWHHA) relating to the College Road Housing Project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA AS FOLLOWS:

Section 1: That the attached Addendum 2 to the Commercial Contract between the City of Key West and the Housing Authority of the City of Key West for property at 5220, 5224, 5228 and 5230 College Road is hereby approved.

Section 2: That the City Manager is authorized to execute this Addendum 2 to the Commercial Contract between the City of Key West and the Housing Authority of the City of Key West, and any related documents, upon the advice and consent of the City Attorney.

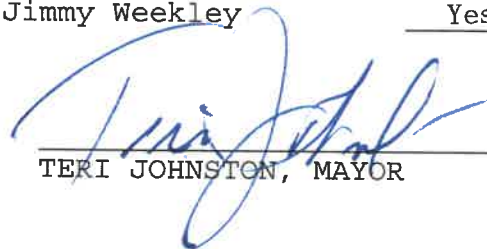
Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 16th day of July, 2019.

Authenticated by the Presiding Officer and Clerk of the Commission on 16th day of July, 2019.

Filed with the Clerk on July 17, 2019.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Absent</u>
Commissioner Clayton Lopez	<u>Absent</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>

  
TERI JOHNSTON, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK

OFFICE OF THE CITY ATTORNEY



PHONE: (305) 809-3770  
FAX: (305) 809-3771

## THE CITY OF KEY WEST

POST OFFICE BOX 1409  
KEY WEST, FL 33041-1409  
WWW.KEYWESTCITY.COM

# EXECUTIVE SUMMARY

To: The City Commission for the City of Key West

From: James K. Scholl, City Manager

By: George B. Wallace, Assistant City Attorney

Date: June 24, 2019

RE: Approve Addendum 2 to the Commercial Contract between City of Key West and The Housing Authority of the City of Key West correcting scriveners' error and waiving delayed execution by Buyer relating to College Road Affordable Housing Project.

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### **Action statement:**

Approve a Resolution authorizing City Manager to execute Addendum 2 to the Commercial Contract relating to the College Road Affordable Housing Rental Complex at 5220,5226,5228 and 5230 College Road.

### **Background**

By Resolution 19-086 The City Commission authorized the City Manager to execute a Commercial Contract to sell the above described property to the Key West Housing Authority for use as an Affordable Housing Rental Complex now known as "Garden View Apartments". One provision of the contract required its execution on or before March 15, 2019. The Buyer did not sign the Contract until May 2, 2019.

The Addendum to the contract contained scribes' errors relating to the numbering of certain paragraphs.

In an abundance of caution it is requested that Addendum 2 clarifying these potential issues be executed in order to avoid the possibility of the contract's rejection by Florida Housing Finance Corporation when considering The Housing Authority's application for funding which will be due on August 6, 2019.

**Recommendation:**

To approve the Resolution authorizing the City Manager to execute Addendum 2 to the Commercial Contract for the sale and purchase of the College Road property.

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## SECOND ADDENDUM TO COMMERCIAL CONTRACT

THIS SECOND ADDENDUM is entered into this 17 day of July, 2019 by and between City of Key West, Florida ("Seller") and The Housing Authority of the City of Key West, Florida, a body politic organized under Chapter 421 of the Florida Statutes ("Buyer" and together with Seller, each a "Party"; and together, the "Parties").

### RECITALS

A. The Parties have previously entered in to that certain Commercial Contract, as Amended by Addendum to Commercial Contract dated May 2, 2019 (hereinafter collectively the "Contract") for the purchase and sale of property located in Monroe County, Florida and commonly referred to as 5220, 5224, 5228, and 5230 College Road, Key West, Florida 33040 (the "Real Property"). Capitalized terms used in this Second Addendum, unless specifically defined herein, shall have the meaning given to such terms in the Contract.

B. The Parties desire to ratify and amend the Contract as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are hereby incorporated into this Second Addendum by this reference.

2. **Ratification.** The Parties acknowledge that notwithstanding the acceptance date outlined in Paragraph 3 of the Contract and the date of execution of the Contract by the Buyer, the Contract is hereby ratified and confirmed in all respects and the same shall remain in full force and effect and be binding on the Parties in accordance with its terms except as modified or amended by this Second Addendum.

3. **Amendments to Agreement.**

a) **Closing Date.** The Parties hereby acknowledge and agree that the reference to "Paragraph 2" in Paragraph 4 of the Addendum to Commercial Contract shall be deleted and replaced with a reference to the financing described in Paragraph 3 of the Addendum to Commercial Contract; therefore, Paragraph 4 of the Addendum to Commercial Contract shall read as follows:

*The Closing Date shall be ninety (90) days after approval of all necessary financing (with all time to appeal the Florida Housing Finance Corporation allocation(s) having expired and with no appeal then pending and no appeal instituted or petition filed) referenced in Paragraph 3; provided however, in no event shall the Closing Date be less than six (6) months from the Application Deadline (as defined in that certain RFA 2019-101-CDBG-DR Request for Applications).*

b) The Parties acknowledge that the Paragraph 5 of the Addendum to Commercial Contract dated May 2, 2019 which sets forth the terms related to "Notices" was erroneously numbered as Paragraph 5; therefore, the Parties agree that such paragraph regarding "Notices" shall be numbered and referred to as Paragraph 6.

c) The Parties acknowledge that the Paragraph 6 of the Addendum to Commercial Contract dated May 2, 2019 which sets forth the terms related to the “Addendum Provisions to Control” was erroneously numbered as Paragraph 6; therefore, the Parties agree that such paragraph regarding the “Addendum Provisions to Control” shall be numbered and referred to as Paragraph 7.


4. **Second Addendum Provisions to Control.** To the extent that there is any inconsistency or conflict with any of the provisions contained in this Second Addendum with the Contract, the provisions set forth in this Second Addendum shall govern the understanding between the Seller and Buyer.

5. **Miscellaneous.** This Second Addendum shall be binding upon and inure to the benefit of the Parties, and their respective heirs, personal representatives, successors and assigns. No additions or modifications of any term or provision of this Second Addendum shall be effective unless set forth in writing, signed by the Party against whom enforcement of such addition or modification is sought.


6. **Counterparts.** This Second Addendum may be executed in two or more counterparts each of which shall be an original but all of which shall constitute one instrument. An executed facsimile copy or e-mail delivery of a “.pdf” format data file shall be an acceptable form of acceptance of this Second Addendum and shall be considered an original for all purposes.

*The remainder of this page has intentionally been left blank.  
Signature page to follow.*

SELLER: CITY OF KEY WEST, FLORIDA

By:   
Printed Name: J.K. SCHOLL  
Its: CITY MANAGER  
DATE: 17 JULY 2019

BUYER: THE HOUSING AUTHORITY OF THE CITY OF KEY WEST, FLORIDA

By:   
Printed Name: J. Manuel Castillo, Sr.  
Its: Executive Director  
DATE: 7-16-19



**Commercial Contract**

1 **1. PARTIES AND PROPERTY:** The Housing Authority of the City of Key West, Florida ("Buyer")  
 2 agrees to buy and City of Key West, Florida ("Seller")

3 agrees to sell the property at:

4 Street Address: 5220, 5224, 5228, and 5230 College Road, Key West, Florida 33040

6 Legal Description: See Exhibit A

8 and the following Personal Property: NONE

10 (all collectively referred to as the "Property") on the terms and conditions set forth below.

