RESOLUTION NO. 12-12-108

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA APPROVING THE FORM OF EASEMENT AGREEMENT FOR WASTEWATER COLLECTION AND TRANSMISSION FACILITIES BETWEEN PROPERTY OWNERS AND ISLAMORADA, VILLAGE OF ISLANDS; AUTHORIZING THE VILLAGE MANAGER TO ACCEPT THE EASEMENT INTERESTS, EXECUTE THE RESPECTIVE EASEMENT AGREEMENTS AND ANY ADDITIONAL NECESSARY AGREEMENTS; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE EASEMENT AGREEMENTS; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Legislation adopted by the Florida Legislature mandates higher wastewater treatment and disposal standards for the Florida Keys, and requires that all wastewater treatment systems in the Florida Keys be upgraded and/or replaced to meet Advanced Wastewater Treatment or Best Available Technology capabilities; and

WHEREAS, the Village competitively procured and selected a firm for the construction and implementation of its wastewater system, and on August 21, 2012, entered into that certain Design, Build and Operate (DBO) Agreement with Reynolds Water Islamorada, LLC (the “Company”) for the design, construction and operation of the Village’s wastewater system (the “Project”); and

WHEREAS, design and construction of the Project has commenced and the Company and Village are seeking to voluntarily obtain easements from property owners, where needed, for the installation, operation and repair and maintenance of sewer or wastewater collection and transmission facilities, as well as ingress and egress, for the Project; and

WHEREAS, the easement which is the subject of the attached Easement Agreement form would also allow the Village to install or construct the facilities necessary to provide
connection availability to the wastewater system for certain property owners or residents of the Village; and

WHEREAS, the Company and Village staff will attempt to receive voluntary conveyances by property owners or residents in the form of the Easement Agreement attached hereto as Exhibit “A”; and

WHEREAS, the Village Council finds that approval of the attached form of Easement Agreement is in the best interest of the Village in order to avoid duplicate presentations to and approvals by Village Council, and hereby authorizes the attainment and acceptance of the easements in connection with the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Approval and Execution of Easement Agreement. The form of Easement Agreement between a property owner and the Village to convey and accept an interest in the property described in the Easement Agreement for wastewater collection and transmission facilities, and ingress and egress, substantially in the form attached hereto as Exhibit “A,” together with such non-material changes as may be acceptable to the Village Manager and approved as to form and legality by the Village Attorney, is approved.

The Village Manager is authorized to accept the easement interest and execute the Easement Agreements on behalf of the Village, and to execute any required agreements and/or documents to implement the terms and conditions of the Easement Agreements and to execute any extensions and/or amendments to the Easement Agreements, subject to the approval as to
form and legality by the Village Attorney.

Section 3. Authorization of Village Officials. The Village Manager and/or his designee and the Village Attorney are authorized to take all actions necessary to implement the terms and conditions of the attached Easement Agreement and this Resolution.

Section 4. Authorization of Fund Expenditure. Notwithstanding the limitations imposed upon the Village Manager pursuant to the Village’s Purchasing Procedures Ordinance, the Village Manager is authorized to expend budgeted funds to implement the terms and conditions of the Easement Agreement.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 13th day of December, 2012.

Motion to adopt by Councilwoman Deb Gillis, second by Councilman Mike Forster.

FINAL VOTE AT ADOPTION

Mayor Ken Philipson YES
Vice-Mayor Ted Blackburn YES
Councilman Mike Forster YES
Councilwoman Deb Gillis YES
Councilman Dave Purdo YES

KEN PHILIPSON, MAYOR

ATTEST:

VILLAGE CLERK
APPROVED AS TO FORM AND LEGALITY FOR THE
USE AND BENEFIT OF ISLAMORADA, VILLAGE OF ISLANDS:

VILLAGE ATTORNEY
EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the “Agreement”) is made this ______ day of __________, 20__, by and between __________________________________________________________________________________________ (hereinafter referred to as the “GRANTOR”), and ISLAMORADA, VILLAGE OF ISLANDS, a Florida municipal corporation, having an address at 86800 Overseas Highway, Islamorada, Florida 33036 (hereinafter referred to as the “GRANTEE”).

RECITALS:

1. GRANTOR owns fee simple title to certain real property in Monroe County, Florida, located in or at __________________________________________________________________________________________ (the “Plat” or “Subdivision”), as more particularly legally described and/or depicted in Exhibit “A” attached hereto and by this reference made a part hereof (the “Property”).

