RESOLUTION NO. 13-04-18

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING THE FIRST AMENDMENT TO AN AFFORDABLE HOUSING MITIGATION AGREEMENT WITH H&C ISLANDER RESORT, LLC; AUTHORIZING THE APPROPRIATE VILLAGE OFFICIALS TO EXECUTE THE FIRST AMENDMENT TO THE AFFORDABLE HOUSING MITIGATION AGREEMENT AND ANY ADDITIONAL DOCUMENTS PERTAINING TO THE FIRST AMENDMENT TO THE AFFORDABLE HOUSING MITIGATION AGREEMENT AND TO TAKE ALL ACTIONS NECESSARY TO IMPLEMENT THE TERMS AND CONDITIONS OF THE FIRST AMENDMENT TO THE AFFORDABLE HOUSING MITIGATION AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, H & C Islander Resort, LLC (the “Applicant”) proposes to construct a 15,336 square foot museum and conference center (the “Project”), located at 82100 Overseas Highway, Upper Matecumbe Key, Islamorada, Florida; and

WHEREAS, on June 23, 2011, the Village and the Applicant entered into an Affordable Housing Mitigation Agreement; and

WHEREAS, the Applicant wishes to amend the Affordable Housing Agreement; and

WHEREAS, pursuant to Chapter 30 “Land Development Regulations,” Article IV “Administrative Procedures,” Division 16 “Affordable Housing Standards,” Section 30-636 “Applicability” of the Village Code of Ordinances (the “Village Code”), the Applicant is required to provide affordable housing proportionate to the need for affordable housing that the development creates; and

WHEREAS, pursuant to Chapter 30 “Land Development Regulations,” Article IV “Administrative Procedures,” Division 16 “Affordable Housing Standards,” Section 30-638(b)(7) “Affordable housing agreement” of the Code, the Applicant has agreed to implement the mitigation plan for the proposed Project; and
WHEREAS, the mitigation plan approved by the Director of Development Services provides for the construction of two (2) affordable residential dwelling units and payment of a $7,851.42 in-lieu fee into the affordable housing trust account; and

WHEREAS, the Village Council of Islamorada, Village of Islands (the “Village Council”) has recognized the need for affordable housing to ensure the availability of a stable and qualified workforce, consistent with the requirements of the Village’s Comprehensive Plan, Village Code and Florida Statutes; and

WHEREAS, the Village Council desires to enter into this First Amendment to the Affordable Housing Agreement, a copy of which is attached hereto as Exhibit “A” (the “Agreement”).

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 are incorporated herein by this reference.

Section 2. Approval of the First Amendment to Agreement. The Village Council hereby approves the execution of the Agreement and any additional documents pertaining to the Agreement.

Section 3. Authorization. The appropriate Village officials including the Mayor, Village Manager and Village Attorney are authorized to execute and deliver the Agreement and any additional documents pertaining to the Agreement, and to take all action necessary to implement the terms and conditions of the Agreement.

Section 4. Effective Date. This Resolution shall be effective immediately upon its adoption.
The foregoing Resolution was offered by Councilman Dave Purdo, who moved for its adoption on first reading. This motion was seconded by Councilwoman Deb Gillis, and upon being put to a vote, the vote was as follows:

**FINAL VOTE AT ADOPTION**

**VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS**

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

PASSED AND ADOPTED on this 25th day of April, 2013.

KEN PHILIPSON, MAYOR

ATTEST:

ARIANA S. LAWSON, VILLAGE CLERK

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

VILLAGE ATTORNEY
FIRST AMENDMENT TO AFFORDABLE HOUSING AGREEMENT

This Affordable Housing Agreement (“Agreement”) is made and entered into by and between H & C Islander Resort (“Developer”) and Islamorada, Village of Islands, Florida (“the Village”) in accordance with Chapter 30, Article IV, Division 16 (the “Affordable Housing Standards”) of the Village Code of Ordinances.

