

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2020-15**

**A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, APPROVING THE ASSIGNMENT OF THE CONTRACT FOR PURCHASE FOR PROPERTY LOCATED AT 7931 OVERSEAS HIGHWAY, MARATHON, FLORIDA (OWNED BY IMBY INC. - RE NO. 00347290-000000) FROM HABITAT FOR HUMANITY OF THE MIDDLE KEYS TO THE CITY OF MARATHON, FLORIDA; APPROVING THE PURCHASE OF SAID PROPERTY FROM IMBY INC., AS PREVIOUSLY APPROVED BY THE CITY COUNCIL: APPROVING THE RECEIPT OF \$800,000 FROM THE MONROE COUNTY LAND AUTHORITY TO ASSIST IN THE PURCHASE OF IMBY INC. AND THE APPROPRIATION OF \$150,000 FROM THE CITY'S AFFORDABLE HOUSING FUND, SUMMING TO A PURCHASE PRICE OF \$950,000; AND PROVIDING DIRECTION TO STAFF TO BRING BACK TO THE CITY COUNCIL A LONG TERM LEASE AGREEMENT BETWEEN THE CITY AND HABITAT FOR HUMANITY OF THE MIDDLE KEYS FOR THE USE, REDEVELOPMENT AND/OR CONSTRUCTION OF ELEVEN AFFORDABLE RESIDENTIAL UNITS; MANAGEMENT OF THE PROPERTY, AND LIMITED COMMERCIAL USE OF THE PROPERTY; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, On May 22, 2018, the City Council approved an eleven (11) unit affordable housing project for IMBY, Inc. Seven (7) of the units exist as the old Anchor Inn Hotel and four (4) were to be constructed as part of the expanding project. Approved as Resolutions 2018-46 & 47; and

**WHEREAS**, The City attempted to provide the necessary eleven (11) affordable allocations through an ILA with the County. That effort failed. Approved by the City as Resolution 2018-61; and

**WHEREAS**, the City ultimately approved the provision of eleven (11) affordable housing allocations using its own limited pool of affordable allocations. Approved as Resolution 2018-84; and

**WHEREAS**, Habitat For Humanity is seeking to purchase the project and holds a contract for sale on the property; and

**WHEREAS**, as assistance to Habitat For Humanity, the City has sought the purchase of the property through the Monroe County Land Authority (MCLA). Similar efforts have been undertaken for a Habitat For Humanity project on 51<sup>st</sup> Street, Gulf. Requested as Resolution 2019-72; and

**WHEREAS**, with Habitat For Humanity, the City has attended two Land Authority Advisory Council meetings and the County Commission meeting in early December in support of the project. Through the Advisory Committee, the City obtained a recommendation that the County Commission provide \$600 thousand of the required \$950 thousand purchase price. At the County Commission meeting in December, the City was able to obtain approval for the MCLA to provide \$800 thousand of the purchase price. At all stages, this has been a team effort with Habitat For humanity and Christine Todd Young, the MCLA, and the County Commission; and

**WHEREAS**, The City of Marathon supports all viable efforts to construct needed affordable housing within the City of Marathon;

**WHEREAS**, the City wishes to support the efforts of Habitat For Humanity to acquire the IMBY, Inc. property as an affordable / workforce housing project and has agreed to provide the remaining funds through the City's Affordable Housing Fund in the amount of \$150,00 to complete the IMBY Inc. purchase,

**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 incorporated herein.

**Section 2.** The City agrees to the assignment of the contract for purchase between IMBY Inc. and Habitat For Humanity Of The Middle Keys to the City of Marathon as the new purchaser in place of Habitat For Humanity.

**Section 3.** Through this Resolution, the City accepts receipt of \$800,000 from the Monroe County Land Authority to assist in the purchase of IMBY Inc. pursuant to the direction of the Monroe County Board of County Commissioners sitting as the Land Authority.

**Section 4.** The City shall appropriate funds in the amount of \$150,000 from The City's Affordable Housing Fund, summing to a purchase price of \$950,000 for the purchase of IMBY Inc.

**Section 5.** Staff is directed in the best of its ability to consummate the purchase of property located at 7931 Overseas Highway, Marathon, Florida from IMBY Inc. at the purchase price of \$950,000 utilizing Thomas W. Wright as the Closing Agent for the City.

**Section 6.** Staff is directed to bring back to the City Council a long term lease agreement between the City And Habitat For Humanity Of The Middle Keys for the use, redevelopment and/or construction of eleven affordable residential units; management of the property, and limited commercial use of the property solely for the use of Habitat For Humanity Of The Middle Keys.

**Section 7.** The City Clerk shall forward a certified copy of this Resolution to the Monroe County Land Authority and Chair of the Board of County Commissioners.

**Section 7.** The City Clerk shall forward a certified copy of this Resolution to the Monroe County Land Authority and Chair of the Board of County Commissioners.

**Section 8. Effective Date.** This Resolution shall become effective immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 11TH DAY OF FEBRUARY, 2020.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Steve Cook, Mayor**

AYES: Bartus, Gonzalez, Senmartin, Zieg, Cook  
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



Commercial Contract

1 1. PARTIES AND PROPERTY: Habitat for Humanity of the Middle Keys, Inc. ("Buyer")
2 agrees to buy and IMBY, Inc. a Florida Corporation ("Seller")

3 agrees to sell the property at:
4 Street Address: 7931 Overseas Highway, Marathon, FL 33050

6 Legal Description: LTS 29-30 ATLANTIC SHORES PB3-5 KEY VACA

8 and the following Personal Property: 11 Affordable Allocations provided to the property pursuant to City of Marathon
9 Resolution 2019-84

10 (all collectively referred to as the "Property") on the terms and conditions set forth below.

11 2. PURCHASE PRICE:

\$ 950,000

12 (a) Deposit held in escrow by: Wolfe/Stevens (Escrow Agent) (checks are subject to actual and final collection)
13 \$ 5,000

14 Escrow Agent's address: 2955 Overseas Highway, Marathon FL Phone: 305 743-9858

15 (b) Additional deposit to be made to Escrow Agent
16 [ ] within \_\_\_ days (3 days, if left blank) after completion of Due Diligence Period or
17 [x] within 3 \_\_\_ days after Effective Date \$

18 (c) Additional deposit to be made to Escrow Agent
19 [ ] within \_\_\_ days (3 days, if left blank) after completion of Due Diligence Period or
20 [ ] within \_\_\_ days after Effective Date \$

21 (d) Total financing (see Paragraph 5) \$

22 (e) Other \$

23 (f) All deposits will be credited to the purchase price at closing.
24 Balance to close, subject to adjustments and prorations, to be paid
25 via wire transfer. \$945,000

26 For the purposes of this paragraph, "completion" means the end of the Due Diligence Period or upon delivery of
27 Buyer's written notice of acceptability.

28 3. TIME FOR ACCEPTANCE; EFFECTIVE DATE; COMPUTATION OF TIME: Unless this offer is signed by Seller
29 and Buyer and an executed copy delivered to all parties on or before 07/19/2019, this offer
30 will be withdrawn and the Buyer's deposit, if any, will be returned. The time for acceptance of any counter offer will be
31 3 days from the date the counter offer is delivered. The "Effective Date" of this Contract is the date on which the
32 last one of the Seller and Buyer has signed or initialed and delivered this offer or the final counter offer or
33 . Calendar days will be used when computing time periods, except time periods of 5
34 days or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal
35 holidays. Any time period ending on a Saturday, Sunday, or national legal holiday will extend until 5:00 p.m. of the next
36 business day. Time is of the essence in this Contract.

37 4. CLOSING DATE AND LOCATION:

38 (a) Closing Date: This transaction will be closed on See Additional terms (Closing Date), unless
39 specifically extended by other provisions of this Contract. The Closing Date will prevail over all other time periods
40 including, but not limited to, Financing and Due Diligence periods. In the event insurance underwriting is suspended

Buyer [Signature] [ ] and Seller [Signature] [ ] acknowledge receipt of a copy of this page, which is Page 1 of 8 Pages.

41 on Closing Date and **Buyer** is unable to obtain property insurance, **Buyer** may postpone closing up to 5 days after  
42 the insurance underwriting suspension is lifted.

43 (b) **Location:** Closing will take place in Monroe County, Florida. (If left blank, closing will take place in the  
44 county where the property is located.) Closing may be conducted by mail or electronic means.