11 **2. PURCHASE PRICE:** \$ 3 640 000.00

12 (a) Deposit held in escrow by: \_\_\_\_\_ \$ \_\_\_\_\_  
 13 ("Escrow Agent") (checks are subject to actual and final collection)

14 Escrow Agent's address: \_\_\_\_\_ Phone: \_\_\_\_\_

15 (b) Additional deposit to be made to Escrow Agent

16  within \_\_\_\_ days (3 days, if left blank) after completion of Due Diligence Period or  
 17  within \_\_\_\_ days after Effective Date \_\_\_\_\_ \$ \_\_\_\_\_

18 (c) Additional deposit to be made to Escrow Agent

19  within \_\_\_\_ days (3 days, if left blank) after completion of Due Diligence Period or  
 20  within \_\_\_\_ days after Effective Date \_\_\_\_\_ \$ \_\_\_\_\_

21 (d) Total financing (see Paragraph 5) \_\_\_\_\_ \$ See Addendum

22 (e) Other \_\_\_\_\_ \$ \_\_\_\_\_

23 (f) All deposits will be credited to the purchase price at closing.  
 24 Balance to close, subject to adjustments and prorations, to be paid  
 25 via wire transfer. \_\_\_\_\_ \$ \_\_\_\_\_

26 For the purposes of this paragraph, "completion" means the end of the Due Diligence Period or upon delivery of  
 27 Buyer's written notice of acceptability.

28 **3. TIME FOR ACCEPTANCE; EFFECTIVE DATE; COMPUTATION OF TIME:** Unless this offer is signed by Seller  
 29 and Buyer and an executed copy delivered to all parties on or before March 15 2019, this offer  
 30 will be withdrawn and the Buyer's deposit, if any, will be returned. The time for acceptance of any counter offer will be  
 31 3 days from the date the counter offer is delivered. The "Effective Date" of this Contract is the date on which the  
 32 last one of the Seller and Buyer has signed or initialed and delivered this offer or the final counter offer or  
 33 \_\_\_\_\_. Calendar days will be used when computing time periods, except time periods of 5  
 34 days or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal  
 35 holidays. Any time period ending on a Saturday, Sunday, or national legal holiday will extend until 5:00 p.m. of the next  
 36 business day. Time is of the essence in this Contract.

37 **4. CLOSING DATE AND LOCATION:**

38 (a) Closing Date: This transaction will be closed on See Addendum (Closing Date), unless  
 39 specifically extended by other provisions of this Contract. The Closing Date will prevail over all other time periods  
 40 including, but not limited to, Financing and Due Diligence periods. In the event insurance underwriting is suspended

Buyer [Signature] and Seller [Signature] acknowledge receipt of a copy of this page, which is Page 1 of 8 Pages.

41 on Closing Date and Buyer is unable to obtain property insurance, Buyer may postpone closing up to 5 days after  
42 the insurance underwriting suspension is lifted.

43 (b) Location: Closing will take place in Monroe County, Florida. (If left blank, closing will take place in the  
44 county where the property is located.) Closing may be conducted by mail or electronic means.

45 **5. THIRD PARTY FINANCING:**

46 **BUYER'S OBLIGATION:** On or before \_\_\_\_\_ days (5 days if left blank) after Effective Date, Buyer will apply for third  
47 party financing in an amount not to exceed \_\_\_\_\_% of the purchase price or \$ \_\_\_\_\_, with a fixed  
48 interest rate not to exceed \_\_\_\_\_% per year with an initial variable interest rate not to exceed \_\_\_\_\_%, with points or  
49 commitment or loan fees not to exceed \_\_\_\_\_% of the principal amount, for a term of \_\_\_\_\_ years, and amortized  
50 over \_\_\_\_\_ years, with additional terms as follows:

51 See Addendum

52 Buyer will timely provide any and all credit, employment, financial and other information reasonably required by any  
53 lender. Buyer will use good faith and reasonable diligence to (i) obtain Loan Approval within \_\_\_\_\_ days (45 days if left  
54 blank) from Effective Date (Loan Approval Date), (ii) satisfy terms and conditions of the Loan Approval, and (iii) close  
55 the loan. Buyer will keep Seller and Broker fully informed about loan application status and authorizes the mortgage  
56 broker and lender to disclose all such information to Seller and Broker. Buyer will notify Seller immediately upon  
57 obtaining financing or being rejected by a lender. **CANCELLATION:** If Buyer, after using good faith and reasonable  
58 diligence, fails to obtain Loan Approval by Loan Approval Date, Buyer may within \_\_\_\_\_ days (3 days if left blank)  
59 deliver written notice to Seller stating Buyer either waives this financing contingency or cancels this Contract.  
60 If Buyer does neither, then Seller may cancel this Contract by delivering written notice to Buyer at any time thereafter.  
61 Unless this financing contingency has been waived, this Contract shall remain subject to the satisfaction, by closing, of  
62 those conditions of Loan Approval related to the Property. **DEPOSIT(S) (for purposes of Paragraph 5 only):** If Buyer  
63 has used good faith and reasonable diligence but does not obtain Loan Approval by Loan Approval Date and  
64 thereafter either party elects to cancel this Contract as set forth above or the lender fails or refuses to close on or  
65 before the Closing Date without fault on Buyer's part, the Deposit(s) shall be returned to Buyer, whereupon both  
66 parties will be released from all further obligations under this Contract, except for obligations stated herein as surviving  
67 the termination of this Contract. If neither party elects to terminate this Contract as set forth above or Buyer fails to use  
68 good faith or reasonable diligence as set forth above, Seller will be entitled to retain the Deposit(s) if the transaction  
69 does not close. For purposes of this Contract, "Loan Approval" means a statement by the lender setting forth the terms  
70 and conditions upon which the lender is willing to make a particular mortgage loan to a particular buyer. Neither a pre-  
71 approval letter nor a prequalification letter shall be deemed a Loan Approval for purposes of this Contract.

72 **6. TITLE:** Seller has the legal capacity to and will convey marketable title to the Property by  statutory warranty  
73 deed  special warranty deed  other \_\_\_\_\_, free of liens, easements and  
74 encumbrances of record or known to Seller, but subject to property taxes for the year of closing; covenants,  
75 restrictions and public utility easements of record; existing zoning and governmental regulations; and (list any other  
76 matters to which title will be subject) none

77 \_\_\_\_\_;  
78 provided there exists at closing no violation of the foregoing and none of them prevents Buyer's intended use of the  
79 Property as affordable housing development

80 (a) Evidence of Title: The party who pays the premium for the title insurance policy will select the closing agent  
81 and pay for the title search and closing services. Seller will, at (check one)  Seller's  Buyer's expense and  
82 within \_\_\_\_\_ days after Effective Date or at least 45 days before Closing Date deliver to Buyer (check one)  
83  (i) a title insurance commitment by a Florida licensed title insurer setting forth those matters to be discharged by  
84 Seller at or before Closing and, upon Buyer recording the deed, an owner's policy in the amount of the purchase  
85 price for fee simple title subject only to exceptions stated above. If Buyer is paying for the evidence of title and  
86 Seller has an owner's policy, Seller will deliver a copy to Buyer within 15 days after Effective Date.  (ii.) an  
87 abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an existing firm.  
88 However, if such an abstract is not available to Seller, then a prior owner's title policy acceptable to the proposed  
89 insurer as a base for reissuance of coverage may be used. The prior policy will include copies of all policy  
90 exceptions and an update in a format acceptable to Buyer from the policy effective date and certified to Buyer or

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91 Buyer's closing agent together with copies of all documents recited in the prior policy and in the update. If such  
92 an abstract or prior policy is not available to Seller then (i.) above will be the evidence of title.

