

RESOLUTION NO. 25-04-20

**A RESOLUTION OF THE VILLAGE COUNCIL OF
ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA;
APPROVING THE REFUND OF OVERCHARGED
WASTEWATER FLOW CHARGES FOR CHEECA LODGE;
AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, Cheeca Lodge notified the Village that it was overcharged wastewater flow charges for the property located at 81801 Overseas Highway, Islamorada, FL 33036 (“Subject Property”) from June, 2021 to and including July, 2024, which were paid in the amount of \$554,434.74 (“Excess Amount”);

WHEREAS, the Village has reviewed the invoices and proof of payment of the Excess Amount related to the Subject Property; and

WHEREAS, the Village has determined that the Excess Amount was overcharged and finds it in the best interest of the Village to refund the Excess Amount.

**NOW THEREFORE BE IT RESOLVED BY THE VILLAGE COUNCIL OF
ISLAMORADA, VILLAGE OF ISLANDS, AS FOLLOWS:**

Section 1. Recitals.

The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Agreement; Execution.

The Village hereby approves the Agreement to refund the Excess Amount in the form attached hereto as “Exhibit A.” The Village Manager is hereby authorized to execute the Agreement, and the Village Clerk is hereby authorized to attest to and seal the Agreement, with such changes as may be approved by the Village Attorney.

Section 3. Effective Date. This Resolution shall be effective upon adoption.


SHARON MAHONEY, MAYOR

ATTEST:


VILLAGE CLERK

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


VILLAGE ATTORNEY

Motion to adopt by Don Horton, seconded by Deb Gillis.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS:

Mayor Sharon Mahoney	<u>Yes</u>
Vice Mayor Don Horton	<u>Yes</u>
Councilwoman Deb Gillis	<u>Yes</u>
Councilman Steve Freidman	<u>Yes</u>
Councilman TBD	<u>Yes</u>



AGREEMENT AND GENERAL RELEASE

This Agreement and General Release ("Agreement") is entered into April 8, 2025, by and between NWCL, LLC, property owner of the Cheeca Lodge & Spa ("NWCL") and the Village of Islamorada ("Village"), a Florida municipal corporation (NWCL and Village collectively referred to as the "Parties").

Recitals

WHEREAS, NWCL notified the Village that it was overcharged wastewater flow charges for the property located at 81801 Overseas Highway, Islamorada, FL 33036 ("Subject Property") from June, 2021 to and including July, 2024, which were paid in the amount of \$554,434.74 ("Excess Amount"); and

WHEREAS, the Village has reviewed the invoices and proof of payment of the Excess Amount related to the Subject Property; and

WHEREAS, the Parties agreed to resolve this matter; and

NOW THEREFORE, in consideration of their mutual promises contained herein, the Parties hereby agree as follows:

Terms

1. **Incorporation of Recitals.** The Parties hereby agree and acknowledge that the foregoing Recitals to this Agreement are true and correct and are hereby incorporated into and made a part of this Agreement as if fully set forth herein.

2. **Refund Payment.**

a. The Village shall pay NWCL pursuant to Paragraph 3 below, the sum of Five Hundred Fifty-Four Thousand Four Hundred Thirty-Four Dollars and 74/100 Dollars (\$554,434.74) as a full and complete refund of the Excess Amount of wastewater flow charges for the Subject Property ("Refund Amount").

b. The Refund Amount should be made payable to: NWCL, LLC.

3. **Closing of Refund.**

a. Within thirty (30) days of the execution of this Agreement by the Parties, the Village shall deliver the Refund Amount to NWCL at the Subject Property.

b. Within three (3) business day of the clearance of the Refund Amount, NWCL shall inform the Village in writing that the Refund Amount has cleared.

c. The Excess Payment shall be considered closed upon the clearance of the Refund Amount.

4. **Complete Release.** NWCL hereby voluntarily releases, waives, and forever discharges any and all claims, rights, demands, actions, or causes of actions, of any kind with respect to overcharge of wastewater flow charges from June 2021 through and including July 2024.

5. **Adequate Consideration.** NWCL agrees that the consideration as set forth in paragraph 2 above constitutes adequate and ample consideration for the rights and claims NWCL is waiving and/or forfeiting under this Agreement.

6. **No Lawsuits or Claims by Third Parties.** NWCL waives the rights and claims set forth above and agrees not to institute, or have instituted by anyone, a lawsuit against the Village based on any such claims or rights to additional refunds based on the Excess Amount paid.

7. **Effective Date.** This Agreement will become effective upon the execution of this Agreement by Deddy and the Village.

8. **Public Record.** NWCL understands and agrees that under the Florida Public Records Law, Chapter 119, Florida Statutes, the Village is required to, and shall upon request by any third party, disclose the terms of this Agreement, and the Village shall comply with all federal, state, and local laws requiring disclosure of public records.

9. **Governing Law and Interpretation.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida. If any provision of this Agreement is declared illegal or unenforceable by any court of competent jurisdiction, and if it cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. Venue for any litigation arising from this Agreement will be in Monroe County, Florida.

10. **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties and shall supersede any and all prior agreements, understandings, whether written or oral, between the Parties, except as specified in this Agreement. The Parties acknowledge that they have not relied on any representations, promises, or agreements of any kind made to them in connection with their decision to sign this Agreement except for those set forth in this Agreement.

11. **Amendment.** This Agreement may not be amended except by written agreement signed by all Parties.

12. **Headings.** Section headings are used herein for convenience of reference only and shall not affect the meaning of any provisions of this Agreement.

13. **Acknowledgement.** The Parties acknowledge that they have carefully read and understand this Agreement consisting of four (4) pages and agree that they have not made any representations other than those contained herein. NWCL also acknowledges that she enters into this Agreement voluntarily, without any pressure or coercion and with full knowledge of its significance, and this Agreement constitutes a full and absolute refund and bar as to any and all claims relating to the Excess Amount on the Subject Property, that NWCL had, have, or may have against the Village.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Agreement as of the date set forth below.

[SIGNATURE PAGE FOLLOWS]

NWCL, LLC

BY: Lou Lavaux

PRINT: Lou Lavaux

TITLE: SVP Finance as agent and manager

DATE: April 10, 2025

VILLAGE OF ISLAMORADA

BY: Sheila Denoncourt

PRINT: Sheila Denoncourt

TITLE: Acting Village Manager

DATED: April 10, 2025

ATTEST:

BY: 
VILLAGE CLERK

DATE: April 10, 2025

Approved as to Form, and Legal Sufficiency:

BY: 
VILLAGE ATTORNEY

DATE: April 10, 2025