45 **5. THIRD PARTY FINANCING:**

46 **BUYER'S OBLIGATION:** On or before \_\_\_\_\_ days (5 days if left blank) after Effective Date, **Buyer** will apply for third  
47 party financing in an amount not to exceed \_\_\_\_\_% of the purchase price or \$\_\_\_\_\_, with a fixed  
48 interest rate not to exceed \_\_\_\_\_% per year with an initial variable interest rate not to exceed \_\_\_\_\_%, with points or  
49 commitment or loan fees not to exceed \_\_\_\_\_% of the principal amount, for a term of \_\_\_\_\_ years, and amortized  
50 over \_\_\_\_\_ years, with additional terms as follows:

51 \_\_\_\_\_  
52 **Buyer** will timely provide any and all credit, employment, financial and other information reasonably required by any  
53 lender. **Buyer** will use good faith and reasonable diligence to (i) obtain Loan Approval within \_\_\_\_\_ days (45 days if left  
54 blank) from Effective Date (Loan Approval Date), (ii) satisfy terms and conditions of the Loan Approval, and (iii) close  
55 the loan. **Buyer** will keep **Seller** and Broker fully informed about loan application status and authorizes the mortgage  
56 broker and lender to disclose all such information to **Seller** and Broker. **Buyer** will notify **Seller** immediately upon  
57 obtaining financing or being rejected by a lender. **CANCELLATION:** If **Buyer**, after using good faith and reasonable  
58 diligence, fails to obtain Loan Approval by Loan Approval Date, **Buyer** may within \_\_\_\_\_ days (3 days if left blank)  
59 deliver written notice to **Seller** stating **Buyer** either waives this financing contingency or cancels this Contract.  
60 If **Buyer** does neither, then **Seller** may cancel this Contract by delivering written notice to **Buyer** at any time thereafter.  
61 Unless this financing contingency has been waived, this Contract shall remain subject to the satisfaction, by closing, of  
62 those conditions of Loan Approval related to the Property. **DEPOSIT(S) (for purposes of Paragraph 5 only):** If **Buyer**  
63 has used good faith and reasonable diligence but does not obtain Loan Approval by Loan Approval Date and  
64 thereafter either party elects to cancel this Contract as set forth above or the lender fails or refuses to close on or  
65 before the Closing Date without fault on **Buyer's** part, the Deposit(s) shall be returned to **Buyer**, whereupon both  
66 parties will be released from all further obligations under this Contract, except for obligations stated herein as surviving  
67 the termination of this Contract. If neither party elects to terminate this Contract as set forth above or **Buyer** fails to use  
68 good faith or reasonable diligence as set forth above, **Seller** will be entitled to retain the Deposit(s) if the transaction  
69 does not close. For purposes of this Contract, "Loan Approval" means a statement by the lender setting forth the terms  
70 and conditions upon which the lender is willing to make a particular mortgage loan to a particular buyer. Neither a pre-  
71 approval letter nor a prequalification letter shall be deemed a Loan Approval for purposes of this Contract.

72 **6. TITLE:** **Seller** has the legal capacity to and will convey marketable title to the Property by  statutory warranty  
73 deed  special warranty deed  other \_\_\_\_\_, free of liens, easements and  
74 encumbrances of record or known to **Seller**, but subject to property taxes for the year of closing; covenants,  
75 restrictions and public utility easements of record; existing zoning and governmental regulations; and (list any other  
76 matters to which title will be subject) \_\_\_\_\_

77 \_\_\_\_\_;  
78 provided there exists at closing no violation of the foregoing and none of them prevents **Buyer's** intended use of the  
79 Property as zoned \_\_\_\_\_

80 (a) **Evidence of Title:** The party who pays the premium for the title insurance policy will select the closing agent  
81 and pay for the title search and closing services. **Seller** will, at (check one)  **Seller's**  **Buyer's** expense and  
82 within \_\_\_\_\_ days after Effective Date or at least 20 \_\_\_\_\_ days before Closing Date deliver to **Buyer** (check one)  
83  (i) a title insurance commitment by a Florida licensed title insurer setting forth those matters to be discharged by  
84 **Seller** at or before Closing and, upon **Buyer** recording the deed, an owner's policy in the amount of the purchase  
85 price for fee simple title subject only to exceptions stated above. If **Buyer** is paying for the evidence of title and  
86 **Seller** has an owner's policy, **Seller** will deliver a copy to **Buyer** within 15 days after Effective Date.  (ii.) an  
87 abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an existing firm.  
88 However, if such an abstract is not available to **Seller**, then a prior owner's title policy acceptable to the proposed  
89 insurer as a base for reissuance of coverage may be used. The prior policy will include copies of all policy  
90 exceptions and an update in a format acceptable to **Buyer** from the policy effective date and certified to **Buyer** or

Buyer  ( ) and Seller  ( ) acknowledge receipt of a copy of this page, which is Page 2 of 8 Pages.

Buyer's closing agent together with copies of all documents recited in the prior policy and in the update. If such an abstract or prior policy is not available to Seller then (i.) above will be the evidence of title.

**(b) Title Examination:** Buyer will, within 15 days from receipt of the evidence of title deliver written notice to Seller of title defects. Title will be deemed acceptable to Buyer if (1) Buyer fails to deliver proper notice of defects or (2) Buyer delivers proper written notice and Seller cures the defects within 30 days from receipt of the notice ("Curative Period"). Seller shall use good faith efforts to cure the defects. If the defects are cured within the Curative Period, closing will occur on the latter of 10 days after receipt by Buyer of notice of such curing or the scheduled Closing Date. Seller may elect not to cure defects if Seller reasonably believes any defect cannot be cured within the Curative Period. If the defects are not cured within the Curative Period, Buyer will have 10 days from receipt of notice of Seller's inability to cure the defects to elect whether to terminate this Contract or accept title subject to existing defects and close the transaction without reduction in purchase price.

**(c) Survey:** (check applicable provisions below)

(i.)  Seller will, within 7 days from Effective Date, deliver to Buyer copies of prior surveys, plans, specifications, and engineering documents, if any, and the following documents relevant to this transaction:

prepared for Seller or in Seller's possession, which show all currently existing structures. In the event this transaction does not close, all documents provided by Seller will be returned to Seller within 10 days from the date this Contract is terminated.

Buyer will, at  Seller's  Buyer's expense and within the time period allowed to deliver and examine title evidence, obtain a current certified survey of the Property from a registered surveyor. If the survey reveals encroachments on the Property or that the improvements encroach on the lands of another,  Buyer will accept the Property with existing encroachments  such encroachments will constitute a title defect to be cured within the Curative Period.

**(d) Ingress and Egress:** Seller warrants that the Property presently has ingress and egress.

**7. PROPERTY CONDITION:** Seller will deliver the Property to Buyer at the time agreed in its present "as is" condition, ordinary wear and tear excepted, and will maintain the landscaping and grounds in a comparable condition. Seller makes no warranties other than marketability of title. In the event that the condition of the Property has materially changed since the expiration of the Due Diligence Period, Buyer may elect to terminate the Contract and receive a refund of any and all deposits paid, plus interest, if applicable, or require Seller to return the Property to the required condition existing as of the end of Due Diligence period, the cost of which is not to exceed \$ (1.5% of the purchase price, if left blank). By accepting the Property "as is", Buyer waives all claims against Seller for any defects in the Property. (Check (a) or (b))

**(a) As Is:** Buyer has inspected the Property or waives any right to inspect and accepts the Property in its "as is" condition.

**(b) Due Diligence Period:** Buyer will, at Buyer's expense and within 30 days from Effective Date ("Due Diligence Period"), determine whether the Property is suitable, in Buyer's sole and absolute discretion. During the term of this Contract, Buyer may conduct any tests, analyses, surveys and investigations ("Inspections") which Buyer deems necessary to determine to Buyer's satisfaction the Property's engineering, architectural, environmental properties; zoning and zoning restrictions; flood zone designation and restrictions; subdivision regulations; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state and regional growth management and comprehensive land use plans; availability of permits, government approvals and licenses; compliance with American with Disabilities Act; absence of asbestos, soil and ground water contamination; and other inspections that Buyer deems appropriate. Buyer will deliver written notice to Seller prior to the expiration of the Due Diligence Period of Buyer's determination of whether or not the Property is acceptable. Buyer's failure to comply with this notice requirement will constitute acceptance of the Property in its present "as is" condition. Seller grants to Buyer, its agents, contractors and assigns, the right to enter the Property at any time during the term of this Contract for the purpose of conducting Inspections, upon reasonable notice, at a mutually agreed upon time; provided, however, that Buyer, its agents, contractors and assigns enter the Property and conduct Inspections at their own risk. Buyer will indemnify and hold Seller harmless from losses, damages, costs, claims and expenses of any nature, including attorneys' fees at all levels, and from liability to any person, arising from the conduct of any and all inspections or any work authorized by Buyer. Buyer will not engage in any activity that could result in a mechanic's lien being filed against the Property without Seller's prior written consent. In the event this transaction does not close, (1) Buyer will repair all damages to the

Buyer  and Seller  acknowledge receipt of a copy of this page, which is Page 3 of 8 Pages.

