

Orig. 9

RESOLUTION NO. 2019- 07

**CITY OF POMPANO BEACH
Broward County, Florida**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND 14TH STREET TOWNHOMES ASSOCIATION, INC. REGARDING THE UNDERGROUNDING OF OVERHEAD UTILITIES; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Agreement between the City of Pompano Beach and 14th Street Townhomes Association, Inc. regarding the undergrounding of overhead utilities, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and 14th Street Townhomes Association, Inc.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 9th day of October, 2018.



LAMAR FISHER, MAYOR

ATTEST:



ASCELETA HAMMONDS, CITY CLERK

Orig. 9

**REIMBURSEMENT AGREEMENT
BETWEEN
CITY OF POMPANO BEACH
AND
14TH STREET TOWNHOMES ASSOCIATION, INC.
REGARDING THE UNDERGROUNDING OF OVERHEAD UTILITIES**

THIS AGREEMENT (the "Agreement") made this 11 day of October, 2018, by and between the CITY OF POMPANO BEACH, a municipal corporation organized under the laws of the State of Florida ("CITY") and the 14TH STREET TOWNHOMES ASSOCIATION, INC., a Florida non profit corporation ("TOWNHOMES").

RECITALS

WHEREAS, TOWNHOMES has asked the CITY to help finance the undergrounding of certain existing overhead public and private utilities, together with appurtenances and appurtenant work as outlined in Exhibit "A," attached hereto and made a part hereof (the "Project");

WHEREAS, the CITY finds that the placement of utilities underground serves a public purpose; and

WHEREAS, the CITY is willing to agree to provide certain funds for the payment of such Project under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the parties resolve and agree as follows:

SECTION 1. INCORPORATION OF RECITALS

1.1 The recitals set forth above in the "Whereas" clauses are hereby accepted by the parties and incorporated into this Agreement.

SECTION 2. TERM OF AGREEMENT

- 2.1 This Agreement shall become effective upon its execution by all parties.
- 2.2 This Agreement shall continue for a period of two (2) years or until the Undergrounding Project is complete, whichever is shorter.

SECTION 3. TOWNHOMES' OBLIGATIONS

3.1 TOWNHOMES shall manage all aspects of the Project, including design, permitting and construction, clearing, demolition and sidewalk/roadway restoration efforts associated with the undergrounding of utilities.

- 3.2 With regard to the Project, the TOWNHOMES shall have sole responsibility for the Project including obtaining all inspections and easements for the Project.
- 3.3 TOWNHOMES shall advance the funds needed to complete the Project including without limitation design, permitting and construction, demolition and sidewalk/roadway restoration efforts associated with the undergrounding of utilities.
- 3.4 TOWNHOMES shall certify that all invoices and bills submitted to CITY are for the actual costs incurred for the Project and have been paid in full.
- 3.5 TOWNHOMES shall pursue the Project to completion unless unforeseen circumstances impact proceeding with the Project. In such event, TOWNHOMES shall notify CITY and this Agreement shall be terminated.
- 3.6 Throughout the term of this Agreement, TOWNHOMES shall procure and maintain liability insurance in the type and amounts set forth in Exhibit "B," attached hereto. Such insurance shall specify that it is issued on an "occurrence" basis. TOWNHOMES shall name CITY as additional insured on said policies and shall provide evidence of such insurance. Such policies shall provide that they may not be canceled without thirty (30) days' notice to CITY.
- 3.7 TOWNHOMES shall defend, indemnify and hold the CITY, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sold negligence of the CITY.
- 3.8 TOWNHOMES shall provide CITY personnel free access during the course of construction as may be needed to determine compliance with requirements of this Agreement. Plans for the proposed installation shall be subject to the final approval of the City Engineer.

SECTION 4. CITY'S OBLIGATIONS

- 4.1 The CITY shall fund forty percent (40%) of the Project costs under this Agreement in an amount not to exceed One Hundred Nine Thousand Dollars (\$109,000.00), which funds shall only be used for the economical design, permitting and construction, clearing, demolition and sidewalk/roadway restoration efforts associated with the undergrounding of utilities.
- 4.2 Upon completion of the Project, including the finalization and acceptance of all permitting and required approvals, TOWNHOMES shall submit to CITY as-builts and final itemized invoices and bills and CITY shall reimburse TOWNHOMES in the amount provided by this Agreement within 90 days of submittal, it being understood that the submitted documents are subject to audit and verification that payment has been made by TOWNHOMES.

SECTION 5. FAILURE TO PERFORM

5.1 Should either party fail to perform any of their respective obligations pursuant to this Agreement, this Agreement may be terminated.

SECTION 6. BOOKS AND RECORDS

6.1 TOWNHOMES shall maintain books, records and documents in accordance with accounting procedures and practices, which sufficiently and properly reflect any and all expenditures of funds under this Agreement.

6.2 TOWNHOMES retain all records related to this Agreement and any Improvements funded hereunder in proper order for at least five (5) years following expiration of this Agreement in accordance with Florida Public Records Act, Chapter 119, Florida Statutes. CITY shall have access to such records, for the purposes of inspection and audit, during this five (5) year period.

