

Prepared by and
return to:

City Attorney of the City of Key West
P.O. Box 1409
Key West, FL 33041-1409
(305) 809-3773

(For Recorder's Use Only)

PARKING AGREEMENT

THIS PARKING AGREEMENT (this "Agreement") is executed as of the ____ day of _____, 2023, by and between Bahama Village on Fort, LTD., a Florida Limited Partnership, Bahama Village Community, LTD., a Florida Limited Partnership, collectively referred to as "Bahama Village Partnerships" and the Naval Properties Local Redevelopment Authority, a municipal corporation ("City").

WHEREAS, City is the owner in fee simple of the property located in the City of Key West, a part of the Truman Waterfront property located at the Naval Air Facility, Key West, Florida, Monroe County, Florida, and more particularly depicted and described on the attached **Exhibit A** (hereinafter "Premises");

WHEREAS, by Referendum conducted in January, 2022, (the "Referendum") THE NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY OF THE CITY OF KEY WEST was authorized to lease real property of approximately 3.2 acres located at the Truman Waterfront, for a period of 99 years, exclusively for affordable workforce housing;

WHEREAS, it is City's intent that the Property be developed to produce affordable workforce housing in accordance with the Referendum;

WHEREAS, Bahama Village Partnerships desires to develop the Property to include a hundred and twenty-six (126) affordable workforce housing units for qualified Lessee occupants and/or qualified Sublessee occupants;

WHEREAS, pursuant to the development and the City's code of ordinances, and due to the land deed restrictions from the NAVY when the parcel was conveyed, Bahama Village Partnerships requires a special long-term contract in order to provide for its use of 16 parking spaces at the City's Truman Waterfront Park Parking Lot 5 (hereinafter "Parking Lot 5") as depicted in **Exhibit B**;

WHEREAS, "Bahama Village Partnerships" shall mean initially, Bahama Village on Fort, LTD., a Florida Limited Partnership, Bahama Village Community, LTD., a Florida Limited Partnership, and includes its successors and/or assigns, including the Association after the control of the Association has been transferred to the Owner/Occupants pursuant to Florida

Statute 718.301, along with all Owner/Occupants as this Lease applies to their respective Affordable Housing Unit; and

NOW, THEREFORE, in consideration of the mutual commitments, conditions and covenants herein contained in this document, and in any contemporaneous Related Agreements between the parties, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. All of the above recitals are true and are incorporated herein.
2. This Agreement is expressly contingent upon the City's approval of the Bahama Village Partnership's Major Development Plan for the development of an affordable housing project on the Property.
3. Bahama Village Partnerships shall mean Bahama Village on Fort, LTD., a Florida Limited Partnership and Bahama Village Community, LTD., a Florida Limited Partnership, and any and/or all of its assigns, agents, heirs, owners, tenants, invitees, associations, managers, etc.
4. Bahama Village Partnerships Rental Development Project shall mean the affordable housing development project as depicted in **Exhibit A**.
5. City shall mean the City of Key West, the Caroline Street Corridor and Bahama Village Community Redevelopment Area (CRA), and/or the Naval Properties Local Redevelopment Authority (LRA), as applicable.
6. The initial term of this Agreement shall commence upon ~~the the date of the issuance of the first certificate of occupancy (including but not limited to a Temporary Certificate of Occupancy) for the affordable housing development~~effective date of the development order for the approval of Bahama Village Partnerships' Major Development Plan, if that event occurs. The initial term of this Agreement shall be twenty (20) years and may be amended thereafter by the City according to section 2-941(a) of the City Code of Ordinances applicable to lands within the boundaries of a Local Redevelopment Area. If the agreement is not renewed timely, the City's applicable "daily rate" for sixteen (16) parking spaces shall apply and shall be remitted monthly by Bahama Village Community LTD., and its successors and/or assigns, to the City of Key West.
7. Upon receipt and clearance of payment(s) made pursuant to paragraph 8, City shall provide 16 parking spaces at the City's Truman Waterfront Park Parking Lot 5 for the use of the tenants of the Bahama Village Partnerships Rental Development Project as depicted in Exhibit B. ~~Homeowners shall have marked and signed parking spaces within the boundaries of the Premises as depicted on Exhibit A.~~ The parking spaces shall be reserved for Bahama Village Partnerships' use and shall not be marked or delineated by the City or Bahama Village Partnerships or any agents or assignees. Access to and use of the parking spaces by Bahama Village Partnerships shall be by special placard made available to the owners of automobiles of the tenants, owners, and/or invitees and such placards shall be placed in the automobiles parked at the lot. The City shall have final approval over the placard system, including but not limited to, placard design and placard administration. Final approval from the City shall be in writing.