145 Property resulting from the Inspections and return the Property to the condition it was in prior to conduct of the  
146 Inspections, and (2) **Buyer** will, at **Buyer's** expense release to **Seller** all reports and other work generated as a  
147 result of the Inspections. Should **Buyer** deliver timely notice that the Property is not acceptable, **Seller** agrees that  
148 **Buyer's** deposit will be immediately returned to **Buyer** and the Contract terminated.

149 (c) **Walk-through Inspection:** **Buyer** may, on the day prior to closing or any other time mutually agreeable to the  
150 parties, conduct a final "walk-through" inspection of the Property to determine compliance with this paragraph and  
151 to ensure that all Property is on the premises.

152 **8. OPERATION OF PROPERTY DURING CONTRACT PERIOD:** **Seller** will continue to operate the Property and any  
153 business conducted on the Property in the manner operated prior to Contract and will take no action that would  
154 adversely impact the Property after closing, as to tenants, lenders or business, if any. Any changes, such as renting  
155 vacant space, that materially affect the Property or **Buyer's** intended use of the Property will be permitted  only with  
156 **Buyer's** consent  without **Buyer's** consent.

157 **9. CLOSING PROCEDURE:** Unless otherwise agreed or stated herein, closing procedure shall be in accordance with  
158 the norms where the Property is located.

159 (a) **Possession and Occupancy:** **Seller** will deliver possession and occupancy of the Property to **Buyer** at  
160 closing. **Seller** will provide keys, remote controls, and any security/access codes necessary to operate all locks,  
161 mailboxes, and security systems.

162 (b) **Costs:** **Buyer** will pay **Buyer's** attorneys' fees, taxes and recording fees on notes, mortgages and financing  
163 statements and recording fees for the deed. **Seller** will pay **Seller's** attorneys' fees, taxes on the deed and  
164 recording fees for documents needed to cure title defects. If **Seller** is obligated to discharge any encumbrance at or  
165 prior to closing and fails to do so, **Buyer** may use purchase proceeds to satisfy the encumbrances.

166 (c) **Documents:** **Seller** will provide the deed; bill of sale; mechanic's lien affidavit; originals of those assignable  
167 service and maintenance contracts that will be assumed by **Buyer** after the Closing Date and letters to each  
168 service contractor from **Seller** advising each of them of the sale of the Property and, if applicable, the transfer of its  
169 contract, and any assignable warranties or guarantees received or held by **Seller** from any manufacturer,  
170 contractor, subcontractor, or material supplier in connection with the Property; current copies of the condominium  
171 documents, if applicable; assignments of leases, updated rent roll; tenant and lender estoppels letters (if  
172 applicable); tenant subordination, non-disturbance and attornment agreements (SNDAs) required by the **Buyer** or  
173 **Buyer's** lender; assignments of permits and licenses; corrective instruments; and letters notifying tenants of the  
174 change in ownership/rental agent. If any tenant refuses to execute an estoppels letter, **Seller**, if requested by the  
175 **Buyer** in writing, will certify that information regarding the tenant's lease is correct. If **Seller** is an entity, **Seller** will  
176 deliver a resolution of its governing authority authorizing the sale and delivery of the deed and certification by the  
177 appropriate party certifying the resolution and setting forth facts showing the conveyance conforms to the  
178 requirements of local law. **Seller** will transfer security deposits to **Buyer**. **Buyer** will provide the closing statement,  
179 mortgages and notes, security agreements, and financing statements.

180 (d) **Taxes and Prorations:** Real estate taxes, personal property taxes on any tangible personal property, bond  
181 payments assumed by **Buyer**, interest, rents (based on actual collected rents), association dues, insurance  
182 premiums acceptable to **Buyer**, and operating expenses will be prorated through the day before closing. If the  
183 amount of taxes for the current year cannot be ascertained, rates for the previous year will be used with due  
184 allowance being made for improvements and exemptions. Any tax proration based on an estimate will, at request  
185 of either party, be readjusted upon receipt of current year's tax bill; this provision will survive closing.

186 (e) **Special Assessment Liens:** Certified, confirmed, and ratified special assessment liens as of the Closing Date  
187 will be paid by **Seller**. If a certified, confirmed, and ratified special assessment is payable in installments, **Seller** will  
188 pay all installments due and payable on or before the Closing Date, with any installment for any period extending  
189 beyond the Closing Date prorated, and **Buyer** will assume all installments that become due and payable after the  
190 Closing Date. **Buyer** will be responsible for all assessments of any kind which become due and owing after Closing  
191 Date, unless an improvement is substantially completed as of Closing Date. If an improvement is substantially  
192 completed as of the Closing Date but has not resulted in a lien before closing, **Seller** will pay the amount of the last  
193 estimate of the assessment. This subsection applies to special assessment liens imposed by a public body and  
194 does not apply to condominium association special assessments.

195 (f) **Foreign Investment in Real Property Tax Act (FIRPTA):** If **Seller** is a "foreign person" as defined by FIRPTA,  
196 **Seller** and **Buyer** agree to comply with Section 1445 of the Internal Revenue Code. **Seller** and **Buyer** will  
197 complete, execute, and deliver as directed any instrument, affidavit, or statement reasonably necessary to comply

Buyer   and Seller   acknowledge receipt of a copy of this page, which is Page 4 of 8 Pages.

198 with the FIRPTA requirements, including delivery of their respective federal taxpayer identification numbers or  
199 Social Security Numbers to the closing agent. If **Buyer** does not pay sufficient cash at closing to meet the  
200 withholding requirement, **Seller** will deliver to **Buyer** at closing the additional cash necessary to satisfy the  
201 requirement.

202 **10. ESCROW AGENT:** **Seller** and **Buyer** authorize Escrow Agent or Closing Agent (collectively "Agent") to receive,  
203 deposit, and hold funds and other property in escrow and, subject to collection, disburse them in accordance with the  
204 terms of this Contract. The parties agree that Agent will not be liable to any person for misdelivery of escrowed items to  
205 **Seller** or **Buyer**, unless the misdelivery is due to Agent's willful breach of this Contract or gross negligence. If Agent  
206 has doubt as to Agent's duties or obligations under this Contract, Agent may, at Agent's option, (a) hold the escrowed  
207 items until the parties mutually agree to its disbursement or until a court of competent jurisdiction or arbitrator  
208 determines the rights of the parties or (b) deposit the escrowed items with the clerk of the court having jurisdiction over  
209 the matter and file an action in interpleader. Upon notifying the parties of such action, Agent will be released from all  
210 liability except for the duty to account for items previously delivered out of escrow. If Agent is a licensed real estate  
211 broker, Agent will comply with Chapter 475, Florida Statutes. In any suit in which Agent interpleads the escrowed items  
212 or is made a party because of acting as Agent hereunder, Agent will recover reasonable attorney's fees and costs  
213 incurred, with these amounts to be paid from and out of the escrowed items and charged and awarded as court costs  
214 in favor of the prevailing party.

215 **11. CURE PERIOD:** Prior to any claim for default being made, a party will have an opportunity to cure any alleged  
216 default. If a party fails to comply with any provision of this Contract, the other party will deliver written notice to the non-  
217 complying party specifying the non-compliance. The non-complying party will have \_\_\_\_\_ days (5 days if left blank) after  
218 delivery of such notice to cure the non-compliance. Notice and cure shall not apply to failure to close.

219 **12. FORCE MAJEURE:** **Buyer** or **Seller** shall not be required to perform any obligation under this Contract or be liable  
220 to each other for damages so long as performance or non-performance of the obligation, or the availability of services,  
221 insurance, or required approvals essential to Closing, is disrupted, delayed, caused or prevented by Force Majeure.  
222 "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God, unusual  
223 transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent effort, the  
224 non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will  
225 be extended a reasonable time up to 7 days after the Force Majeure no longer prevents performance under this  
226 Contract, provided, however, if such Force Majeure continues to prevent performance under this Contract more than  
227 30 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other  
228 and the Deposit shall be refunded to **Buyer**, thereby releasing **Buyer** and **Seller** from all further obligations under this Contract.

229 **13. RETURN OF DEPOSIT:** Unless otherwise specified in the Contract, in the event any condition of this Contract is  
230 not met and **Buyer** has timely given any required notice regarding the condition having not been met, **Buyer's** deposit  
231 will be returned in accordance with applicable Florida Laws and regulations.





232 **14. DEFAULT:**

233 (a) In the event the sale is not closed due to any default or failure on the part of **Seller** other than failure to make  
234 the title marketable after diligent effort, **Buyer** may elect to receive return of Buyer's deposit without thereby  
235 waiving any action for damages resulting from Seller's breach and may seek to recover such damages or seek  
236 specific performance. If Buyer elects a deposit refund, Seller may be liable to Broker for the full amount of the  
237 brokerage fee.