WHEREAS, the Developer has proposed the construction of a 15,336 square foot museum and conference center (the “Project”) on property located at 82100 Overseas Highway, Upper Matecumbe Key, Islamorada, Florida, more particularly described on Exhibit “1” attached hereto; and

WHEREAS, pursuant to Code Section 30-639, the affordable housing need generated by the Project is calculated to be 2.91 typical affordable housing units to house 7.46 employees; and

WHEREAS, the Developer has submitted an affordable housing mitigation plan (the “Mitigation Plan”), attached as Exhibit “2”, in accordance with Code Section 30-638; and

WHEREAS, to satisfy the Affordable Housing Standards of the Village Code, the Developer has proposed construction of three (3) two (2) affordable residential dwelling units and payment of a $7,851.42 in-lieu fee into the affordable housing trust account, as more particularly described in the Mitigation Plan; and

WHEREAS, the Village has determined that the construction of the affordable residential dwelling units and payment of an in-lieu fee in the affordable housing trust account, as more particularly described in the Mitigation Plan, will meet the Affordable Housing Standards of the Village Code.

NOW, THEREFORE, in consideration of the representations herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Incorporation of Recitals. The foregoing recitals are true and correct, and are hereby incorporated by the parties as part of this Agreement as provided for herein.
2. **First Amendment to Affordable Housing Agreement.** The Developer hereby agrees to implement the Mitigation Plan as follows:

Construction of Units. Based upon the Affordable Housing Standards of the Village Code, the Developer is required to construct one (1) affordable residential dwelling unit, consisting of at least three bedrooms, a minimum of 900 square feet in total floor area, and housing a minimum of five persons; and two (2) one (1) affordable residential dwelling units, consisting of at least one bedroom, a minimum of 500 square feet in total floor area and housing a minimum total of three two persons for both units and payment of a $7,851.42 in-lieu fee into the affordable housing trust account. The units shall be constructed on property located at Lot 4, Block 9, Stratton’s Subdivision, on Upper Matecumbe Key, as more particularly described on Exhibit “1” attached hereto. All occupants either renting or purchasing the affordable residential dwelling units shall meet and adhere to the income standards pursuant to Code Section 30-639(a)(5). The Developer shall submit a building permit application that includes construction specifications and the proposed deed restrictions/restrictive covenants to be placed on the affordable residential dwelling units. The deed restrictions/restrictive covenants shall be in a form approved by the village attorney, and shall be recorded with the Monroe County Clerk at the Developer’s sole cost.

3. **Dedication of Affordable Housing Unit by Developer.** In accordance with Code Section 30-639(a)(6), the affordable residential dwelling units described in the Mitigation Plan shall receive certificate of occupancies no later than the date of the initial certificate of occupancy of the Project.

4. **Satisfaction of Affordable Housing Mitigation Requirements.** The Village hereby acknowledges and agrees that, upon the issuance of the certificate of occupancies for the affordable housing dwelling units as described in the Mitigation Plan, the Developer shall be deemed to have satisfied all requirements under the Affordable Housing Standards of the Village Code.

5. **Governing Law/Binding Effect.** This Agreement shall be interpreted and governed by Florida Law. Each of the parties hereto warrants and represents that this Agreement is valid, binding and enforceable against them in accordance with the terms and conditions of Florida law.

6. **Remedies.** The parties hereto shall have all rights and remedies provided herein and under Florida Law with respect to the enforcement of this Agreement, and hereby acknowledge and agree that each party hereto shall have the right and remedy to bring an action or actions for specific performance and such other equitable or injunctive relief, as appropriate and necessary, to enforce this Agreement. The parties agree that the venue for any enforcement action shall be the Circuit Court in Monroe County, Florida. The parties further acknowledge and agree that, in the event the Developer fails to receive certificate of occupancies for the required affordable housing dwelling units as provided in this Agreement, no certificate of occupancy shall be approved for the Project.
7. **Notices.** All notices which are required or permitted under this Agreement shall be given to the parties by certified mail with return receipt requested, hand delivery, or express courier, and shall be effective upon receipt when delivered to the parties at the addresses set forth herein below (or such other address as provided by the parties by written notice delivered in accordance with this paragraph):

**ISLAMORADA, VILLAGE OF ISLANDS**
86800 Overseas Hwy
Islamorada, FL 33036-3162

**H & C ISLANDER RESORT, LLC**
4119 Massard Road
Fort Smith, AR 72903

8. **Amendments.** No amendment, modification, or other changes in this Agreement shall be binding upon the parties unless in writing executed by all of the parties.