2. GRANTEE desires to install, operate and repair and maintain certain sewer and wastewater collection and transmission facilities, including but not limited to, all conveyances, lines, equipment, fixtures and appurtenances related thereto (the “Utilities”) within the Property.

3. GRANTOR desires to grant certain easement rights in the Property to GRANTEE in conjunction therewith for Utilities purposes, as well as ingress and egress in, over, under, upon and through the Property for the purpose of installing, constructing, operating, maintaining, repairing and replacing the Utilities, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises and the sum of TEN AND NO/100 DOLLARS ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. Recitals. The parties acknowledge that the foregoing recitals are true and correct and hereby incorporated into this Agreement as if fully set forth herein.
2. **Grant of Easement.** GRANTOR does hereby grant and convey to the GRANTEE an exclusive, perpetual easement for the purpose of installing, constructing, operating, inspecting, repairing, replacing, reconstructing, improving, removing and maintaining the Utilities, as well as ingress and egress in, over, under, upon and through the Property with full rights and authority to enter upon and excavate the Property in order to install, construct, inspect, reconstruct, operate, relocate, replace, improve, remove, repair and maintain such Utilities and work. Subject to the restoration provisions set forth in Section 3 hereof, GRANTOR also grants GRANTEE a license to temporarily locate its equipment on any property of GRANTOR adjoining the Property as may be necessary to perform the foregoing.

3. **Improvements and Restoration.** GRANTOR and its successors and assigns agree not to build, install, construct or create, or permit others to build, install, construct or create any buildings, fixtures or vertical structures on the Property that may interfere with the installation, operation, maintenance, repair and/or replacement of the Utilities and/or any rights of excavation and ingress and egress set forth herein. Paving, curbing, landscaping, light posts and other existing improvements installed on the Property shall not be deemed to violate the foregoing. GRANTEE agrees to restore the Property to its pre-existing condition (subject to the installation of the Utilities) in connection with any work performed by or for the GRANTEE pursuant to this Agreement, unless such restoration is required due to the acts or omissions of GRANTOR. GRANTEE shall use reasonable efforts to minimize any impacts to GRANTOR’s ongoing activities on the Property in exercising its rights hereunder.

4. **Warranties and Representations.** GRANTOR does hereby warrant and represent to GRANTEE, that (a) it is lawfully seized and possessed of the Property; (b) it has good and lawful title to the Property and the right to enter into this Agreement and convey this Easement; (c) any and all applicable corporate, partnership, trust or other required authorizations, approvals or consents have been obtained and no other authorizations, approvals or consents are required to effectuate GRANTOR’s execution and delivery of this Agreement. GRANTOR acknowledges and agrees that GRANTEE is materially relying upon the warranties and representation made by GRANTOR in this Agreement.

5. **Covenants Running with the Land.** This Easement, and the rights and interests created herein, shall run with the land and shall be binding upon and inuring to the benefit of the parties hereto and their respective successors and assigns.

6. **Miscellaneous.** This Easement shall be construed under the laws of the State of Florida. GRANTEE shall, at GRANTEE’S cost and expense, record this Easement and any amendments hereto in the Public Records of Monroe County, Florida. This Easement may only be modified, supplemented or revised in writing signed by the parties, or their successors or assigns, and any modification shall be effective only upon recordation in the Public Records of Monroe County, Florida.

**IN WITNESS WHEREOF,** the undersigned have caused these presents to be executed by its duly authorized officer or representative as of the day and year first above written.
WITNESSES:  

______________________________  _______________________________
Print Name_____________________            Owner

______________________________            Print Name: _____________________
Print Name_____________________

STATE OF FLORIDA  )
) S S
COUNTY OF ______________       )

The foregoing instrument was acknowledged before me this _____ day of
________________, 20___, by _______________________, who is personally known to me or
who has produced a Florida driver’s license as identification.

_________________________________
Notary Public, State of Florida
My commission expires: ______________

SEAL
EXHIBIT “A”

An easement for the installation, construction, operation and repair and maintenance of sewer and wastewater collection and transmission facilities, as well as ingress and egress, over, under, upon and through the following described Property:

[Insert Legal Description and Survey/Sketch Depicting Easement Property]