238 (b) In the event the sale is not closed due to any default or failure on the part of **Buyer**, **Seller** may either (1)  
239 retain all deposit(s) paid or agreed to be paid by **Buyer** as agreed upon liquidated damages, consideration for the  
240 execution of this Contract, and in full settlement of any claims, upon which this Contract will terminate or (2) seek  
241 specific performance. If **Buyer** fails to timely place a deposit as required by this Contract, **Seller** may either (1)  
242 terminate the Contract and seek the remedy outlined in this subparagraph or (2) proceed with the Contract without  
243 waiving any remedy for **Buyer's** default.

244 **15. ATTORNEY'S FEES AND COSTS:** In any claim or controversy arising out of or relating to this Contract, the  
245 prevailing party, which for purposes of this provision will include **Buyer**, **Seller** and Broker, will be awarded reasonable  
246 attorneys' fees, costs, and expenses.

247 **16. NOTICES:** All notices will be in writing and may be delivered by mail, overnight courier, personal delivery, or  
248 electronic means. Parties agree to send all notices to addresses specified on the signature page(s). Any notice,  
249 document, or item given by or delivered to an attorney or real estate licensee (including a transaction broker)  
250 representing a party will be as effective as if given by or delivered to that party.

Buyer   and Seller   acknowledge receipt of a copy of this page, which is Page 5 of 8 Pages.



251 **17. DISCLOSURES:**

252 **(a) Commercial Real Estate Sales Commission Lien Act:** The Florida Commercial Real Estate Sales  
253 Commission Lien Act provides that a broker has a lien upon the owner's net proceeds from the sale of  
254 commercial real estate for any commission earned by the broker under a brokerage agreement. The lien upon the  
255 owner's net proceeds is a lien upon personal property which attaches to the owner's net proceeds and does not  
256 attach to any interest in real property. This lien right cannot be waived before the commission is earned.

257 **(b) Special Assessment Liens Imposed by Public Body:** The Property may be subject to unpaid special  
258 assessment lien(s) imposed by a public body. (A public body includes a Community Development District.) Such  
259 liens, if any, shall be paid as set forth in Paragraph 9(e).

260 **(c) Radon Gas:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in  
261 sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that  
262 exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon  
263 and radon testing may be obtained from your county public health unit.

264 **(d) Energy-Efficiency Rating Information:** Buyer acknowledges receipt of the information brochure required by  
265 Section 553.996, Florida Statutes.

266 **18. RISK OF LOSS:**

267 **(a)** If, after the Effective Date and before closing, the Property is damaged by fire or other casualty, **Seller** will  
268 bear the risk of loss and **Buyer** may cancel this Contract without liability and the deposit(s) will be returned to  
269 **Buyer**. Alternatively, **Buyer** will have the option of purchasing the Property at the agreed upon purchase price and  
270 **Seller** will credit the deductible, if any and transfer to **Buyer** at closing any insurance proceeds, or **Seller's** claim  
271 to any insurance proceeds payable for the damage. **Seller** will cooperate with and assist **Buyer** in collecting any  
272 such proceeds. **Seller** shall not settle any insurance claim for damage caused by casualty without the consent of  
273 the **Buyer**.

274 **(b)** If, after the Effective Date and before closing, any part of the Property is taken in condemnation or under the  
275 right of eminent domain, or proceedings for such taking will be pending or threatened, **Buyer** may cancel this  
276 Contract without liability and the deposit(s) will be returned to **Buyer**. Alternatively, **Buyer** will have the option of  
277 purchasing what is left of the Property at the agreed upon purchase price and **Seller** will transfer to the **Buyer** at  
278 closing the proceeds of any award, or **Seller's** claim to any award payable for the taking. **Seller** will cooperate  
279 with and assist **Buyer** in collecting any such award.

280 **19. ASSIGNABILITY; PERSONS BOUND:** This Contract may be assigned to a related entity, and otherwise  is not  
281 assignable  is assignable. If this Contract may be assigned, **Buyer** shall deliver a copy of the assignment agreement  
282 to the **Seller** at least 5 days prior to Closing. The terms "**Buyer**," "**Seller**" and "**Broker**" may be singular or plural. This  
283 Contract is binding upon **Buyer**, **Seller** and their heirs, personal representatives, successors and assigns (if  
284 assignment is permitted).

285 **20. MISCELLANEOUS:** The terms of this Contract constitute the entire agreement between **Buyer** and **Seller**.  
286 Modifications of this Contract will not be binding unless in writing, signed and delivered by the party to be bound.  
287 Signatures, initials, documents referenced in this Contract, counterparts and written modifications communicated  
288 electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or  
289 typewritten terms inserted in or attached to this Contract prevail over preprinted terms. If any provision of this Contract  
290 is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. This Contract will be  
291 construed under Florida law and will not be recorded in any public records.

292 **21. BROKERS:** Neither **Seller** nor **Buyer** has used the services of, or for any other reason owes compensation to, a  
293 licensed real estate Broker other than:



294 **(a) Seller's Broker:** No Broker  
295 (Company Name) (Licensee)

(Address, Telephone, Fax, E-mail)

296 who  is a single agent  is a transaction broker  has no brokerage relationship and who will be compensated\_ by  
297  **Seller**  **Buyer**  both parties pursuant to  a listing agreement  other (specify)

298  
299  
300 **(b) Buyer's Broker:** No Broker  
301 (Company Name) (Licensee)

(Address, Telephone, Fax, E-mail)

Buyer  and Seller  acknowledge receipt of a copy of this page, which is Page 6 of 8 Pages.

302 who  is a single agent  is a transaction broker  has no brokerage relationship and who will be compensated by  
303  Seller's Broker  Seller  Buyer  both parties pursuant to  an MLS offer of compensation  other (specify)

304  
305 (collectively referred to as "Broker") in connection with any act relating to the Property, including but not limited to  
306 inquiries, introductions, consultations, and negotiations resulting in this transaction. **Seller and Buyer** agree to  
307 indemnify and hold Broker harmless from and against losses, damages, costs and expenses of any kind, including  
308 reasonable attorneys' fees at all levels, and from liability to any person, arising from (1) compensation claimed which is  
309 inconsistent with the representation in this Paragraph, (2) enforcement action to collect a brokerage fee pursuant to  
310 Paragraph 10, (3) any duty accepted by Broker at the request of **Seller or Buyer**, which is beyond the scope of  
311 services regulated by Chapter 475, Florida Statutes, as amended, or (4) recommendations of or services provided and  
312 expenses incurred by any third party whom Broker refers, recommends, or retains for or on behalf of **Seller or Buyer**.

313 **22. OPTIONAL CLAUSES:** (Check if any of the following clauses are applicable and are attached as an addendum to  
314 this Contract):

- |   |  |   |
|---|--|---|
| 315 <input type="checkbox"/> Arbitration                    | <input type="checkbox"/> Seller Warranty                   | <input type="checkbox"/> Existing Mortgage          |
| 316 <input type="checkbox"/> Section 1031 Exchange          | <input type="checkbox"/> Coastal Construction Control Line | <input type="checkbox"/> Buyer's Attorney Approval  |
| 317 <input type="checkbox"/> Property Inspection and Repair | <input type="checkbox"/> Flood Area Hazard Zone            | <input type="checkbox"/> Seller's Attorney Approval |
| 318 <input type="checkbox"/> Seller Representations         | <input type="checkbox"/> Seller Financing                  | <input type="checkbox"/> Other _____                |

319 **23. ADDITIONAL TERMS:**



320 1: This contract is contingent upon the Buyer obtaining written approval from the City Of Marathon for transfer to Buyer  
321 and modification of, existing Conditional Use and Development Agreement known as City of Marathon Resolution 2018-47  
322 as well approval of transfer of City of Marathon Resolution 2018-84 awarding eleven (11) affordable building allocations  
323 (building rights) to the subject property.

324 2: This contract is contingent upon the approval of the purchase of the property by the Monroe County Comprehensive  
325 Land Authority on behalf of the Buyer.

326 3: It is expressly agreed that, notwithstanding any other provisions of this contract, the Buyer shall not incur any penalty  
327 by forfeiture of earnest money or otherwise be obligated to complete the purchase of the property described herein, if the  
328 contract purchase price or the reasonable value of the property established by the Monroe County Comprehensive Land  
329 Authority exceeds the contract price. The Buyer shall, however, have the privilege and option of proceeding with the  
330 consummation of this contract without regard to the amount of the reasonable value established by the Monroe County  
331 Comprehensive Land Authority. Furthermore, the Seller shall have the option to cancel the contract if the value established  
332 by the Monroe County Comprehensive Land Authority is less than the purchase price of this contract.