9. **Successors and Assigns Bound.** The rights and obligations contained in this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto, including any successor in title to the Developer to all or any part of the Property.

10. **Recording.** The Developer shall record this Agreement in the Public Records of Monroe County, Florida at the Developer’s expense.

11. **Effective Date.** This Agreement shall become effective upon the date it is executed by the last party to execute the Agreement.

12. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute duplicates of one and the same instrument.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below their signatures.

ISLAMORADA, VILLAGE OF ISLANDS, a Florida municipal corporation

By: ____________________________
    Village Manager

Date Executed: ____________________

Attest:

______________________________
Village Clerk

Approved As To Form And Legal Sufficiency:

______________________________
Village Attorney

WITNESSES:

H & C ISLANDER RESORT, LLC a Florida limited liability company:

By: ____________________________
    [insert name, title]

Print Name: ____________________________
Title: ________________________________

Print Name: ____________________________
STATE OF FLORIDA  )  
                       SS:  
COUNTY OF MONROE  )  

The foregoing instrument was acknowledged before me this _____ day of ____________,  
20__, by __________________________________________, as Village  
Manager and Village Clerk, respectively, of ISLAMORADA, VILLAGE OF ISLANDS, a Florida  
municipal corporation, who (check one)      [ ] are personally known to me or [ ] have produced  
________________________________________ as identification.

_______________________________________  
NOTARY PUBLIC, State of Florida  

My Commission Expires:  
Print Name:________________________________ 

STATE OF ________  )  
                       SS:  
COUNTY OF ________  )  

The foregoing instrument was acknowledged before me this _____ day of ______________,  
20__, by ____________________________, ___________ of H & C ISLANDER RESORT, LLC, a Florida  
limited liability company, who (check one) [ ] is personally known to me or [ ] has produced  
a Florida drivers license as identification.

_______________________________________  
Notary Public, State of Florida  

My Commission Expires:  
Print Name:________________________________ 
LEGAL DESCRIPTION

PARCEL A:

Lots 10, 11 and 12, in Block 8, of STRATTON'S SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 2, at Page 38, of the Public Records of Monroe County, Florida.

PARCEL B:

Lots 10, 11 and 12, in Block 9, of STRATTON'S SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 2, at Page 38, of the Public Records of Monroe County, Florida.

PARCEL C:

All of Lots 5, 6, 7, 8 and 9, in Block 10; and that part of the Northeast one-half of Lot 4, Block 10, of STRATTON'S SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 2, at Page 38, of the Public Records of Monroe County, Florida, more particularly described as follows:

Starting at the dividing line between Lots 3 and 4 in Block 10, thence going in an Easterly direction one hundred (100) feet along the shoreline to a starting point of the Northeast one-half of Lot 4, thence going one hundred (100) feet to the dividing line of Lots 4 and 5, thence going in a Northwesterly direction along the dividing line of Lots 4 and 5, six hundred ninety eight (698) feet, more or less, to the road, thence going in a Southwesterly direction one hundred (100) feet along the road, thence going in a Southwesterly direction six hundred fifty five (655) feet more or less to the waters of the Atlantic Ocean to the point of beginning;

ALSO

A parcel of submerged land in the Atlantic Ocean in Government Lot 4, Section 28, Township 63 South, Range 37 East, Upper Matecumbe Key, Monroe County, Florida, more particularly described as follows:

From the dividing line between Lots 9 and 10, Block 10 of Stratton's Subdivision according to the Plat thereof recorded in Plat Book 2, at Page 38, of the Public Records of Monroe County, Florida, and at the Northwesterly line of said Block 10, run Southwesterly along the said Northwesterly line of said Block 10, a distance of 500 feet to the Southwesterly line of Northeastery one-half of Lot 7 in said Block 10; thence Southeasterly along said Southwesterly line of the Northeasterly one-half of Lot 7, a distance of 574 feet, more or less, to the mean high tide line on the shore of the Atlantic
Ocean and point of beginning of the parcel hereinafter described; thence continue Southeasterly along the Southeasterly prolongation of the Southeasterly line of the Northeasterly one-half of said Lot 7, a distance of 200 feet; thence Northeasterly with an interior angle of 79°54', a distance of 507.8 feet more or less to the Southeasterly prolongation of the said dividing line between Lots 9 and 10; thence Northwesterly along said prolongation, a distance of 200 feet to the said mean high tide line at the dividing line between Lots 9 and 10; thence Southeasterly meandering said mean high tide line a distance of 507.8 feet more or less, to the point of beginning.

