RESOLUTION NO. 13-06-34

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING AN AFFORDABLE HOUSING AGREEMENT WITH OCEAN GARDENS AND GIFTS, LLC, F/K/A GLORY OF THE ATLANTIC LLC; AUTHORIZING THE APPROPRIATE VILLAGE OFFICIALS TO EXECUTE THE AFFORDABLE HOUSING AGREEMENT AND ANY ADDITIONAL DOCUMENTS PERTAINING TO THE AFFORDABLE HOUSING AGREEMENT AND TO TAKE ALL ACTIONS NECESSARY TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AFFORDABLE HOUSING AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Islamorada, Village of islands (the “Village”) issued Site Plan Approval 13-02 to Glory of the Atlantic, LLC, now known as Ocean Gardens and Gifts, LLC pursuant to a name change amendment (the “Developer”), for the construction of a 2,644 square foot commercial retail building (the “Project”) on the property located at 82233 Overseas Highway, Upper Matecumbe Key, Islamorada, Florida (legally described as Lot 2, Block 11, of Stratton’s Subdivision, Plat Book 2, Page 38, Monroe County); 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 Village Code of Ordinances (the “Village Code”), the Developer has agreed to implement the Affordable Housing Mitigation Plan for the proposed Project; and

WHEREAS, the Affordable Housing Mitigation Plan (the “Mitigation Plan”) submitted by the Developer provides for the payment of in-lieu mitigation fees in the amount of $15,017.92, which Mitigation Plan is attached to the Affordable Housing Agreement attached hereto as Exhibit “A”; 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 approve the Mitigation Plan provided by the Developer and enter into the Affordable Housing Agreement attached hereto as Exhibit “A”.

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 Mitigation Plan and Agreement. The Village Council hereby approves the Mitigation Plan and execution of the Agreement attached hereto as Exhibit “A”, together with such non-material changes to the Agreement as may be acceptable to the Village Manager and approved as to form and legality by the Village Attorney, 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
The foregoing Resolution was offered by Councilwoman Deb Gillis, who moved for its adoption on first reading. This motion was seconded by Councilman Dave Purdo, 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 this 27TH day of June, 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

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AFFORDABLE HOUSING AGREEMENT  
(Lot 2, SP 13-02)

THIS AFFORDABLE HOUSING AGREEMENT (“Agreement”) is made and entered into by and between OCEAN GARDENS AND GIFTS, LLC, a Florida Limited Liability Company, F/K/A GLORY OF THE ATLANTIC, LLC, a Florida Limited Liability Company (“Developer”), whose principal address is 117 S. Carroll Street, Islamorada, Florida 33036, and ISLAMORADA, VILLAGE OF ISLANDS (“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 obtained Site Plan Approval 13-02 (“SP 13-02”) for the construction of a 2,644 square feet commercial retail building (the “Project”) on property located at 82233 Overseas Highway, Upper Matecumbe Key, Islamorada, Florida, which property is more particularly described on Exhibit “A” attached hereto (the “Property”); and

WHEREAS, as a condition of said Site Plan Approval 13-02 and pursuant to Section 30-638 of the Village’s Code of Ordinances, the affordable housing need generated by the Project is calculated to be 0.74 typical affordable housing units, which would need to house 1.89 persons; and

WHEREAS, the Developer has submitted an affordable housing mitigation plan (the “Mitigation Plan”) attached hereto as Exhibit “B”, in accordance with Section 30-638 of the Village’s Code of Ordinances; and

WHEREAS, to satisfy the Affordable Housing Standards of the Village Code, the Developer has proposed payment of a $15,017.92 in-lieu fee, as more particularly described in the Mitigation Plan; and

WHEREAS, the Village has determined that the Mitigation Plan meets the Affordable Housing Standards of the Village Code.
NOW, THEREFORE, in consideration of the representations herein, and other good and valuable consideration, the receipt and sufficiency of which are 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. **Affordable Housing Agreement.** The Developer hereby agrees to implement the Mitigation Plan as follows:

   A. **Construction of Units.** N/A
   
   B. **Conversion of Units.** N/A
   
   C. **Conveyance of Land.** N/A
   
   D. **In-Lieu Fees.** The Developer shall pay an In-Lieu Fee of $15,017.92 prior to issuance of a building permit for the nonresidential development or Project.