333 \_\_\_\_\_  
334 \_\_\_\_\_  
335 \_\_\_\_\_  
336 \_\_\_\_\_  
337 \_\_\_\_\_  
338 \_\_\_\_\_  
339 \_\_\_\_\_  
340 \_\_\_\_\_  
341 \_\_\_\_\_

342 **THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE**  
343 **ADVICE OF AN ATTORNEY PRIOR TO SIGNING. BROKER ADVISES BUYER AND SELLER TO VERIFY ALL**  
344 **FACTS AND REPRESENTATIONS THAT ARE IMPORTANT TO THEM AND TO CONSULT AN APPROPRIATE**  
345 **PROFESSIONAL FOR LEGAL ADVICE (FOR EXAMPLE, INTERPRETING CONTRACTS, DETERMINING THE**  
346 **EFFECT OF LAWS ON THE PROPERTY AND TRANSACTION, STATUS OF TITLE, FOREIGN INVESTOR**  
347 **REPORTING REQUIREMENTS, ETC.) AND FOR TAX, PROPERTY CONDITION, ENVIRONMENTAL AND OTHER**

Buyer   and Seller   acknowledge receipt of a copy of this page, which is Page 7 of 8 Pages.

348 **ADVICE. BUYER ACKNOWLEDGES THAT BROKER DOES NOT OCCUPY THE PROPERTY AND THAT ALL**  
349 **REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) BY BROKER ARE BASED ON SELLER**  
350 **REPRESENTATIONS OR PUBLIC RECORDS UNLESS BROKER INDICATES PERSONAL VERIFICATION OF**  
351 **THE REPRESENTATION. BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND**  
352 **GOVERNMENTAL AGENCIES FOR VERIFICATION OF THE PROPERTY CONDITION, SQUARE FOOTAGE AND**  
353 **FACTS THAT MATERIALLY AFFECT PROPERTY VALUE.**

354 Each person signing this Contract on behalf of a party that is a business entity represents and warrants to the other  
355 party that such signatory has full power and authority to enter into and perform this Contract in accordance with its  
356 terms and each person executing this Contract and other documents on behalf of such party has been duly authorized  
357 to do so.

358  Date: 7/18/19  
(Signature of Buyer)

359 Habitat for Humanity of the Middle Keys, Inc. Tax ID No.: \_\_\_\_\_  
(Typed or Printed Name of Buyer)

360 Title: \_\_\_\_\_ Telephone: \_\_\_\_\_

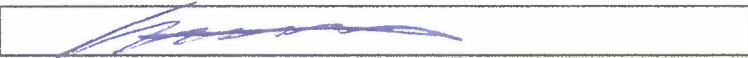
361  Date: \_\_\_\_\_  
(Signature of Buyer)

362 \_\_\_\_\_ Tax ID No.: \_\_\_\_\_  
(Typed or Printed Name of Buyer)

363 Title: \_\_\_\_\_ Telephone: \_\_\_\_\_

364 Buyer's Address for purpose of notice \_\_\_\_\_

365 Facsimile: \_\_\_\_\_ Email: info@habitatmiddlekeys.org

366  Date: \_\_\_\_\_  
(Signature of Seller)

367 IMBY, Inc. By JASUNA MORTHEG Pres. Tax ID No.: \_\_\_\_\_  
(Typed or Printed Name of Seller)

368 Title: \_\_\_\_\_ Telephone: \_\_\_\_\_

369  Date: \_\_\_\_\_  
(Signature of Seller)

370 \_\_\_\_\_ Tax ID No.: \_\_\_\_\_  
(Typed or Printed Name of Seller)

371 Title: \_\_\_\_\_ Telephone: \_\_\_\_\_

372 Seller's Address for purpose of notice: \_\_\_\_\_

373 Facsimile: \_\_\_\_\_ Email: josh@fundinthesun.com

The Florida Association of REALTORS® makes no representation as to the legal validity or adequacy of any provision of this form in any specific transaction. This standardized form should not be used in complex transactions or with extensive riders or additions. This form is available for use by the entire real estate industry and is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. The copyright laws of the United States (17 U.S. Code) forbid the unauthorized reproduction of this form by any means including facsimile or

Buyer   and Seller   acknowledge receipt of a copy of this page, which is Page 8 of 8 Pages.

# Comprehensive Rider to the Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



Realtors

If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between IMBY, Inc. (SELLER)

and Habitat for Humanity of the Middle Keys, Inc. (BUYER)

concerning the Property described as 7931 Overseas Highway, Marathon, FL 33050

LTS 29-30 ATLANTIC SHORES PB3-5 KEY VACA

Buyer's Initials

[Signature] [ ]

Seller's Initials

[Signature] [ ]

## AA. LICENSEE DISCLOSURE OF PERSONAL INTEREST IN PROPERTY

Joshua MOTHNER has an active or inactive real estate license and has a personal interest in the Property (specify if licensee is related to a party, or is acting as Buyer or Seller, etc.) Licensee is President of the Corporation

selling the property

THIS INSTRUMENT PREPARED  
BY AND RETURN TO:

Adele V. Stones, Esq.  
Oropeza, Stones, & Cardenas, PA  
221 Simonton Street  
Key West, FL 33040

## LAND USE RESTRICTION AGREEMENT

**Anchor Inn Motel (IMBY, Inc.) Property / 7931 Overseas Highway, Marathon, FL**

**THIS LAND USE RESTRICTION AGREEMENT** (hereinafter "Agreement") is made and entered into as of the 12 day of February, 2020 between the CITY OF MARATHON, a municipal corporation of the State of Florida (hereinafter "City") and the MONROE COUNTY COMPREHENSIVE PLAN LAND AUTHORITY, a land authority pursuant to section 380.0663(1), Florida Statutes and Monroe County Ordinance No. 031-1986 (hereinafter "Land Authority"), and their respective successors and assigns.

### RECITALS

A. The Anchor Inn Motel property is legally described as **Lots 29 and 30, Atlantic Shores as recorded in Plat Book 3, Page 5, of the Public Records of Monroe County, Florida** (hereinafter "Subject Property") and currently has a street address of 7931 Overseas Highway in Marathon, Florida.

B. The Marathon City Council has adopted Resolution 2019-72 nominating the Subject Property for purchase by the Land Authority and subsequent conveyance to the City as a workforce housing site.

C. In accordance with Land Authority Resolution 12-2019, the Land Authority has provided \$800,000 toward the City's purchase of Subject Property.

D. As a condition of receiving said Land Authority funding, the City has agreed that the Subject Property shall comply with the affordable housing requirements specified herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Land Authority do hereby contract and agree as follows:

**ARTICLE I**  
**COMPLIANCE WITH LAND AUTHORITY REQUIREMENTS**

In order to comply with the Land Authority's requirements pursuant to section 380.0663(1), *et seq.*, Florida Statutes and Monroe County Ordinance No. 031-1986, the City hereby covenants and agrees as follows:

- 1.01 The restrictions contained in this Article I shall not expire, shall run with the Subject Property in perpetuity and shall be binding upon the City, its successors or assigns.
- 1.02 Use of the Subject Property shall be restricted to the provision of affordable housing for households whose income does not exceed 160% of the Area Median Income. Nothing herein shall preclude the City or any other entity providing affordable housing on the Subject Property from setting more restrictive income limits than those imposed by this Agreement.
- 1.03 The City is responsible for ensuring compliance with the restrictions in this Article I and expressly agrees to furnish, upon the Land Authority's request, written certification thereof.

**ARTICLE II**  
**CONSIDERATION**

In addition to other purposes, the Land Authority has provided funding for the purchase of the Subject Property by the City as an inducement to the City to restrict use of the Subject Property to affordable housing in perpetuity. In consideration of said Land Authority funding for the foregoing purposes, the City and the Land Authority have entered into this Agreement.

**ARTICLE III**  
**RELIANCE**

In performing its duties hereunder, the Land Authority may rely upon statements and certificates of the City, its tenants, and the residents of the Subject Property believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the City pertaining to occupancy of the Subject Property.

**ARTICLE IV**  
**TERM**

This Agreement shall become effective upon its execution and delivery, and shall remain in full force and effect without expiration, unless modified by mutual written consent of the parties.

**ARTICLE V**  
**ENFORCEMENT**

If the City defaults in the performance of its obligations under this Agreement or breaches any material covenant, agreement or warranty of the City set forth in this Agreement, and if such default remains uncured for a period of thirty (30) days after written notice thereof shall have been given by the Land Authority to the City, then the Land Authority may take any action at law or in equity or otherwise to address said default(s). However, if the default stated in such notice can be corrected, but not within the thirty (30) day period, and if the City adopts a plan to correct or cure the default and commences the correction within the thirty (30) day period (subject to any rights of tenants in possession of units under a valid lease agreement), and thereafter diligently pursues the same to completion within such extended period, the Land Authority shall not have waived its right of enforcement if the default remains uncured after the expiration of the extended cure period.

**ARTICLE VI**  
**RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND**

6.01. Upon execution the City shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in the official public records of Monroe County and shall pay all fees and charges incurred in connection therewith.