93 (b) Title Examination: Buyer will, within 15 days from receipt of the evidence of title deliver written notice to Seller  
94 of title defects. Title will be deemed acceptable to Buyer if (1) Buyer fails to deliver proper notice of defects or (2)  
95 Buyer delivers proper written notice and Seller cures the defects within 90 days from receipt of the notice  
96 ("Curative Period"). Seller shall use good faith efforts to cure the defects. If the defects are cured within the  
97 Curative Period, closing will occur on the latter of 10 days after receipt by Buyer of notice of such curing or the  
98 scheduled Closing Date. Seller may elect not to cure defects if Seller reasonably believes any defect cannot be  
99 cured within the Curative Period. If the defects are not cured within the Curative Period, Buyer will have 10 days  
100 from receipt of notice of Seller's inability to cure the defects to elect whether to terminate this Contract or accept  
101 title subject to existing defects and close the transaction without reduction in purchase price.

102 (c) Survey: (check applicable provisions below)

103 (i.)  Seller will, within \_\_\_\_\_ days from Effective Date, deliver to Buyer copies of prior surveys,  
104 plans, specifications, and engineering documents, if any, and the following documents relevant to this  
105 transaction:

106 \_\_\_\_\_  
107 prepared for Seller or in Seller's possession, which show all currently existing structures. In the event this  
108 transaction does not close, all documents provided by Seller will be returned to Seller within 10 days from the  
109 date this Contract is terminated.

110  Buyer will, at  Seller's  Buyer's expense and within the time period allowed to deliver and examine  
111 title evidence, obtain a current certified survey of the Property from a registered surveyor. If the survey reveals  
112 encroachments on the Property or that the improvements encroach on the lands of another,  Buyer will  
113 accept the Property with existing encroachments  such encroachments will constitute a title defect to be  
114 cured within the Curative Period.

115 (d) Ingress and Egress: Seller warrants that the Property presently has ingress and egress.

116 7. PROPERTY CONDITION: Seller will deliver the Property to Buyer at the time agreed in its present "as is" condition,  
117 ordinary wear and tear excepted, and will maintain the landscaping and grounds in a comparable condition. Seller  
118 makes no warranties other than marketability of title. In the event that the condition of the Property has materially  
119 changed since the expiration of the Due Diligence Period, Buyer may elect to terminate the Contract and receive a  
120 refund of any and all deposits paid, plus interest, if applicable, or require Seller to return the Property to the required  
121 condition existing as of the end of Due Diligence period, the cost of which is not to exceed \$ \_\_\_\_\_ (1.5% of  
122 the purchase price, if left blank). By accepting the Property "as is", Buyer waives all claims against Seller for any  
123 defects in the Property. (Check (a) or (b))

124  (a) As is: Buyer has inspected the Property or waives any right to inspect and accepts the Property in its "as is"  
125 condition.

126  (b) Due Diligence Period: Buyer will, at Buyer's expense and within 180 days from Effective Date ("Due  
127 Diligence Period"), determine whether the Property is suitable, in Buyer's sole and absolute discretion. During the  
128 term of this Contract, Buyer may conduct any tests, analyses, surveys and investigations ("Inspections") which  
129 Buyer deems necessary to determine to Buyer's satisfaction the Property's engineering, architectural,  
130 environmental properties; zoning and zoning restrictions; flood zone designation and restrictions; subdivision  
131 regulations; soil and grade; availability of access to public roads, water, and other utilities; consistency with local,  
132 state and regional growth management and comprehensive land use plans; availability of permits, government  
133 approvals and licenses; compliance with American with Disabilities Act; absence of asbestos, soil and ground  
134 water contamination; and other inspections that Buyer deems appropriate. Buyer will deliver written notice to  
135 Seller prior to the expiration of the Due Diligence Period of Buyer's determination of whether or not the Property  
136 is acceptable. Buyer's failure to comply with this notice requirement will constitute acceptance of the Property in  
137 its present "as is" condition. Seller grants to Buyer, its agents, contractors and assigns, the right to enter the  
138 Property at any time during the term of this Contract for the purpose of conducting Inspections, upon reasonable  
139 notice, at a mutually agreed upon time; provided, however, that Buyer, its agents, contractors and assigns enter  
140 the Property and conduct Inspections at their own risk. Buyer will indemnify and hold Seller harmless from  
141 losses, damages, costs, claims and expenses of any nature, including attorneys' fees at all levels, and from  
142 liability to any person, arising from the conduct of any and all inspections or any work authorized by Buyer. Buyer  
143 will not engage in any activity that could result in a mechanic's lien being filed against the Property without  
144 Seller's prior written consent. In the event this transaction does not close, (1) Buyer will repair all damages to the

Buyer Julie ( ) and Seller [Signature] ( ) acknowledge receipt of a copy of this page, which is Page 3 of 8 Pages.

145 Property resulting from the Inspections and return the Property to the condition it was in prior to conduct of the  
146 Inspections, and (2) Buyer will, at Buyer's expense release to Seller all reports and other work generated as a  
147 result of the Inspections. Should Buyer deliver timely notice that the Property is not acceptable, Seller agrees that  
148 Buyer's deposit will be immediately returned to Buyer and the Contract terminated.

149 (c) Walk-through Inspection: Buyer may, on the day prior to closing or any other time mutually agreeable to the  
150 parties, conduct a final "walk-through" inspection of the Property to determine compliance with this paragraph and  
151 to ensure that all Property is on the premises.

152 **8. OPERATION OF PROPERTY DURING CONTRACT PERIOD:** Seller will continue to operate the Property and any  
153 business conducted on the Property in the manner operated prior to Contract and will take no action that would  
154 adversely impact the Property after closing, as to tenants, lenders or business, if any. Any changes, such as renting  
155 vacant space, that materially affect the Property or Buyer's intended use of the Property will be permitted  only with  
156 Buyer's consent  without Buyer's consent.

157 **9. CLOSING PROCEDURE:** Unless otherwise agreed or stated herein, closing procedure shall be in accordance with  
158 the norms where the Property is located.

159 (a) Possession and Occupancy: Seller will deliver possession and occupancy of the Property to Buyer at  
160 closing. Seller will provide keys, remote controls, and any security/access codes necessary to operate all locks,  
161 mailboxes, and security systems.