3. **Dedication of Affordable Housing Mitigation Requirements.** Intentionally Deleted.

4. **Satisfaction of Affordable Housing Mitigation Requirements.** The Village hereby acknowledges and agrees that, upon the issuance of all certificates of occupancy for the affordable residential dwelling units and/or payment of the In-Lieu Fee 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 certificates of occupancy for any 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):

VILLAGE:

ISLAMORADA, VILLAGE OF ISLANDS
Attention: Village Manager
86800 Overseas Hwy
Islamorada, FL 33036-3162

DEVELOPER:

OCEAN GARDENS AND GIFTS, LLC
F/K/A GLORY OF THE ATLANTIC, LLC
Attention: Phil Sena, Manager
117 S. Carroll Street
Islamorada, Florida 33036

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 Village 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.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below their signatures.

VILLAGE:

ISLAMORADA, VILLAGE OF ISLANDS,
a Florida municipal corporation

By: ______________________

Edward Koconis, Village Manager

Attest:

_____________________

Village Clerk

Approved As To Form And Legal Sufficiency:

_____________________

Village Attorney

STATE OF FLORIDA

COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 8 day of July, 2013, by Edward Koconis and Ariana Lawson, 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

Print Name: SYNTHIA TRAKUL LANKEFORD

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OCEAN GARDENS AND GIFTS, LLC,
a Florida limited liability company
F/K/A GLORY OF THE ATLANTIC, LLC

By: P

Name: Phillip Sena
Title: Manager/Member

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 20th day of June, 2013, by Phillip Sena, as Manager/Member of OCEAN GARDENS AND GIFTS, LLC, a Florida Limited Liability Company, F/K/A/ GLORY OF THE ATLANTIC, 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:
EXHIBIT “A”

LEGAL DESCRIPTION OF THE PROPERTY

Lot 2, Block 11, STRATTON’S SUBDIVISION, Upper Matecumbe Key, according to the Plat thereof, as recorded in Plat Book 2, Page 38, of the Public Records of Monroe County, Florida
EXHIBIT “B”

AFFORDABLE HOUSING MITIGATION PLAN

Exhibit B

Glory of the Atlantic – Lot 2
82237 Overseas Highway
Islamorada, Florida 33036

 Permit # SP-13-02
Affordable Housing Mitigation Plan

The applicant proposes a 2,644 square foot retail commercial structure. The project will generate 0.74 additional units which equates to 1.89 persons. The mitigation fee for the proposed increase in development will be $15,017.92. The following describes the calculations for generating the proposed affordable housing mitigation:

- Proposed square footage (Retail Commercial Use): 2,644 square feet
- Total Square feet: 2,644 square feet

- Units per Square foot Required for Retail use (Table 30-639(a)(2)(b)(1)): 0.00028 units per square foot
- Total Units Needed (Units per square foot x Total square feet): 0.74 units
- Total Unit Credit for existing development (Units per square foot x Existing square feet): N/A
- Total Units Required (Total units needed – Total unit credit for existing development): 0.74

Total Units Required is less than one (1) unit, therefore the in-lieu fee option is applicable pursuant to Code Section 30-639(b)(2)(c).

- Total Fee required (Temporary in-lieu fee mitigation from table 30-639(e)(1)(c) x proposed increase in square footage): $15,017.92

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<tr>
<th>Nonresidential land use</th>
<th>Units needed per sq. ft, gross leasable area (GLA)</th>
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<tr>
<td>Governmental</td>
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<td>Retail</td>
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<td>Tourist—Expansion or redevelopment of existing use</td>
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<tr>
<td>Tourist—New development</td>
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Exhibit B

TABLE 30-639(e)(1)(k)
Temporary amount of in-lieu fees to mitigate nonresidential development (per square foot) for two years beginning October 1, 2012

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<thead>
<tr>
<th>Nonresidential Land Use</th>
<th>Per Square Foot In-Lieu Fee Amount</th>
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<tbody>
<tr>
<td>Governmental</td>
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<td>Tourist—New development</td>
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