6.02 This Agreement and the covenants contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the City and the Land Authority and their respective successors and assigns during the term of this Agreement.

**ARTICLE VII**  
**GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, with respect to both substantive rights and with respect to procedures and remedies.

**ARTICLE VIII**  
**NOTICE AND EFFECT**

All notices and other communications to be made or permitted to be made hereunder shall be in writing and shall be delivered to the addresses shown below or to such other addresses that the parties may provide to one another in accordance herewith. Such notices and other communications shall be given by any of the following means: (a) personal service or (b) national express air courier, provided such courier maintains written verification of actual delivery. Any notice or other communication given by the means described in subsection (a) or (b) above shall be deemed effective upon the date of receipt or the date of refusal to accept delivery by the party to whom such notice or other communication has been sent.

Land Authority: Monroe County Land Authority  
1200 Truman Avenue, Suite 207  
Key West, FL 33040  
Attention: Executive Director

City: City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050  
Attention: City Manager

Any party may change said address by giving the other parties hereto notice of such change of address in accordance with the foregoing provisions.

**ARTICLE IX**  
**MISCELLANEOUS**

9.01. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

9.02. This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.



**COUNTERPART SIGNATURE PAGE TO  
LAND USE RESTRICTION AGREEMENT**

**Anchor Inn Motel (IMBY, Inc.) Property / 7931 Overseas Highway, Marathon, FL**

IN WITNESS WHEREOF, the City and the Land Authority have caused this Agreement to be signed, sealed and attested on their behalf by duly authorized representatives, all as of the date first set forth above.

WITNESSES:

CITY OF MARATHON

Diane Clavier  
Print: Diane Clavier  
George Garrett  
Print: George Garrett

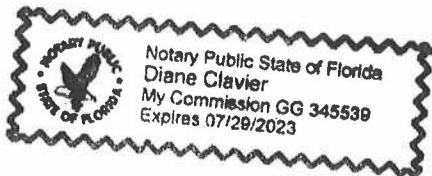
By: [Signature]  
Steve Cook, Mayor

Address: 9805 Overseas Highway  
Marathon, FL 33050

[SEAL]

STATE OF FLORIDA  
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 12 day of February, 2020 by Steve Cook, as Mayor of the CITY OF MARATHON, a municipal corporation of the State of Florida, on behalf of the City. Said person is personally known to me or has produced a valid driver's license as identification.



Diane Clavier  
Notary Public; State of Florida  
Print Name: Diane Clavier  
My Commission Expires: 7/29/2023  
My Commission No.: GG 345539

COUNTERPART SIGNATURE PAGE TO  
LAND USE RESTRICTION AGREEMENT

Anchor Inn Motel (IMBY, Inc.) Property / 7931 Overseas Highway, Marathon, FL

IN WITNESS WHEREOF, the City and the Land Authority have caused this Agreement to be signed, sealed and attested on their behalf by duly authorized representatives, all as of the date first set forth above.

WITNESSES:

MONROE COUNTY COMPREHENSIVE PLAN  
LAND AUTHORITY

[Signature]  
Print: Dina Gambuzza

By: [Signature]  
David P. Rice, Chairman

[Signature]  
Print: Charles Pattison

Address: 1200 Truman Avenue  
Suite 207  
Key West, FL 33040

Approved as to form and legality

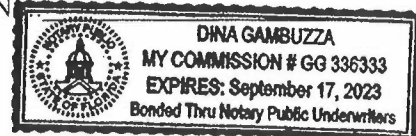


[Signature]  
Adele V. Stones, Esq.

STATE OF FLORIDA  
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of January, 2020 by David P. Rice, as Chairman of the MONROE COUNTY COMPREHENSIVE PLAN LAND AUTHORITY, a land authority pursuant to section 380.0663(1), Florida Statutes and Monroe County Ordinance No. 031-1986, on behalf of the Land Authority. Said person is personally known to me or has produced a valid driver's license as identification.

Monroe County [Signature]  
Notary Public, State of Florida  
Print Name: DINA GAMBUTZA  
My Commission Expires: \_\_\_\_\_  
My Commission No. \_\_\_\_\_



**INTERIM OPERATING AGREEMENT  
BETWEEN THE CITY OF MARATHON AND HABITAT FOR HUMANITY OF THE  
MIDDLE KEYS, INC. AS TO OPERATION OF PROPERTY LOCATED AT 7931  
OVERSEAS HIGHWAY**

This Interim Operating Agreement (“Operating Agreement”) of  
is entered into on the 20<sup>th</sup> day of February 2020  
between the City of Marathon (“City”) and  
Habitat for Humanity of the Middle Keys, Inc. (“Habitat”)

**I. INTENT**

The City of Marathon (CITY) and Habitat for Humanity of the Middle Keys, Inc. (HABITAT) enter into this interim operating Agreement in order to begin the effectuation of the CITY’s Resolution 2020-15 wherein the CITY agreed to the assignment of the contract for purchase between IMBY Inc. and HABITAT to the CITY as the new purchaser in place of HABITAT of the property located at 7931 Overseas Highway, Marathon, Florida, legal description as: Lots 29 and 30, Atlantic Shores as recorded in Plat Book 3, Page 5, of the Public Records of Monroe County, Florida.

While CITY’s Resolution 2020-15 contemplates a long-term lease agreement between the CITY and HABITAT, an interim operating agreement is required for responsibility and operation of the property and the current rental units and renters on the property. The CITY is purchasing the property with intent to lease to HABITAT. HABITAT will operate the property and collect rents in return in the interim until a full lease agreement can be executed by all parties.

**II. RESPONSIBILITIES OF CITY AND HABITAT**

**1. Management of Property**

In exchange for the CITY’s purchase of the property, HABITAT agrees to fully manage the property purchased by the CITY and the CITY agrees to let HABITAT operate the property, including collection and accrual of rents for a three (3) month period.

- a. The CITY permits and requires HABITAT to use all lawful means to lease, renew leases, rent, operate, and manage the property, including the current rental properties.
- b. HABITAT shall make, cause to made, and/or supervise the condition and repairs to the property as warranted by the rental lease agreements;
- c. HABITAT shall maintain all portions of the premises in a safe and clean manner;
- d. The CITY is not responsible for the cost of maintenance and/or repair needs for the property and such costs shall be the responsibility of HABITAT;
- e. HABITAT shall accept transfer of all Rental Security Deposit funds and shall deposit such funds in a non-interest-bearing account and properly disperse pursuant to law and current rental agreements on the property;

## **2. Collection of Rents**

HABITAT shall be entitled to all rental income on the property and shall collect the same from the renters pursuant to current lease agreements.

## **3. Insurance**

HABITAT shall carry liability insurance on the property at all times in an amount of at least one million (\$1,000,000) dollars single incident/two million (\$2,000,000) dollars aggregate and have the CITY listed as an additional insured.

## **4. Term**

This interim operating agreement shall terminate ninety (90) days from the execution of this agreement or as extended by mutual agreement.

## **5. Indemnification**

HABITAT agrees to pay, and to protect, indemnify, and save CITY harmless from and against, any and all liabilities, losses, damages, costs, expenses (including all reasonable attorneys' fees and expenses), causes of action, suits, claims, demands, or judgments of any nature whatsoever arising from (i.) any injury to, or the death of, any person, or any damage to the property or upon adjoining sidewalks, streets, or ways, or in any manner growing out of or connected with the use, non-use, condition, or occupancy of the property or any part thereof, resulting from the condition thereof; (ii.) a violation by any contractor, subcontractor, tenant, sub-lessee, occupants, guests or family of any lease, any contract or agreement to which CITY or HABITAT is a party, or any restriction, statute, law, ordinance, or regulation, in each case affecting the property or any part thereof, or the ownership, occupancy, or use thereof; (iii.) losses suffered as a result of the refusal or failure of a tenant to pay rent, carry required insurance or otherwise comply with the terms and conditions of any lease affecting the Property, or from the misconduct, tortious acts, or negligence of any tenant, contractor, subcontractor, sub-lessee, occupants, guests or family; (iv.) losses suffered by an person as a result of any natural disasters or Acts of God. In the event that CITY is made a party in litigation regarding the operation of this property, HABITAT shall hold CITY harmless from all claims made, including reasonable attorneys' fees and costs.

## **6. Records**

HABITAT shall provide any and all records to the CITY regarding operation of the property upon request within five (5) days, including but not limited to maintenance agreements, contractors agreements, leases, and accounting of rents and income.

Additionally, HABITAT agrees and understands that it is subject to Public Records laws in relation to the property and is treated as a Contractor pursuant to Florida Statute § 119.0701. Florida Statute § 119.0701 requires the following:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF THE CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS, DIANE CLAVIER, AT 305-289-5020, [clavierd@ci.marathon.fl.us](mailto:clavierd@ci.marathon.fl.us), MARATHON CITY HALL, 9805 OVERSEAS HIGHWAY, MARATHON, FLORIDA 33050.