162 (b) Costs: Buyer will pay Buyer's attorneys' fees, taxes and recording fees on notes, mortgages and financing  
163 statements and recording fees for the deed. Seller will pay Seller's attorneys' fees, taxes on the deed and  
164 recording fees for documents needed to cure title defects. If Seller is obligated to discharge any encumbrance at or  
165 prior to closing and fails to do so, Buyer may use purchase proceeds to satisfy the encumbrances.

166 (c) Documents: Seller will provide the deed; bill of sale; mechanic's lien affidavit; originals of those assignable  
167 service and maintenance contracts that will be assumed by Buyer after the Closing Date and letters to each  
168 service contractor from Seller advising each of them of the sale of the Property and, if applicable, the transfer of its  
169 contract, and any assignable warranties or guarantees received or held by Seller from any manufacturer,  
170 contractor, subcontractor, or material supplier in connection with the Property; current copies of the condominium  
171 documents, if applicable; assignments of leases, updated rent roll; tenant and lender estoppels letters (if  
172 applicable); tenant subordination, non-disturbance and attornment agreements (SNDAs) required by the Buyer or  
173 Buyer's lender; assignments of permits and licenses; corrective instruments; and letters notifying tenants of the  
174 change in ownership/rental agent. If any tenant refuses to execute an estoppels letter, Seller, if requested by the  
175 Buyer in writing, will certify that information regarding the tenant's lease is correct. If Seller is an entity, Seller will  
176 deliver a resolution of its governing authority authorizing the sale and delivery of the deed and certification by the  
177 appropriate party certifying the resolution and setting forth facts showing the conveyance conforms to the  
178 requirements of local law. Seller will transfer security deposits to Buyer. Buyer will provide the closing statement,  
179 mortgages and notes, security agreements, and financing statements.

180 (d) Taxes and Prorations: Real estate taxes, personal property taxes on any tangible personal property, bond  
181 payments assumed by Buyer, interest, rents (based on actual collected rents), association dues, insurance  
182 premiums acceptable to Buyer, and operating expenses will be prorated through the day before closing. If the  
183 amount of taxes for the current year cannot be ascertained, rates for the previous year will be used with due  
184 allowance being made for improvements and exemptions. Any tax proration based on an estimate will, at request  
185 of either party, be readjusted upon receipt of current year's tax bill; this provision will survive closing.

186 (e) Special Assessment Liens: Certified, confirmed, and ratified special assessment liens as of the Closing Date  
187 will be paid by Seller. If a certified, confirmed, and ratified special assessment is payable in installments, Seller will  
188 pay all installments due and payable on or before the Closing Date, with any installment for any period extending  
189 beyond the Closing Date prorated, and Buyer will assume all installments that become due and payable after the  
190 Closing Date. Buyer will be responsible for all assessments of any kind which become due and owing after Closing  
191 Date, unless an improvement is substantially completed as of Closing Date. If an improvement is substantially  
192 completed as of the Closing Date but has not resulted in a lien before closing, Seller will pay the amount of the last  
193 estimate of the assessment. This subsection applies to special assessment liens imposed by a public body and  
194 does not apply to condominium association special assessments.

195 (f) Foreign Investment in Real Property Tax Act (FIRPTA): If Seller is a "foreign person" as defined by FIRPTA,  
196 Seller and Buyer agree to comply with Section 1445 of the Internal Revenue Code. Seller and Buyer will  
197 complete, execute, and deliver as directed any instrument, affidavit, or statement reasonably necessary to comply

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with the FIRPTA requirements, including delivery of their respective federal taxpayer identification numbers or Social Security Numbers to the closing agent. If Buyer does not pay sufficient cash at closing to meet the withholding requirement, Seller will deliver to Buyer at closing the additional cash necessary to satisfy the requirement.

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**10. ESCROW AGENT:** Seller and Buyer authorize Escrow Agent or Closing Agent (collectively "Agent") to receive, deposit, and hold funds and other property in escrow and, subject to collection, disburse them in accordance with the terms of this Contract. The parties agree that Agent will not be liable to any person for misdelivery of escrowed items to Seller or Buyer, unless the misdelivery is due to Agent's willful breach of this Contract or gross negligence. If Agent has doubt as to Agent's duties or obligations under this Contract, Agent may, at Agent's option, (a) hold the escrowed items until the parties mutually agree to its disbursement or until a court of competent jurisdiction or arbitrator determines the rights of the parties or (b) deposit the escrowed items with the clerk of the court having jurisdiction over the matter and file an action in Interpleader. Upon notifying the parties of such action, Agent will be released from all liability except for the duty to account for items previously delivered out of escrow. If Agent is a licensed real estate broker, Agent will comply with Chapter 475, Florida Statutes. In any suit in which Agent interpleads the escrowed items or is made a party because of acting as Agent hereunder, Agent will recover reasonable attorney's fees and costs incurred, with these amounts to be paid from and out of the escrowed items and charged and awarded as court costs in favor of the prevailing party.

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**11. CURE PERIOD:** Prior to any claim for default being made, a party will have an opportunity to cure any alleged default. If a party fails to comply with any provision of this Contract, the other party will deliver written notice to the non-complying party specifying the non-compliance. The non-complying party will have 30 days (5 days if left blank) after delivery of such notice to cure the non-compliance. Notice and cure shall not apply to failure to close.

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**12. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation, or the availability of services, insurance, or required approvals essential to Closing, is disrupted, delayed, caused or prevented by Force Majeure. "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God, unusual transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended a reasonable time up to 7 days after the Force Majeure no longer prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under this Contract more than 30 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

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**13. RETURN OF DEPOSIT:** Unless otherwise specified in the Contract, in the event any condition of this Contract is not met and Buyer has timely given any required notice regarding the condition having not been met, Buyer's deposit will be returned in accordance with applicable Florida Laws and regulations.

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**14. DEFAULT:**

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(a) In the event the sale is not closed due to any default or failure on the part of Seller other than failure to make the title marketable after diligent effort, Buyer may elect to receive return of Buyer's deposit without thereby waiving any action for damages resulting from Seller's breach and may seek to recover such damages or seek specific performance. If Buyer elects a deposit refund, Seller may be liable to Broker for the full amount of the brokerage fee.

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(b) In the event the sale is not closed due to any default or failure on the part of Buyer, Seller may either (1) retain all deposit(s) paid or agreed to be paid by Buyer as agreed upon liquidated damages, consideration for the execution of this Contract, and in full settlement of any claims, upon which this Contract will terminate or (2) seek specific performance. If Buyer fails to timely place a deposit as required by this Contract, Seller may either (1) terminate the Contract and seek the remedy outlined in this subparagraph or (2) proceed with the Contract without waiving any remedy for Buyer's default.

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**15. ATTORNEY'S FEES AND COSTS:** In any claim or controversy arising out of or relating to this Contract, the prevailing party, which for purposes of this provision will include Buyer, Seller and Broker, will be awarded reasonable attorneys' fees, costs, and expenses.

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**16. NOTICES:** All notices will be in writing and may be delivered by mail, overnight courier, personal delivery, or electronic means. Parties agree to send all notices to addresses specified on the signature page(s). Any notice, document, or item given by or delivered to an attorney or real estate licensee (including a transaction broker) representing a party will be as effective as if given by or delivered to that party.

Buyer  ( ) and Seller  ( ) acknowledge receipt of a copy of this page, which is Page 5 of 8 Pages.