6.3 Section 6.2 shall survive the expiration or termination of this Agreement.

SECTION 7. GENERAL PROVISIONS

7.1 *Assignment.* This Agreement may not be assigned or transferred.

7.2 *Notices.* Any notices required by this Agreement shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, or alternatively, may be sent by U.S. certified mail, return receipt requested. Notices shall be provided to the following:

As to the CITY:
City of Pompano Beach
100 W. Atlantic Boulevard
Pompano Beach, FL 33060
Attention: City Manager

With a copy to:
City of Pompano Beach Attorney’s Office
100 W. Atlantic Boulevard
Pompano Beach, FL 33060
Attention: City Attorney

As to TOWNHOMES:
14th Street Townhomes Association, Inc.
2501 NE 14th Street, No. 308
Pompano Beach, FL 33062
Attention: Nick Damasceno, President

7.3 The effective date of any notice shall be the date of delivery of the notice if by personal delivery (provided a receipt is obtained), courier service (provided a receipt is obtained) or prepaid overnight delivery service; or, if mailed, upon the date which the return receipt is signed or delivery is refused, or the notice is designated by the postal authorities as non-deliverable, as the case may be.

7.4 *Liability.* CITY shall not be deemed to assume any liability for the negligent or wrongful acts or omissions of TOWNHOMES or another party. Nothing contained herein shall be construed as a waiver by a party of the liability limits established in Section 768.28 of the

Florida Statutes. Liability for injury to personnel and the loss or damage of equipment shall be borne by TOWNHOMES employing such personnel and owning such equipment.

- 7.5 *Non-Discrimination.* TOWNHOMES agrees no person shall on the grounds of race, color, religion, sex, gender identity or expressions, national origin, age, disability, familial status, marital status or sexual orientation be excluded from the benefits of or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.
- 7.6 *Individual Members Not Liable.* No covenants, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member of the governing body or agent or employee of the CITY in its, his, her, or their individual capacity, and neither the members of the governing body of the CITY, nor any official executing this Agreement, shall be liable personally, or shall be subject to any accountability, by reason of the execution of this Agreement or any act pertaining hereto.
- 7.7 *No General Obligation.* Nothing contained in this Agreement shall constitute or create a lien or be construed or deemed to constitute or create a lien, either legal or equitable, on any of the CITY's revenues or funds. No person shall ever have the right to compel any exercise of the ad valorem taxing power of the CITY to make the payments herein provided against any property of the CITY, nor shall this Agreement constitute a charge, lien or encumbrance, either legal or equitable, upon any property or funds of the CITY, except as expressly herein provided.
- 7.8 *Litigation; Venue; Waiver of Jury.* This Agreement shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law. The parties submit to the jurisdiction of Florida courts. The parties agree that proper venue for any suit concerning this Agreement shall be Broward County, Florida. In any litigation arising under this Agreement, each party shall bear its own costs and attorney fees. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.
- 7.9 *Waiver.* It is hereby agreed to by the parties that no waiver of breach of any of the covenants or provisions of this Agreement shall be construed to be a waiver of any succeeding breach of the same or any covenant.
- 7.10 *Entire Agreement.* This Agreement expresses the entire agreement of the parties, and no party shall be bound by any promises or representations, verbal or written, made prior to the date hereof which are not incorporated herein.
- 7.11 *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be an original, but together such counterparts shall constitute only one instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date set forth above.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

Betty J. Moses

By: [Signature]
LAMAR FISHER, MAYOR

Shelley R. Bartholomew

By: [Signature]
GREGORY P. HARRISON, CITY MANAGER

Attest:

Ascelita Hammond
ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved by:

[Signature]
MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 11 day of October, 2018, by **LAMAR FISHER** as Mayor, **GREGORY P. HARRISON** as City Manager, and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

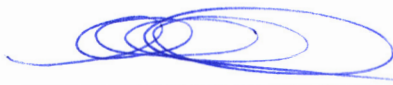
[Signature]
NOTARY PUBLIC, STATE OF FLORIDA
Jennette Forrester Williams
(Name of Acknowledger Typed, Printed or Stamped)

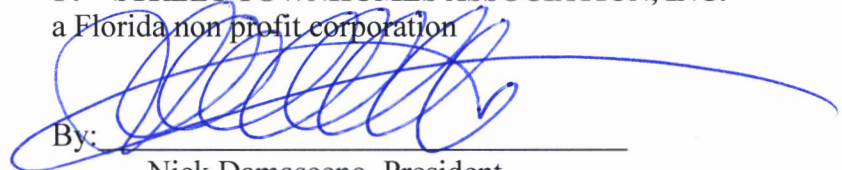
Commission Number



Signed, Sealed and Witnessed
In the Presence of:

14TH STREET TOWNHOMES ASSOCIATION, INC.
a Florida non profit corporation





Print Name: Christiana Felix

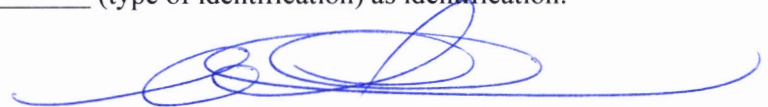
By: _____
Nick Damasceno, President



Print Name: Anders Alexents

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 11 day of Sept, 2018, 2018, by Nick Damasceno as President of **14TH STREET TOWNHOMES ASSOCIATION, INC.**, a Florida non profit corporation, on behalf of the non profit corporation. He is personally known to me or who has produced FL Drivers LIC FOLD525621623280 (type of identification) as identification.



NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

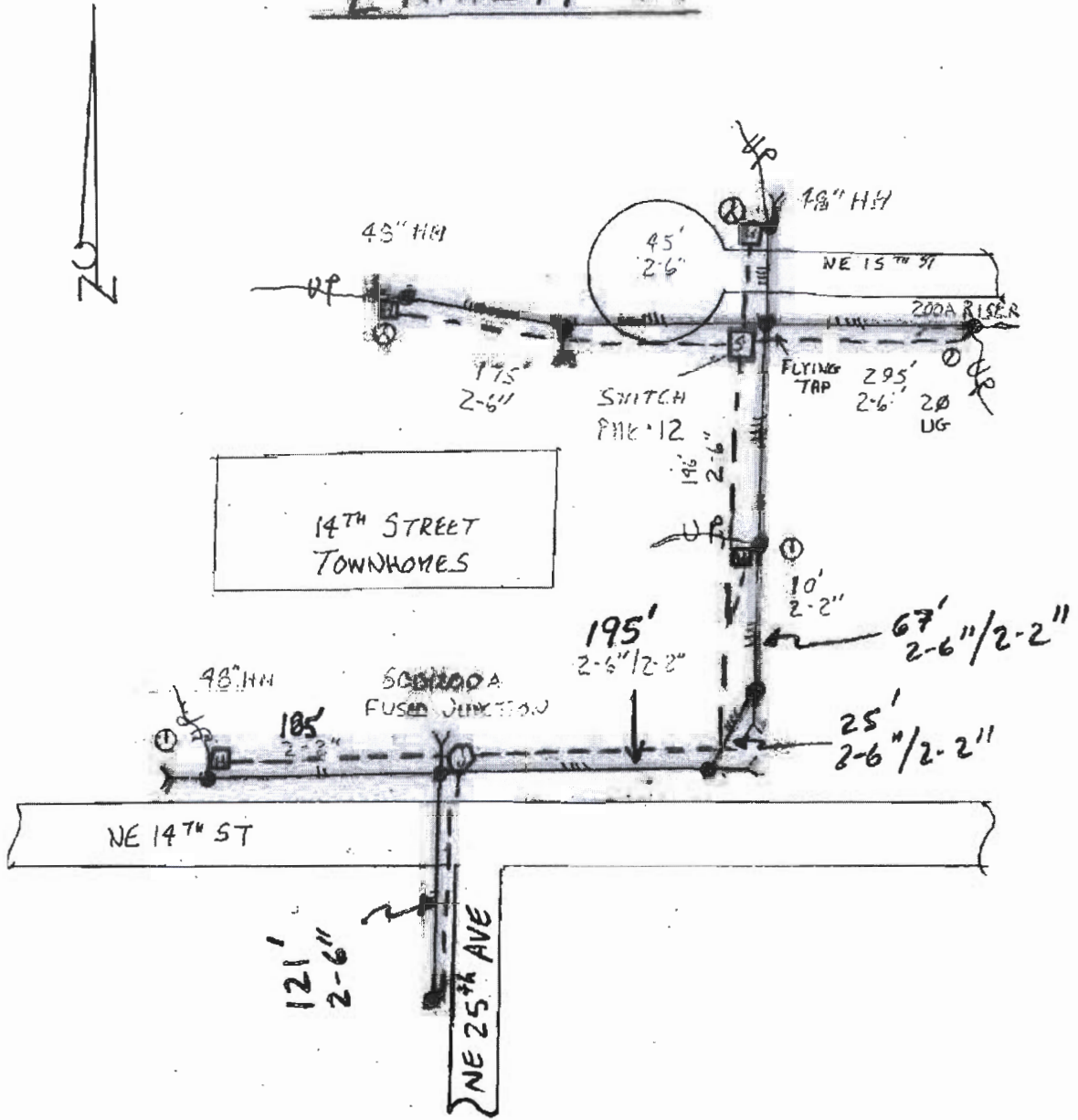


CHRISTIANA FELIX
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF154448
Expires 9/30/2018

Christiana Felix
(Name of Acknowledger Typed, Printed or Stamped)

FF 154448
Commission Number

EXHIBIT A



INSTALL LG
 REMOVE OH

CITY OF PONPANDBEACH
 14th ST. TOWNHOMES
 DET 3-31-14

N. T. S.