HABITAT shall comply with public records law and must:

- a. Keep and maintain public records required by the CITY to perform the service;
- b. Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law;
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if HABITAT does not transfer the records to the CITY;
- d. Upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of HABITAT or keep and maintain public records required by the CITY to perform the service. If HABITAT transfers all public records to the CITY upon completion of the contract, HABITAT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If HABITAT keeps and maintains public records upon completion of the contract, HABITAT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

## **7. Assignment**

HABITAT shall not assign, transfer, mortgage, pledge or otherwise encumber or dispose of this agreement during the term hereof.

## **8. Improvements to the Premises**

Any improvements to the property under this agreement shall first be approved by the CITY in writing.

## **9. Termination**

This agreement can be terminated for breach of the covenants as set forth herein. The breaching party shall have ten (10) days upon written notice of the breach of the Agreement to cure any such breach. If the breach is not cured within the ten (10) days after delivery of the written


notice, then the non-breaching party may, in its sole and absolute discretion, terminate this agreement without further delay.

### 10. Non-Waiver of Immunity

Notwithstanding the provisions of Florida Statute Section 768.28, the participation of CITY and HABITAT in this Agreement and the acquisition of any insurance coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any agreement or contract entered into by the CITY and HABITAT be required to contain any provision against such waiver.

IN WITNESS, WHEREOF, the CITY OF MARATHON and HABITAT FOR HUMANITY OF THE MIDDLE KEYS, INC. have duly signed and executed this interim operating Agreement on this 20<sup>th</sup> of February 2020.

CITY OF MARATHON

  
George Garrett for  
Chuck Lindsey  
City Manager

2/20/2020  
Date

HABITAT FOR HUMANITY OF THE MIDDLE KEYS, INC.

  
Christine Todd Young

2/20/2020  
Date

# OWNER'S POLICY OF TITLE INSURANCE

## OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

### COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Florida corporation (the "Company") insures, as of Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
  - (a) A defect in the Title caused by
    - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
    - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
    - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
    - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
    - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
    - (vi) document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
    - (vii) a defective judicial or administrative proceeding.
  - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
  - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (a) the occupancy, use, or enjoyment of the Land;
  - (b) the character, dimensions, or location of any improvement erected on the Land;
  - (c) the subdivision of land; or
  - (d) environmental protection
 if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

*(Covered Risks continued)*

*In Witness Whereof*, OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, has caused this policy to be signed and sealed as of Date of Policy shown in Schedule A, the policy to become valid when countersigned by an authorized signatory of the Company.



**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**  
A Stock Company  
400 Second Avenue South, Minneapolis, Minnesota 55401  
(612) 371-1111

By *C. Monroe* President

Attest *David Wald* Secretary

**SERIAL**  
**OF6-8767308**

*(Covered Risks continued)*

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
  - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
  - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
    - (i) to be timely, or
    - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

#### **EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
  - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

#### **CONDITIONS**

##### **1. DEFINITION OF TERMS**

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
  - (i) the term "Insured" also includes
    - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
    - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
    - (C) successors to an Insured by its conversion to another kind of Entity;
    - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
      - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,



- (2) if the grantee wholly owns the named Insured,
  - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
  - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
- (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (e) "Insured Claimant": An Insured claiming loss or damage.
  - (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
  - (g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
  - (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
  - (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
  - (j) "Title": The estate or interest described in Schedule A.
  - (k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

## 2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

## 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

## 4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

## 5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

## 6. DUTY OF INSURED CLAIMANT TO COOPERATE

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

#### **7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY**

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

#### **8. DETERMINATION AND EXTENT OF LIABILITY**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or

(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

#### **9. LIMITATION OF LIABILITY**

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

#### **10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY**

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

#### **11. LIABILITY NONCUMULATIVE**

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

#### **12. PAYMENT OF LOSS**

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

#### **13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT**

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant

in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

#### 14. ARBITRATION

Unless prohibited by applicable law, arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association may be demanded if agreed to by both the Company and the Insured at the time of the controversy or claim. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, and service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the Insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the Land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator (s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

#### 15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim whether or not based on negligence shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

#### 16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

#### 17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

#### 18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at 400 Second Avenue South, Minneapolis, Minnesota 55401-2499. Phone: (612) 371-1111.



**Old Republic National**  
**Title Insurance Company**

OWNER'S  
TITLE INSURANCE  
POLICY

For information about coverage or  
assistance in resolving complaints,  
call (612) 371-1111.

Offices at  
400 Second Avenue South  
Minneapolis, Minnesota 55401

# Old Republic National Title Insurance Company

## OWNER'S POLICY Schedule A

Policy No.:  
OF6-8767308

Date of Policy:  
February 26, 2020 @ 10:15 AM

Agent's File Reference:  
19-301

Amount of Insurance: \$950,000.00

Premium: \$2,880.00

Address Reference: 7931 Overseas Hwy, Marathon, FL 33050

1. Name of Insured: City of Marathon, a Florida municipal corporation
2. The estate or interest in the Land that is insured by this policy is: Fee Simple as shown by instrument recorded as Document No. 2257312 in Official Records Book 3010, Page 1087, of the Public Records of Monroe County, Florida.
3. Title is vested in: City of Marathon, a Florida municipal corporation
4. The Land referred to in this policy is described as follows:

Lots 29 and 30, Atlantic Shores, according to the map or plat thereof as recorded in Plat Book 3, Page 5, Public Records of Monroe County, Florida.

## Old Republic National Title Insurance Company

400 Second Avenue South, Minneapolis, Minnesota 55401, (612) 371-1111

Agent No.: 27363

Issuing Agent:

**Wolfe Stevens PLLC  
6807 Overseas Highway  
Marathon, FL 33050**



Agent's Signature

# Old Republic National Title Insurance Company

## OWNER'S POLICY

### Schedule B

Policy No.:  
OF6-8767308

Agent's File Reference:  
19-301

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. General or special taxes and assessments required to be paid in the year 2020 and subsequent years.
2. Rights or claims of parties in possession not recorded in the Public Records.
3. Any encroachment, encumbrance, violation, variation or adverse circumstance that would be disclosed by an inspection or an accurate and complete land survey of the Land and inspection of the Land.
4. Easements or claims of easements not recorded in the Public Records.
5. Any lien, or right to a lien, for services, labor or material furnished, imposed by law and not recorded in the Public Records.
6. Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the Land(s) insured hereunder, including submerged, filled and artificially exposed lands, and lands accreted to such lands.
7. Any lien provided by County Ordinance or by Chapter 159, F.S., in favor of any city, town, village or port authority, for unpaid service charges for services by any water systems, sewer systems or gas systems serving the land described herein; and any lien for waste fees in favor of any county or municipality.
8. Dedications, reservations and private roads as contained on the Plat of Atlantic Shores, as recorded in Plat Book 3, Page 5, Public Records of Monroe County, Florida.
9. Covenants, conditions, and restrictions recorded in O.R. Book 567, Page 101, Public Records of Monroe County, Florida, which contain provisions creating easements and set back lines.
10. Broadband Easement and Right of Way Entry Agreement recorded in O.R. Book 1836, Page 1595, Public Records of Monroe County, Florida.
11. Memorandum of Agreement between Anchor Inn, Inc. and Comcast of California/Colorado/Florida/Oregon, Inc. recorded in O.R. Book 1855, Page 1351, Public Records of Monroe County, Florida.
12. Resolution No. 2018-47 recorded in O.R. Book 2913, Page 1101, Public Records of Monroe County, Florida.
13. Warranty Deed for Transfer of Building Rights recorded in O.R. Book 2991, Page 1993, together with Affidavit recorded in O.R. Book 2991, Page 1986, Public Records of Monroe County, Florida.
14. Deed of Transfer recorded in O.R. Book 2991, Page 1989, together with Affidavit recorded in O.R. Book 2991, Page 1986, Public Records of Monroe County, Florida.
15. State Law under Chapter 76-190 and Chapter 22F-8.02 of the Florida Administrative Code for Land Planning for the Florida Keys Area of Critical State Concern, recorded in O.R. Book 668, Page 43, Public Records of Monroe County, Florida.
16. House Bill No. 634, Chapter 70-231, an act relating to the Bureau of Beaches, Shores and Coastal Construction, amending Chapter 161, Florida Statutes by adding Section 161.052; providing a setback line for coastal construction and excavation; providing for the granting of variance by the Department of Natural Resources, providing penalties, and providing an effective date.
17. Rights of the lessees under unrecorded leases.
18. If neither the survey nor any other fact known to the Title Agent indicates that the subject property is submerged, or was at any time submerged, or that there is water in, upon or adjacent to the property, the general sovereignty land exception may be deleted from the owner policy issued pursuant to this Commitment, despite the above Exception 3 to the contrary.
19. Standard Exceptions 2 and 5 are hereby deleted.