251 **17. DISCLOSURES:**

252 (a) **Commercial Real Estate Sales Commission Lien Act:** The Florida Commercial Real Estate Sales  
253 Commission Lien Act provides that a broker has a lien upon the owner's net proceeds from the sale of  
254 commercial real estate for any commission earned by the broker under a brokerage agreement. The lien upon the  
255 owner's net proceeds is a lien upon personal property which attaches to the owner's net proceeds and does not  
256 attach to any interest in real property. This lien right cannot be waived before the commission is earned.

257 (b) **Special Assessment Liens Imposed by Public Body:** The Property may be subject to unpaid special  
258 assessment lien(s) imposed by a public body. (A public body includes a Community Development District.) Such  
259 liens, if any, shall be paid as set forth in Paragraph 9(e).

260 (c) **Radon Gas:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in  
261 sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that  
262 exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon  
263 and radon testing may be obtained from your county public health unit.

264 (d) **Energy-Efficiency Rating Information:** Buyer acknowledges receipt of the Information brochure required by  
265 Section 553.996, Florida Statutes.

266 **18. RISK OF LOSS:**

267 (a) If, after the Effective Date and before closing, the Property is damaged by fire or other casualty, Seller will  
268 bear the risk of loss and Buyer may cancel this Contract without liability and the deposit(s) will be returned to  
269 Buyer. Alternatively, Buyer will have the option of purchasing the Property at the agreed upon purchase price and  
270 Seller will credit the deductible, if any and transfer to Buyer at closing any insurance proceeds, or Seller's claim  
271 to any insurance proceeds payable for the damage. Seller will cooperate with and assist Buyer in collecting any  
272 such proceeds. Seller shall not settle any insurance claim for damage caused by casualty without the consent of  
273 the Buyer.

274 (b) If, after the Effective Date and before closing, any part of the Property is taken in condemnation or under the  
275 right of eminent domain, or proceedings for such taking will be pending or threatened, Buyer may cancel this  
276 Contract without liability and the deposit(s) will be returned to Buyer. Alternatively, Buyer will have the option of  
277 purchasing what is left of the Property at the agreed upon purchase price and Seller will transfer to the Buyer at  
278 closing the proceeds of any award, or Seller's claim to any award payable for the taking. Seller will cooperate  
279 with and assist Buyer in collecting any such award.

280 **19. ASSIGNABILITY; PERSONS BOUND:** This Contract may be assigned to a related entity, and otherwise  is not  
281 assignable  is assignable. If this Contract may be assigned, Buyer shall deliver a copy of the assignment agreement  
282 to the Seller at least 5 days prior to Closing. The terms "Buyer," "Seller" and "Broker" may be singular or plural. This  
283 Contract is binding upon Buyer, Seller and their heirs, personal representatives, successors and assigns (if  
284 assignment is permitted).

285 **20. MISCELLANEOUS:** The terms of this Contract constitute the entire agreement between Buyer and Seller.  
286 Modifications of this Contract will not be binding unless in writing, signed and delivered by the party to be bound.  
287 Signatures, initials, documents referenced in this Contract, counterparts and written modifications communicated  
288 electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or  
289 typewritten terms inserted in or attached to this Contract prevail over preprinted terms. If any provision of this Contract  
290 is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. This Contract will be  
291 construed under Florida law and will not be recorded in any public records.

292 **21. BROKERS:** Neither Seller nor Buyer has used the services of, or for any other reason owes compensation to, a  
293 licensed real estate Broker other than:

294 (a) **Seller's Broker:** N/A

(Company Name)

(Licensee)

(Address, Telephone, Fax, E-mail)

296 who  is a single agent  is a transaction broker  has no brokerage relationship and who will be compensated by  
297  Seller  Buyer  both parties pursuant to  a listing agreement  other (specify) \_\_\_\_\_  
298 \_\_\_\_\_  
299 \_\_\_\_\_

300 (b) **Buyer's Broker:** N/A

(Company Name)

(Licensee)

(Address, Telephone, Fax, E-mail)

301 Buyer (Signature) and Seller (Signature) acknowledge receipt of a copy of this page, which is Page 6 of 8 Pages.

302 who  is a single agent  is a transaction broker  has no brokerage relationship and who will be compensated by  
303  Seller's Broker  Seller  Buyer  both parties pursuant to  an MLS offer of compensation  other (specify)  
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305 (collectively referred to as "Broker") in connection with any act relating to the Property, including but not limited to  
306 inquiries, introductions, consultations, and negotiations resulting in this transaction. Seller and Buyer agree to  
307 indemnify and hold Broker harmless from and against losses, damages, costs and expenses of any kind, including  
308 reasonable attorneys' fees at all levels, and from liability to any person, arising from (1) compensation claimed which is  
309 inconsistent with the representation in this Paragraph, (2) enforcement action to collect a brokerage fee pursuant to  
310 Paragraph 10, (3) any duty accepted by Broker at the request of Seller or Buyer, which is beyond the scope of  
311 services regulated by Chapter 475, Florida Statutes, as amended, or (4) recommendations of or services provided and  
312 expenses incurred by any third party whom Broker refers, recommends, or retains for or on behalf of Seller or Buyer.

313 **22. OPTIONAL CLAUSES:** (Check if any of the following clauses are applicable and are attached as an addendum to  
314 this Contract):

- |   |  |   |
|---|--|---|
| 315 <input type="checkbox"/> Arbitration                    | <input type="checkbox"/> Seller Warranty                   | <input type="checkbox"/> Existing Mortgage                |
| 316 <input type="checkbox"/> Section 1031 Exchange          | <input type="checkbox"/> Coastal Construction Control Line | <input type="checkbox"/> Buyer's Attorney Approval        |
| 317 <input type="checkbox"/> Property Inspection and Repair | <input type="checkbox"/> Flood Area Hazard Zone            | <input type="checkbox"/> Seller's Attorney Approval       |
| 318 <input type="checkbox"/> Seller Representations         | <input type="checkbox"/> Seller Financing                  | <input checked="" type="checkbox"/> Other <u>Addendum</u> |

319 **23. ADDITIONAL TERMS:**  
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342 **THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE**  
343 **ADVICE OF AN ATTORNEY PRIOR TO SIGNING. BROKER ADVISES BUYER AND SELLER TO VERIFY ALL**  
344 **FACTS AND REPRESENTATIONS THAT ARE IMPORTANT TO THEM AND TO CONSULT AN APPROPRIATE**  
345 **PROFESSIONAL FOR LEGAL ADVICE (FOR EXAMPLE, INTERPRETING CONTRACTS, DETERMINING THE**  
346 **EFFECT OF LAWS ON THE PROPERTY AND TRANSACTION, STATUS OF TITLE, FOREIGN INVESTOR**  
347 **REPORTING REQUIREMENTS, ETC.) AND FOR TAX, PROPERTY CONDITION, ENVIRONMENTAL AND OTHER**

Buyer JMG ( ) and Seller [Signature] ( ) acknowledge receipt of a copy of this page, which is Page 7 of 8 Pages.

