

Sponsored by: Burnett

**CITY OF MARATHON, FLORIDA
RESOLUTION 2009-071**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE FIRST AMENDMENT TO GROUND LEASE AGREEMENT WITH PALM VILLAGE, LLC TO EXTEND THE DEADLINES THEREUNDER; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Marathon (the “City”) and Palm Village, LLC (“Lessee”) entered into that certain 99-year Ground Lease Agreement dated the 16th day of January, 2008, (hereinafter “Lease”) for the property more particularly described therein for the construction and development of at least forty (40) affordable housing units (the “Affordable Units” or the “Project”); and

WHEREAS, construction of the Affordable Units has not commenced, and the City and Lessee desire to amend the Lease to extend the time for the commencement and completion of the construction of the Project, and to extend the timeframe for certain contingencies contained in the Lease; and

WHEREAS, the City Council has previous directed City staff to extend the deadlines in the Lease by an additional one year; and

WHEREAS, the City and Lessee have negotiated a First Amendment to Ground Lease Agreement that implements the extensions;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

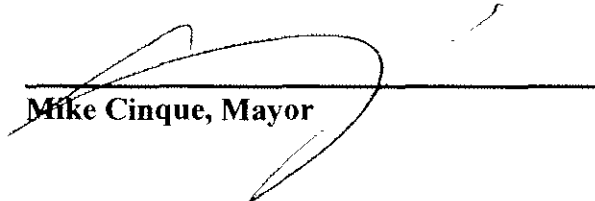
Section 1. The above recitals are true and correct and are incorporated herein

Section 2. The City Council approves the First Amendment to Ground Lease Agreement with Palm Village LLC, a copy of which is attached hereto as Exhibit “A”. The City Council further authorizes the City Manager to execute the First Amendment on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 9th day of June, 2009.


THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

AYES: Ramsay, Snead, Vasil, Worthington, Cinque
NOES: None
ABSENT: None
ABSTAIN: None


ATTEST:



Diane Clavier
City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:



City Attorney

PREPARED BY AND RETURN TO:
ERICA N. HUGHES-STERLING, ESQ.
SPOTTSWOOD, SPOTTSWOOD AND SPOTTSWOOD
500 FLEMING STREET
KEY WEST, FL 33040

FIRST AMENDMENT TO GROUND LEASE AGREEMENT

THIS AGREEMENT, dated this 9th day of June, 2009, by and between **CITY OF MARATHON**, a Florida municipal corporation (hereinafter referred to as “Lessor”), and **PALM VILLAGE, LLC**, a Florida limited liability company (hereinafter referred to as “Lessee”):

WITNESSETH

WHEREAS, Lessor and Lessee entered into that certain 99-year Ground Lease Agreement dated the 16th day of January, 2008, for the property more particularly described therein (hereinafter “Property”) for the construction and development of at lease forty (40) affordable housing units (the “Affordable Units” or the “Project”), said Lease being recorded in Monroe County Public Records at OR Book **2344**, Page **955** (hereinafter “Lease”); and

WHEREAS, construction of the Affordable Units has not commenced, and the parties desire to enter into this First Amendment to Ground Lease Agreement (hereinafter “Agreement”) to extend the time for the commencement and completion of the construction of the Project, and to extend the timeframe for certain contingencies contained in the Lease.

NOW, THEREFORE, in consideration of mutual covenants and obligations contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the undersigned parties agree as follows:

1. The recitals contained herein are true and correct and incorporated herein by reference.

2. Section 14.01(a) of the Lease is hereby deleted and replaced with the following provision:

Initial Lessee shall commence construction of the Project by the earlier of: i) one hundred twenty (120) days after the issuance of the building permits necessary for the construction of the Project, or ii) thirty (30) months from the date of this Ground Lease, and shall substantially complete construction of all forty (40) Affordable Housing Units within eighteen (18) months thereafter. The foregoing limitation of time for the completion of the Project may be extended by written agreement between the parties thereto.

3. The second sentence of Section 20.16 of the Lease is hereby deleted and replaced with the following provision:

Therefore, in the event Initial Lessee is unable to obtain financing, permits or adequate access so as to permit beginning of the eighteen (18) month construction provided for herein, by the end of the thirtieth (30th) month from the date of this Ground Lease, either party may terminate this Lease.

4. Except as expressly modified by this Amendment, all terms and conditions of the Lease remain in full force and effect, binding upon the parties.

5. Each party agrees that they have authority to sign this Agreement on behalf of each party and represents and warrants that such person has the full right and authority to enter into this Agreement on behalf of such party and to fully bind such party to the terms and obligations of this Agreement.

IN WITNESS WHEREOF, the undersigned executed this First Amendment to Ground Lease Agreement this 10 day of June 2009.

LESSOR:

CITY OF MARATHON

(SEAL)

ATTEST: City of Marathon Clerk

By: Clyde Burnett
Clyde Burnett, City Manager

By: Diane Clavier
Diane Clavier, City Clerk

Approved as to legal form and sufficiency:

By: Jimmy Morales
Jimmy Morales, City Attorney

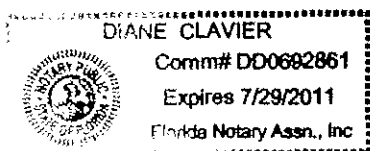
STATE OF FLORIDA
COUNTY OF MONROE

BE IT KNOWN, That on the 10 day of June, two thousand and nine, before me, a Notary Public in and for the State of Florida, County of Monroe, duly commissioned and sworn, dwelling in the City of Marathon, personally came and appeared Clyde Burnett, as City Manager of the City of Marathon, to me personally known or has produced _____ as identification.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal of office the day and year last above written.

Diane Clavier
NOTARY PUBLIC

[Seal]




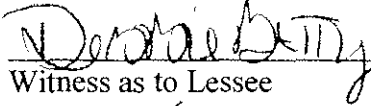
LESSEE:

WITNESSES AS TO LESSEE:

PALM VILLAGE, LLC, a Florida limited liability company

Signed, sealed and delivered

By: 
Edwin O. Swift, III, Managing Member


Witness as to Lessee

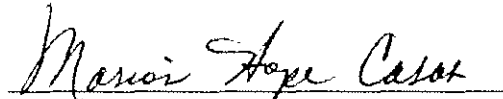

Witness as to Lessee

**STATE OF FLORIDA
COUNTY OF MONROE**

BE IT KNOWN, That on the 8th day of July, two thousand and nine, before me, a Notary Public in and for the State of Florida, County of Monroe, duly commissioned and sworn, dwelling in the City of Key West, personally came and appeared EDWIN O. SWIFT, III, as Managing Member of Palm Village, LLC, a Florida limited liability company, to me personally known or has produced _____ as identification.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal of office the day and year last above written.

[Seal]


NOTARY PUBLIC