# Old Republic National Title Insurance Company

## *OWNER'S POLICY* **Schedule B (Continued)**

Policy No.:  
OF6-8767308

Agent's File Reference:  
19-301



Prepared by and return to:

Wolfe Stevens PLLC  
2955 Overseas Highway  
Marathon, FL 33050  
305-743-9858  
File Number: 19-301  
Will Call No.:

Doc # 2257312 Bk# 3010 Pg# 1087  
Recorded 2/26/2020 10:15 AM Page 1 of 2

Deed Doc Stamp \$6,650.00  
Filed and Recorded in Official Records of  
MONROE COUNTY KEVIN MADOK, CPA

Parcel Identification No. 00347290-000000

[Space Above This Line For Recording Data]

## Warranty Deed

(STATUTORY FORM - SECTION 689.02, F.S.)

**This Indenture** made this 19th day of February, 2020 between **IMBY, Inc., a Florida corporation** whose post office address is **490 52nd Street Gulf, Marathon, FL 33050** of the County of **Monroe, State of Florida**, grantor\*, and **City of Marathon, a Florida municipal corporation** whose post office address is **9805 Overseas Highway, Marathon, FL 33050** of the County of **Monroe, State of Florida**, grantee\*,

**Witnesseth** that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in **Monroe County, Florida**, to-wit:

**Lots 29 and 30, Atlantic Shores, according to the map or plat thereof as recorded in Plat Book 3, Page 5, Public Records of Monroe County, Florida.**

**SUBJECT TO: Land Use Restriction Agreement between City of Marathon and the Monroe County Comprehensive Plan Land Authority, dated February 12, 2020.**

and said grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

\* "Grantor" and "Grantee" are used for singular or plural, as context requires.

**In Witness Whereof**, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

[Signature]  
Witness Name: Patrick Stevens

[Signature]  
Witness Name: Lisa Ziels

IMBY, Inc., a Florida corporation

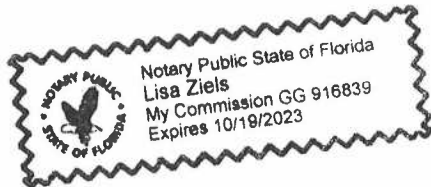
By: [Signature]  
Joshua Mothner, President

(Corporate Seal)

State of Florida  
County of Monroe

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 19th day of February, 2020 by Joshua Mothner, President of IMBY, Inc., a Florida corporation, on behalf of the corporation. He  is personally known to me or  has produced a driver's license as identification.

[Notary Seal]



[Signature]  
Notary Public

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



This Instrument prepared by:

Wolfe Stevens PLLC.  
2955 Overseas Hwy.  
Marathon, FL 33050  
305-743-9858

**Doc # 2257311 Bk# 3010 Pg# 1085**  
Recorded 2/26/2020 10:15 AM Page 1 of 2

Deed Doc Stamp \$0.70  
Filed and Recorded in Official Records of  
**MONROE COUNTY KEVIN MADOK, CPA**

After recording, return to:

George Garrett, Planning Director  
c/o **CITY OF MARATHON**  
9805 Overseas Highway  
Marathon, FL 33050  
305-289-4111

### **WARRANTY DEED FOR TRANSFER OF BUILDING RIGHTS**

THIS INDENTURE, made this 19th day of January 2020 by and between IMBY, Inc. a Florida corporation, whose address is 490 52<sup>nd</sup> Ave. Gulf, Marathon, Florida 33050, Grantor\*, and City of Marathon, a Florida municipal corporation, whose address is 9805 Overseas Highway, Marathon Florida 33050, of the County of Monroe State of Florida, Grantee\*,

**WITNESSETH.** That said Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, has granted, bargained and sold to said Grantee, and Grantee's heirs and assigns forever, the following described building rights in Monroe County, Florida, to wit:

**One (1) market rate building right assigned Sender Site Identifier No. TBR NO. 170041 by the City of Marathon, Florida. Said market rate transferable building rights being transferred from the following described Sender Site in Monroe County, Florida:**

**Lots 29 and 30, Atlantic Shores, according to the map or plat thereof as recorded in Plat Book 3, Page 5, Public Records of Monroe County, Florida.**

**The subject market rate transferable building rights shall run with, and be appurtenant to, the following described Receiver Site owned by Grantee:**

**(Receiver Legal) – to be determined, administratively placed pending designation of receiver site(s).**

and said Grantor does hereby fully warrant that he has the full right, title and interest in, and authority to transfer said building rights, and will defend the same against the lawful claims of all persons whomsoever.

**THIS DEED IS GIVEN IN ACCORDANCE WITH SECTION 107.16 OF THE CITY OF MARATHON LAND DEVELOPMENT**

REGULATIONS.

\* "Grantor" and "Grantee" are used for singular or plural, as context requires.

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

Owner:

*[Signature]*

IMBY, Inc. a Florida corporation

Witness Name: LISA ZIELS

*[Signature]*

*[Signature]*  
By: Joshua Mothner its President

Witness Name: PATRICK M STUBBS

State of Florida

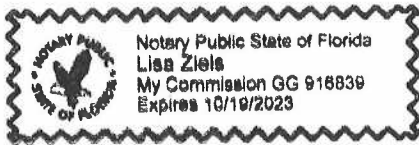
County of Monroe

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 19th day of February, 2020 by Joshua Mothner, President of IMBY, Inc., a Florida corporation, on behalf of the corporation. He  is personally known to me or  has produced a driver's license as identification.

[Notary Seal]

*[Signature]*  
Notary Public

Printed Name: \_\_\_\_\_



My Commission Expires: \_\_\_\_\_

This Instrument prepared by:

Wolfe Stevens PLLC  
2955 Overseas Hwy.  
Marathon, FL 33050  
305-743-9858

After recording, return to:  
George Garrett, Planning Director  
c/o CITY OF MARATHON  
9805 Overseas Highway  
Marathon, FL 33050  
305-289-4111

Deed Doc Stamp \$0.00  
Filed and Recorded in Official Records of  
**MONROE COUNTY KEVIN MADOK, CPA**

**DEED OF TRANSFER**

**Whereas**, the undersigned, **IMBY, Inc. a Florida corporation**, (hereinafter "owner") is in possession of one (1) transferable market rate building right (hereinafter "TBR") located on property described in Exhibit "A" attached hereto (hereinafter "Sender Site") and:

**Whereas**, the City of Marathon has assigned to each TBR the following identifiers:

- 1. Sender Site Identifier No. 170041 TBR - attached to RE No. 00347290-000000.

**WHEREAS**, Owner does hereby sell, transfer, assign, and deliver to City of Marathon, (hereinafter "Grantee") all right(s), title and interest in and to one (1) Market Rate TBR from the Sender Site to the real property owned by City of Marathon to be determined (the "Receiver Site"), and.

**WHEREAS**, Owner has this date executed and delivered City of Marathon, a Warranty Deed for Transfer of Market Rate Building Right transferring the one (1) Market Rate TBR from the Sender Site to the holding Receiver Site with the final Receiver site to be determined.

**WHEREAS**, it is understood and agreed that Seller retains the right to designate a suitable receiver site for the transfer of these rights and the City shall process such transfer request according to its requirements and regulations.

**NOW, THEREFORE**, Owner does hereby covenant that no further use of Market Rate TBR conveyed to Grantee shall be made on the Sender Site.

Owner further agrees that this covenant shall be deemed a covenant running with the land and shall be recorded, at Owner's expense, in the Public Records of Monroe County, Florida, and shall remain in full force and effect and be binding upon Owner, his heirs, successors, personal representatives, and assignees, and upon all mortgagees or leasees until such time as the same may be released by the City Manager of designee.

**City Use Only**

Verified by: <i>[Signature]</i>	Date: <i>2/20/2020</i>
Accepted by: <i>[Signature]</i>	Date: <i>2/20/2020</i>

In Witness Whereof, IMBY Inc., a Florida corporation has hereunto set is hand and seal this 28 day of February 2020.

Signed, sealed and delivered in our presence:

Owner: IMBY Inc., a Florida corporation

[Signature]  
Witness Name: Lisa Ziels

By: [Signature]  
Joshua Mothner, its President

[Signature]  
Witness Name: Patricia M Stevens

State of Florida  
County of Monroe

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 19th day of February, 2020 by Joshua Mothner, President of IMBY, Inc., a Florida corporation, on behalf of the corporation. He  is personally known to me or  has produced a driver's license as identification.

[Notary Seal]



[Signature]  
Notary Public  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

## **Exhibit A**

**Lots 29 and 30, Atlantic Shores, according to the map or plat thereof as recorded in Plat Book 3, Page 5, Public Records of Monroe County, Florida.**