348 **ADVICE. BUYER ACKNOWLEDGES THAT BROKER DOES NOT OCCUPY THE PROPERTY AND THAT ALL**  
349 **REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) BY BROKER ARE BASED ON SELLER**  
350 **REPRESENTATIONS OR PUBLIC RECORDS UNLESS BROKER INDICATES PERSONAL VERIFICATION OF**  
351 **THE REPRESENTATION. BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND**  
352 **GOVERNMENTAL AGENCIES FOR VERIFICATION OF THE PROPERTY CONDITION, SQUARE FOOTAGE AND**  
353 **FACTS THAT MATERIALLY AFFECT PROPERTY VALUE.**

354 Each person signing this Contract on behalf of a party that is a business entity represents and warrants to the other  
355 party that such signatory has full power and authority to enter into and perform this Contract in accordance with its  
356 terms and each person executing this Contract and other documents on behalf of such party has been duly authorized  
357 to do so.

*The Housing Authority of the City of Key West, Florida*

358 (Signature of Buyer) \_\_\_\_\_ Date: May 2, 2019

359 J. MANUEL CASTILLO, SR. Tax ID No.: \_\_\_\_\_  
(Typed or Printed Name of Buyer)

360 Title: EXEC DIR Telephone: \_\_\_\_\_

361 (Signature of Buyer) \_\_\_\_\_ Date: \_\_\_\_\_

362 (Typed or Printed Name of Buyer) \_\_\_\_\_ Tax ID No.: \_\_\_\_\_

363 Title: \_\_\_\_\_ Telephone: \_\_\_\_\_

364 Buyer's Address for purpose of notice \_\_\_\_\_

365 Facsimile: \_\_\_\_\_ Email: \_\_\_\_\_

*City of Key West, Florida*

366 [Signature] Date: 12 MARCH 2019  
(Signature of Seller)

367 (Typed or Printed Name of Seller) \_\_\_\_\_ Tax ID No.: \_\_\_\_\_

368 Title: \_\_\_\_\_ Telephone: \_\_\_\_\_

369 (Signature of Seller) \_\_\_\_\_ Date: \_\_\_\_\_

370 (Typed or Printed Name of Seller) \_\_\_\_\_ Tax ID No.: \_\_\_\_\_

371 Title: \_\_\_\_\_ Telephone: \_\_\_\_\_

372 Seller's Address for purpose of notice: \_\_\_\_\_

373 Facsimile: \_\_\_\_\_ Email: \_\_\_\_\_

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Buyer [Signature] and Seller [Signature] acknowledge receipt of a copy of this page, which is Page 8 of 8 Pages.



## ADDENDUM TO COMMERCIAL CONTRACT

THIS ADDENDUM to the Commercial Contract dated MARCH 12<sup>TH</sup> 2019, (hereinafter the "Contract") between City of Key West, Florida ("Seller") and The Housing Authority of the City of Key West, Florida, a body politic organized under Chapter 421 of the Florida Statutes ("Buyer"), concerning the real property located at 5220, 5224, 5228, and 5230 College Road, Key West, Florida 33040 (the "Real Property").

IT IS HEREBY AGREED AS FOLLOWS:

1. Real Property. Seller acknowledges that the Real Property shall include a) all of Seller's right, title and interest, if any, in and to any and all easements, rights, privileges, air rights, and other rights, tenements, hereditaments, and appurtenances in any way belonging or appertaining to, or otherwise inuring to the benefit of, the Real Property or the improvements; and (b) all of Seller's right, title, and interest, if any, to the air space above the Real Property, and zoning entitlements, development rights, and appurtenances accruing to the Real Property, and/or related to the proposed development thereof, under, or by reason of, any applicable zoning ordinance or other law, rule, regulation, or ordinance (the "Development Rights"); and (ii) any and all tangible and intangible personal property of Seller located on, or related to, the Real Property, including, without limitation (a) all development rights for the Real Property, or any part thereof, which Seller has, including, without limitation, those relating to utilities, prepaid water and sewer connection fees, reservation fees and impact fees; (b) all right, title and interest of Seller in any approved site plans, development plans, development orders or development agreements as they relate to the Real Property; (c) all environmental, water, sewer, drainage, road, excavation, fill and all other construction and development applications, permits, licenses, and rights, contractual or otherwise, relating to the Real Property; (d) all rights and interests of Seller under any agreements relating to flood control, drainage, roads, water or sewer facilities or other infrastructure, construction and development for the Real Property; and (e) any and all right, title and interest of Seller in any environmental and/or wetlands mitigation relating to the Real Property, or any portion thereof.
2. Intentionally deleted.
3. Financing. This Contract is contingent upon Buyer obtaining financing in amount to be determined by Buyer, in Buyer's sole and absolute discretion, from Monroe County Land Authority, Florida Housing Finance Corporation and/or any other financial institutions that may be necessary to finance the purchase of the Real Property.
4. Closing Date. The Closing Date shall be ninety (90) days after approval of all necessary financing (with all time to appeal the Florida Housing Finance Corporation allocation(s) having expired and with no appeal then pending and no appeal instituted or petition filed) referenced in Paragraph 2; provided however, in no event shall the Closing Date be less than six (6) months from the Application Deadline (as defined in that certain RFA 2019-101-CDBG-DR Request for

Applications).

5. Closing Conditions. Seller and Buyer acknowledge and agree that the obligation of Buyer to consummate the transaction contemplated hereby is also subject to the satisfaction of the following conditions (the "Closing Conditions"), unless waived in writing by Buyer prior to Closing:

(a) At Closing, there shall have been no material, adverse change to the condition of the Real Property from the condition existing on the Effective Date, including, without limitation, any adverse change to the environmental condition of the Real Property.

(b) By Closing, Buyer shall have satisfied or waived in writing the "Florida Housing Finance Corporation Contingency." For purposes of this Agreement, the term "Florida Housing Finance Corporation Contingency" means, collectively: (i) an award from Florida Housing Finance Corporation ("FHFC") in connection with a Request for Applications (RFA 2019-101) issued by FHFC, for Community Development Block Grant-Disaster Recovery Financing (the "CDBG-DR") in an amount sufficient, in Buyer's sole and absolute discretion, to enable Buyer to acquire the Real Property and construct its intended improvements on the Real Property, with all time to appeal such award having expired and with no appeal then pending and no appeal instituted or petition filed. If Buyer has not satisfied the Florida Housing Finance Corporation Contingency, as a result of not receiving an allocation of CDBG-DR for the acquisition and development of the Real Property, Buyer shall have the right to terminate this Contract upon delivering written notice thereof to Seller.

(c) By Closing, Seller shall have cured and/or closed, as applicable, any violations of applicable laws, ordinances, rules, requirements, or zoning, building, fire or other codes of any governmental agency, body or subdivision thereof with respect to the Property (collectively, "Code Violations") and closed any open permits with respect to the Property (the "Open Permits"), and provide to Buyer documentation reasonably satisfactory to Buyer confirming that the Code Violations have been completely remedied and any Open Permits have been closed.

(d) In addition to any rights or remedies that Buyer may be entitled to under this Agreement, if any of the Closing Conditions are not satisfied by Closing, Buyer shall have the right to terminate this Agreement upon delivering written notice to Seller, in which event the escrow deposit, to the extent a deposit was paid, shall be returned to Buyer and all further obligations of the parties hereunder shall terminate, except those that expressly survive termination hereof.