Notwithstanding the above, the twenty-eight (28) Homeowner units shall have marked and signed parking spaces within the boundaries of the Premises as depicted on Exhibit A.

8. Bahama Village Partnerships or its agents or assignees shall compensate the City for the loss of revenue received by the City from the parking spaces reserved for Bahama Village Partnerships. The compensation to be paid by the Bahama Village Partnerships shall be calculated by multiplying the number of parking spaces reserved for the Bahama Village Partnerships' development project by \$239.10, the documented annual revenue per parking space at City's Truman Waterfront Park Parking Lot 5 at the time of the execution of this Agreement. Accordingly, the compensation due from Bahama Village Partnerships at the time of the execution of this Agreement for a term of twenty (20) years is \$52,061.69, the lump sum present value of twenty (20) years of revenue of sixteen (16) spaces at City's Truman Waterfront Park Parking Lot 5. The one-time payment for the parking space revenue provided will be made by Bahama Village Partnerships prior to the issuance of the first certificate of occupancy (including but not limited to a Temporary Certificate of Occupancy) for the affordable housing development.

9. In the event additional improvements are required to provide access to the City's Truman Waterfront Park Parking Lot for Bahama Village Partnerships' use, such as a new curb cut to be constructed or new sidewalk segments to provide ADA access for tenants from the City's Truman Waterfront Park Parking Lot 5 to the rental unit buildings at 918 Fort Street or other improvements to City property necessitated by this Agreement, as agreed to by the parties, all such additional costs shall be the sole and entire responsibility of Bahama Village Partnerships.

10. Alterations and Improvements.

- A. No structure or improvements of any kind, whether temporary or permanent, shall be placed upon Parking Lot 5 without prior approval in writing by the City, a building permit issued by the City and any permits required by law by any other agency, federal or state. Any such structure or improvements shall be constructed in a good and workmanlike manner at the Bahama Village Partnerships' sole cost and expense, except as otherwise agreed herein. Subject to any landlord's lien, any structures or improvements constructed by the Bahama Village Partnerships shall be removed by the Bahama Village Partnerships at its sole cost and expense, by midnight on the day of termination of this Agreement or extension hereof, and the Parking Lot 5 restored as nearly as practical to its condition at the time this Agreement is executed. The Bahama Village Partnerships shall be solely responsible for obtaining all necessary permits and paying fees.
- B. The City reserves the right to inspect the leased area and to require whatever adjustment to structures or improvements as the City, in its sole discretion, deems necessary for the use of the Bahama Village Partnerships Rental Development Project. Any such adjustments shall be done at the Bahama Village Partnerships' sole cost and expense. Any building permits sought by

the Bahama Village Partnerships shall be subject to permit fees at Bahama Village Partnerships' sole cost and expense.

- C. Bahama Village Partnerships shall perform, at the sole expense of Bahama Village Partnerships, all work required in the preparation of the property or Parking Lot 5 hereby leased for the use stated herein by Bahama Village Partnerships, if necessary; and Bahama Village Partnerships does hereby accept the leased property or Parking Lot 5 as now being in fit and tenantable condition for the specific purposes of Bahama Village Partnerships as delineated herein.
- D. Any and all signage is subject to approval of the City Manager. Any and all signage is subject to approval of HARC, if necessary.
- E. This Agreement is subject to all terms and conditions as stated in the Sales Parcel Lease, recorded July 19, 2022, in Book 3185, Page 1 of the Official Records of Monroe County, Florida, including but not limited to, Art. 2, Sec. 2.2 of said Lease.
- F. This Agreement is subject to all terms and conditions as stated in the Rental Parcel Lease, recorded March 21, 2022, in Book 3162, Page 1069 of the Official Records of Monroe County, Florida, including but not limited to, Art. 2, Sec. 2.2 of said Lease, and as amended by the First Amendment, recorded July 20, 2022, in Book 3185, Page 127 of the Official Records of Monroe County, Florida.

