RESOLUTION NO. 15-10-98

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING RESOLUTION 13-06-34 AND REVISING AN APPROVED AFFORDABLE HOUSING AGREEMENT BETWEEN THE VILLAGE AND 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 PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in 2015, Islamorada, Village of Islands (the “Village”) issued Minor Conditional Use Approval 15-03 to Ocean Gardens and Gifts, LLC F/K/A Glory of the Atlantic, LLC, (the “Developer”), for the construction of a 2,805 square foot community center and a 362 square foot addition of retail to an existing 4,963 square foot commercial retail building (the “Project”) on the property located at 82237 and 82233 Overseas Highway, Upper Matecumbe Key, Islamorada, Florida, legally described as Lot 3, 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 Developer executed an Affordable Housing Agreement with the Village pursuant to Resolution 13-06-34;
WHEREAS, the Affordable Housing Mitigation Plan (the "Mitigation Plan") submitted by the Developer which is attached to the Affordable Housing Agreement attached hereto as Exhibit "2" of Exhibit "A", provides for the payment of in-lieu mitigation fees in the amount of $74,233.70; 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 Plan provided by the Developer and enter into the 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 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.

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 Chris Sante, who moved for its adoption on first reading. This motion was seconded by Councilman Jim Mooney, and upon being put to a vote, the vote was as follows:

FINAL VOTE AT ADOPTION
VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA

Mayor Mike Forster       YES
Vice Mayor Deb Gillis     YES
Councilman Jim Mooney     YES
Councilman Chris Sante    YES
Councilman Dennis Ward    YES

PASSED on the first reading this 1st day of October, 2015.

MIKE FORSTER, MAYOR

ATTEST:

KELLY TOTH, VILLAGE CLERK

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

ROGET V. BRYAN, VILLAGE ATTORNEY
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:

WHEREAS, the Village has determined that the Mitigation Plan meets the Affordable Housing Standards of the Village Code.

WHEREAS, to satisfy the Affordable Housing Standards of the Village Code, the Developer has proposed payment of a $74,233.70 in-lieu fee, as more particularly described in the Mitigation Plan;

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

WHEREAS, as a condition of said Minor Conditional Use Approval MN-15-03 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 0.91 typical affordable housing units; and

WHEREAS, the Developer has obtained Minor Conditional Use Approval IS-JO (“MN 15-03”) for the construction of a 2,805 square foot addition of a community center and a 362 square foot addition of retail to an existing 4,963 square foot commercial retail building (the “Project”) on property located at 82237 Overseas Highway, Upper Matecumbe Key, Islamorada, Florida, which property is more particularly described on Exhibit “1” attached hereto (the “Property”); and

WHEREAS, the Developer has submitted an affordable housing mitigation plan (the “Mitigation Plan”) attached hereto as Exhibit “2”, 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 $74,233.70 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 $74,233.70 prior to issuance of a building permit for the nonresidential development or Project.

3. 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.

4. 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.

5. 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.

6. 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):
7. **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.

8. **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.

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

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

11. **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: Maria T. Aguilar, Village Manager

Date Executed: 10/4/2015

Attest:

Kelly Toth, Village Clerk

Approved As To Form And Legal Sufficiency:

Roget V. Bryan, Village Attorney

STATE OF FLORIDA )
SS: )
COUNTY OF MONROE )

The foregoing instrument was acknowledged before me this 6 day of October, 2015, by Maria T. Aguilar and Kelly Toth, as Village Manager and Village Clerk, respectively, of ISLAMORADA, VILLAGE OF ISLANDS, a Florida municipal corporation, who (check one) [X] are personally known to me or [ ] have produced as identification.

NOTARY PUBLIC, State of Florida

My Commission Expires: 11/18/18 Print Name: Kyle McLeod
WITNESSES:

Print Name: Karla Vasquez

Print Name: Kelly S. Toth

DEVELOPER:

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

By: ______________

Name: Phillip Sena

Title: Manager/Member

STATE OF FLORIDA )

COUNTY OF MONROE )

The foregoing instrument was acknowledged before me this 7th day of October, 2015, 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: 11/18/2018
Print Name: Kyle McLeod

Print Name: Kyle McLeod
LEGAL DESCRIPTION OF THE PROPERTY

Lots 2 and 3, 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