5. Notices. All notices shall be in writing unless provided for elsewhere in the Contract, and shall be deemed delivered and received (i) on the date when personally delivered; (ii) on the date sent by email transmission sent to the party to receive such notice, provided, in either instance, that a copy is also sent via a nationally recognized carrier for delivery the next business day; (iii) on the date when actually received when delivered by a commercial express delivery service who obtains a receipt; or (iv) three (3) days after deposit in any post office or mail receptacle maintained or authorized by the United States Postal Service, certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

As to Seller: City of Key West, Florida  
ATTN: James K. Scholl  
1300 White Street  
[jscholl@cityofkeywest-fl.gov](mailto:jscholl@cityofkeywest-fl.gov)

With a copy to: Shawn Smith  
1300 White Street  
Key West, FL 33040  
[sdsmith@cityofkeywest-fl.gov](mailto:sdsmith@cityofkeywest-fl.gov)


As to Buyer: The Housing Authority of the City of Key West, Florida  
ATTN: Manuel Castillo  
1400 Kennedy Drive  
Key West, Florida 33040  
[castilom@kwha.org](mailto:castilom@kwha.org)

With a copy to: Spottswood, Spottswood, Spottswood & Sterling, PLLC  
ATTN: Jack Spottswood  
500 Fleming Street  
Key West, FL 33040  
[jack@spottswood.com](mailto:jack@spottswood.com)

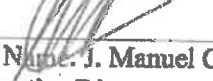
6. Addendum Provisions to Control. To the extent that there is any inconsistency or conflict with any of the provisions contained in this Addendum with the Commercial Contract, the provisions set forth in this Addendum shall govern the understanding between the Seller and Buyer. All terms and conditions in the Commercial Contract not specifically referenced in or amended by this Addendum shall and do remain in full force and effect and are hereby ratified and confirmed by Seller and Buyer in all other respects.

*The remainder of this page has intentionally been left blank.  
Signature page to follow.*

**SELLER: CITY OF KEY WEST, FLORIDA**

By:   
Printed Name: J. K. S. HOWELL  
Its: CITY MANAGER  
DATE: 12 MAR 2019

**BUYER: THE HOUSING AUTHORITY OF THE CITY OF KEY WEST, FLORIDA**

By:   
Printed Name: J. Manuel Castillo, Sr.  
Its: Executive Director  
DATE: May 2, 2019

**EXHIBIT A**

**Legal Description for 5220, 5224, 5228, and 5230 College Road, Key West, Florida**

A PARCEL OF LAND LOCATED ON STOCK ISLAND WITHIN SECTIONS TWENTY-SEVEN (27) AND THIRTY-FOUR (34), TOWNSHIP SIXTY-SEVEN (67) SOUTH, RANGE TWENTY-FIVE (25) EAST, MONROE COUNTY, STATE OF FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:

COMMENCING AT THE POINT OF CURVATURE (PC) OF THE SURVEY BASELINE OF U.S. HIGHWAY 1, HAVING A STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION SURVEY BASELINE STATION OF 63+33.59 AS SHOWN ON THE SPECIFIC PURPOSE SURVEY COMPLETED BY FRANCISCO L. NUNEZ, JR. AND DATED AUGUST 21, 2013, THENCE S70°53'51"W ALONG THE SAID SURVEY BASELINE OF U.S. HIGHWAY 1 FOR A DISTANCE OF 2,740.26 FEET TO THE POINT OF INTERSECTION (PI) OF THE CENTERLINE OF COLLEGE ROAD AS SHOWN ON THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP SECTION 90550-2612, HAVING A TRACED DATE OF JANUARY 23, 1973 AND THE SAID SURVEY BASELINE OF U.S. HIGHWAY 1; THENCE TRAVERSING ALONG THE SAID CENTERLINE OF COLLEGE ROAD AS SHOWN ON THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP SECTION 90550-2612, HAVING A TRACED DATE OF JANUARY 23, 1973, FOR THE FOLLOWING SEVEN COURSES AND DISTANCES: N19°06'09"W FOR A DISTANCE OF 136.16 FEET TO A POINT OF CURVATURE (PC); THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 225.00 FEET, A CENTRAL ANGLE OF 35°06'00", FOR AN ARC LENGTH OF 137.84 FEET TO A POINT OF TANGENCY (PT); THENCE N54°12'09"W FOR A DISTANCE OF 272.56 FEET TO A POINT OF CURVATURE (PC); THENCE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 401.02 FEET, A CENTRAL ANGLE OF 14°25'40", FOR AN ARC LENGTH OF 100.98 FEET TO A POINT OF TANGENCY (PT); THENCE N39°46'29"W FOR A DISTANCE OF 273.51 FEET TO A POINT OF CURVATURE (PC); THENCE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 486.85 FEET, A CENTRAL ANGLE OF 62°35'30", FOR AN ARC LENGTH OF 531.85 FEET TO A POINT OF TANGENCY (PT); THENCE N22°49'01"E FOR A DISTANCE OF 442.74 FEET TO A POINT; THENCE S67°10'59"E AND LEAVING SAID CENTERLINE OF COLLEGE ROAD FOR A DISTANCE OF 40.00 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF SAID COLLEGE ROAD AND THE SOUTHERLY LINE OF THE KEY WEST GOLF COURSE LEASE AREA, SAID POINT BEING THE POINT OF BEGINNING; THENCE S22°49'01"W ALONG SAID EAST RIGHT OF WAY LINE OF COLLEGE ROAD FOR A DISTANCE OF 442.74 FEET TO A POINT OF CURVATURE(PC); THENCE CONTINUING ALONG SAID EAST RIGHT OF WAY LINE OF COLLEGE ROAD ON A CURVE TO THE LEFT, HAVING A RADIUS OF 446.85 FEET, A CENTRAL ANGLE OF 23°06'07", FOR AN ARC LENGTH OF 180.17 FEET TO A POINT ON THE SOUTH LINE OF A 30 FEET WIDE EASEMENT AS RECORDED IN OFFICIAL RECORDS BOOK 130 AT PAGE 168 OF MONROE COUNTY PUBLIC RECORDS; THENCE N67°36'25"E AND LEAVING SAID EAST RIGHT OF WAY LINE OF COLLEGE ROAD AND ALONG THE SOUTH LINE OF SAID 30 FEET WIDE EASEMENT FOR A DISTANCE OF 344.92 FEET TO THE SOUTHWEST CORNER OF THE LAND DESCRIBED IN OFFICIAL RECORDS BOOK 148 AT PAGE 425 OF MONROE COUNTY PUBLIC RECORDS; THENCE N19°39'24"E ALONG THE WEST LINE OF SAID LAND DESCRIBED IN OFFICIAL RECORDS BOOK 148 AT PAGE 425 OF MONROE COUNTY PUBLIC RECORDS FOR A DISTANCE OF 238.08 FEET TO THE SOUTHEAST CORNER OF THE LAND DESCRIBED IN OFFICIAL RECORDS BOOK 365 AT PAGE 324 OF MONROE COUNTY PUBLIC RECORDS; THENCE N70°20'35"W AND ALONG THE SOUTH LINE OF SAID LAND DESCRIBED IN OFFICIAL RECORDS BOOK 365 AT PAGE 324 OF MONROE COUNTY PUBLIC RECORDS FOR A DISTANCE OF 150.00 FEET TO A POINT; THENCE N19°39'25"E ALONG THE WEST LINE OF SAID LAND DESCRIBED IN OFFICIAL RECORDS BOOK 365 AT PAGE 324 OF MONROE COUNTY PUBLIC RECORDS FOR A DISTANCE OF 150.00 FEET TO A POINT ON THE SOUTHERLY LINE OF THE KEY WEST GOLF COURSE LEASE AREA; THENCE N70°20'35"W