11. The Bahama Village Partnerships shall not permit any mechanic's lien or liens to be placed on Parking Lot 5 or on improvements on or made to it. If a mechanic's lien is filed, it shall be the sole responsibility of the Bahama Village Partnerships or its officer, employee, agent, contractor, or other representative causing the lien to be filed to discharge the lien and to hold harmless and defend the City against enforcement of such lien. Pursuant to Section 713.01, Florida Statutes, the liens authorized in Chapter 713, Florida Statutes, do not apply to the City.

12. The Bahama Village Partnerships must keep Parking Lot 5 in good order and condition. The Bahama Village Partnerships shall not commit waste on Parking Lot 5, nor maintain or permit a nuisance on Parking Lot 5.

13. To the extent that Bahama Village Partnerships requests that the City provide the parking spaces referred to herein, Bahama Village Partnerships agrees to protect, defend, indemnify, save and hold harmless The City of Key West, all its Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expense and liability arising out of injury or death to any person or the damage, loss of destruction of any property which may occur or in any way result from City's act of providing parking spaces to the Bahama Village Partnerships Development Project, or any and all costs, expense and/or attorney fees incurred by the City as a result of any claim, demands, and/or causes of action except of those claims, demands, and/or causes of action arising out of the negligence of The City of Key West, all Departments, Agencies, Boards and

Commissions, its officers, agents, servants and employees. Bahama Village Partnerships agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent. Nothing in this indemnification is intended to act as a waiver of the City's sovereign immunity rights, including those provided under section 768.28, Florida Statutes. This indemnification shall survive the expiration or termination of this Agreement.

14. This Agreement has been carefully reviewed by Bahama Village on Fort, LTD., a Florida Limited Partnership, Bahama Village Community, LTD., a Florida Limited Partnership collectively referred to as "Bahama Village Partnerships" and the City of Key West, Florida, a municipal corporation. Therefore, this Agreement is not to be construed against any party on the basis of authorship.

15. Notices. Any written notices or correspondence given pursuant to this Agreement, unless otherwise specified, shall be sent by United States Mail, certified, return receipt requested, postage prepaid, or by courier with proof of delivery. The place of giving Notice shall remain the same as set forth herein until changed in writing in the manner provided in this paragraph. Notice is deemed received by either party when hand delivered by national courier with proof of delivery or by U.S. Mail upon verified receipt or upon the date of refusal or non-acceptance of delivery. Notice shall be sent to the following:

For the City: City Manager
City of Key West
P.O. Box 1409
Key West, Florida 33041-1409

With a copy to: City Attorney
City of Key West
P.O. Box 1409
Key West, Florida 33041

For Bahama Village on Fort, LTD: Bahama Village on Fort, LTD
3030 Hartley Road, Suite 310
Jacksonville, FL 32257
Attn: Clarence S. Moore

With a copy to: Smith Hawks, PL
138 Simonton Street
Key West, Florida 33040
Attn: Bryan Hawks

For Bahama Village Community, LTD: Bahama Village Community, LTD
3030 Hartley Road, Suite 310
Jacksonville, FL 32257
Attn: Clarence S. Moore

With a copy to: Smith Hawks, PL
 138 Simonton Street
 Key West, Florida 33040
 Attn: Bryan Hawks

16. The Bahama Village Partnerships may not assign this Agreement or assign or subcontract any of its obligations under this Agreement without the written approval of the City. Notwithstanding the foregoing, upon Bahama Village on Fort, LTD. turning over control to the condominium association as contemplated in the Ground Lease Agreement recorded in the Official Records of Monroe County Book 3185, Page 1, Bahama Village on Fort, LTD. may assign their interest in this Agreement to the condominium association. All the obligations of this Agreement will extend to and bind the successors and assigns of the Bahama Village on Fort, LTD., Bahama Village Community, LTD., collectively referred to as “Bahama Village Partnerships” and the City of Key West, Florida, a municipal corporation.

17. This Agreement is governed by the laws of the State of Florida. Venue for any dispute arising under this Agreement must be in Monroe County, Florida, Lower Keys Division of the Circuit Court, or the Southern District of Florida, as applicable. In the event of litigation affecting the rights of any party under this Agreement, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder, including those pertaining to appeals.

18. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions, and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition, and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions, and provisions of this Agreement would prevent the accomplishment of the original intent of this Lease Agreement. The parties agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

19. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

20. The Bahama Village Partnerships are and shall be an independent contractor and not an agent or servant of the City. The Bahama Village Partnerships shall exercise control, direction, and supervision over the means and manner that its personnel, contractors, and volunteers perform the work for which purpose this Agreement is entered. The Bahama Village Partnerships shall have no authority whatsoever to act on behalf and/or as agent for the City in any promise, agreement, or representation other than specifically provided for in this Agreement. The City shall at no time be legally responsible for any negligence on the part of the Bahama Village Partnerships, its employees, agents, or volunteers resulting in either bodily or personal injury or property damage to any individual, property, or corporation.

21. The Bahama Village Partnerships shall maintain adequate and complete records for a period of four (4) years after termination of this Agreement. The City, its officers, employees, agents, and contractors shall have access to the Bahama Village Partnerships' books, records, and documents related to this Agreement upon request. The access to, and inspection of, such books, records, and documents by the City shall occur at any reasonable time.

22. The Bahama Village Partnerships shall, within ten (10) business days after execution of this Agreement, record a complete and true copy of this Agreement and any exhibits in the Official Records of Monroe County at the sole expense of the Bahama Village Partnerships.

23. This Agreement constitutes the sole and entire agreement between the Parties. This Agreement is the parties' final mutual understanding. It replaces any earlier agreements or understandings, whether written or oral. This Agreement cannot be modified or replaced except by another written and signed agreement executed by all parties. This Agreement may be modified or amended only by a writing duly authorized and executed by all parties. It may not be amended or modified by oral agreements or understandings between the parties unless the same shall be reduced to writing duly authorized and executed by all parties.

24. This Agreement will take effect upon the signature of the last party to the Agreement.

[Signature Pages to Follow]

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

(SEAL)

THE NAVAL PROPERTIES LOCAL
REDEVELOPMENT AUTHORITY OF
THE CITY OF KEY WEST

ATTEST:

By: _____
City Clerk

By: _____
Mayor

Date: _____

Date: _____

BAHAMA VILLAGE COMMUNITY,
LTD., a Florida limited partnership

By: Bahama Village GP, LLC, its general
partner

By: Vestcor, Inc., a Florida corporation

By: _____
Name:
Title:

STATE OF: _____

COUNTY OF: _____

Subscribed and sworn to (or affirmed) before me, by means of ☐ physical presence or ☐ online notarization, on _____, 2023 by _____ (name of affiant) as _____ of Vestcor, Inc., a Florida corporation, manager of Bahama Village GP, LLC, general partner of BAHAMA VILLAGE COMMUNITY, LTD., a Florida limited partnership. He/She is personally known to me or has produced _____ (type of identification) as identification.

NOTARY PUBLIC

[Signature Page to Agreement]

BAHAMA VILLAGE ON FORT, LTD.,
a Florida limited partnership

By: Bahama Village on Fort GP, LLC, its
general partner

By: Vestcor, Inc., a Florida corporation,
its manager

By: _____
Name:
Title:

STATE OF: _____

COUNTY OF: _____

Subscribed and sworn to (or affirmed) before me, by means of ☐ physical presence or ☐ online
notarization, on _____, 2023 by _____ (name of affiant) as
_____ of Vestcor, Inc., a Florida corporation, manager of Bahama Village on Fort GP,
LLC, general partner of BAHAMA VILLAGE ON FORT, LTD., a Florida limited partnership.
He/She is personally known to me or has produced
_____ (type of identification) as identification.

NOTARY PUBLIC

[Signature Page to Agreement]