ALSO

A parcel of submerged land in Section 33, Township 63 South, Range 37 East, Monroe County, Florida, more particularly described as follows:

Commencing at the mean high tide line on the shore of the Straits of Florida at the Northeast boundary line of Lot 9, Block 10 of Stratton's Subdivision on Upper Matecumbe Key, according to the Plat thereof recorded in Plat Book 2, at Page 38, of the Public Records of Monroe County, Florida; thence Southeasterly along said Northeast boundary line of Lot 9 extended into the waters of the Straits of Florida for a distance of 200 feet to the Point of Beginning of the parcel hereinafter described; thence continue Southeasterly along the same course for a distance of 289 feet; thence at right angles and Southwesterly for a distance of 500 feet to the Southeasterly prolongation of the Southwest boundary line of the Northeast 1/2 of Lot 7, Block 10; thence Northwesterly along said prolongation for a distance of 200 feet; thence, with a deflected angle to the right of 79°54' run Northeasterly for a distance of 507.8 feet, more or less, back to the Point of Beginning.

ALSO

The following described land, to-wit:

A parcel of submerged land in the Straits of Florida in Section 33, Township 63 South, Range 37 East, Monroe County, Florida more particularly described as follows: Beginning at the high tide line on the shore of the Atlantic Ocean at the dividing line between Lots 5 and 6 of Block 10 of Stratton's Subdivision as recorded in Plat Book 2, at Page 38, of the Public Records of Monroe County, Florida, run Southeasterly, along the extension of the dividing line between the aforementioned Lots 5 and 6, for a distance of 2000 feet thence at right angles run Southwesterly 300 feet; thence at right angles run Northwesterly 2012 feet, more or less, to the shoreline; thence meander the shore in an Easterly and Northerly direction back to the Point of Beginning.

ALSO

A parcel of submerged land in the Straits of Florida in Section 33, Township 63 South, Range 37 East, Monroe County, Florida, more particularly described as follows: Beginning at the high tide line on the shore of the Atlantic Ocean at the dividing line between Lots 5 and 6 of Block 10 of Stratton's Subdivision as recorded in Plat Book 2, at Page 38, of the Public Records of Monroe County, Florida, run Southeasterly, along the extension of the dividing line between the aforementioned Lots 5 and 6, for a distance of 2000 feet; thence at right angles run Northeasterly 300 feet; thence at right angles run Northwesterly 2125 feet, more or less, to the shoreline; thence meander the shore in a Southwesterly direction back to the Point of Beginning.

PARCEL D:

Lot 4, in Block 9, of Stratton's Subdivision, according to the Plat thereof, as recorded in Plat Book 2, at Page 38, of the Public Records of Monroe County, Florida.
April 11, 2013

Ms. Cheryl Cioffari
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, FL 33036

Dear Ms. Cioffari,

As owner of the Islander Resort hotel property, for which a 15,336 square foot museum and conference center has recently been constructed, and for which affordable housing is required, I propose to meet the requirement in the follow way.

The existing manager’s unit on Carroll Street will be dedicated to the requirements of the museum. The unit shall be remodeled to create two units, one (1) three bedroom unit and one (1) one bedroom unit and payment of $7,851.42 into the affordable housing trust account, thereby meeting the requirements. The connecting corridor, which provides for common access to shared facilities will be severed.

The two units will be encumbered by a new deed restriction specific to the requirement for the museum. There exists already a unity of title between the Islander property and the Carroll street property which will allow for the increase in density.

Respectfully,

C. David Curry

H & C Islander Resort, LLC

CDC/Ihk