**ALONG THE SAID SOUTH LINE OF THE KEY WEST GOLF COURSE LEASE AREA FOR A  
DISTANCE OF 107.83 FEET BACK TO THE POINT OF BEGINNING.**

OFFICE OF THE CITY ATTORNEY



PHONE: (305) 809-3770  
FAX: (305) 809-3771

## THE CITY OF KEY WEST

POST OFFICE BOX 1409  
KEY WEST, FL 33041-1409  
WWW.KEYWESTCITY.COM

# EXECUTIVE SUMMARY

To: The City Commission for the City of Key West

From: James K. Scholl, City Manager

By: George B. Wallace, Assistant City Attorney

Date: January 30, 2019 Updated February 21, 2019 and March 4, 2019 to reflect appraised value.

RE: Proposed development of College Road Affordable Housing Rental Complex and funding plan.

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### Action statement:

Approve a Resolution in support of Management's plan for the construction and funding of the College Road Affordable Housing Rental Complex at 5220, 5226, 5228 and 5230 College Road.

### Background

Following the impact of Hurricane Irma on September 10, 2017 Congress appropriated \$7.4 billion for disaster recovery through the CDBG-DR program nationwide of which Florida is to receive approximately \$616 Million.

The Department of Economic Opportunity (DEO) has released overviews and conducted workshops relating to the allocation of a specific set-aside of \$20 Million for Monroe

County for Workforce Affordable Rental New Construction Housing development with an additional \$10,000,000.00 allocated for land acquisition for Affordable Housing. These funds will be awarded on a competitive basis in response to a Request for Application, "RFA 2019-101 CDBG-DR Financing of Workforce Housing Developments to be used in Monroe County".

By Resolution 18-347 the City Commission authorized the retention of Affordable Housing Consulting, LLC to make application for funding through the RFA process once the final RFA is released. The funds would then be combined with other financing options to be utilized for the construction of the planned 104 unit affordable housing project on College Road. The pending RFA requires that 100% of the units be set aside at or below 80% AMI. (Low Income)

On January 25, 2019 a workshop was conducted by Florida Housing Finance Corporation to review the proposed RFA. The City has been working with the Key West Housing Authority to develop cost and income analysis for the project. The proposed RFA includes a \$10,000,000.00 set-aside for land acquisition in addition to \$20,000,000.00 for development funding. Each project is limited to \$5,000,000.00 of acquisition funding and \$8,000,000.00 development funding.

It is proposed that the Key West Housing Authority make application for both acquisition funding and development funding of the College Road property. The Housing Authority would use acquisition funds to purchase the property from the City of Key West for its appraised value of \$3,640,000.00. The proceeds from the sale will be committed by the City for construction and development funds to construct the rental complex. The sale would be contingent upon receipt of the acquisition grant amount. The property would be deed restricted in perpetuity, (not less than 99 years), for low income housing with 10% of the units set aside for Extremely Low-income including special needs tenants.

The current Total Development estimate for the project is \$25,500,000.00. If successful in the application process the Key West Housing Authority would receive up to



\$11,640,000.00 from CDBG-DR acquisition and development funding for the completion of the project. By Resolution 19-047 the City designated \$8,107,916.00 of Land Authority funds for the construction of the project and by Resolution 19-064 has designated an additional \$400,000.00 towards the project leaving a balance needed of \$5,360,000.00.

The Key West Housing Authority has the ability borrow as much as \$10,000,000.00 in tax exempt financing for the project.

The CDBG-DR grant funds, if received, are forgiven after 20 years so there is no debt service to the City. The only debt service will be for funds borrowed by the Key West Housing Authority to make up the shortfall.

Article VII Section 7.03(a) of the Charter of the City of Key West excludes this proposed conveyance from referendum requirements.

**Recommendation:**

To approve the Resolution giving City Staff direction to proceed with the above described funding process for the construction of the 104 unit Affordable Housing Rental Complex planned for College Road and authorizing the City Manager to executed necessary contracts and other documents to accomplish the project upon the advice and consent of the City Attorney.

---

RESOLUTION NO. 19-086

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AUTHORIZING THE CITY MANAGER TO PROCEED WITH THE PROPOSED DEVELOPMENT OF COLLEGE ROAD AFFORDABLE HOUSING RENTAL COMPLEX PROJECT AND THE FUNDING PLAN AS DESCRIBED IN THE EXECUTIVE SUMMARY ATTACHED TO THIS RESOLUTION; AUTHORIZING THE CITY MANAGER TO EXECUTE NECESSARY CONTRACT DOCUMENTS UPON ADVICE AND CONSENT OF THE CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the need for affordable workforce housing in and around the City of Key West was exacerbated by the destruction of housing by Hurricane Irma; and

WHEREAS, in Resolution 18-126 the City Commission directed the City Manager to expedite the College Road Workforce Housing project; and

WHEREAS, in Resolution 19-047 approved on February 5, 2019, the City Commission nominated to the Monroe County Land Authority the allocation of partial funding for the College Road Workforce Housing project; and

WHEREAS, by separate resolution approved concurrent with this Resolution the City Commission has requested the Monroe County Land Authority designate an additional \$400,00.00 to the College Road Workforce Housing Project; and

WHEREAS, the City Commission recognizes that the project is both complex and crucial, and that the Key West Housing

Authority (KWA) has expertise and the authority to apply for and accept certain federal Community Development Block Grant Disaster Relief (CDBG-DR) funding for acquisition and development of low and very low income housing; and

WHEREAS, pursuant to Section 7.03(a) of the City Charter, the conveyance of City property to another government agency does not require a referendum.

WHEREAS, the City Commission finds that authorizing the conveyance of the College Road property to the KWA, for the purpose of constructing low and very low income housing, conditioned upon the receipt of acquisition funding through the CDBG-DR program, would expedite this important project and expand funding/finance options for development of 104 units of affordable housing; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA AS FOLLOWS:

Section 1: That the City Manager is authorized to proceed with the proposed development of the College Road Affordable Housing Rental Complex Project and the funding plan as described in the executive summary attached to this ordinance.

Section 2: That the City Manager is authorized to execute necessary contract documents required for the sale of the

College Road property to the Key West Housing Authority, upon the advice and consent of the City Attorney.

Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 5th day of March, 2019.

Authenticated by the Presiding Officer and Clerk of the Commission on 6th day of March, 2019.

Filed with the Clerk on March 6th, 2019.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>

  
TERI JOHNSTON, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK