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GROUND LEASE AGREEMENT

BETWEEN

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

and BAHAMA VILLAGE COMMUNITY, LTD.

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GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT is made and entered into this _____ day of _____, 2022 by and between **THE NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY OF THE CITY OF KEY WEST** (referred to as "Lessor") and **BAHAMA VILLAGE COMMUNITY, LTD.**, a Florida limited partnership (referred to as "Lessee").

RECITALS

WHEREAS, Lessor 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 shown on the attached **Exhibit A** ("Demised Premises");

WHEREAS, by Referendum conducted in January, 2022 (the "Referendum") Lessor was authorized to lease real property of approximately 3.2 acres located at the Truman Waterfront in Historic Bahama Village (the "3.2 Acre Property"), for a period of 99 years, exclusively for affordable workforce housing;

WHEREAS, it is Lessor's intent that the 3.2 Acre Property and Demised Premises be developed to produce affordable workforce housing in accordance with the Referendum;

WHEREAS, Lessee desires to develop the Demised Premises to include at least ninety-eight (98) Affordable Housing Units for rent to individuals and families which comply with applicable Affordable Housing Restrictions using, among other financing sources, those made available through Section 42 Low-Income Housing Tax Credit program (LIHTC) (collectively, "Financing");

WHEREAS, Lessee's affiliate, Bahama Village on Fort, Ltd., shall enter a ground lease for the remainder of the 3.2 Acre Property (less the Demised Premises), which leased premises shall be improved with a development consisting of at least twenty-eight (28) affordable workforce housing units for sale, which ownership shall expire at the end of the term of such lease (the "Conveyance Units Lease");

WHEREAS, in order to preserve the affordability of the Affordable Housing Units (as defined below) to be developed on the Demised Premises and create an attractive financial arrangement for potential lender, Lessor desires to lease the Demised Premises to Lessee for ninety-nine (99) years; and

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

ARTICLE 1. Definitions

1.1. **Certain Defined Terms.** As used herein, the following capitalized terms shall have the following meanings (such meanings to be applicable to both the singular and the plural form of the terms defined):

"Affordable Housing Development" shall mean a development on the Demised Premises consisting of at least ninety-eight (98) Affordable Housing Units for rent to individuals and families which comply with the Affordable Housing Restrictions and also including related infrastructure, securing of required development approvals and permits, financing and marketing of the Affordable Housing Units.

"Affordable Housing Restrictions" shall mean the affordable housing regulations for the Affordable Housing Units as set forth herein and in applicable sections of Florida Housing Finance Corporation and the City of Key West Land Development Regulations or City Code; provided that if there is any discrepancy or conflict between such regulations, the regulations of Florida Housing Finance Corporation shall control over the City of Key West Land Development Regulations or City Code. The Affordable Housing Development shall consist of the following Affordable Housing Units designated at "extremely low", "low income" or "very low income" or "moderate income" as set forth in the definition of "Affordable Housing Unit":

i) Ten (10) Affordable Housing Units designated for "extremely low-income persons"
ii) Thirty-nine (39) Affordable Housing Units designated for "very low-income persons"
iii) Twenty-nine (29) Affordable Housing Units designated for "low-income persons"
iv) Twenty (20) Affordable Housing Units designated for "moderate income persons"

Residential Sublessees, excluding dependents, shall derive 70% of their income from gainful employment in Monroe County provided this provision does not violate any Fair Housing Act. These restrictions shall be memorialized and agreed to by the parties, then recorded and shall become part of the Related Agreements in the form of Declaration of Affordable Housing Restrictions attached as **Exhibit B**.

"Affordable Housing Unit" shall mean a dwelling unit in which the monthly rent, including utilities, does not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for persons or a family as set forth below:

i) "Extremely low-income persons" means one or more natural persons or a family whose total annual household income does not exceed 25 percent of the median annual adjusted gross income for households within the State of Florida. The Florida Housing Finance Corporation may adjust this amount annually by rule to provide that in lower income counties, extremely low income may exceed 25 percent of area median income and that in higher income counties, extremely low income may be less than 25 percent of area median income.

ii) "Very low-income persons" means one or more natural persons or a family, not including students, the total annual adjusted gross household income of which does not exceed 60 percent of the median annual adjusted gross income for households within the State of Florida, or 60 percent of the median annual adjusted gross income for households within the metropolitan statistical area ("MSA") or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

iii) "Low-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the State of Florida, or 80 percent of the median annual adjusted gross income for households within the MSA or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

iv) "Moderate income persons" means one or more natural persons or a family, the total annual adjusted gross household income shall not exceed 120 percent of the median annual adjusted gross income for households within the State of Florida, or 120 percent of the median annual adjusted gross income for households within the MSA or, if not within an MSA, within the county in which the person or family resides, whichever is greater).

"Attorney's Fees" shall mean reasonable attorney's fees and costs incurred by a party, including attorney's fees and cost for trial and appellate proceedings.

"Commencement Date" shall mean the date when Lessee closes and receives the Financing necessary to construct and develop the Affordable Housing Development.

"Concept Plan" shall mean a plan prepared by the Lessee which shall include the overall development plan of the Affordable Housing Development, including, the anticipated housing type, housing design, project budgets, project schedule, landscaping plan, amenities, anticipated zoning, construction requirements and plans related to the infrastructure.

"Demised Premises" shall have the meaning ascribed in the Recitals. The Demised Premises is depicted on the attached **Exhibit A**. Demised Premises, where the context requires and the construction is most appropriate, shall also mean portions of the Demised Premises and any improvements erected thereon.

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

"Governmental Regulations" shall mean all laws, ordinances, and regulations now or hereafter enacted by the State of Florida, City of Key West or by the Federal government.

"Hazardous Substances" shall mean flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), arsenic, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related

materials, petroleum and petroleum products, and substances declared to be hazardous or toxic under any Governmental Regulations.

"Indemnify" shall mean to hold harmless from, and defend against, all claims, demands, actions, causes of action, losses, expenses, damages, liabilities, and Attorney's Fees arising out of or incurred in connection with an identified circumstance, incident, condition, relationship, time period, or other matter. Any indeminification provided by Lessor shall be limited to the Lessor's Sovereign Immunity Limits including but not limited to damages, costs, and Attorney's Fees. Nothing herein shall be deemed a waiver, express or implied, of Lessor's sovereign immunity or an increase in the limits of liability pursuant to Section 768.28, Florida Statutes, regardless of whether any such obligations are based in tort, contract, statute, strict liability, and negligence, product liability or otherwise. Nothing herein shall be construed as consent by Lessor to be sued by third parties in any matter arising out of any contract, act or action.

"Lease" and/or "Agreement" shall mean this Ground Lease Agreement for the creation of the Affordable Housing Development on the Demised Premises, as may be amended from time to time by the parties. It is expressly contemplated and intended by the Lessor, as fee title holder to the Demised Premises, that any limitations, restrictions and/or covenants of any nature established pursuant to this Lease or by the Affordable Housing Restrictions, be given the full force and effect of enforceable covenants running with the land, equitable servitudes and all other cognizable legal and equitable real property conventions so as to ensure the overall public affordable housing purposes intended to be served, including appropriate application of cumulative enforcement theories.

"Lease Year" shall have the meaning set forth in Section 3.1.

"Lessor" shall mean THE NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY OF THE CITY OF KEY WEST or its assigns or designees (herein after referred to as the "LRA"). Lessor as used herein and where the context requires, shall mean an agency or party designated by the Lessor to administer or enforce some or any portion of the provisions of this Lease or the Affordable Housing Restrictions.

"Lessee" means the Lessee and its successors and/or assigns.

"Related Agreements" shall mean any agreement entered into with Lessor contemporaneously and in conjunction with this Lease and which is recorded, included, but not limited to the Declaration of Affordable Housing Restrictions.

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

"Residential Sublease" shall mean a lease or rental agreement document for the leasing of an Affordable Housing Unit to a qualified tenant/sublessee in accordance with the Affordable Housing Restrictions.

"Residential Sublessee" shall mean an individual(s) which lease(s) an Affordable Housing Unit pursuant to a Residential Sublease, and who as of the date such person(s) acquire(s) their leasehold interest(s) in the Affordable Housing Unit, would qualify under the Affordable Housing Restrictions.

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

"Sublease" shall mean any combination of instruments that grant, convey or otherwise transfer a possessory use and/or a leasehold interest in the entirety of the Demised Premises, but excluding rental of an Affordable Housing Unit pursuant to a Residential Sublease and any security, mortgage, note or other interest of a form and type customarily used with purchase money or home equity loans. The title or exact nomenclature used to describe such instruments may vary to suit particular circumstances and shall lie within Lessee's reasonable discretion and still remain within the meaning herein intended (e.g., a "deed of improvements" may in a given context be construed as an effective sublease for purposes herein. A Sublease, as used herein, regardless of final form and substance, must be approved by the Lessor.

1.2. **Other terms**. All capitalized terms used in this Lease that are not defined in this Article 1 shall have the meanings set forth elsewhere in this Lease.

ARTICLE 2. Demised Premises

2.1. **Lessor's Demise**. Upon the terms and conditions hereinafter set forth, and in consideration of the payment of the Rents and the prompt and full performance by Lessee of the covenants and the terms and conditions of any Related Agreements, to be kept and performed by the Lessee, the Lessor does lease, let, and demise to the Lessee and the Lessee hereby leases from the Lessor, the Demised Premises, situate, lying, and being in Monroe County, Florida.

See Attached **Exhibit A**

2.2. Conditions to Demise of Demised Premises. The demise is likewise made subject to the following:

a. Conditions, restrictions, and limitations, if any, there may be now appearing of record;

b. Zoning ordinances of Key West, the County of Monroe, State of Florida, and any other applicable governmental body now existing or which may hereafter exist by reason of any legal authority during the Term of this Lease;

c. Any questions of survey, the Lessee having satisfied itself as to the boundary lines and contents of the Demised Premises above described and likewise satisfied itself with a sufficiency of the present title of the Lessor;

d. The proper performance by the Lessee of all of the terms and conditions contained in this Lease;

e. Any and all easements affecting the Demised Premises;

f. Quitclaim deed between the United States of America and the LRA, recorded December 9, 2002 in Book 1839, Page 410 of the Official Records of Monroe County Florida and as re-recorded July 16, 2004 in Book 2026, Page 531 of the Official Records of Monroe County, Florida (the "Navy QCD");

g. Memorandum of Agreement between the United States of America and the LRA, recorded December 9, 2002 in Book 1839, Page 480 of the Official Records of Monroe County Florida (the "Navy MOA" and with the Navy QCD, collectively, the "Navy Documents"). The parties acknowledge and agree that this Lease is only subject to the Navy Documents so far as such documents are applicable to the Demised Premises. In the event that any claims, debts, demands, or obligations may be made against the Lessor and/or Lessee by the LRA regarding violations of the Navy Documents on property outside of the Demised Premises, to the extent allowed by law, Lessor will indemnify, defend and save harmless the Lessee against any and all such claims, provided said claims, debts, demands, or obligations are not caused by, arise from and/or are attributable to the Lessee, and only to the extent caused or incurred by the negligence or other actionable fault of the Lessor. This obligation shall be limited to a maximum amount of the sovereign immunity limits of liability prescribed in 768.28, Florida Statutes, namely $200,000 per person or $300,000 per occurrence and the Lessor will have no futher obligation to defend or hold harmless Lessee in the event said limits are paid or exhausted. Nothing contained herein shall be construed to alter or waive the Lessor's sovereign immunity under 768.28, Florida Statutes. Lessee acknowledges that indemnification by Lessor may be unenforceable under Florida law, and that Lessor does not waive any legal defense based on the unenforceability of such indemnification provision.

h. The street otherwise known as "Allen Avenue" and depicted on attached **Exhibit A** must remain open to the public pursuant to the agreements with Truman Annex Master Property Owners' Association (the "TAMPOA Agreements"), attached hereto as **Exhibit C**. Provided that Lessee, at its sole cost, shall be responsible for the maintenance and repair of the portion of "Allen Avenue" located on the Demised Premises, so long as access is materially available and continuous as required in the TAMPOA Agreements, Lessee shall be permitted to relocate such access with Lessor's prior reasonable consent.

i. City of Key West Request for Proposal #008-21, including all addenda, Lessee's response thereto and all other documents associated with RFP #008-21 are hereby referred to and by reference made a part of this Contract as fully and completely as if the same were fully set forth herein and are mutually cooperative therewith (Collectively the "RFP Documents").

ARTICLE 3. Term

3.1. **Lease Year**. As used herein, the term "Lease Year" shall have the following meaning: The first Lease Year shall be the period beginning on the Commencement Date and ending on the last day of the same calendar month one year later, and successive Lease Years shall be the twelve (12) month periods immediately succeeding the end of the first Lease Year.

3.2. **Term**. The term of this Lease shall commence on the Commencement Date and continue for ninety-nine (99) years thereafter (the "Term"), plus any agreed upon extension of this Lease, and unless otherwise permitted by Lessor, all Residential Subleases and other Subleases and rights or interests grated thereunder shall terminate at the end of the Term. Notwithstanding the foregoing, provided that Lessee has delivered any required certificates of insurance, Lessee shall be entitled to access the Demised Premises prior to the Commencement Date for the purposes of inspecting the Demised Premises subject to Section 3.3, preparing for the development of the Affordable Housing Development, completing any appraisals or inspections in conjunction with the Financing, matters related to the process of obtaining the Approvals and related matters. Lessee's early access of the Demised Premises shall be subject to all of the provisions of this Lease other than the payment of Rent. Lessee acknowledges that notwithstanding the early access provided herein, Lessee shall not be permitted to physically occupy or commence construction of the Affordable Housing Development prior to the Commencement Date.

The end of the Term shall be the last day of the ninety-ninth (99th) Lease Year; provided, however, that the Lease (or portion thereof) will terminate for nonperformance in the event that (1) Lessor determines at a duly noticed public meeting that Lessee has failed to meet any of the material performance criteria of this Lease, including those set forth below, and (2) the noncompliance remains unremedied 60 days after notification from the Lessor:

a. Lessee must submit an application for funding of the Financing with the Florida Housing Finance Corporation (FHFC) not later than the deadline for the RFA 2022-208;

b. Prior to the Effective Date, the initial Concept Plan shall be delivered to Lessor.

c. Lessee must on or before the date which is eighteen (18) months following the Effective Date obtain all Approvals, including building permits, for construction and development of the Affordable Housing Development to be built on the Demised Premises; and

d. Lessee must acquire issuance of a certificate of occupancy for the Affordable Housing Development, within two (2) years following issuance of all Approvals,

including building permits, necessary for construction and development of the Affordable Housing Development to be built on the Demised Premises.

The foregoing timeframes may be extended by written agreement between the parties hereto.

3.3. **Pre-Commencement Date Access.** Lessee acknowledges and agrees that all access and inspections done on the Demised Premises prior to the Commencement Date shall be subject to the following conditions and requirements: (i) Lessee shall provide Lessor twenty-four (24) hours' advance telephone, and email notice of such site visit to the City Manager and the City Attorney and/or their Designee(s) and (ii) Lessor may have a representative present during such inspections at its discretion. Lessee shall indemnify, defend and hold harmless Lessor from and against any and all claims resulting from the inspections performed by or on behalf of Lessee, or the entry on or about the Lessee by or on behalf of Lessee; provided, however, that the foregoing indemnity obligations shall not extend to, and in no event shall Lessee be liable to Lessor for, any pre-existing conditions on or about the Demised Premises. During such times as Lessee or its representatives are accessing or conducting physical inspection of the Demised Premises prior to the Commencement Date, Lessee agrees to maintain (i) commercial general liability insurance with limits of not less than $1,000,000 and (ii) if applicable, worker's compensation in statutory prescribed amounts and to provide Lessor with evidence of such insurance upon request.

3.4. **Conveyance Units Lease.** If the Conveyance Units Lease is not executed within three (3) months from the Effective Date, Lessor may terminate this Lease immediately.

ARTICLE 4. Use

4.1. **Use.** The Demised Premises shall be used by the Lessee exclusively for the Affordable Housing Development. No other use whatsoever is permitted on the Demised Premises without the express written consent of the Lessor, which consent may be unreasonably withheld at the sole and absolute discretion of the Lessor.

4.2. **Compliance with Governmental Regulations.** Lessee, Sublessee and all Residential Sublessees shall comply with all Governmental Regulations pertaining to use of the Demised Premises.

4.3. **Nuisances.** Lessee and its Sublessee shall not make, suffer, or permit any unlawful, improper, or offensive use of the Demised Premises, or any part thereof, or permit any nuisance thereon. Lessee shall not permit rubbish, refuse, or garbage to accumulate, or any fire or health hazard to exist, upon or about the Demised Premises. Lessee shall not suffer or permit any waste or mistreatment of the Demised Premises.

4.4. **Utilities.** Should either the existing City sewer or Navy water line running through the Demised Premises sustain damage resulting from construction activities on, or use of, the Demised Premises, Lessee shall promptly repair such damage at its expense.

4.5. **Nondiscrimination.** No person or firm shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in conjunction with the awarding and performance by Lessee or its Sublessee of any procurement, nor in the provision of housing on the Demised Premises, on the basis of race, color, religion, national origin, age, sex, disability, sexual orientation, or marital status.

4.6. **Public entity conviction.** No person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may, for a period of thirty-six (36) months from the date of being placed on the convicted vendor list, submit a bid on, or be awarded a contract to perform, any of the following: provision of any goods or services to Lessee or its Sublessee, the construction or repair of a building or work on the Demised Premises, or work on the Demised Premises as a contractor, supplier, subcontractor, or consultant in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO. Should the statutory bar against convicted vendors be amended during the term of this Lease, this paragraph shall be deemed amended to be consistent therewith, as of the effective date of such statutory amendment.

4.7. **Use by Lessor.** Notwithstanding any provision of this Lease to the contrary and subject to the provisions of this section, up until the Commencement Date, Lessor shall be permitted to continue to occupy and to use the existing Demised Premises free of charge to the Lessor and without material interference from the Lessee. During this time, Lessor shall be responsible for all costs of maintaining the Demised Premises. Lessor shall continue its policies of insurance and/or self-insurance with respect to its use of the Demised Premises, if any, subject to the Lessor's sovereign immunity protections. The foregoing notwithstanding, Lessee shall provide written notice to Lessor sixty (60) days prior to the estimated Commencement Date and Lessor shall cease all activities at the Demised Premises on or before the Commencement Date and Lessor shall have no obligation to insure the Demised Premises after the Commencement Date. No provision of this Lease shall give the Lessee any right to force the Lessor to continue its use of the Demised Premises.

4.8. **Existing Utilities.** To Lessor's knowledge, there are no operational underground electric or other utility lines or equipment for the benefit of the Lessor under the Demised Premises other than the light posts currently on the property and electrical lines controlled by Keys Energy Services. Furthermore, Lessor and Lessee recognize that the Navy may have underground facilities on the Demised Premises and the Navy shall have vehicular access over and across those portions of the Demised Premises necessary for obtaining reasonable access to the facilities, at any and all times. With regards to this provision, Lessor represents and warrants that it will interfere as little as reasonably possible with the Lessee's use of the Demised Premises and Lessor will not install facilities or take other actions which would prevent Lessee and any sub-tenants from operating the Demised Premises for the use provided herein, with the exception for emergency situations. Lessor agrees not to install any further utilities on the Demised Premises without written consent of Lessee which shall not be unreasonably withheld, delayed or conditioned.

4.9. **Execution of Lease Does Not Grant Development Rights.** Nothing contained herein is intended to grant Lessee any development rights or guarantees, including but not limited to:

building permit allocations, zoning or variance waivers and similar governmental required approvals.

4.10. **Surrender of Demised Premises**. Lessee shall, upon expiration of the term hereof, or any earlier termination of this Lease for any cause, surrender to Lessor the Demised Premises, including, without limitation, all alterations, improvements, and other additions thereto that have been made or installed by either party in or upon the Demised Premises, in good and clean condition and repair, ordinary wear and tear and casualty damage, if any, excepted.

4.11. **Quiet Enjoyment**. Lessor covenants that so long as Lessee pays the rent reserved in this Lease and performs its agreements hereunder, Lessee shall have the right to quietly enjoy and use the Demised Premises for the term of this Lease, subject to the provisions hereof. Lessor represents and warrants to, and covenants with, Lessee that Lessor owns fee simple title to the Demised Premises subject to any and all restrictions and/or covenants contained in the conveyance documents and that the Demised Premises shall be free from any and all liens, claims, and encumbrances that materially interfere with Lessee 's intended use and enjoyment of the Demised Premises other than the aforementioned restrictions and covenants.

4.12. **Signage**. Lessee and its Sublessee shall be entitled to place signage on the Demised Premises in connection with, and appropriate to, the permitted use of the Demised Premises. All signage shall comply with the regulatory requirements of the City of Key West, including without limitation, HARC regulations.

ARTICLE 5. Rent

5.1. During the term of this Lease, Lessee covenants and agrees to pay to Lessor promptly when due, without notice or demand, and without deduction or offset, annual base rent for the Demised Premises in the amount of Ten Dollars ($10.00) per Lease Year or partial Lease Year. Lessee shall pay to Lessor said annual base rent on the first day of the second month of each Lease Year throughout the term of this Lease.

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

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

5.4. All amounts payable by Lessee to Lessor under any of the provisions of this Lease, if not paid when due as provided for in this Lease shall bear interest at the highest rate allowable

under Florida law from the time they become due until paid in full by Lessee. In addition, Lessee shall pay a late fee in the amount of ten (10%) percent of any amount due from Lessee to Lessor, which is not paid within ten (10) days of the due date for such payment as to any sums due for Rent and within thirty (30) days for any other sums due from Lessee pursuant to this Lease; provided, however, such payment shall not excuse or cure any default by Lessee under this Lease. It is agreed by the parties hereto that said late fee should be for reimbursement to Lessor for collection charges incurred as a result of the overdue rent. Such late fee shall be in addition to any interest payable by Lessee as set herein from Lessee's failure to pay any Rent due hereunder. In the event that any check, bank draft, order for payment or negotiable instrument given to Lessor for any payment under this Lease shall be dishonored for any reason whatsoever not attributable to Lessor, Lessor shall be entitled to charge Lessee an administrative charge of Fifty Dollars ($50.00). In addition, Lessor shall be reimbursed by Lessee for any costs incurred by Lessor as a result of said instrument being dishonored (e.g., Attorney's Fees).

ARTICLE 6. Non-Subordination

6.1. **Non-Subordination**. Notwithstanding anything to the contrary contained in this Lease, the fee simple interest in the Demised Premises shall not be subordinated to any leasehold mortgage, lien or encumbrance of any nature whatsoever. Furthermore, the Lessor's right to receive payment or performance under this Lease or adherence to any of its conditions or to the Affordable Housing Restrictions (or performance under or adherence to the terms of any Sublease, Residential Sublease or related instrument) shall not be subordinated to any to any debt or equity financing, leasehold mortgage, lien, encumbrance or obligation of any nature whatsoever.

ARTICLE 7. Payment of Taxes and Utilities

7.1. **Lessee's Obligations**. Following the Commencement Date, Lessee shall pay and discharge, as they become due, promptly and before delinquency, all taxes, assessments, water and sewer rents, rates and charges, transit taxes, charges for public utilities, excises, levies, licenses and permit fees and other governmental charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature, whatsoever, which at any time during the term of this Lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on, the Demised Premises, or any improvements thereon, or any part thereof or any appurtenance thereto, or otherwise arising out of the rent and income received by the Lessee from Sublessees, any use or occupation of the Demised Premises, and such franchises as may be appurtenance to the use of the Demised Premises, or any document (to which the Lessee is a party) creating or transferring an interest or estate in the Demised Premises. With regards to special assessments, if the right is given to pay either in one sum or in installments, Lessee may elect either mode of payment and Lessee's election shall be binding on Lessor.

7.2. **Obligations Altered**. Nothing herein shall require the Lessee to pay municipal, state, or federal income taxes assessed against the Lessor; provided, however, that if at any time during the term of this Lease the methods of taxation prevailing at the commencement of the term

hereof shall be altered so as to cause the whole or any part of the taxes, assessments, levies, impositions, or charges now levied, assessed and imposed, wholly or partially as a capital levy, or otherwise, on the rents received therefrom, or of any tax, corporation franchise tax, assessments, levy (including, but not limited to any municipal, state, or federal levy), imposition or charge, or any part thereof, shall be measured by or based in whole or in part upon the Demised Premises and shall be imposed upon the Lessor, then all such taxes, assessments, levies, impositions, or charges, or the part thereof so measured or based, shall be paid and discharged by the Lessee. All rebates on account of any taxes, rates, levies, charges, or assessments required to be paid, shall belong to Lessee.

7.3. **Mode of Payment.** The Lessee shall pay the taxes and other charges as enumerated in this Article and shall deliver official receipts evidencing such payment to the Lessor, which payment of taxes shall be made and the receipts delivered, at least 30 days before the tax, itself, would become delinquent in accordance with the law then in force governing the payment of such tax or taxes. If, however, the Lessee desires to contest the validity of any tax or tax claim, the Lessee may do so without being in default hereunder, provided the Lessee gives the Lessor notice of the Lessee's intention to do so and furnishes the Lessor or the applicable governmental agency with a bond with a surety made by a surety company qualified to do business in the State of Florida or pays cash to a recognized Escrow Agent in Monroe County, one and one half times the amount of the tax item or items intended to be contested, conditioned to pay such tax or tax items when the validity thereof shall have been determined, and which written notice and bond or equivalent cash shall be given by the Lessee to the Lessor, not later than 60 days before the tax item or items proposed to be contested would otherwise become delinquent.

7.4. **Lessee's Default.** If the Lessee shall fail, refuse, or neglect to make any of the payments required in this Article, then the Lessor may pay the same, and the amount or amounts of money so paid, including reasonable attorneys' fees and expenses which might have been reasonably incurred because of or in connection with such payments, together with interest on all such amounts, at the highest rate allowed by law shall be repaid by the Lessee to the Lessor, upon the demand of the Lessor, and the payment thereof may be collected or enforced by the Lessor in the same manner as though such amount were an installment of rent specifically required by the terms of this Lease to be paid by the Lessee to the Lessor, upon the day when the Lessor demands repayment thereof or reimbursement therefor of and from the Lessee; but the election of the Lessor to pay such taxes shall not waive the default thus committed by the Lessee.

ARTICLE 8. Mechanic's Liens

8.1. **No Lien.** The Lessee shall not have the power to subject the interest of the Lessor in the Demised Premises to any mechanic's or materialmen's liens or lien of any kind.

8.2. **Release of Lien.** The Lessee will not permit or suffer to be filed or claimed against the interest of the Lessor in the Demised Premises during the continuance of this Lease, any lien or claim of any kind (excepting for the mortgage referred to in Article 15), and if such lien be claimed or filed, it shall be the duty of the Lessee, within thirty (30) days after the Lessor

shall have been given written notice of such a claim having been filed, or within thirty (30) days after the Lessor shall have been given written notice of such claim and shall have transmitted written notice of the receipt of such claim unto the Lessee (whichever thirty (30) day period expires earlier) to cause the Demised Premises be released from such claim, either by payment or by the posting of bond or by the payment to the court of the amount necessary to relieve and release the Demised Premises from such claim, or in any other manner which, as a matter of law, will result, within such period of thirty (30) days, in releasing the Lessor and the title of the Lessor from such claim; and the Lessee covenants and agrees, within such period of thirty (30) days, so as to cause the Demised Premises and the Lessor's interest therein to be released from the legal effect of such claim. Lessee shall include language in all contracts and agreements it enters into for improvements to the Demised Premises that specifies and acknowledges the inability to lien Lessor's interests as specified herein.

8.3. **Lessee's Default.** If the Lessee shall fail, refuse, or neglect to perform its obligations as required in this Article, then the Lessor may pay any sums required to cause the Demised Premises and the Lessor's interest therein to be released from the legal effect of such claim and the amount or amounts of money so paid, including reasonable attorneys' fees and expenses which might have been reasonably incurred because of or in connection with such payments, together with interest on all such amounts at the highest rate allowed by law shall be repaid by the Lessee to the Lessor, upon the demand of the Lessor, and the payment thereof may be collected or enforced by the Lessor in the same manner as though such amount were an installment of rent specifically required by the terms of this Lease to be paid by the Lessee to the Lessor, upon the day when the Lessor demands repayment thereof or reimbursement therefor of and from the Lessee; but the election of the Lessor to pay such amount shall not waive the default thus committed by the Lessee.

ARTICLE 9. Governing Law, Cumulative Remedies

9.1. **Governing Law.** All of the rights and remedies of the respective parties shall be governed by the provisions of this instrument and by the laws of the State of Florida as such laws relate to the respective rights and duties of lessors and lessees.

9.2. **Cumulative Remedies.** During the continuance of the Lease, the Lessor shall have all rights and remedies which this Lease and the laws of the State of Florida assures to it. All rights and remedies accruing to the Lessor shall be cumulative, that is, the Lessor may pursue such rights as the law and this Lease affords to it in whatever order the Lessor desires and the law permits without being compelled to resort to any one remedy in advance of any other. Lessor's resort to one remedy in advance of any other shall not result in waiver or compromise of any other remedy.

ARTICLE 10. Indemnification of Lessor

10.1. **Indemnification by Lessee.** During the entire term of the Lease, the Lessee will indemnify, defend and save harmless the Lessor against any and all claims, debts, demands, or obligations which may be made against the Lessor or against the Lessor's title in the Demised Premises, arising out of, or in connection with, or in any way related to the Demised Premises,

except to the extent such claims may be caused by gross negligence or misconduct of the Lessor (or its agents or employees in the conduct of work for or at the direction of the Lessor); and if it becomes necessary for the Lessor to defend any action seeking to impose any such liability, the Lessee will pay the Lessor all costs of court and reasonable attorneys' fees incurred by the Lessor in effecting such defense in addition to any other reasonable sums which the Lessor may be called upon to pay by reason of the entry of a judgment against the Lessor in the litigation in which such claim is asserted.

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

10.2. **Insurance**. On the Commencement Date, the Lessee shall cause to be written and in full force and effect a policy or policies of insurance as noted in Article 11 insuring the Lessee against any and all claims and demands made by any person or persons whomsoever for injuries received in connection with the operation and maintenance of the Demised Premises, improvements, and buildings located on the Demised Premises. All such policies shall name the Lessee and the Lessor (and any lender holding a mortgage on the Demised Premises), as their respective interests may appear, as the persons insured by such policies; and the original or a duplicate original of each of such policy or policies shall be delivered by the Lessee to the Lessor promptly upon the writing of such policies, together with adequate evidence of the fact that the premiums are paid. Any loss adjustment shall require the written consent of both the Lessor and Lessee.

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

ARTICLE 11. Insurance

11.1. **Property Insurance**. From and after the Commencement Date, Lessee will keep insured any and all buildings and improvements upon the Demised Premises against all loss or damage by fire, flood and windstorm, together with "all risks" "extended coverage," which said insurance will be maintained in an amount which will be sufficient to prevent any party in interest from being or becoming a co insurer on any part of the risk, which amount shall not be less than full Replacement Cost value of the Demised Premises, and all of such policies of insurance shall

include the name of the Lessor as an additional insured and shall fully protect both the Lessor and the Lessee as their respective interests may appear. In the event of destruction of the said buildings or improvements by fire, flood, windstorm, or other casualty for which insurance shall be payable and as often as such insurance money shall have been paid to the Lessor and the Lessee, said sums so paid shall be deposited in a joint account of the Lessor and the Lessee in a bank located in the State of Florida designated by the Lessee, and shall be made available to the Lessee for the construction or repair (including any modification to the improvements sought by the Lessee and approved in writing by the Lessor with Lessor's approval) as the case may be, of any building or buildings damaged or destroyed by fire, flood, windstorm, or other casualty for which insurance money shall be payable and shall be paid out by the Lessor and the Lessee from said joint account from time to time on the estimate of any reliable architect licensed in the State of Florida having jurisdiction of such reconstruction and repair, certifying that the amount of such estimate is being applied to the payment of the reconstruction or repair and at a reasonable cost therefor; provided, however, that the total amount of money necessary for the reconstruction or repair of any building or buildings destroyed or injured has been provided by the Lessee for such purpose and its application for such purpose assured. In the event of the destruction or damage of the buildings and improvements or any part thereof, and as often as any building or improvement on said Demised Premises shall be destroyed or damaged by fire, flood, windstorm, or other casualty, the Lessee shall rebuild and repair the same in such manner that the building or improvement so rebuilt and repaired, and the personal property so replaced or repaired (other than personal property of any Residential Sublessee), shall be of similar value as the said building or improvement and the personal property upon the Demised Premises prior to such damage or destruction, and shall diligently prosecute the reconstruction or repairs without delay and have the same rebuilt and ready for occupancy as soon as reasonably possible from the time when the loss or destruction occurred, subject to Force Majeure or Forced Delay described in Section 14.3. Notwithstanding the foregoing, the provisions of any Leasehold Mortgage shall control as to the uses and disbursement of funds for reconstruction of the improvements in the event of any casualty or damage to such improvements.

While the Affordable Housing Development, or any replacement thereof, is in the course of construction, and whenever appropriate while any alterations are in the course of being made, the aforesaid fire and extended coverage insurance shall be carried by Lessee in builder's risk form written on a completed value basis.

Notwithstanding anything to the contrary in the immediately preceding paragraph, in case of destruction of all of the improvements on the Demised Premises from any cause so as to make a material number of Affordable Housing Units untenantable occurring during the last ten (10) years of the Term of this Lease, Lessee, if not then in default under this Lease and if there is no Leasehold Mortgage or other similar encumbrance on the Lessee's interest in the Demised Premises which requires otherwise, may elect to terminate this Lease by written notice to Lessor within ninety (90) days after the occurrence of the destruction. In the event of termination, there shall be no obligation on the part of Lessee to restore or repair the improvements on the Demised Premises, nor any right of the Lessee to receive any proceeds collected under any insurance policies covering the improvements. If Lessee elects not to terminate this Lease in the event of destruction during the last ten (10) years of this Lease, the proceeds of all insurance covering the

improvements shall be made available to Lessee for repairs, and Lessee shall be obligated to repair as set forth above.

11.2. **Commercial General Liability Insurance.** Lessee shall maintain Commercial General Liability Insurance beginning on the Effective Date and continuing during the entire Term of this Lease. The Commercial General Liability shall cover those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form [ISO Form CG 00-01] as filed for use in Florida without the attachment of restrictive endorsements other than the elimination of medical payments and fire damage legal liability.

General Aggregate	$1,000,000
Products/Completed Operations [*coverage for three (3) years after project completion*]	$1,000,000
Personal & Advertising Liability	$500,000
Each Occurrence	$1,000,000
Contractual Liability	$1,000,000

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

At least once every five (5) years, Lessor and Lessee shall meet to review the extent and amount of insurance coverage provided hereunder. Should Lessor reasonably believe that the coverage provided is not sufficient to protect its interest, it may specify the level of insurance required.

11.3. **Environmental Remediation Responsibility**. The Lessee and/or its contractors acknowledge that the performance of this Lease is, or may be, subject to Federal, State and local laws and regulations enacted for the purpose of protecting, preserving or restoring the environment. The Lessee shall at the sole cost of the Lessee or its Contractors, be responsible for full compliance with any such laws or regulations, including the obligations to remediate. The Environmental Reports which have been provided by Lessor are attached as **Schedule 18.1**.

The Lessee's performance under Lease shall include, but not by way of limitation, the following:

a. Performance in a manner to reasonably minimize disturbance of or damage to the environmental conditions of the Demised Premises.

b. To the extent caused by the performance of this Lease by or on behalf of the Lessee or its Contractors, the clean-up, repair or restoration of the environment to the extent required by any Federal, State or local laws or regulations.

c. The Lessee and/or its Contractors shall be responsible for any fines, penalties, damages or assessments made against the Lessee or its Contractors or the Lessor resulting from the performance of this Lease by or on behalf of the Lessee.

d. The Lessee's obligation under this Section shall survive the termination of this Lease, and shall not be limited in any manner by acceptance or final payment under the Lease terms.

11.4. **Other Insurance.** Lessee shall maintain such other insurance and in such amounts as may from time to time be reasonably required by the Lessor against other insurable hazards which at the time are commonly insured against in the case of demolition and construction of buildings and/or in the case of premises similarly situated, due regard being or to be given to the height or type of building, its location, construction, use and occupancy.

11.5. **Delivery of Policies.** The Lessee shall pay premiums for all of the insurance policies which the Lessee is obligated to carry under the terms of this Lease, and will deliver to the Lessor evidence of such payment before the payment of any such premiums become in default, and the Lessee will cause renewals of expiring policies to be written and the policies or copies thereof, as the Lease may require, to be delivered to Lessor at least ten days before the expiration date of such expiring policies.

11.6. **Proceeds Payable to Leasehold Mortgagee.** If any Leasehold Mortgagee holding a Leasehold Mortgage created pursuant to the provisions of Article 15 elects, in accordance with the terms of such Leasehold Mortgage, to require that the proceeds of the insurance be paid to the mortgagee, then such payment shall be made, but in such event, it shall still be obligatory upon the Lessee to create the complete fund with the Leasehold Mortgagee in the manner set forth in this Article to assure and complete the payment for the work of reconstruction and repair.

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

11.8. **Direct Repayment.** The foregoing notwithstanding, in the event the insurance proceeds are the sum of One Hundred Thousand and 00/100 Dollars ($100,000) or less, then such proceeds shall be paid directly to the Lessee without the necessity of creating the joint bank account, and Lessee shall use such funds to make the replacements or repairs.

11.9. **General Requirements.** All insurance to be provided by Lessee under this Lease shall be effected under valid and enforceable policies in such forms, issued by insurers of

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

ARTICLE 12. Assignment/Transfer

12.1. **Assignment/Sublease by Lessee.** Without the written consent of Lessor, Lessee shall not assign this Lease or enter into a Sublease for any portion or all of the Demised Premises which consent may be unreasonably withheld at the sole and absolute discretion of the Lessor. Notwithstanding the foregoing, Lessor may not unreasonably withhold consent for an assignment wherein Lessee proposes assigning this Lease to a related entity owned and controlled by the same underlying owners as Lessee.

12.2. **Right of First Refusal.** In the event Lessee shall enter into a commitment, or receive an offer which Lessee wishes to reasonably accept, with respect to an assignment of this Lease or a Sublease for the entirety of the Demised Premises (a "Commitment"), Lessor shall have a period of thirty (30) days after receiving written notice and a copy of such Commitment from Lessee, in which to agree to match such Commitment on the same reasonable material terms and conditions as set forth in the Commitment, whereupon, in the event Lessor elects to match such Commitment terms, the parties shall use all commercially reasonable efforts to enter into a definitive agreement consistent therewith, as soon as practicable thereafter. Notwithstanding the foregoing, Lessee's assignment to a related entity owned and controlled by the same underlying owners as Lessee shall not be subject to the right of first refusal described in this section.

12.3. **No Consent Required for Entering Into Residential Subleases.** Lessor's consent shall not be required for Lessee to enter into any Residential Sublease for the Affordable Housing Units, provided such Residential Subleases are done in compliance with the Affordable Housing Restrictions, this lease and Section 12.4.

12.4. **Associations.** Lessee shall not be authorized to assign its interest in this Lease for any portions of the Demised Premises to a homeowners', condominium, or similar association, without the express written consent of Lessor which consent may be unreasonably withheld at the sole and absolute discretion of the Lessor. In the event Lessor so approves such assignment to such association, any such Association and its related declaration, articles of incorporation, bylaws, and any other governing documents, as may be amended, shall first be approved by Lessor or its designee for compliance with the goals, purposes, and intent of this Lease and the Affordable Housing Restrictions. Where Lessor approves such documents as complying with the foregoing, Lessor may join in any community ownership governing documents as may be required by Lessee

in order to conform its planned unit governance to state law. No governing document related to such Association shall materially alter or impair the terms and conditions of this Lease or the applicability of the Affordable Housing Restrictions. Lessor shall have forty-five (45) days from receipt of said documents to review and object to any contents thereof. Upon the foregoing Lessor-authorized assignment to an association by Lessee or a Sublease to a sublessee, the sublessee under a Sublease and the association shall assume and thereby be assigned Lessee responsibilities to Lessor for their respective portions of the Demised Premises, releasing Lessee from the same for all such portions, except for design and construction defect liability for which builder(s)/developer(s) are otherwise responsible under Florida law.

12.5. **Required Notice of Restrictions**. Any conveyance, lease, assignment, grant or other disposition of any interest made with respect to any portion of the Demised Premises, including but not limited to any recorded association governing documents and the Residential Subleases, other than those Leasehold Mortgage interests provided for in Article 15, shall contain the following required Notice of Restrictions in a conspicuous location on the upper one-half of the first page of the relevant instrument effectuating the interest in bold capital typed letters greater than or equal to 14 point font:

NOTICE OF RESTRICTIONS

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

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

12.6. **Assignment by Lessor**. This Lease is freely assignable by the Lessor, and upon such assignment, the Lessor's liability shall cease and Lessor shall be released from any further liability. In the event the ownership of the land comprising the Demised Premises is conveyed or transferred (whether voluntarily or involuntarily) by Lessor to any other person or entity, this Lease shall not cease, but shall remain binding and unaffected. It is hereby acknowledged that Lessor shall have the right to freely assign any of its duties and rights herein under this Lease to the City of Key West Housing Authority, or to any other governmental entity or profit or non-profit organization designated and approved by Lessor.

12.7. **Approval of Residential Sublease Form.** All Residential Subleases shall be upon terms and with Residential Sublessees on a form that has been reasonably approved by Lessor. Any changes or modifications to the Residential Sublease form shall be permitted solely with the prior reasonable consent of Lessor.

12.8. **Additional terms of Residential Subleases.** No Residential Sublease shall be allowed for an Affordable Housing Unit for a term greater than one (1) year, or containing an automatic renewal term that would frustrate Lessor's rights or continued affordability expectations established under this Lease or the Affordable Housing Restrictions. Any Residential Sublease shall contain the following warning prominently set forth in writing:

BY SIGNING THIS RENTAL AGREEMENT, THE TENANT AGREES THAT UPON SURRENDER OR ABANDONMENT, AS DEFINED BY CHAPTER 83 FLORIDA STATUTES, THE LESSOR SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF THE LESSEE'S PERSONAL PROPERTY.

ARTICLE 13. Condemnation

13.1. **Eminent Domain; Cancellation.** If, at any time during the continuance of this Lease, the Demised Premises or the improvement or building or buildings located thereon, or any portion thereof is taken or appropriated or condemned by reason of eminent domain, there shall be such division of the proceeds and awards in such condemnation proceedings and such abatement of the rent and other adjustments made as shall be just and equitable under the circumstances. If the Lessor and the Lessee are unable to agree upon what division, annual abatement of rent or other adjustments as are just and equitable, within thirty (30) days after such award has been made, then the matters in dispute shall, be determined in accordance with the rules of the American Arbitration Association. Such determination made by the arbitration shall be binding on the parties. If the legal title to the entire Demised Premises be wholly taken by condemnation, the Lease shall be cancelled.

13.2. **Apportionment.** Although the title to the building and improvements placed by the Lessee upon the Demised Premises will pass to the Lessor, nevertheless, for purpose of condemnation, the fact that the Lessee placed such buildings on the Demised Premises shall be taken into account, and the deprivation of the Lessee's use of such buildings and improvements shall, together with the term of the Lease remaining, be an item of damage in determining the portion of the condemnation award to which the Lessee is entitled. In general, it is the intent of this Section that, upon condemnation, the parties hereto shall share in their awards to the extent that their interests, respectively, are depreciated, damaged, or destroyed by the exercise of the right of eminent domain. In this connection, if the condemnation is total, the parties agree that the condemnation award shall be allocated so that the then value of the property, as though it were unimproved property, shall be allocated to the Lessor, and the then value of the building or

buildings thereon shall be allocated between the Lessor and Lessee after giving due consideration to the number of years remaining in the term of this Lease and the condition of the buildings at the time of condemnation.

ARTICLE 14. Construction

14.1. Requirement to Construct Affordable Housing Development.

a. Lessee shall commence construction of the Affordable Housing Development no later than one hundred twenty (120) days after the issuance of all Approvals, including building permits necessary for the construction of the Affordable Housing Development and shall substantially complete construction of all ninety-eight (98) Affordable Housing Units within twenty-four (24) months after receipt of such Approvals. The foregoing limitation of time for the completion of the Affordable Housing Development may be extended by written agreement between the parties hereto.

b. During the course of construction of the Affordable Housing Development, Lessee shall provide to the Lessor quarterly written status reports on the Affordable Housing Development. The Lessor and Lessee shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in their possession or under their control where such information is subject to public disclosure under the provisions of Chapter 119, F.S., or successor or supplemental statutes. However, nothing contained herein shall be construed to render documents or records of Lessee or any other persons that would not be deemed public records under Chapter 119 to be such records only because of this provision. Lessee (but for clarity, not Residential Sublessees) shall maintain all books, records, and documents directly pertinent to performance under this Lease in accordance with generally accepted accounting principles consistently applied. The City Clerk, State Auditor, or a designee of said officials or of the Lessor, shall, during the term of this Agreement and for a period of five (5) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Lessee involving transactions related to this Agreement.

c. The Affordable Housing Development shall be constructed in accordance with the requirements of all laws, ordinances, codes, orders, rules and regulations of all Governmental Agencies having jurisdiction over the Affordable Housing Development, including, but not limited to, the Lessor.

d. The Lessee shall apply for and prosecute, with reasonable diligence, all necessary approvals, permits and licenses required by applicable government authorities for the construction, development, zoning, use and occupation of the Affordable Housing Development, including all building permits necessary and all applicable appeal periods (collectively, the "Approvals"). Lessor agrees to reasonably cooperate with and reasonably publicly support the Lessee's effort to obtain such Approvals, provided that such Approvals shall be obtained at Lessee's sole cost and expense. Nothing in this Lease is intended to or shall be construed to obviate or lessen any requirements for customary development approvals from any permitting authority or Governmental Agency (as defined below), including the Lessor. Nothing in this Lease shall be

construed as the Lessor's delegation or abdication of its zoning authority or powers and no zoning approval that Lessee may require to complete its performance under this Lease has been or shall be deemed agreed to, promised or contracted for by this Lease.

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

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

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

14.2. **Access to the Affordable Housing Development and Inspection**. The Lessor or its duly appointed agents shall have the right, at all reasonable times upon the furnishing of reasonable notice under the circumstances (except in an emergency, when no notice shall be necessary), to enter upon the common area of the Demised Premises to examine and inspect said area to the extent that such access and inspection are reasonably justified to protect and further the Lessor's continuing interest in the Demised Premises, as determined in Lessor's reasonable discretion. Lessor's designees, for purposes of this Article 14.2, shall include city, county or State code or building inspectors, and the like, without limitation. Lessee shall permit building and code inspectors access customary to the performance of their duties related to projects of the nature contemplated herein, said notice requirements notwithstanding.

14.3. **Forced Delay in Performance.** Notwithstanding any other provisions of this Lease to the contrary, the Lessee shall not be deemed to be in default under this Lease where delay in the construction or performance of the obligations imposed by this Lease are caused by war, revolution, labor strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, labor disputes, health or other pandemics, governmental restrictions, embargoes, litigation (excluding

litigation between the Lessor and the Lessee), tornadoes, hurricanes, tropical storms or other severe weather events, or inability to obtain or secure necessary labor, materials or tools, delays of any contractor, subcontractor, or supplier, or unreasonable acts or failures to act by the Lessor, or any other causes beyond the reasonable control of the Lessee. The time of performance hereunder shall be extended for the period of any forced delay or delays caused or resulting from any of the foregoing causes.

14.4. **Easements**. Lessee shall be authorized to grant reasonable and necessary easements (i) for access and utilities customary for similar land uses and construction projects in the City of Key West and (ii) lessee under the Conveyance Units Lease for access to Allen Avenue and any common areas to the Demised Premises, subject to Lessor's attorney's review and written approval for substance and form of easement instruments, which approval shall not be unreasonably withheld. Lessor shall make objection to any proposed easement instruments within thirty (30) days of receipt of copies thereof.

ARTICLE 15. Leasehold Financing

15.1. Lessee intends and shall make a good faith attempt to obtain financing for the Affordable Housing Development through a combination of SHIP, SAIL Loans and Federal LIHTC program.

15.2. **Right to Mortgage**. Without the prior written consent of Lessor, Lessee may grant one or more mortgages of its interest in the Lease (each, a "Leasehold Mortgage") to lenders (either as described in 15.1 or to Federal or State Savings & Loan Association, Bank or Trust Company, Insurance Company, Pension Fund or Trust [or to a private lender so long as the terms and conditions of the financing from private lender are on substantially similar terms to those then existing by the other lenders referred to in this section] or similar lending institution authorized to make leasehold mortgage loans in the State of Florida) and, in connection therewith, to collaterally assign this Lease to such lenders. In no event shall Lessor ever be required to execute any such mortgage or any note secured thereby or any other obligation securing any such note, or to subordinate Lessor's fee interest in the Demised Premises or any portion thereof to the lien of any such mortgage. Lessee shall identify, in writing to Lessor, the name of each mortgagee ("Leasehold Mortgagee") for such portion of the Demised Premises and the address(es) to which notices to the Leasehold Mortgagee are to be sent. Lessor agrees to review and if reasonably agreeable, execute any additional customary documents as may be reasonably requested by any Leasehold Mortgagee in connection with any Leasehold Mortgage permitted by this Section 15.

15.3. **Consent Required for Termination and Amendments**. No termination, cancellation, surrender, modification, or amendment of this Lease by agreement between Lessor and Lessee shall be effective as to any Leasehold Mortgagee unless consented to in writing by such Leasehold Mortgagee or pursuant to Article 15 and/or Article 16.

15.4. **Default Notice**. Lessor, upon providing Lessee with any notice of (i) default under this Lease or the Affordable Housing Restrictions, or (ii) a termination of this Lease, shall at the

same time send a copy of such notice to every Leasehold Mortgagee, if applicable, identified by written notice to Lessor by Lessee, provided, however, that the failure to provide such additional notices shall not invalidate any duly delivered notice to Lessee. From and after such notice has been given to the Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period, after the giving of such notice upon it, for remedying any default or causing the same to be remedied, as is given Lessee after the giving of such notice to Lessee, to remedy, commence remedying or cause to be remedied the defaults specified in any such notice. Lessor shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Lessee. Lessee authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and does hereby authorize entry upon the Demised Premises by such Leasehold Mortgagee for such purpose.

15.5. **Notice to Leasehold Mortgagee.** Anything contained in this Lease to the contrary notwithstanding, if any default shall occur and remain uncured beyond all applicable grace or cure periods of this Lease, which entitles Lessor to terminate this Lease as to all or any portion of the Demised Premises to take any other remedial action against Lessee, Lessor shall have no right to terminate this Lease or take such remedial action unless, following the expiration of the period of time given Lessee to cure such default, Lessor shall notify each Leasehold Mortgagee, to the extent of Lessor's actual knowledge of their existence, of Lessor's intent to so terminate at least thirty (30) calendar days in advance of the proposed effective date of such termination. The provisions of Section 15.5 hereof shall apply if, during such thirty (30) calendar day notice period, any Leasehold Mortgagee:

a. Notifies Lessor of such Leasehold Mortgagee's desire to nullify such notice; and

b. Pays or causes to be paid all payments then due and in arrears and/or rectifies the default applicable to the subject portion(s) of the Demised Premises, as specified in the notice given to such Leasehold Mortgagee and which becomes due during such thirty (30) day period; and

c. Complies or in good faith, with reasonable efforts, commences to comply with any non-monetary requirements of this Lease applicable to the subject portion(s) of the Demised Premises then in default and except as provided in the following sentence, reasonably susceptible of being complied with by the Leasehold Mortgagee.

d. No Leasehold Mortgagee shall be required during such thirty (30) day day period to cure or commence to cure any default consisting of Lessee's failure to satisfy and discharge any lien, charge or encumbrance against Lessee's interest in this Lease or any part thereof which is (a) authorized by this Lease, and (b) junior in priority to the lien of the Leasehold Mortgage, if applicable, held by such Leasehold Mortgagee.

15.6. **Procedure on Default.** If Lessor shall elect to terminate this Lease by reason of any default of Lessee, which default has not been cured within the applicable cure period, and the Leasehold Mortgagee shall have proceeded in the manner provided for by Section 15.5 hereof,

the specified date for such termination as fixed by Lessor in its notice given pursuant to Section 15.5 hereof shall be extended for a period of three (3) months, provided that Leasehold Mortgagee shall, during such threet-month period:

a. Pay or cause to be paid, any monetary obligations of Lessee under this Lease, as the same become due, and continue its good faith efforts to perform all of Lessee's other obligations under this Lease, excepting (i) obligations of Lessee to satisfy or otherwise discharge any lien, charge or encumbrance against Lessee's interest in this Lease or any part thereof which is junior in priority to the lien of the Leasehold Mortgage, if applicable, held by such Leasehold Mortgagee, and (ii) past non-monetary obligations then in default and not reasonably susceptible of being cured by the Leasehold Mortgagee; and

b. Except to the extent enjoined and stayed, take steps to acquire or sell Lessee's interest in this Lease, by foreclosure of such Leasehold Mortgagee, or other appropriate means and prosecute the same to completion with reasonable efforts.

15.7. **Extension of Cure Period**. If at the end of the three-month period specified in Section 15.6 hereof, the Leasehold Mortgagee is complying with Section 15.6(a) hereof, then this Lease shall not then terminate, and the time for completion by such Leasehold Mortgagee of its proceedings shall continue so long as such Leasehold Mortgagee is enjoined or stayed and thereafter for so long as such Leasehold Mortgagee proceeds to complete steps to acquire or sell Lessee's interest in this Lease, by foreclosure of its Leasehold Mortgage or by other appropriate means with reasonable efforts. Nothing in this Article 15, however, shall be construed to extend this Lease beyond the Term. If any Leasehold Mortgagee is complying with Section 15.7 hereof, upon the acquisition of Lessee's interest in this Lease by such Leasehold Mortgagee or its designee, or any other purchaser at a foreclosure sale or otherwise and the discharge, by operation of law or otherwise, of any lien, charge or encumbrance against Lessee's interest in this Lease or any part thereof which is junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee and which Lessee is obligated to satisfy and discharge by the terms of this Lease, this Lease shall continue in full force and effect as if Lessee had not defaulted under this Lease subject to Lessor's Right of First Refusal.

15.8. **Right to New Lease**. In the event that the Lease is terminated by Lessor, Lessor shall, if requested by Leasehold Mortgagee, if applicable, grant to the Leasehold Mortgagee a new lease on the following terms and conditions:

a. In the event of the termination of this Lease prior to its stated expiration date, Lessor agrees that it will enter into a new lease of the Demised Premises with any Leasehold Mortgagee, if applicable, or, at the request of such Leasehold Mortgagee, a designee, including but not limited to a corporation or other entity formed by or on behalf of such Leasehold Mortgagee, for the remainder of the Term effective as of the date of such termination, at the same Rent and upon the same covenants, agreements, terms, provisions, and limitations herein contained, provided (i) such Leasehold Mortgagee makes written request upon Lessor for such new lease within thirty (30) days from the date Lessor notifies such Leasehold Mortgagee of such termination and such written request is accompanied by payment to Lessor of all amounts then due

to Lessor under this Lease but for such termination, (ii) such Leasehold Mortgagee pays or causes to be paid to Lessor at the time of the execution and delivery of such new lease any and all sums which would at the time of the execution and delivery thereof be due under this Lease but for such termination and pays or causes to be paid any and all expenses, including reasonable counsel fees, court costs, and costs and disbursements incurred by Lessor in connection with any such termination and in connection with the execution and delivery of such new lease, (iii) such Leasehold Mortgagee agrees to reinstate the lien and take the Demised Premises subject to the loan of any other Leasehold Mortgagee which held a lien senior in priority to the lien of such Leasehold Mortgagee if such senior Leasehold Mortgagee had also requested a new lease and tendered the required payments(s), and (iv) cures any and all default(s) to the satisfaction of Lessor.

b. Any new lease made pursuant to this Section 15.8 shall have the same priority as this Lease (except with respect to any non-electing Leasehold Mortgagee).

c. Any mortgage or deed of trust upon Lessor's interest in the Demised Premises permitted in accordance with this Lease hereof and any action by such mortgagee or trustee or beneficiary of such deed of trust by way of receivership, foreclosure, exercise of power of sale, or deed in lieu thereof shall be subject and subordinate to this Lease and to the new lease to be given pursuant to this Section 15.8 and any mortgagee or holder of such mortgage or the beneficiary and trustee of any such deed of trust must recognize this Lease and any new lease and all rights of Lessee and each Leasehold Mortgagee hereunder and thereunder.

15.9. **Assumption of Lessee's Obligations.** The making of a Leasehold Mortgage, if applicable, shall not be deemed to constitute an assignment or transfer of this Lease or Lessee's interest created hereby, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of Lessee's interests under this Lease so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Lessee to be performed hereunder, but a Leasehold Mortgagee may become the holder of Lessee's leasehold estate and succeed to Lessee's interest in this Lease by foreclosure of its Leasehold Mortgage or as a result of the assignment of this Lease in lieu of foreclosure, and any purchaser at any sale of Lessee's interest under this Lease in any proceeding for the foreclosure of any mortgage or the assignee or transferee of Lessee's interest in this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any mortgage shall be deemed to be an assignee or transferee approved by Lessor and shall be deemed to have agreed to perform all of the terms, covenants, and conditions on the part of Lessee to be performed hereunder, but only for so long as such purchaser or assignee is the owner of Lessee's interest in this Lease.

15.10. **Non-Curable Defaults.** Nothing in this Article 15 shall require any Leasehold Mortgagee, or its designee as a condition to the exercise of rights provided under this Article 15 to cure any default of Lessee not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee as such susceptibility is reasonably determined solely by Lessor. The foregoing shall not be deemed to excuse any Leasehold Mortgagee from performing covenants relating to the condition of the Affordable Housing Development on the Demised Premises, operation in compliance with the Affordable Housing Restrictions, or other similar matters

requiring access to or control of the Demised Premises, from and after such time as such Leasehold Mortgagee acquires Lessee's interest in this Lease by foreclosure or otherwise.

15.11. **No Merger**. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Demised Premises and the leasehold estate of Lessee therein shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by any single owner, other than by termination of this Lease by Lessor in compliance with the provisions of this Article 15.

15.12. **Lessor's Fee to Remain Unsubordinated**. Lessor and Lessee expressly acknowledge and agree that Lessor shall have no obligation under this Lease or otherwise to subordinate fee title of Lessor in the Demised Premises or any rights of Lessor in this Lease to the leasehold estate of Lessee created by this Lease or to join any such mortgage or encumbrance or otherwise in any manner subordinate the fee title of Lessor in and to the Demised Premises or interest of Lessor under this Lease.

15.13. **Sale of Demised Premises.** In the event of any sale or conveyance of the Demised Premises by Lessor, any such sale or conveyance of all or any part of the Demised Premises shall be subject to this Lease and all of the provisions hereof, and notice of such sale shall be provided to each Leasehold Mortgagee.

15.14. **Estoppel.** Within ten (10) business days after Lessor's receipt of written request by Lessee or by Leasehold Mortgagee(s), or after receipt of such written request in the event that upon any sale, assignment or mortgaging of Lessee's interest in this Lease by Lessee or Leasehold Mortgagee(s) as allowed by this Lease, an estoppel or offset statement shall be required from the Lessor, and the Lessor agrees to reasonably deliver in recordable form a certificate or estoppel to any proposed leasehold mortgagee(s), purchaser(s), assignee(s) or to Lessee, certifying (if such be the case) (i) that this Lease is in full force and effect; (ii) that the Lessor has no knowledge of any default under this Lease, or if any default exists, specifying the nature of the default; and (iii) that there are no defenses or offsets which are known and may be asserted by the Lessor against the Lessee with respect to any obligations pursuant to this Lease.

ARTICLE 16. Default

16.1. **Notice of Default.** Lessee shall not be deemed to be in default under this Lease in the payment of Rent or the payment of any other monies as herein required unless Lessor shall first give to Lessee and any Leasehold Mortgagee ten (10) days written notice of such default and Lessee or any other party on its behalf fails to cure such default within ten (10) days of verifiable receipt of said notice.

Except as to the provisions or events referred to in the preceding paragraph of this Section, Lessee shall not be deemed to be in default under this Lease unless Lessor shall first give to Lessee and Leasehold Mortgagee thirty (30) days written notice of such default, and Lessee fails to cure

such default within the immediate thirty (30) day period thereafter, or, if the default is of such a nature that it cannot be cured within thirty (30) days, Lessee fails to commence to cure such default within such period of thirty (30) days or fails thereafter to proceed to the curing of such default with all possible diligence. A Leasehold Mortgagee shall be entitled to cure Lessee defaults on the same terms and conditions as the Lessee.

Regardless of the notice and cure periods provided herein, in the event that more rapid action is required to preserve any right or interest of the Lessor in the Demised Premises due to any detrimental event or occurrence (such as, but not limited to, payment of insurance premiums, actions to prevent construction or judgment lien foreclosures or tax sales), then the Lessor is empowered to take such reasonable action and to request reimbursement or restoration from the Lessee as reasonably appropriate.

16.2. **Default.** In the event of any material uncured default of this Lease by Lessee, Lessor, and after the necessary notice and cure opportunity provided to Lessee and other parties required under this Lease, in addition to the other rights or remedies it may have under applicable law, shall have the immediate right to terminate this Lease in compliance with applicable law. In any action by Lessor asserting a violation of the Affordable Housing Restrictions, Lessee shall have the burden of proof with respect to such matter. Termination of the Lease, under such circumstances, shall constitute effective, full and immediate conveyance and assignment to Lessor of all of the Demised Premises, improvements and materials and redevelopment rights to and associated with the Demised Premises and the Affordable Housing Development, subject to Leasehold Mortgagee protection as provided herein and provided that all Residential Sublessees currently in compliance with their Residential Subleases shall be permitted to remain in occupancy of their Affordable Housing Unit through the remainder of the term of their applicable Residential Sublease. Furthermore, in the event of any breach of this Lease by Lessee, Lessor, in addition to the other rights or remedies it may have, shall have the immediate right of re-entry (as may be lawfully conditioned per application of Chapter 83, Florida Statutes, as amended) and may remove all persons and personal property from the affected portions of the Demised Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Lessee, or where statutory abandonment or unclaimed property law permits, disposed of in any reasonable manner by Lessor without liability or any accounting therefore.

Included in this right of reentry, and subject to Lessee's rights, if any, shall be any instance wherein a Residential Sublessee renounces its Residential Sublease or a sublessee under a Sublease renounces its Sublease or this Lease or a Sublease or any of the foregoing abandons all or any portion of the Demised Premises, in which case Lessor may, at its option, in an appropriate case and subject to any rights of a Leasehold Mortgagee, obtain possession of the abandoned property in any manner allowed or provided by law, and may, at its option, re-let the repossessed property for the whole or any part of the then unexpired term, receive and collect all applicable sublease rent payable by virtue of such reletting, and hold applicable sublessee or Residential Sublessee liable for any difference between the rent that would have been payable under its applicable Sublease or Residential Sublease and the net sublease rent for such period realized by Lessor, by means of such reletting. However, such Lessor rights shall not abrogate a Leasehold Mortgagee's rights to the extent those rights do not conflict with or injure Lessor's interests as established under

this Lease. Personal property left on the Demised Premises by a sublessee under a Sublease or a Residential Sublessee may be stored, sold, or disposed of by Lessor, and Lessor accepts no responsibility other than that imposed by law.

Should Lessor elect to re-enter, as herein provided, or should Lessor take possession pursuant to legal proceedings or pursuant to any notice provided for by law, subject to all rights of Leasehold Mortgagee, Lessor may either terminate this Lease or it may from time to time, without terminating this Lease, re let the Demised Premises or any part thereof for such term or terms (which mav be for a term extending beyond the Term of this Lease) and at such Rent or Rents and on such other terms and conditions as Lessor in its sole reasonable discretion may deem advisable with the right to make alterations and repairs to the Demised Premises. On each such re-letting Lessee shall be immediately liable to pay to Lessor, in addition to any indebtedness other than Rent due under this Lease, the expenses of such re-letting and of such alterations and repairs, incurred by Lessor.

Notwithstanding any such re-letting without termination, Lessor may at any time thereafter elect to terminate this Lease for such previous breach. Should Lessor at any time terminate this Lease for any breach, in addition to any other remedy it may have, Lessor may recover from Lessee all damages incurred by reason of such breach, including the cost of recovering the Demised Premises, which amounts shall be immediately due and payable from Lessee to Lessor.

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

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

16.5. **Affordable Housing Restrictions**. Notwithstanding the foregoing, if there is a failure of compliance with the Affordable Housing Restrictions at any given time or any portion of the Demised Premises is used for purposes other than affordable housing by an interest holder of such portion (ie a Residential Sublessee or sublessee under a Sublease), as they pertain to their

respective interests in or portions of the Demised Premises, such an occurrence will be considered a material default by the offending party. Should the foregoing type of use default occur with respect to only one or more sublessee under a Sublease or Residential Sublessee's portion(s) of the Demised Premises, then the default termination provisions provided for in this subsection, shall apply only to those sublessee under a Sublease or Residential Sublessee in default.In the foregoing event, in the event that Lessee has not terminated such defaulted Sublease or Residential Sublease, Lessor may terminate the subleases and tenancies involved, as the case may be, subject to Lessor's compliance with any applicable default notice provisions provided elsewhere in this Lease and Lessee's, and Leasehold Mortgagee's applicable cure rights, if any. Lessee hereby agrees that all occupants shall use the Demised Premises and Affordable Housing Units for affordable residential purposes only and any incidental activities related to the residential use as well as any other uses that are permitted by applicable zoning law and approved by Lessor.

ARTICLE 17. Repair Obligations

17.1. **Repair Obligations**. During the continuance of this Lease the Lessee will keep in good state of repair any and all buildings, furnishings, fixtures, landscaping and equipment which are brought or constructed or placed upon the Demised Premises by the Lessee, nor will the Lessee suffer or permit any strip, waste, or neglect of any building or other property to be committed, except for that of normal wear and tear. The Lessee will repair, replace and renovate such property as often as it may be necessary in order to keep the buildings and other property which is the subject matter of this Lease in first class repair and condition. Lessor shall not be required to make any repairs to the Demised Premises or to the Affordable Housing Units.

ARTICLE 18. Environmental Matters

18.1. **Lessor's Disclosure**. Lessor has disclosed to Lessee the reports and correspondence listed on **Schedule 18.1** and Lessee is aware that a resampling as recommended in a Phase II environmental report has been ordered by Lessor and is forthcoming (collectively, the "Environmental Reports"), and Lessee acknowledges, that the Demised Premises were previously part of a military base on which Hazardous Substances were kept and used. Lessee shall be responsible for any Hazardous Substances removal or remediation that may be required by any Governmental Regulation. The Lessee will be responsible to obtain its own environmental reports or studies as it deems prudent. Prior to the execution of this Lease, Lessor has attempted to identify some or all of the environmental issues and/or conditions regarding the Demised Premises, but other than providing the Environmental Reports readily available, Lessor makes no representations or warranties concerning the Demised Premises. The Lessee acknowledges that the Demised Premises contains arsenic, and that the Lessee has been provided environmental information regarding the Demised Premises. The Lessee will be responsible to have the arsenic, as well as any other environmental conditions or hazards remediated or otherwise mitigated at its sole expense in accordance with all local, state and federal laws. Further, Lessee has inspected the Demised Premises and has had ample opportunity to inspect the same, accordingly:

LESSEE COVENANTS AND AGREES TO ACCEPT THE PREMISES IN ITS "AS IS" AND "WHERE IS" CONDITION, WITHOUT ANY AGREEMENTS, REPRESENTATIONS, UNDERSTANDINGS OR OBLIGATIONS ON THE PART OF LESSOR WHATSOEVER TO PERFORM ANY ALTERATIONS, REPAIRS OR IMPROVEMENTS.

18.2. Lessee shall not cause or permit to occur any of the following:

a. Any violation of Governmental Regulations related to environmental conditions and/or covenants and/or deed restrictions on, under, or about the Demised Premises or arising from Lessee's use or occupancy of the Demised Premises, including, but not limited to, soil and ground water conditions.

b. The use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substances on, under, or about the Demised Premises or the transportation to or from the Demised Premises of any Hazardous Substances.

c. Lessee, its sublessees, and assignees shall not permit the presence, handling, storage or transportation of hazardous or toxic materials or medical waste ("hazardous waste") in or about the Demised Premises, except in strict compliance with all law, ordinance, rules, regulations, order and guidelines of any government agency having jurisdiction and the applicable board of insurance underwriters. In no event shall hazardous waste be disposed of in or about the Demised Premises. Lessee shall obtain and maintain throughout the term of this Lease all licenses and permits required in connection with Lessee's activities involving hazardous waste. For purposes herein, the term hazardous materials or substances shall mean any hazardous, toxic or radioactive substance material, matter or waste which is or becomes regulated by any federal, state or local law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement and shall include petroleum products and asbestos as well as those materials defined as hazardous substance or hazardous waste in the Comprehensive Environmental Response Compensation and Liability Act and/or the Resource Conservation and Recovery Act.

d. Lessee shall notify Lessor immediately of any discharge or discovery of any hazardous waste in violation of Governmental Regulations at, upon, under, or within the Demised Premises. Lessee shall, at its sole cost and expense, comply with all remedial measures required by any Governmental Agency (as defined below) having jurisdiction. Lessee shall promptly forward to Lessor copies of all orders, notices, permits, applications, or other communications under reports received by Lessee in connection with any discharge or the presence of any hazardous waste or any other matters relating to the toxic waste or any similar laws or regulations, as they may affect the Demised Premises.

18.3. The obligations, liabilities and responsibilities of Lessee, its sublessees under any Subleases or Residential Sublessees and assignees, shall survive the expiration or termination of this Lease and shall include:

a. The removal of any material deemed at any time to be hazardous waste on, within or released from the Demised Premises, whether such removal is done or completed by Lessee, Lessor or other person or entity and regardless of whether or not such removal is rendered pursuant to a court order or the order of a Governmental Agency;

b. Claims asserted by any person or entity (including, without limitation, any governmental agency or quasi-governmental authority, board, bureau, commission, department, instrumentality, public body, court, or administrative tribunal (a "Governmental Agency") in connection with or in any way arising out of the presence, storage, use, disposal, generation, transportation, or treatment of any hazardous waste at, upon, under or within the Demised Premises, after the time that Lessee became an occupant or had control of the Demised Premises;

c. To indemnify, defend and hold Lessor, its agents and mortgagees harmless from and against any and all claims, liabilities, injuries, damages, costs and expenses (including attorney's fees and costs through appeal) arising out of or in connection with any breach of this Section and the following Section, including any direct, indirect, or consequential damages suffered by any individual or entity related in any way to Lessee's use, storage or possession of hazardous materials at the Demised Premises, including without limitation, claims by Lessee's officers, directors, employees, invitees, contractors and agents.

18.4. **Environmental Law Compliance.** Lessee and Lessor acknowledge that certain federal, state and local laws, regulations and guidelines are now in effect, and that additional laws, regulations and guidelines may hereafter be enacted, relating to or affecting the Demised Premises concerning the impact on the environment of construction, land use, the maintenance and operation of structures and the conduct of business. Lessee will not cause, or permit to be caused, any act or practice, by negligence, omission, or otherwise, that would violate any said laws, regulations, or guidelines. Any violation of this covenant shall be an event of default under this Lease. Lessee shall have no claim against Lessor by reason of any changes Lessor may make in the Demised Premises under such laws, regulations, and guidelines. In the event any governmental agency makes a determination that Lessee's activities upon the Demised Premises or its environs have caused ecological damage or have violated any of the foregoing laws, rules, regulations or ordinances, Lessee will be responsible for all costs of clean-up, as well as all fines, penalties or assessments imposed by said governmental agencies, either during the term of this lease or after its termination.

ARTICLE 19. Additional Covenants

19.1. **Intentionally Deleted.**

19.2. **Termination.** Upon termination of this Lease, the Lessee will peaceably and quietly deliver possession of the Demised Premises, including all improvements, unless the Lease is extended. Ownership of the improvements shall thereupon revert to Lessor.

19.3. **Recovery of Litigation Expense.** In the event of any suit, action or proceedings at law or in equity, by either of the parties hereto against the other by reason of any matter or thing arising out of this Lease, including any eviction proceedings, the prevailing party shall recover not only its legal costs, but reasonable Attorneys' Fees. Lessor may recover reasonable legal and professional fees attributable to administration, enforcement and preparation for litigation relating to this Lease or to the Affordable Housing Restrictions from any person or persons from or to whom a demand or enforcement request is made, regardless of actual initiation of an action or proceeding.

19.4. **Condition of the Demised Premises.** Lessee agrees to accept the Demised Premises in its presently existing condition "as is". It is understood and agreed that the Lessee has determined that the Demised Premises is acceptable for its purposes and hereby certifies same to Lessor. Lessor shall have no responsibility for utilities for the Demised Premises. Lessee, at its sole cost and expense, shall bring or cause to be brought to the Demised Premises adequate connections for water, electrical power, telephone, stormwater and sewage and shall arrange with the appropriate utility companies for furnishing such services with no obligation therefore on the part of Lessor. Lessee acknowledges that the Lessor, and any agent, has made no representations or promises in regard to the Demised Premises except as set forth in this Lease. Any and all installation and/or repair of utilities and/or construction is subject to any land use controls and/or deed restriction(s) which may exist. The Lessor makes no express warranties and disclaims all implied warranties, including, without limitation, those relating to the environmental condition the Demised Premises. Lessee accepts the same in the condition in which they now are, without representation or warranty, express or implied, in fact or by law, by the Lessor, and without recourse to the Lessor as to the nature, condition, or usability of the Demised Premises, or the uses to which the Demised Premises may be put. Lessor shall not be responsible for any latent defect or change of condition in the improvements, and personalty, or of title, and the Rent hereunder shall not be withheld or diminished on account of any defect in such title or property, any change in the condition thereof, any damage occurring thereto, or the existence with respect thereto of any violations of the laws or regulations of any governmental authority.

19.5. **Recordation.** Lessee, within ten (10) business days after execution of this Lease, shall record a complete, true and correct copy of the Lease and any addenda or exhibits thereto and any Related Agreement(s) in the Public Records of Monroe County, Florida and shall provide Lessor with the written Clerk's receipt of the book and page number where recorded and the original Lease and Related Agreement(s) after recordation.

ARTICLE 20. Representations, Warranties of Title and Quiet Enjoyment and No Unlawful or Immoral Purpose or Use

20.1. **Representations, Warranties of Title and Quiet Enjoyment.** Lessor represents and warrants that to its knowledge, there are no material claims, causes of action or other proceedings pending or threatened in respect to the ownership or operation of the Demised Premises or any part thereof other than what may have been disclosed. Additionally, the Lessor and Lessee covenant and agree that so long as the Lessee keeps and performs all of the covenants and conditions required by the Lessee to be kept and performed, the Lessee shall have quiet and undisturbed and continued possession of the Demised Premises from claims by Lessor.

20.2. **No Unlawful or Immoral Purpose or Use.** The Lessee will not use or occupy Demised Premises for any unlawful or immoral purpose and will, at Lessee's sole cost and expense, conform to and obey any present or future ordinance and/or rules, regulations, requirements and orders of governmental authorities or agencies respecting the use and occupation of the Demised Premises.

ARTICLE 21. Miscellaneous

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

21.2 **No Waiver.** Time is of the essence in the performance of the obligations of the parties hereto. No waiver of a breach of any of the covenants in this Lease shall be construed to be a waiver of any succeeding breach of the same covenant. The failure of a party to insist, in any one or more instances, upon strict performance of any covenants or agreements of this Lease, or to exercise any option of such party herein contained, shall not be construed as a waiver or relinquishment of any right or remedy of such party hereunder and shall not be deemed a waiver of any subsequent breach or default by the other party of the covenants or conditions herein. Receipt of rent by Lessor, with knowledge of the breach of any covenant or agreement hereof, shall not be deemed a waiver of such breach. No waiver by a party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such party. With respect to Lessor, such written expression of waiver may only occur by resolution of the Key West City Commission or Naval Properties Local Redevelopment Authority of the City of Key West.

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

21.4 **Entire Agreement.** This Lease, including the Recitals and all exhibits and schedules hereto (all of which are expressly incorporated herein by this reference) shall constitute the entire agreement between parties as of this date. No prior written or prior or contemporaneous oral promises or representations shall be binding. The execution hereof has not been induced by either party by representations, promises, or understandings not expressed herein and there are no collateral agreements, stipulations, promises, or undertakings whatsoever upon the respective parties in any way touching the subject matter of this instrument which are not expressly contained in this instrument. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

21.5 **Notices.** If either party desires to give notice to the other in connection with and according to the terms of this Lease, such notice shall be given by registered or certified mail or by national overnight tracked and delivery-receipt courier service, and unless otherwise required to be "received", it shall be deemed given when deposited in the United States mails with postage prepaid or courier fees prepaid. Nothing herein contained shall be construed as prohibiting the parties respectively from changing the place at which notice is to be given, or the addition of one additional person or location for notices to be given, but no such change shall be effective unless and until it shall have been accomplished by written notice given in the manner set forth in this Section. Notification to Lessor and Lessee shall be as set forth herein, unless a different method is later directed as prescribed herein:

For the Lessor: 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 the Lessee:

Bahama Village Community, Ltd
3030 Hartley Rd. Ste. 310
Jacksonville, FL 32257
Attn: James R. Hoover

With a copy to:

Smith Hawks, PL
138 Simonton Street
Key West, Florida 33040
Attn: Bryan Hawks

21.6 **Joint liability.** If the parties upon either side (Lessor and Lessee) consist of more than one person, such persons shall be jointly and severally liable on the covenants of this Lease.

21.7 **Liability Continued, Lessor Liability.** All references to the Lessor and Lessee mean the persons who, from time to time, occupy the positions, respectively, of Lessor and Lessee, although this shall not be construed as relieving a person of any liability incurred by them by reason of or in connection with their having been Lessor or Lessee at one time. In the event of an assignment of this Lease by the Lessor, except for liabilities that may have been incurred prior to the date of the assignment, the Lessor's liability under this Lease shall terminate upon such assignment, unless such termination is conditioned otherwise. In addition, the Lessor's liability under this Lease shall be at all times limited to the Lessor's interest in the Demised Premises.

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

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

21.10 **Governing Law, Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any proceeding arising out of this Agreement shall be in Monroe County, Florida, Lower Keys Division of the Circuit Court, or the Southern District of Florida, as applicable.

21.12 **Survival of Provisions**. Any terms or conditions of this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

21.13 **Holding Over.** Any holding over after the expiration of the term of this Lease, with consent of Lessor, shall be construed to be a tenancy from month to month, at twice the monthly rent as required to be paid by Lessee for the period immediately prior to the expiration of the term hereof, and shall otherwise be on the terms and conditions herein specified, so far as applicable.

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

21.15 **Partial Invalidity.** If any provision of this Lease or the application thereof to any person or circumstance shall at any time or to any extent be held invalid or unenforceable, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby.

21.16 **Force Majeure**If either party shall be delayed, hindered or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor trouble, inability to procure material, health or other pandemics failure of power, riots, insurrection, war or other reasons of like nature not the fault of the party delayed, in performing work or doing acts required under this Lease, the period for the performance of any such act shall be extended for a reasonable period as long as the extension is in writing pursuant to this Agreement.

21.17 **Lessor/Lessee Relationship, Non-Reliance by Third Parties.** This Lease creates a lessor/lessee relationship, and no other relationship, between the parties. This Lease is for the sole benefit of the parties hereto and, except for assignments or subleases permitted hereunder, no other person or entity shall be a third party beneficiary hereunder.

21.18 **Contingencies**. Lessee's obligations to proceed with and complete the Affordable Housing Development under this Lease Agreement is contingent upon the following:

(a) Lessee obtaining Financing to build the Affordable Housing Development herein within the time specified.

(b) Lessee obtaining Approvals from all applicable authorities to build the Affordable Housing Development within the time specified.

(c) Lessee reasonably determining that the remediation required under the Environmental Reports (or any subsequent environmental reports) is commercially reasonable and can be completed for no more than $500,000.00.

In the event that any of the contingencies above are not met, Lessee may terminate this Lease. Termination of the Lease under such circumstances shall constitute effective, full and immediate conveyance and assignment to Lessor of all of the Demised Premises, improvements, interests in and materials and redevelopment rights to and associated with the Demised Premises and the Affordable Housing Development, subject to Leasehold Mortgagee protection as provided herein.

21.19 **Radon Gas Notification**. Radon is a naturally occurring radioactive gas that when it has accumulated in a building of sufficient quantities, may present a health risk to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County Public Health Unit. Lessor shall not be responsible for radon testing for any persons purchasing, leasing or occupying any portion of the Demised Premises, and all Residential Sublessees and any sublessee under a Sublease shall hold Lessor harmless and indemnify Lessor for damages or claims related thereto and release Lessor from same.

21.20 **Mold Disclosure**. Mold is a naturally occurring phenomenon that, when it has accumulated in a building in sufficient quantities, may pose health risks to persons who are exposed to it over time. Mold has been found in buildings in the City of Key West and Monroe County. There are no measures that can guarantee against mold, but additional information regarding mold and mold prevention and health effects may be obtained from your county health unit or the EPA or CDC. Lessee and Sublessees accept responsibility to inspect for mold and take measures to reduce mold. Lessor shall not be responsible for mold testing for any persons purchasing, leasing or occupying any portion of the Demised Premises, and all owners, sublessees and Residential Sublessees shall hold Lessor harmless and indemnify Lessor for damages or claims related thereto and release Lessor from same.

21.21 **Intentionally Deleted.**

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

21.23 **Default of Related Agreements/Remedies.** To the extent that any Related Agreement relating to the Demised Premises incorporates, relates to and/or is contingent upon the execution of and/or any performance under this Lease, any default under such other agreement shall be a default under this Lease and any default under this Lease shall be a default of such other agreement. Moreover, the parties agree that any remedy available for any breach under this Lease or any Related Agreements shall be cumulatively or selectively available at Lessors complete discretion, with any election to avail itself or proceed under any particular remedial mechanism in no way to be construed as a waiver or relinquishment of Lessor's right to proceed under any other mechanism at any time or in any particular sequence.

21.24 **Supplemental Administrative Enforcement.** Lessor, or its appropriate agency, may establish under the Affordable Housing Restrictions, as amended from time to time, during the Term of this Lease, such rules, procedures, administrative forms of proceedings, and such evidentiary standards, as deemed reasonable within Lessor's legislative prerogative, to implement enforcement of the terms of this Lease and the Affordable Housing Restrictions. Such forums may include but in no way be limited to use of Code Enforcement procedures pursuant to Chapter 162, Florida Statutes, to determine, for and only by way of one example, and not as any limitation, the facts and legal effect of an allegedly unauthorized "offer to rent," or, for another example, an unauthorized "occupancy." However, nothing herein shall be deemed to limit Lessor, Lessee or any Leasehold Mortgagee from access to an appropriate court of competent jurisdiction where the resolution of any dispute would be beyond the competence or lawful jurisdiction of any administrative proceeding.

21.25 **U.S. Navy Consent.** This Lease is expressly contingent upon issuance of any consent by the U. S. Navy that may be required under the terms of the Navy Documents. Lessee shall promptly provide the U.S. Navy a copy of this Lease, together with a request for any required consent thereto.

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

21.27 **Reporting under Related Agreements.** Lessee acknowledges and agrees that it shall be responsible for annual reporting of the eligibility of the Residential Sublessees and compliance of the Affordable Housing Development with the Affordable Housing Restrictions as set forth in the Declaration of Affordable Housing Restrictions of the Related Agreements.

21.28 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

21.29 **Bankruptcy of Lessee.**

IN THE EVENT LESSEE FILES ANY FORM OF BANKRUPTCY, LESSOR SHALL BE ENTITLED TO IMMEDIATE TERMINATION OF THE AUTOMATIC STAY PROVISIONS OF 11 U.S.C. §352, GRANTING THE LESSOR COMPLETE RELIEF AND ALLOWING THE LESSOR TO EXERCISE ALL OF ITS LEGAL AND EQUITABLE RIGHTS AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE RIGHT TO TERMINATE THIS LEASE AND DISPOSSESS LESSEE FROM THE DEMISED PREMISES IN ACCORDANCE WITH FLORIDA LAW. ADDITIONALLY, LESSEE AGREES NOT TO DIRECTLY OR INDIRECTLY OPPOSE OR OTHERWISE DEFEND AGAINST THE LESSOR'S EFFORT TO GAIN RELIEF FROM THE AUTOMATIC STAY. THE LESSOR SHALL BE ENTITLED AS AFORESAID TO THE LIFTING OF THE AUTOMATIC STAY WITHOUT THE NECESSITY OF AN EVIDENTIARY HEARING AND WITHOUT THE NECESSITY OR REQUIREMENT OF THE LESSOR TO ESTABLISH OR PROVE THE VALUE OF THE LEASEHOLD, THE LACK OF ADEQUATE PROTECTION OF HIS INTEREST IN THE LEASEHOLD, OR THE LACK OF EQUITY IN THE SAME. LESSEE SPECIFICALLY AGREES AND ACKNOWLEDGES THAT THE LIFTING OF THE AUTOMATIC STAY HEREUNDER BY THE APPROPRIATE BANKRUPTCY COURT SHALL BE DEEMED TO BE "FOR CAUSE" PURSUANT TO SECTION 362(D)(1).

THIS CLAUSE WAS A MATERIAL CONSIDERATION TO THE LESSOR TO GIVE THIS LEASE, AND HAD THE LESSEE NOT AGREED TO THIS PROVISION, THE LESSOR WOULD NOT HAVE ENTERED INTO THIS LEASE.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

(SEAL)

ATTEST:

By: _____
Deputy Clerk

Date: 3/2/22

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

By: _____
Mayor

Date: 3/21/22

BAHAMA VILLAGE COMMUNITY, LTD., a Florida limited partnership

By: Bahama Village GP, LLC, its general partner

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

By: _____
Name: James R. Hoover
Title: Vice President

STATE OF: Florida

COUNTY OF: Duval

Subscribed and sworn to (or affirmed) before me, by means of ☑ physical presence or ☐ online notarization, on March 16, 2022 by James R. Hoover (name of affiant) as Vice President 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

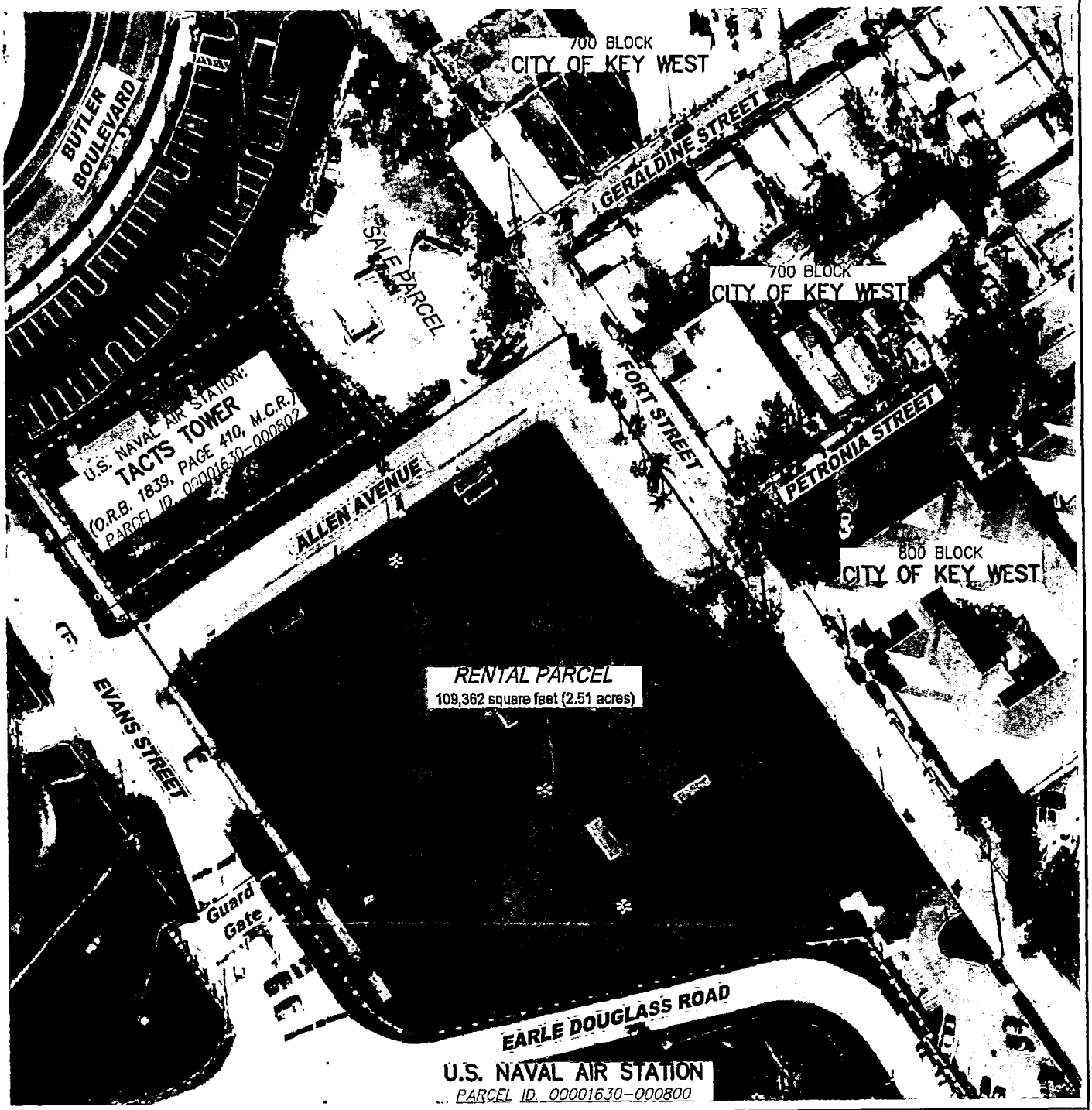
Notary Public State of Florida
Rebecca L White
My Commission GG 942290
Expires 03/23/2024

NOT A VALID SURVEY WITHOUT ALL ACCOMPANYING SHEETS

SKETCH AND DESCRIPTION
BAHAMA VILLAGE RENTAL PARCEL

PORTION OF TRUMAN ANNEX
(O.R.B. 1839, PG. 410, M.C.R.)
CITY OF KEY WEST, MONROE COUNTY, FLORIDA

0 80 160
GRAPHIC SCALE IN FEET
1" = 80'



REVISIONS

AVIROM & ASSOCIATES, INC.
SURVEYING & MAPPING
50 S.W. 2nd AVENUE, SUITE 102
BOCA RATON, FLORIDA 33432
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JOB #:	11558-2.2
SCALE:	1" = 80'
DATE:	03/06/2022
BY:	K.C.
CHECKED:	K.M.C-A-T
F.B. N/A	PG. N/A
SHEET:	1 OF 5

EXHIBIT A

SKETCH AND DESCRIPTION

BAHAMA VILLAGE RENTAL PARCEL

PORTION OF TRUMAN ANNEX
(O.R.B. 1839, PG. 410, M.C.R.)
CITY OF KEY WEST, MONROE COUNTY, FLORIDA

NOT A VALID SURVEY WITHOUT ALL ACCOMPANYING SHEETS

SURVEYOR'S REPORT:

1. Reproductions of this Sketch are not valid without the electronic signature of a Florida licensed surveyor and mapper. Additions or deletions to this survey map or report by other than the signing party is prohibited without written consent of the signing party.
2. No Title Opinion or Abstract to the subject property has been provided. It is possible that there are Deeds, Easements, or other instruments (recorded or unrecorded) which may affect the subject property. No search of the Public Records has been made by the Surveyor. NOTICE: There may be encumbrances that are not delineated on this survey that may be found in the Public Records of Monroe County, Florida.
3. The land description shown hereon was prepared by the Surveyor.
4. Data shown hereon was compiled from instrument(s) of record and does not constitute a boundary survey.
5. Bearings shown hereon are relative to Grid North of the North American Datum of 1983, Florida State Plane Coordinate System, East Zone with the southwesterly right-way line of Fort Street having a bearing of S 33°54'27" E.
7. This map is intended to be displayed at a scale of 1:960 (1"=80') or smaller.
8. Abbreviation Legend: A= Arc Length; Δ= Central Angle; ℄= Centerline; CB= Chord Bearing; CD= Chord Distance; ID= Identification; L.B.= Licensed Business; M.C.R.= Monroe County Records; O.R.B.= Official Records Book; P.B.= Plat Book; PG.= Page; P.L.S.= Professional Land Surveyor; P.O.B.= Point of Beginning; P.O.C.= Point of Commencement; R= Radius; RP= Reference Point; R/W= Right-of-Way.

CERTIFICATION:

I HEREBY CERTIFY that the attached Sketch and Description of the hereon described property is true and correct to the best of my knowledge and belief as prepared under my direction. I FURTHER CERTIFY that this Sketch and Description meets the Standards of Practice set forth in Chapters 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes.

Date: 03/06/2022

Digitally signed by Keith M. Chee-A-Tow, P.L.S.
Date: 2022.03.06 15:43:19 -05'00'

KEITH M. CHEE-A-TOW, P.L.S.
Florida Registration No. 5328
AVIROM & ASSOCIATES, INC.
L.B. No. 3300
E-Mail: Keith@AviromSurvey.com

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JOB #:	11558-2.2
SCALE:	N/A
DATE:	03/06/2022
BY:	K.C.
CHECKED:	K.M.C-A-T
F.B. N/A	PG. N/A
SHEET:	2 OF 5

SKETCH AND DESCRIPTION

BAHAMA VILLAGE RENTAL PARCEL

PORTION OF TRUMAN ANNEX
(O.R.B. 1839, PG. 410, M.C.R.)
CITY OF KEY WEST, MONROE COUNTY, FLORIDA

LEGAL DESCRIPTION:

A portion of the lands described in a Quitclaim Deed from the U.S. Government (Grantor) to the City of Key West (Grantee) as recorded in Official Records Book 1839, Page 410, of the Public Records of Monroe County, Florida, described as:

A portion of land located on the Island of Key West, Monroe County, Florida, said parcel also located in Truman Annex (formerly U.S. Navy) and being more particularly described as follows:

COMMENCE at the National Ocean Survey Triangulation Station, GSL, being a brass disc set in concrete, located on the outer mole of Truman Annex, the coordinates of which are N 81,406.14 and E 386,795.78 (1983/89), based on the U.S. Coast and Geodetic Survey Mercator grid coordinate system which has for it's zero coordinate a point of Latitude North 24°20'00" and 500.00 feet west of Longitude West 81°00'00"; thence N 74°38'54" E, a distance of 901.39 feet to the Point of Beginning of the lands granted to the City of Key West as described in Official Records Book 1838, Page 410 of said Public Records; thence along the boundary of the lands as described in said Quitclaim Deed for the following eight (8) courses and distances: N 88°01'07" E, a distance of 57.69 feet (1); thence N 01°52'38" W, a distance of 2.77 feet (2); thence N 88°13'17" E, a distance of 19.93 feet (3); thence S 19°53'46" E, a distance of 549.69 feet (4); thence S 00°20'55" E, a distance 409.16 feet(5); thence N 89°49'18" E, a distance of 100.84 feet (6); thence S 33°56'54" E, a distance of 842.47 feet (7) to the northwest right-of-way of Angela Street; thence S 55°59'51" W along said right-of-way, a distance of 105.64 feet (8) to the southwesterly right-of-way of Fort Street according to the City of Key West Street Map dated May 26, 1955; thence S 33°54'27" E, along said right-of-way, a distance of 268.92 feet to the POINT OF BEGINNING of the Rental Parcel herein described; thence continue S 33°54'27" E along said right-of-way, 395.91 feet; thence S 56°05'33" W, a distance of 55.99 feet; thence N 33°54'27" W, a distance of 17.78 feet; thence thence along the boundary of the lands as described in said Quitclaim Deed for the following four (4) courses and distances: S 56°05'33" W, a distance of 33.80 feet (1); thence S 76°53'05" W, a distance of 217.59 feet (2) to the point of curvature of a curve to the right, having a radius of 40.00 feet, a central angle of 69°12'28" a chord bearing of N 68°30'41" W and a chord length of 45.43 feet; thence along the arc of said curve, an arc length of 48.32 feet to the point of tangency of said curve (3); thence N 33°54'27" W, a distance of 100.28 feet (4); thence N 56°05'33" E, a distance of 13.05 feet; thence N 33°49'42" W, a distance of 163.22 feet to the existing north edge of pavement of Allen Avenue; thence N 56°05'33" E along said edge of pavement, a distance of 305.74' feet to the southwesterly right-of-way of Fort Street and the POINT OF BEGINNING.

Said lands lying within Section 6, Township 68 South, Range 25 East, City of Key West, Monroe County, Florida containing 109,362 square feet (2.51 acres) more or less.

NOT A VALID SURVEY WITHOUT ALL ACCOMPANYING SHEETS

REVISIONS	AVIROM & ASSOCIATES, INC. SURVEYING & MAPPING	JOB #: 11558-2.2
	50 S.W. 2nd AVENUE, SUITE 102	SCALE: N/A
	BOCA RATON, FLORIDA 33432	DATE: 03/06/2022
	(561) 392-2594 / www.AVIROMSURVEY.com	BY: K.C.
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		F.B. N/A PG. N/A
		SHEET: 3 OF 5

SKETCH AND DESCRIPTION
BAHAMA VILLAGE RENTAL PARCEL
PORTION OF TRUMAN ANNEX
(O.R.B. 1839, PG. 410, M.C.R.)
CITY OF KEY WEST, MONROE COUNTY, FLORIDA

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REVISIONS

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JOB #:	11558-2.2
SCALE:	1" = 80'
DATE:	03/06/2022
BY:	K.C.
CHECKED:	K.M.C-A-T
F.B. N/A	PG. N/A
SHEET:	4 OF 5

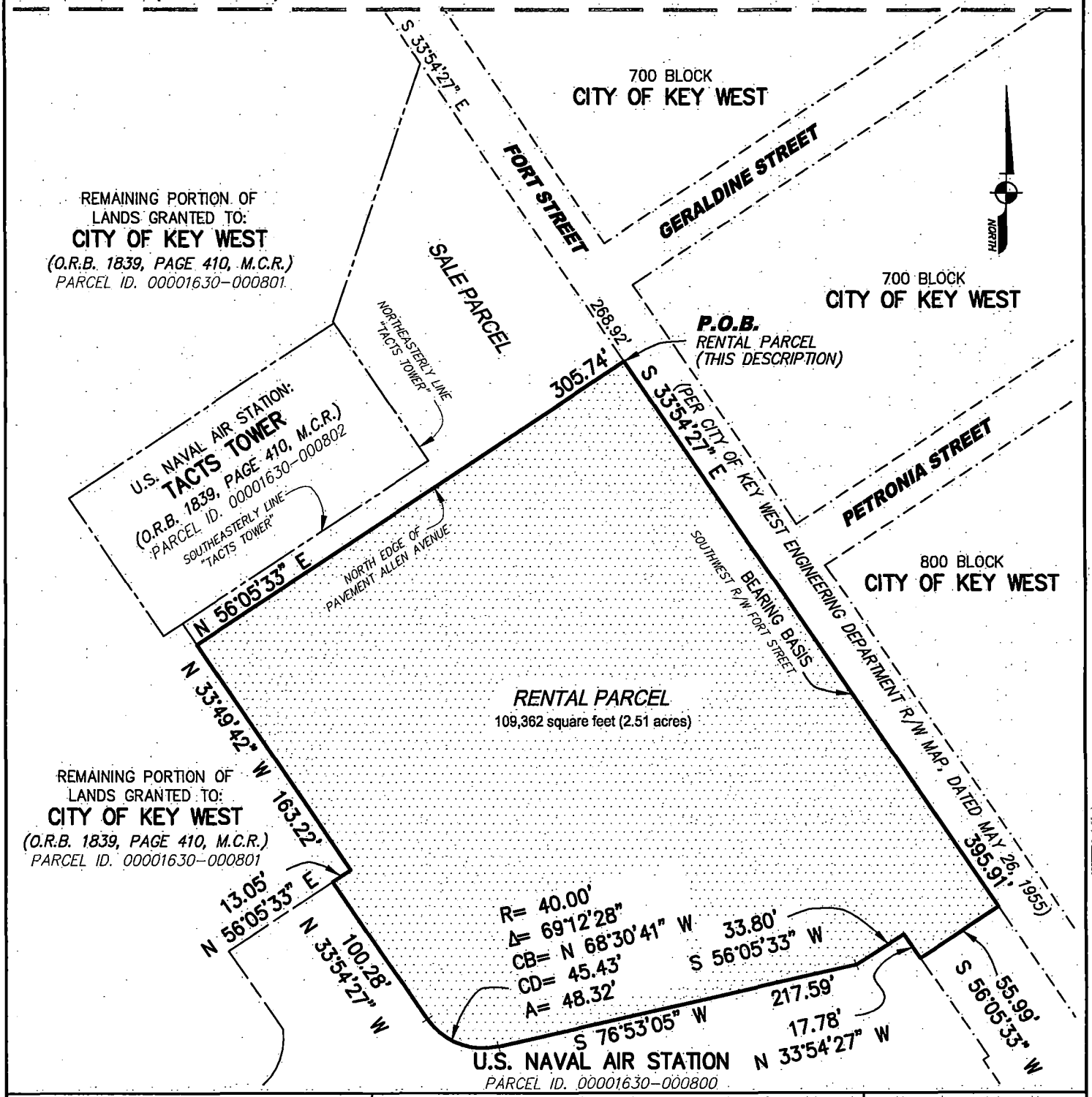
NOT A VALID SURVEY WITHOUT ALL ACCOMPANYING SHEETS

SKETCH AND DESCRIPTION
BAHAMA VILLAGE RENTAL PARCEL

PORTION OF TRUMAN ANNEX
(O.R.B. 1839, PG. 410, M.C.R.)
CITY OF KEY WEST, MONROE COUNTY, FLORIDA

0 80 160
GRAPHIC SCALE IN FEET
1" = 80'

MATCH LINE (*SEE SHEET 4*)



REVISIONS

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JOB #:	11558-2.2
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DATE:	03/06/2022
BY:	K.C.
CHECKED:	K.M.C-A-T.
F.B. N/A	PG. N/A
SHEET:	5 OF 5

Prepared by and
return to:

Shawn D. Smith, Esq.
P.O. Box 1409
Key West, FL 33041-1409
(305) 809-3773

(For Recorder's Use Only)

DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS

This Declaration of Affordable Housing Restriction (hereinafter "Declaration") is made and entered into this_____day of____, 2022 by BAHAMA VILLAGE COMMUNITY, LTD., a Florida limited partnership (the "Declarant")

This Declaration applies to all of the units which are or may be located on the real property located in Historic Bahama Village, in Key West, Florida, which is more fully described in the Legal Description attached hereto and incorporated herein as Exhibit A (hereinafter "Property").

WHEREAS, the Property has been leased to Declarant pursuant to that certain 99-year ground lease by and between The Naval Properties Local Redevelopment Authority of the City of Key West, a political subdivision of the State of Florida ("City of Key West") and Declarant dated _____ and recorded _____ at Book ____, Page ____ of the Official Records of Monroe County (the "Lease");

WHEREAS, the City of Key West has required that the Property be subject to affordable housing restrictions, which shall establish affordable housing categories to facilitate the development of housing designed to meet the needs of people in the City, establish eligibility requirements for occupants of such affordable housing, and restricts lease price of the Property and requires that the Property leased at a price substantially less than fair market value to a tenant within a specific income range;

WHEREAS, Declarant as well as tenants will benefit from the limitations and regulations placed on the Property by operation of this Declaration;

WHEREAS, the intent of the City of Key West in imposing reasonable regulations on the Property is to establish and maintain the affordability of the Property for persons with incomes within a specified range; and

WHEREAS, the intent of Declarant is to preserve through this Declaration the affordability of the Property and to assign to the City the right to enforce compliance with this Declaration as an intended beneficiary of this Declaration.

EXHIBIT B

NOW, THEREFORE, the Declarant agrees that the Property shall be held conveyed, assigned or leased subject to the following affordable housing restrictions, covenants and conditions, which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns for the entire term of this Declaration.

I. DEFINITIONS

A. "Declarant" shall include any subsequent purchaser, devisee, transferee, grantee or holder of title of the Property or any portion of the Property.

B. "Transfer" means any sale, lease or sublease, assignment or transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Property is transferred and Declarant retains title.

C. "Transferee" shall mean an individual, or individuals, who receive a Transfer of the Property from the Declarant.

D. "Income" shall mean gross adjusted income.

All other terms shall have the same meaning given to them in the Lease and Related Agreements (as defined in the Lease).

II. TERM AND ENFORCEABILITY

A. This Declaration shall run with the land and with the title to the Property in perpetuity and bind the Declarant, its successors in interest and assigns, from the effective date of this Declaration.

B. The Property is held and hereafter shall be held, conveyed, encumbered, used, subleased, leased and occupied subject to the covenants, conditions, restrictions and limitations set forth in the Lease and this Declaration. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.

C. Any transferee, sublessee, lessee, mortgagee or purchaser of the Property, or of any portion of or interest in the Property, by the acceptance of a deed or sublease therefore, whether from Declarant or from any subsequent purchaser of the Property, or by the signing of a contract or agreement to purchase or sublease the same, shall, by the acceptance of such deed, sublease or mortgage, or by the signing of such contract or agreement, be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein. Any written

instrument attempting or purporting to lease or sublease, sell, convey, grant, transfer, exchange assign or mortgage any legal or equitable rights or interests to the Property (including the interest in the Lease) shall be deemed null and void, where such instrument purports or evidences an attempt to sell, convey, grant, transfer, exchange or assign any right or interest to the Property where such instrument is inconsistent with or contrary to the conditions or covenants contained herein. Any lease, sublease, deed or instrument of conveyance executed by or on behalf of Declarant or any subsequent grantee, devisee, heir, assignee or other transferee shall expressly set forth verbatim this and the foregoing reservations, restrictions and covenants or, in lieu thereof, incorporate them by specific reference to this Declaration by Book and Page number(s) where recorded in the Public Records of Monroe County, Florida.

D. In order to preserve through this Declaration the affordability of the Property for persons with incomes within a specified range, the Declarant hereby grants and assigns to the City the right to monitor and enforce compliance with this Declaration. Declarant otherwise reserves the rights necessary to implement the provisions of this Declaration.

III. IDENTIFICATION OF THE UNITS AFFECTED

Pursuant to the Lease, the total rental for all the affected units shall be based on each unit being affordable housing. The affordable housing development located on the Property shall consist of the following rental for units designated at "extremely low", "low income" or "very low income" or "moderate income"

A. Ten (10) units designated for "extremely low-income" persons

B. Thirty-nine (39) units designated for "very low-income" persons

C. Twenty-nine (29) units designated for "low-income" persons

D. Twenty (20) units designated for "moderate income" persons

IV. OCCUPANCY, SALE, LEASING AND USE OF THE PROPERTY

A. The Property shall be operated, managed and otherwise administered as affordable housing and such other uses incidental to residential use as may be permitted by local zoning and land use regulations.

1. At the time an affordable housing (extremely low-income) unit is subleased, the total income of the eligible household or persons shall not exceed 25 percent of the median annual adjusted gross income for households within the State of Florida. The Florida Housing Finance Corporation may adjust this amount annually by rule to provide that in lower income counties, extremely low income may exceed 25 percent of area median income and that in higher income counties, extremely low income may be less than 25 percent of area median income.

2. At the time an affordable housing (very low-income) unit is subleased, the total income of the eligible household or persons shall not exceed 60 percent of the median annual adjusted gross income for households within the State of Florida, or 60 percent of the median annual adjusted gross income for households within the metropolitan statistical area ("MSA") or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

3. At the time an affordable housing (low-income) unit is subleased, the total income of the eligible household or persons shall not exceed 80 percent of the median annual adjusted gross income for households within the State of Florida, or 80 percent of the median annual adjusted gross income for households within the MSA or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

4. At the time an affordable housing (moderate income) unit is subleased, the total income of the eligible household or persons shall not exceed 120 percent of the median annual adjusted gross income for households within the State of Florida, or 120 percent of the median annual adjusted gross income for households within the MSA or, if not within an MSA, within the county in which the person or family resides, whichever is greater)

5. Eligibility is based on an employer verification form signed by the employer or reasonably sufficient evidence, demonstrating income qualification through self-employment.

6. The income of eligible households shall be determined by counting the full amount, before any payroll deductions, of wages, salaries, overtime pay, commissions, fees, tips, bonuses, Social Security, annuities, insurance policies retirement funds, pensions, disability or death benefits unemployment compensation disability or death benefits, unemployment compensation disability compensation, worker's compensation, severance pay and any net income from the operation of a business or profession of all household members. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income from operation of a business or profession.

7. Residential Sublessees, excluding dependents, shall derive 70% of their income from gainful employment in Monroe County provided this provision does not violate any Fair Housing Act.

V. DEFAULTS AND REMEDIES: ASSIGNMENT OF RENTS

A. Upon any violation of the provisions of this Declaration, the City may declare a default under this Declaration by delivering written notice thereof to the Declarant. After providing written notice of default, and provide that such default has not been reasonably cured within thirty (30) days of receipt of such default notice, the City may apply to a court of competent jurisdiction for specific performance of the Declaration, for an injunction prohibiting a proposed sale or transfer or lease in violation of this Declaration, for a declaration that a prohibited transfer or lease is void, or for any such other relief as may be appropriate.

B. Subject to the rights of "Leasehold Mortgagees" under the Lease, Declarant hereby assigns to City the right to receive the rents due or collected from any units identified to be subject to this Declaration during the entire period those units are occupied in violation of any of the terms of this Declaration.

C. The remedies stated herein shall not be exclusive, but shall be cumulative to all other remedies and rights the parties may lawfully exercise.

VI. REQUIREMENTS FOR WRITTEN REPORTS FROM DECLARANT

Declarant shall provide a written report to the City each year on January 1, or on such other date as specified by the City in writing, which includes a statement that Declarant has complied with all provisions of this Declaration, or includes Declarant's explanation of any violation of any provision of this Declaration. The report shall be submitted within thirty (30) days of the specified date to the City, or to such other person or address designated by the City. Failure to provide a report in a timely manner, or any misrepresentations on the report, shall constitute a default under this Declaration.

VII. GENERAL PROVISIONS

A. The City may assign its rights and delegate its duties hereunder in writing without the consent of Declarant. Upon such assignment, the City shall notify the Declarant.

B. If any action is brought to enforce the terms of this Declaration, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

C. If any one or more of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Declaration, and this Declaration shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

D. The terms of this Declaration shall be interpreted under the laws of the State of Florida and venue shall lie in Monroe County, Florida.

E. All notices required herein shall be sent by certified mail, return receipt requested, to the Declarant at 3030 Hartley Road, Suite 310, Jacksonville, FL 32257, with a copy to Smith Hawks, PL, 138 Simonton Street, Key West, FL 33040 and to the City Manager or his or her designee at P.O. Box 1409, Key West, FL, 33041, or such other address that either party may subsequently provide in writing to the other party.

VIII. CONVERSION TO CONDOMINIUM FORM OF OWNERSHIP

Prior to Declarant or any subsequent owner or transferee converting ownership of the Property to condominium or a similar form of ownership, Declarant shall obtain the City's reasonable consent to same and Declarant expressly agrees herein to execute an amended Declaration as reasonably required by the City.

IX. MORTGAGE SUBORDINATION

Subject to the terms regarding "Leasehold Mortgages" under the Lease, upon demand by the City any mortgagee who accepts any or all of the Property as collateral or security for any purpose or loan shall execute and deliver, in recordable form, its subordination agreement subordinating its mortgage to the terms and conditions of this Declaration.

[Rest of page intentionally left blank; Signature page to follow]

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the date written below.

BAHAMA VILLAGE COMMUNITY, LTD., a Florida limited partnership

By: Bahama Village GP, LLC, its general partner

Signed, sealed and delivered in our presence:

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

Allison C Adams
Witness Name: Allison C Adams

By: James R. Hoover
Name: James R. Hoover
Title: Vice President

Witness Name: Eric Weller

STATE OF FLORIDA
COUNTY OF Duval

The foregoing instrument was acknowledged before me [✓] by physical presence or [ ] online notarization this 16th day of March, 2022 by James R. Hoover as Vice President of Vestcor, Inc., a Florida corporation, manager of Bahama Village GP, LLC, general partner of BAHAMA VILLAGE COMMUNITY, LTD., a Florida limited partnership, who [✓] are personally known to me or [ ] have produced _____ as identification.

[Notary Seal]

Rebecca L. White
Notary Public
Printed Name: _____
My Commission Expires: _____

Notary Public State of Florida
Rebecca L White
My Commission GG 942290
Expires 03/23/2024

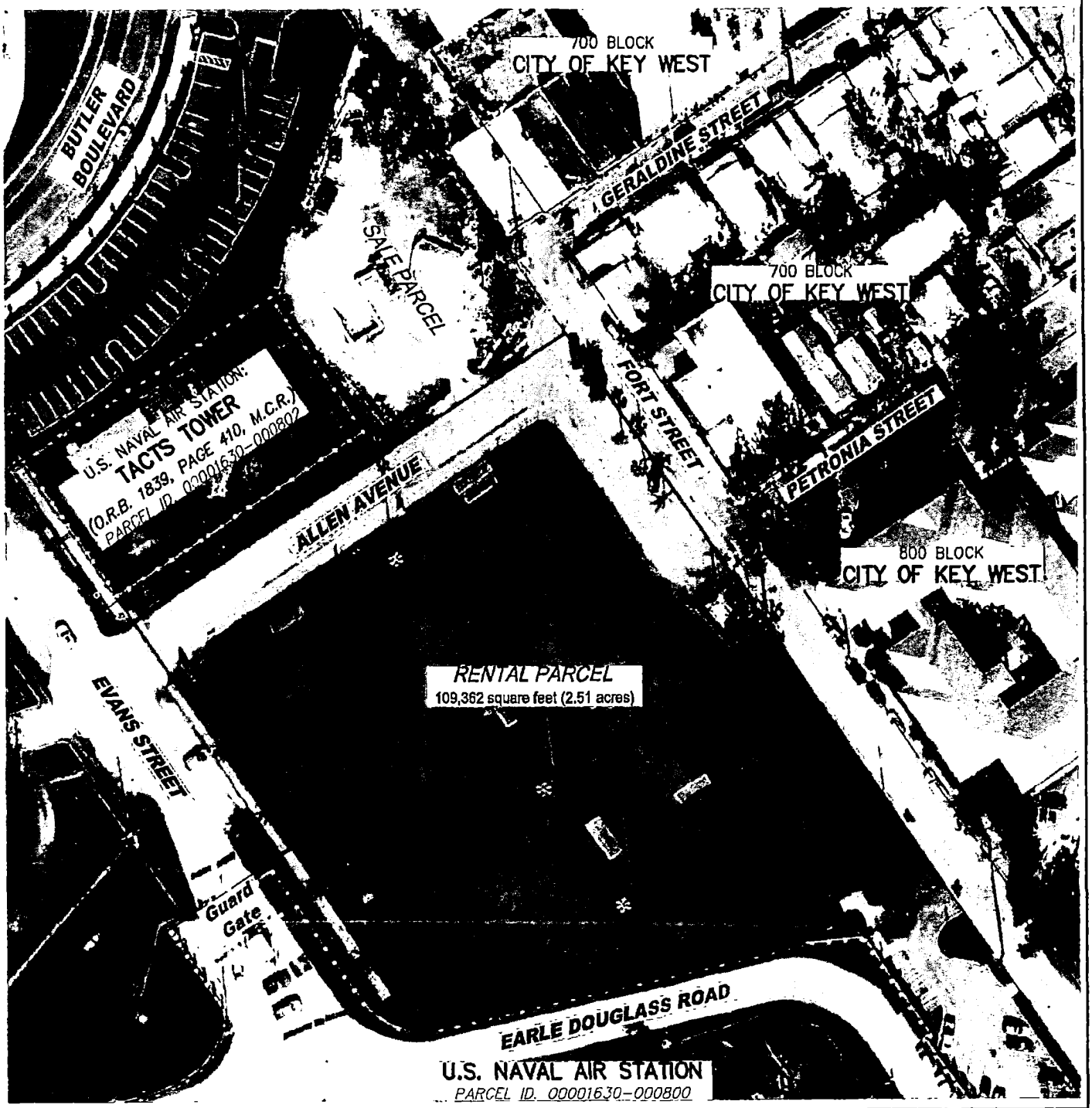
EXHIBIT A

NOT A VALID SURVEY WITHOUT ALL ACCOMPANYING SHEETS

SKETCH AND DESCRIPTION
BAHAMA VILLAGE RENTAL PARCEL

PORTION OF TRUMAN ANNEX
(O.R.B. 1839, PG. 410, M.C.R.)
CITY OF KEY WEST, MONROE COUNTY, FLORIDA

0 80 160
GRAPHIC SCALE IN FEET
1" = 80'



REVISIONS

AVIROM & ASSOCIATES, INC.
SURVEYING & MAPPING
50 S.W. 2nd AVENUE, SUITE 102
BOCA RATON, FLORIDA 33432
(561) 392-2594 / www.AVIROMSURVEY.com

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JOB #:	11558-2.2
SCALE:	1" = 80'
DATE:	03/06/2022
BY:	K.C.
CHECKED:	K.M.C-A-T
F.B. N/A	PG. N/A
SHEET:	1 OF 5

EXHIBIT A

SKETCH AND DESCRIPTION

BAHAMA VILLAGE RENTAL PARCEL

PORTION OF TRUMAN ANNEX
(O.R.B. 1839, PG. 410, M.C.R.)
CITY OF KEY WEST, MONROE COUNTY, FLORIDA

NOT A VALID SURVEY WITHOUT ALL ACCOMPANYING SHEETS

SURVEYOR'S REPORT:

1. Reproductions of this Sketch are not valid without the electronic signature of a Florida licensed surveyor and mapper. Additions or deletions to this survey map or report by other than the signing party is prohibited without written consent of the signing party.
2. No Title Opinion or Abstract to the subject property has been provided. It is possible that there are Deeds, Easements, or other instruments (recorded or unrecorded) which may affect the subject property. No search of the Public Records has been made by the Surveyor. NOTICE: There may be encumbrances that are not delineated on this survey that may be found in the Public Records of Monroe County, Florida.
3. The land description shown hereon was prepared by the Surveyor.
4. Data shown hereon was compiled from instrument(s) of record and does not constitute a boundary survey.
5. Bearings shown hereon are relative to Grid North of the North American Datum of 1983, Florida State Plane Coordinate System, East Zone with the southwesterly right-way line of Fort Street having a bearing of S 33°54'27" E.
7. This map is intended to be displayed at a scale of 1:960 (1"=80') or smaller.
8. Abbreviation Legend: A= Arc Length; Δ= Central Angle; ℄= Centerline; CB= Chord Bearing; CD= Chord Distance; ID= Identification; L.B.= Licensed Business; M.C.R.= Monroe County Records; O.R.B.= Official Records Book; P.B.= Plat Book; PG.= Page; P.L.S.= Professional Land Surveyor; P.O.B.= Point of Beginning; P.O.C.= Point of Commencement; R= Radius; RP= Reference Point; R/W= Right-of-Way.

CERTIFICATION:

I HEREBY CERTIFY that the attached Sketch and Description of the hereon described property is true and correct to the best of my knowledge and belief as prepared under my direction. I FURTHER CERTIFY that this Sketch and Description meets the Standards of Practice set forth in Chapters 5J-17, Florida Administrative Code, pursuant to Chapter 472, Florida Statutes.

Date: 03/06/2022

Digitally signed by Keith M. Chee-A-Tow, P.L.S.
Date: 2022.03.06 15:43:19 -05'00'

KEITH M. CHEE-A-TOW, P.L.S.
Florida Registration No. 5328
AVIROM & ASSOCIATES, INC.
L.B. No. 3300
E-Mail: Keith@AviromSurvey.com

REVISIONS	AVIROM & ASSOCIATES, INC. SURVEYING & MAPPING	JOB #: 11558-2.2
	50 S.W. 2nd AVENUE, SUITE 102	SCALE: N/A
	BOCA RATON, FLORIDA 33432	DATE: 03/06/2022
	(561) 392-2594 / www.AVIROMSURVEY.com	BY: K.C.
		CHECKED: K.M.C-A-T
		F.B. N/A PG. N/A
		SHEET: 2 OF 5

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SKETCH AND DESCRIPTION

BAHAMA VILLAGE RENTAL PARCEL

PORTION OF TRUMAN ANNEX
(O.R.B. 1839, PG. 410, M.C.R.)
CITY OF KEY WEST, MONROE COUNTY, FLORIDA

LEGAL DESCRIPTION:

A portion of the lands described in a Quitclaim Deed from the U.S. Government (Grantor) to the City of Key West (Grantee) as recorded in Official Records Book 1839, Page 410, of the Public Records of Monroe County, Florida, described as:

A portion of land located on the Island of Key West, Monroe County, Florida, said parcel also located in Truman Annex (formerly U.S. Navy) and being more particularly described as follows:

COMMENCE at the National Ocean Survey Triangulation Station, GSL, being a brass disc set in concrete, located on the outer mole of Truman Annex, the coordinates of which are N 81,406.14 and E 386,795.78 (1983/89), based on the U.S. Coast and Geodetic Survey Mercator grid coordinate system which has for it's zero coordinate a point of Latitude North 24°20'00" and 500.00 feet west of Longitude West 81°00'00"; thence N 74°38'54" E, a distance of 901.39 feet to the Point of Beginning of the lands granted to the City of Key West as described in Official Records Book 1838, Page 410 of said Public Records; thence along the boundary of the lands as described in said Quitclaim Deed for the following eight (8) courses and distances: N 88°01'07" E, a distance of 57.69 feet (1); thence N 01°52'38" W, a distance of 2.77 feet (2); thence N 88°13'17" E, a distance of 19.93 feet (3); thence S 19°53'46" E, a distance of 549.69 feet (4); thence S 00°20'55" E, a distance 409.16 feet(5); thence N 89°49'18" E, a distance of 100.84 feet (6); thence S 33°56'54" E, a distance of 842.47 feet (7) to the northwest right-of-way of Angela Street; thence S 55°59'51" W along said right-of-way, a distance of 105.64 feet (8) to the southwesterly right-of-way of Fort Street according to the City of Key West Street Map dated May 26, 1955; thence S 33°54'27" E, along said right-of-way, a distance of 268.92 feet to the POINT OF BEGINNING of the Rental Parcel herein described; thence continue S 33°54'27" E along said right-of-way, 395.91 feet; thence S 56°05'33" W, a distance of 55.99 feet; thence N 33°54'27" W, a distance of 17.78 feet; thence thence along the boundary of the lands as described in said Quitclaim Deed for the following four (4) courses and distances: S 56°05'33" W, a distance of 33.80 feet (1); thence S 76°53'05" W, a distance of 217.59 feet (2) to the point of curvature of a curve to the right, having a radius of 40.00 feet, a central angle of 69°12'28" a chord bearing of N 68°30'41" W and a chord length of 45.43 feet; thence along the arc of said curve, an arc length of 48.32 feet to the point of tangency of said curve (3); thence N 33°54'27" W, a distance of 100.28 feet (4); thence N 56°05'33" E, a distance of 13.05 feet; thence N 33°49'42" W, a distance of 163.22 feet to the existing north edge of pavement of Allen Avenue; thence N 56°05'33" E along said edge of pavement, a distance of 305.74' feet to the southwesterly right-of-way of Fort Street and the POINT OF BEGINNING.

Said lands lying within Section 6, Township 68 South, Range 25 East, City of Key West, Monroe County, Florida containing 109,362 square feet (2.51 acres) more or less.

NOT A VALID SURVEY WITHOUT ALL ACCOMPANYING SHEETS

REVISIONS

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SURVEYING & MAPPING
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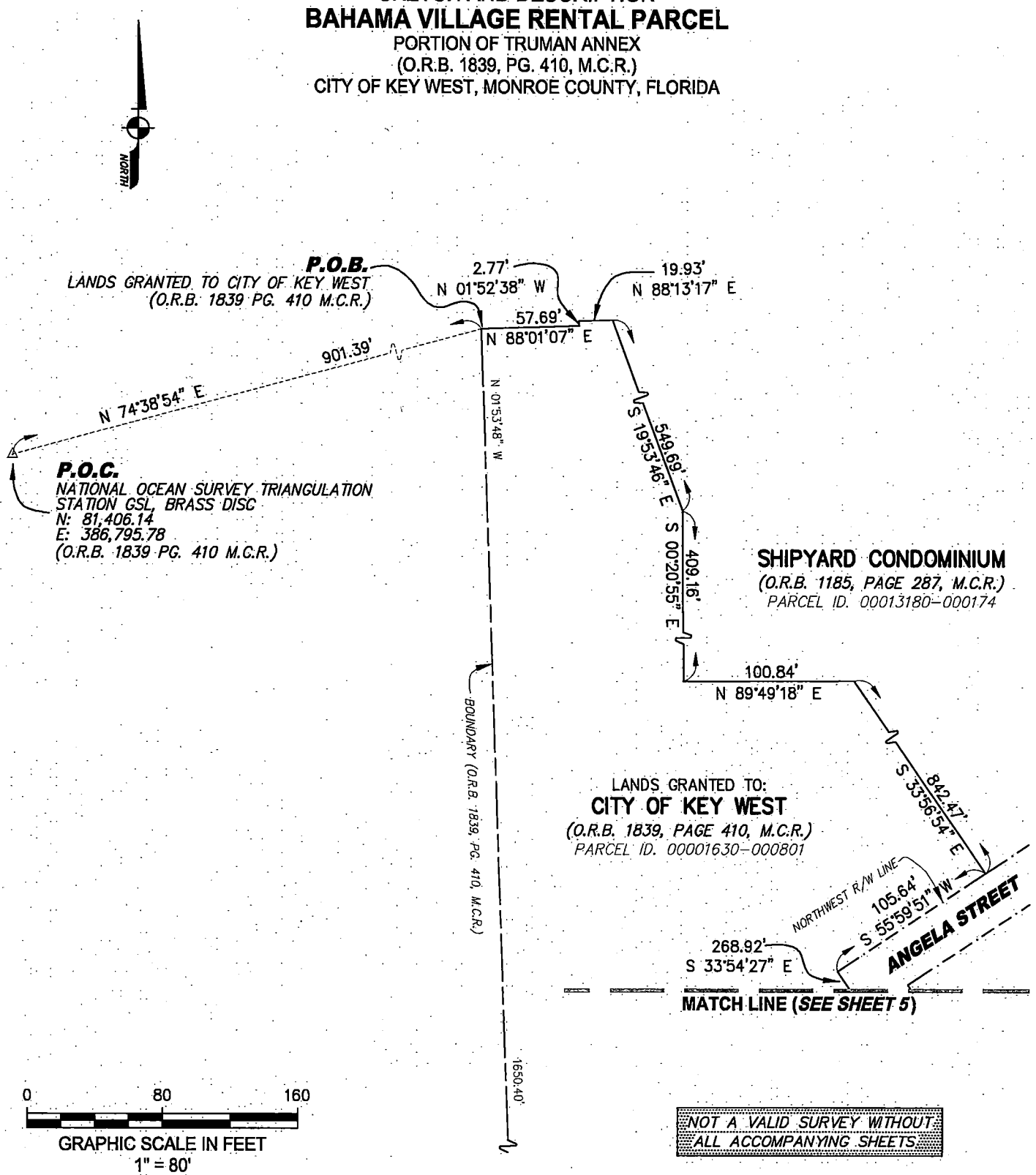
JOB #:	11558-2.2
SCALE:	N/A
DATE:	03/06/2022
BY:	K.C.
CHECKED:	K.M.C-A-T
F.B.	N/A PG. N/A
SHEET:	3 OF 5

SKETCH AND DESCRIPTION
BAHAMA VILLAGE RENTAL PARCEL
PORTION OF TRUMAN ANNEX
(O.R.B. 1839, PG. 410, M.C.R.)
CITY OF KEY WEST, MONROE COUNTY, FLORIDA



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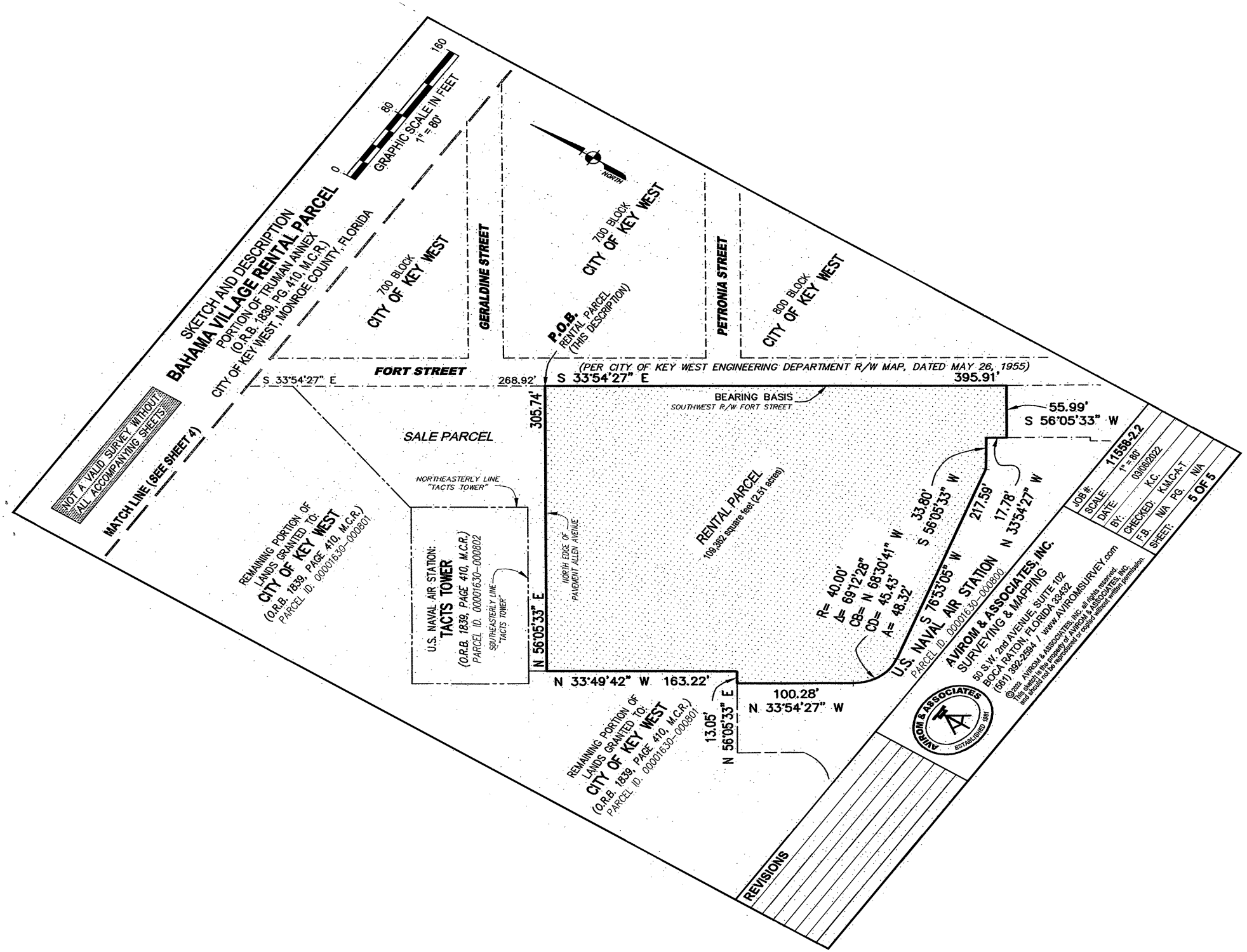
JOB #:	11558-2.2
SCALE:	1" = 80'
DATE:	03/06/2022
BY:	K.C.
CHECKED:	K.M.C-A-T
F.B. N/A	PG. N/A
SHEET:	4 OF 5


SKETCH AND DESCRIPTION
BAHAMA VILLAGE RENTAL PARCEL
PORTION OF TRUMAN ANNEX
(O.R.B. 1839, PG. 410, M.C.R.)
CITY OF KEY WEST, MONROE COUNTY, FLORIDA
NOT A VALID SURVEY WITHOUT ALL ACCOMPANYING SHEETS
MATCH LINE (SEE SHEET 4)
GRAPHIC SCALE IN FEET
1" = 80'
0
80
160
NORTH
700 BLOCK CITY OF KEY WEST
GERALDINE STREET
700 BLOCK CITY OF KEY WEST
PETRONIA STREET
800 BLOCK CITY OF KEY WEST
FORT STREET
(PER CITY OF KEY WEST ENGINEERING DEPARTMENT R/W MAP, DATED MAY 26, 1955)
P.O.B.
RENTAL PARCEL
(THIS DESCRIPTION)
S 33°54'27" E
268.92'
S 33°54'27" E
395.91'
BEARING BASIS
SOUTHWEST R/W FORT STREET
55.99'
S 56°05'33" W
SALE PARCEL
305.74'
RENTAL PARCEL
109,362 square feet (2.51 acres)
NORTHEASTERLY LINE
"TACTS TOWER"
NORTH EDGE OF
PAVEMENT ALLEN AVENUE
SOUTHEASTERLY LINE
"TACTS TOWER"
U.S. NAVAL AIR STATION:
TACTS TOWER
(O.R.B. 1839, PAGE 410, M.C.R.)
PARCEL ID. 00001630-000802
REMAINING PORTION OF
LANDS GRANTED TO:
CITY OF KEY WEST
(O.R.B. 1839, PAGE 410, M.C.R.)
PARCEL ID. 00001630-000801
N 56°05'33" E
R= 40.00'
Δ= 69°12'28"
CB= N 68°30'41" W
CD= 45.43'
A= 48.32'
33.80'
S 56°05'33" W
217.59'
S 76°53'05" W
17.78'
N 33°54'27" W
U.S. NAVAL AIR STATION
PARCEL ID. 00001630-000800
N 33°49'42" W 163.22'
100.28'
N 33°54'27" W
13.05'
N 56°05'33" E
REMAINING PORTION OF
LANDS GRANTED TO:
CITY OF KEY WEST
(O.R.B. 1839, PAGE 410, M.C.R.)
PARCEL ID. 00001630-000801
REVISIONS
AVIROM & ASSOCIATES
ESTABLISHED 1981
AVIROM & ASSOCIATES, INC.
SURVEYING & MAPPING
50 S.W. 2nd AVENUE, SUITE 102
BOCA RATON, FLORIDA 33432
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JOB #: 11558.2.2
SCALE: 1" = 80'
DATE: 03/06/2022
BY: K.C.
CHECKED: K.M.C-A-T
F.B. N/A PG. N/A
SHEET: 5 OF 5

RESOLUTION NO. 00-43

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED AGREEMENT BETEEN THE CITY AND THE TRIUMAN ANNEX MASTER PROPERTY OWNERS' ASSOCIATIONN (TAMPOA); PROVIDING FOR AN EFFECTIVE DATE

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

Section 1: That the attached Agreement between the City and TAMPOA is hereby approved.

Section 2: 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 20TH day of JANUARY, 2000.

Authenticated by the presiding officer and Clerk of the Commission on JANUARY 21, 2000.

Filed with the Clerk _____, 2000.

JIMMY WEEKLEY, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

EXHIBIT C

AGREEMENT

THIS AGREEMENT ("Agreement") is binding on the "effective date" as set forth herein, between the City of Key West ("City"), as a political subdivision of the State of Florida, and the Truman Annex Master Property Owners' Association ("TAMPOA"), as the legal or equitable owner and/or developer of certain properties in Florida, its successors and assigns.

WITNESSETH:

WHEREAS, TAMPOA is the property owners' association which represents the owners of real property within the residential portions of the Truman Planned Residential Development, with the exception of the Shipyard's Condominium Association, which is located in the City of Key West, and whose function and powers are described in bylaws filed and recorded with the Monroe County Clerk;

WHEREAS, the City of Key West is a chartered city within the State of Florida empowered to enter into agreements to protect the general health, safety and welfare of its citizens;

WHEREAS, the City has adopted a Naval Properties Base Reuse Plan ("Plan") for the Truman Annex Waterfront Area ("Waterfront"), and other Navy-owned properties as provided by Florida Statute § 288.975;

WHEREAS, the City Comprehensive Plan and Land Development Regulations for Truman Annex Waterfront area together with the data and analysis documents supporting the proposed amendments recognizes that access to and from the Waterfront will pass through property owned by members of TAMPOA and has the possibility of negatively impacting their properties;

WHEREAS, TAMPOA has filed two petitions challenging the Plan pursuant to its concerns for possible impacts on the properties of its members, including the City's proposed method of

access to the Waterfront and the method of mitigating the impacts therefrom;

WHEREAS, TAMPOA desires to affirm its commitment to allowing public access to its properties pursuant to the terms of the Twelfth Amended Development Agreement;

WHEREAS, both the City and TAMPOA wish to avoid further conflict and litigation regarding the City's right to access and the impacts of the access on the TAMPOA properties; and

WHEREAS, the City finds that this Agreement furthers the purposes of the City's Comprehensive Plan and is authorized to enter this Agreement by City Code of Ordinances.

NOW THEREFORE, the parties do hereby agree as follows:

I. Recitations of Facts and Mutual Commitments

The above recitations and representations are true and correct and are incorporated herein by this reference.

II Duration of Agreement

This Agreement shall remain in effect until such time as the City ceases to provide access to the Waterfront through properties owned or managed by the members of TAMPOA, its successors and assigns or until such time as amended by both parties in writing.

III. Requirements for and Limitations on Access to the Waterfront

For the duration of this Agreement, the Parties agree that any and all of the access to the Waterfront approved by the City shall adhere to and conform to this Agreement.

1. Within two (2) years of the City acquiring the Waterfront property, the City shall create and fully implement the following vehicular, pedestrian and bicycle access points to the Waterfront property:

A. The City shall provide ingress and egress by way of Fort Street through Olivia Street;

B. The City shall provide ingress through Petronia Street; and

C. The City shall provide ingress and egress by way of Truman Avenue to Fort Street.

Additionally, the City shall erect signage directing vehicular traffic to use Truman Avenue, Petronia Street, and Olivia Street for ingress and egress to and from the Waterfront property.

2. TAMPOA will convert its section of Southard Street to a one-way egress only from the Waterfront property upon the completion of any development other than infrastructure having traffic impact on TAMPOA's property (i.e. retail, commercial or residential units on the Waterfront property) or after 5 years of the City acquiring the Waterfront property, which ever occurs first. TAMPOA's residents shall continue to have the right of ingress on the section of Southard Street owned by TAMPOA through controlled gates. Emergency vehicles shall have the right of ingress on the section of Southard Street owned by TAMPOA for the duration of this Agreement. The trains and trolleys owned by Historic Tours of America, Inc. or its subsidiaries, or its successors, shall have the right of ingress on the section of Southard Street owned by TAMPOA. No other vehicles will have the right of ingress on the section of Southard Street owned by TAMPOA after the conversion described in this paragraph.

3. TAMPOA will have the option of using Eaton Street as a vehicular entrance and/or

exit to and from TAMPOA exclusively for its homeowners. The City will be provided emergency access on Eaton Street from Whitehead Street to Front Street and down Front Street between Eaton and Southard Streets. Access for pedestrian and bicycle traffic also will be permitted along Eaton Street between Whitehead Street and Front Street. Under no circumstances will the Eaton Street right of way beyond Front Street be used as any type of public or emergency ingress or egress to and from the Waterfront property.

4. Construction vehicles shall have access to the section of Southard Street owned by TAMPOA only between the hours of 7:00 a.m. and 6:00 p.m. Access by construction vehicles on the said section of Southard Street shall be subject to all other provisions of this Agreement.
5. Within two (2) years of the City acquiring the Waterfront property, TAMPOA shall have the right to prohibit any access, including but not limited to vehicular, pedestrian and bicycle traffic, to the section of Southard Street owned by TAMPOA from 11:00 p.m. to 7:00 a.m., except for a reasonable number of scheduled special events and except for emergency vehicles.

IV. Public Health, Safety and Welfare

Exclusive of any others, except those imposed by law, the following additional conditions, terms, restrictions, or other requirements are also determined by the City of Key West to be necessary for the public health, safety, or welfare of its citizens:

1. Breach of Agreement and Cure Provisions

Upon a party's material breach of the terms and conditions of this

Agreement, the non-breaching party may serve written notice on the breaching party via certified mail, return receipt requested, and shall provide the breaching party the opportunity, within sixty (60) days of receipt of notice, to cure the breach. In the event the breaching party fails to cure the material breach within sixty (60) days, the non-breaching party may seek injunctive relief and any other damages to which it is entitled by filing an action in the Circuit Court of Monroe County to enforce the terms of this Agreement.

2. Amendment of Agreement

The parties hereto shall at all times adhere to the terms and conditions of this Agreement. It is further agreed that no modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document approved and executed by the parties.

3. State and Federal Law

If state or federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this Agreement, this Agreement shall be modified as is necessary to comply with the relevant state or federal laws; however, this Agreement shall not be construed to waive or supersede any contention under law that TAMPOA has acquired vested rights under prior law.

V. Additional Provisions

A. Recording

The City of Key West shall record this Agreement with the Clerk of the

Circuit Court of Monroe County within fourteen (14) days following signature by all parties. Recording fees shall be paid by the City.

B. Entire Agreement

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in or incorporated into this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

C. Severability

If any part of this Agreement is contrary to, prohibited by, or deemed invalid under any applicable law or regulation, such provisions shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid; however, the remainder here shall not be invalidated thereby and shall be given full force and effect.

D. Governing Law

This Agreement shall be construed and interpreted under the laws of the State of Florida.

E. Successors and Assigns

This Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns, and personal representatives.

F. Notices

All notices, demands, requests, or replies provided for or permitted by this Agreement shall be in writing and shall be delivered by deposit with the United States Postal Service as certified mail, return receipt requested, postage prepaid, to the addresses stated below. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the United States Postal Service. For purposes of notice, demand, request, or replies, the address of the City of Key West shall be:

City Manager
City of Key West
525 Angela Street
Key West, Florida 33040

The address of TAMPOA shall be:

Truman Annex Master Property Owner's Association, Inc.
President
201 Front Street, Suite 103
Key West, Florida 33040

G. Titles and Captions

All article and section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

H. Pronouns

All pronouns and variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or

persons may require.

I. Further Action

The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of the Agreement.

J. Counterparts

This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.

K. Agreement Shall Not be Construed Against Any Party

This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

L. Third Party Beneficiaries

Nothing herein shall be construed to be for the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

M. Effective Date

The effective date of this Agreement shall be the date the Agreement is approved by the City of Key West City Commission and the Board of Directors of Truman Annex Master Property Owners' Association.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year below written.

Signed, sealed, and delivered in the presence of:

Witnesses:

(FLORIDA)

STERLING J. CHRISTIAN
Printed Name

Signature

Bertrice Christensen
Printed Name

Signature

TAMPOA

By: _____
President

DAVID J. PFENT
Printed Name

Dated: 1/20/00

STATE OF FLORIDA

COUNTY OF MONROE

The foregoing instrument was acknowledged before me on this 20th day of January, 2000, by David J. Pfent, the President of TAMPOA, on behalf of the Association. He is personally known to me and did not take an oath.

Notary Public

Joy Delgado
Printed Name

My commission expires:

Joy Delgado
My Commission CC805835
Expires February 1, 2003

APPROVAL OF THE CITY OF KEY WEST

On the 20 day of January, 2000, the City of Key West Commission approved this Agreement by Resolution No. 00-43.

ATTEST **CITY OF KEY WEST, FLORIDA**

Cheryl Smith, City Clerk

By: Jimmy Weekley, Mayor

MEDIATION SETTLEMENT AGREEMENT

THIS MEDIATION SETTLEMENT AGREEMENT (hereinafter referred to as the "Agreement") between the City of Key West (hereinafter referred to as "CITY"), a municipal corporation of the State of Florida, and the Truman Annex Master Property Owners' Association, Inc., a Florida corporation (hereinafter referred to as "TAMPOA"), a legal or equitable owner and/or representative of certain properties located in the City of Key West, Florida (both "City" and "TAMPOA" shall be hereinafter referred to collectively as the "Parties" and may individually be referred to as a "party"), as well as each of the Parties' successors and assigns.

RECITALS

WHEREAS, TAMPOA is the property owners' association which represents the owners of real property within the Truman Planned Residential Development (hereinafter referred to as "TRUMAN ANNEX") with the exception of the Shipyard's Condominium Association, and whose function and powers are described in those bylaws of TAMPOA filed and recorded in the public records of Monroe County, Florida;

WHEREAS, the CITY is a municipality organized and existing under the laws of the State of Florida and, among other things, is empowered to enter into agreements to settle the litigation described herein and to protect the public health, safety and welfare of its citizens;

WHEREAS, TAMPOA has filed an action for damages, specific performance and other relief against the CITY which is styled *Truman Annex Master Property Owners' Association vs. City of Key West* (Case No. 44-2006-CA-55-K) in the Sixteenth Judicial Circuit, Monroe County, Florida; and has also filed a separate action styled *Truman Annex Master Property Owners' Association v. City of Key West and United States of America* (Case No. 07-10033-CIV-MOORE) in the United

States District Court, Southern District of Florida (hereinafter collectively referred to as the "Lawsuits");

WHEREAS, true and correct copies of those pending complaints in both of the LAWSUITS are attached hereto and incorporated herein as "Exhibit "A" and "Exhibit B" respectively for reference;

WHEREAS, by entering into this Agreement, the CITY and TAMPOA wish to fully and finally resolve all pending issues between the CITY and TAMPOA with regard to the Lawsuits.

WHEREAS, all times set forth herein shall be local time.

WHEREAS, unless otherwise specifically stated, this Agreement contains the entirety of the terms of the Agreement by and between the Parties with regard to the subject matter of the Agreement.

NOW THEREFORE, the parties do hereby agree as follows:

I. Recitations of Facts and Mutual Commitments

The above recitations and representations are true and correct and are incorporated herein by reference.

II. Southard Street Access

TAMPOA agrees to execute an access easement in favor of the CITY to provide ingress and egress over the portion of Southard Street described in "Exhibit C" (hereinafter referred to simply as "Southard Street") according to the terms, more fully set forth below:

A. During the hours of 6:00 a.m. and 10:00 p.m., there shall be unrestricted access by the public over and across Southard Street for purposes of ingress and egress to and from the Waterfront property described in "Exhibit D" (hereinafter referred to simply as Waterfront)

B. Nothing in this Agreement shall be construed to allow, authorize or permit any non-residents of TAMPOA to have access to the remaining properties of TAMPOA. Instead, this Agreement is specifically intended to allow, authorize and permit persons to have access to and utilize an easement over and across Southard Street to provide ingress and egress to properties beyond TAMPOA including the Waterfront, the United States Navy Base, and Fort Zachary Taylor Historic State Park.

C. During the hours of 10:00 p.m. and 6:00 a.m., only the following persons shall be allowed access over and across Southard Street for purposes of ingress and egress to and from the Waterfront:

(1) City employees;

(2) Marina guests;

(3) Residents, guests, and employees of approved developments located within the Waterfront;

(4) Employees and guests of the NOAA facility; and

(5) Persons attending CITY approved special events at the Waterfront.

D. TAMPOA shall have the right, at its option and at its sole expense, to construct, maintain and man gates and/or guard booths at either or both ends of Southard Street. Each such gate(s) and/or guard booth(s) will be manned during any hours between 10:00 p.m. and 6:00 a.m. that the gates are closed to ensure access to those persons listed in Paragraph C. The gates and/or guard booths will not be manned between 6:00 a.m. and 10:00 p.m. except for the purpose of providing information to motorists and pedestrians who request information.

E. Regardless of TAMPOA's rights to construct, maintain and man such gates and/or guard booths, TAMPOA shall be required to comply with the requirements of allowing ingress and egress by authorized persons as defined herein.

F. As used in this Agreement "unrestricted access" shall mean that any gates constructed, maintained and manned by TAMPOA on Southard Street shall be in the open position and ingress and egress over and across Southard Street shall be permitted to all persons. However, during restricted times between 10:00 p.m. (EST) and 6:00 a.m. (EST), TAMPOA shall be permitted to have such gates in the closed position, to have the gates and/or guard houses manned with personnel paid for by TAMPOA, to make reasonable inquiry of those persons utilizing the easement to ensure that such persons are within the category of persons authorized to have such access, to deny access to any persons who do not fall within the categories of authorized persons as specifically set forth herein, and to engage in all actions reasonably necessary to accomplish the terms of this Agreement.

G. In consideration of this Agreement and in light of the traffic that will utilize the easement over and across Southard Street, CITY hereby agrees to be solely responsible for the maintenance of Southard Street, excepting only the gates and/or guards houses to be constructed, maintained and/or manned by TAMPOA. For purposes of establishing a standard by which maintenance shall be required, the parties acknowledge that the CITY shall be required to maintain Southard Street in the same manner as Southard Street is currently maintained including the same materials as currently exist on Southard Street (by way of example and not as an exhaustive reference, CITY shall use brick pavers of same quality, color and appearance). All maintenance shall be performed in a prompt manner to ensure that the structure and appearance of Southard Street is

properly maintained. CITY's responsibility for maintenance and repair shall also include, but shall not be limited in any way to, repair/replacement of underground utilities of any kind, repair/replacement of brick pavers, repair/replacement of all asphalted areas of Southard Street, repair/replacement of all concrete areas of Southard Street, and all other maintenance, repairs and replacement measures that may be required to keep Southard Street in the same condition it exists as of the Effective Date of this Agreement. TAMPOA will be responsible for the maintenance, staffing and repair of any gates and/or guard houses constructed at any location along Southard Street. The "Access Easement " to be executed by TAMPOA is attached as Exhibit "E".

III. "Waterfront" Property Traffic Ways Plan

The CITY agrees to provide at a minimum one road with ingress and one road with egress to and from the "waterfront" property, in addition to the ingress and egress provided by TAMPOA on Southard through its' easement not later than 180 days from date this Agreement is executed by the CITY.

IV. Settlement of the Lawsuits

CITY and TAMPOA shall execute Stipulations for the entry of Final Orders of Dismissal as to each other, which will provide for the Courts' approval for this Agreement and which will further provide that the Courts retain jurisdiction to enforce the terms of the Agreement. If either party to this Agreement shall be required to incur attorney's fees and/or costs in enforcing this Agreement, the prevailing party in any action to so enforce this Agreement shall be entitled to an award of attorney's fees and costs, in addition to any and all other remedies awarded. All disputes regarding enforcement as to the meaning of terms within the agreement shall be resolved by expedited binding arbitration. The Parties shall mutually agree upon an arbitrator and, if unable to agree, shall each

select an arbitrator of their own choice and such arbitrators shall then mutually agree upon a third person to act as arbitrator. This arbitrator will be a standing arbitrator and available to hear arguments on issues of dispute and issue an opinion on issues of enforcement of this agreement within one week. For purposes of proceeding with arbitration, the parties shall initially be required to equally divide any and fees and costs of the arbitrator in conducting the proceedings; however, the prevailing party at any arbitration shall be entitled to reimbursement of any and all such fees and costs, in addition to any other award. With regard to attorney's fees and costs incurred to date and through the administration and implementation of this Agreement, and conditioned upon this Agreement being actually approved and implemented, each party shall bear its own attorney's fees and costs to date. The Stipulations for Final Order of Dismissal and proposed Final Order of Dismissal are attached hereto as "Exhibit F" through "Exhibit "H" respectively. The Parties also acknowledge and agree that there may remain disputes by and between TAMPOA and the United States of America and/or United States Navy regarding Southard Street and/or other issues. CITY and TAMPOA specifically acknowledge and agree that the existence of any dispute by and between TAMPOA and the United States of America and/or United States Navy shall not have any affect on this Agreement, its enforcement or the relationship between TAMPOA and City as provided herein.

V. Easement For Southard Street

As part of this Agreement, TAMPOA shall execute an easement in favor of CITY over and across Southard Street, which said easement shall comport with the terms of this Agreement. A copy of the easement executed by TAMPOA and to be recorded is attached hereto as "Exhibit I".

VI. Entire Agreement

The CITY and TAMPOA specifically acknowledge that they have the right and power to enter into this agreement. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in or incorporated into this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

VII. Severability

The provisions of this Agreement are declared to be severable, and if any portion, clause or phrase of this Agreement is held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions, sentences, clauses, and phrases of this Agreement, but they shall remaining in effect, if the intent of the parties that disagreement shall stand not withstanding the invalidity of any part.

VIII. Governing Law

This Agreement shall be construed and interpreted under the laws of the State of Florida.

IX. Successors and Assigns

This Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns and personal representatives.

X. Attorney's Fees and Costs

As set forth herein, attorney's fees and costs shall be paid to the prevailing party in the event of legal action to enforce any of the provisions of this Agreement.

XI. Notices

All notices, demands, requests, or replies provided for or permitted by this Agreement shall be in writing and shall be delivered by deposit with the United States Postal Service with postage prepaid, to the addresses stated below. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the United States Postal Service. For purposes of notice, demand, request, or replies, the address of the CITY shall be:

City Manager
City of Key West
525 Angela Street
Key West, Florida 33040

The address of TAMPOA shall be:

Truman Annex Master Property Owners' Association, Inc.
President
201 Front Street, Suite 103
Key West, Florida 33040

XII. Titles and Captions

All article and section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

XIII. Pronouns

All pronouns and variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require.

XIV. Further Action

The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purpose of the Agreement.

XV. Counterparts

This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.

XVI. Agreement Shall Not be Construed Against Any Party

This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

XVII. Third Party Beneficiaries

Nothing herein shall be construed to be for the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

XVIII. Time Is Of The Essence

With regard to the provisions of this Agreement, the parties acknowledge and agree that time is of the essence.

XIX. Effective Date

The Effective Date of this Agreement shall be the date the Agreement is approved by the City of Key West City Commission and the Board of Directors of Truman Annex Master Property Owners' Associations.

City of Key West:

3/4/09
Date

By: _____

Its: _____

Truman Annex Master Property Owners' Association, Inc., a Florida corporation:

2/18/09
Date

By: THOMAS B. INSET

Its: PRESIDENT