

This instrument prepared by and returned to:

Barton W. Smith, Esq.
SMITH | OROPEZA | HAWKS
138 Simonton Street
Key West, Florida 33040
305-296-7227

Parcel Identification Number: 000720808-001400

DEVELOPMENT AGREEMENT FOR SUNSET MARINA

THIS DEVELOPMENT AGREEMENT is entered into by and between SUNSET MARINA, LLC, a Florida limited liability company, its successors and/or assigns, as their interests may appear (“Owner”) and the CITY OF KEY WEST, a Florida municipal corporation (herein the “City”) (collectively the “Parties”), pursuant to Sections 90-676 through 90-692 of the City Code and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2014), and is binding on the “Effective Date” set forth herein.

WITNESSETH:

WHEREAS, the Owner is the owner of that certain real property located at 5555 College Road in the City of Key West, comprising approximately 4.2 upland acres and Twenty-Nine (29) wet slips more particularly described in the legal descriptions and Surveys attached as Composite Exhibit “A” and incorporated herein (“Property”); and

WHEREAS, the Property is designated General Commercial (“GC”) under the City’s Comprehensive Plan and Land Development Regulations;

WHEREAS, the upland property is currently comprised of four (4) affordable housing units, a marina ship store and a commercial building consisting of a marina boat repair shop, storage for the marina, office space, and showers and laundry attendant to the marina use.

WHEREAS, Owner has submitted for approval a Major Development Plan and has requested all required Variances from the City for the redevelopment of the property to include up to Sixty-Six (66 residential dwelling units); and

WHEREAS, pursuant to Sections 90-678 and 90-679 of the City Code, and after consultation with the City Planning Department, the Owner requested that the City Commission consider entering into Development Agreement with the Owner; and

WHEREAS, on October 24, 2014 the City Commission pursuant to Resolution 14-6613 approved granting preliminary authorization to enter into the Development Agreement Process and pursue negotiations with the Owner; and

WHEREAS, the Owner is pursuing the appropriate approvals for the redevelopment of the existing infrastructure and uses; and

WHEREAS, the City has provided public notice of the parties' intent to consider entering into this Development Agreement by publishing an advertisement in a newspaper of general circulation and readership in the City and mailing notice to the persons and entities shown on the most recent Monroe County Tax Roll to be the owners of property lying within five hundred (500) feet of the boundaries of the Property subject to this Agreement; and

WHEREAS, the City Planning Board held an advertised public hearing on _____, to consider this Development Agreement, and received and considered the comments and recommendations of the City staff and members of the public, and issued a recommendation of approval to the City Commission; and

WHEREAS, the City Commission held an advertised public hearing on _____, to consider the Development Agreement, and received and

considered the comments and recommendations of the City staff, the Planning Board, and members of the public and granted approval of this Development Agreement; and

WHEREAS, the City has determined that the attached Conceptual Site Plan for the development as described herein, is consistent with the allowed uses, densities and intensities of the City’s Comprehensive Plan and Land Development Regulations, meets concurrency requirements, and is compatible with surrounding land uses; and

WHEREAS, the City has determined that this Development Agreement is in the public interest and will further the health, safety and welfare of the residents of the City of Key West.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. RECITALS. The recitals set forth in the preceding “Whereas” clauses are incorporated herein and form a material part of this Agreement.

B. DEFINITIONS. For the purposes of this Agreement, the terms enumerated below shall have the following prescribed meanings. Terms not defined in this Agreement shall be as defined, first, to the extent not inconsistent with applicable state or federal law, in the City Code, and subsequently in Chapter 163, Florida Statutes, or, if not defined in the Code or statute, shall be understood according to their usual and customary meanings.

1. “Affordable Work Force Housing” means housing as defined in Sections 122-1465 through 122-1472 of the Effective Code.

2. “Building Permit Allocation” means a permit allocation under Division 3 of Article X of the Effective Code.

3. “Conceptual Site Plan” refers to the attached conceptual plan of the Property (Exhibit “B”) that demonstrates the general concepts for future development.

4. “Effective Code” means the Code of Ordinances of the City of Key West in effect on the Effective Date, as defined in Section 6 below.

5. “Effective Comprehensive Plan” means the City’s Comprehensive Plan in effect on the Effective Date.

6. “Effective Date” shall refer to the date that this Development Agreement becomes legally effective, as set forth in Section 31 below.

8. “Major Development Plan Approval” shall mean the approval by the City Commission of the Development Plan submitted by Owner.

11. “Property” or “Properties” shall refer to parcel described in Composite Exhibit “A” that is the subject of this Development Agreement.

12. “Public facilities” shall mean those facilities identified in Section 163.3221 (13), Florida Statutes (2012).

C. TERMS OF AGREEMENT.

1. Legal Description; Ownership and Equitable Interests in the Property. The legal description of the Property subject to this Development Agreement is attached as Composite Exhibit “A” and incorporated herein by reference. The Owner of the Property as of the date of execution of this Development Agreement is Sunset Marina, LLC, a Florida limited liability company. There are no other legal owners of the Property known to the parties to this Development Agreement.

2. Duration of Agreement; Renewal. This Development Agreement shall remain in effect for a period of five (5) years, commencing on the Effective Date. This Development Agreement may be renewed or extended as provided herein.

3. Existing Development. The Property is located in the City of Key West at the following physical addresses: 5555 College Road, Key West, Florida 33040, also identified alphabetically by Site as shown on the Conceptual Site Plan: four (4) affordable deed restricted one bedroom, one bathroom residential units, 2,475 square foot ship store and office, 9,600 square feet consisting of a 2,960 square foot marina boat repair shop, 1,840 square feet of storage attendant to the marina use, 1,125 square feet consisting of showers and laundry facilities attendant to the marina use and 3,675 square feet of office space.

4. Proposed Development: The development shown on the Conceptual Site Plan, as approved by the City Commission:

Market Rate Residential Units – Owner may construct up to Sixty-six (66) residential dwelling units consisting of the existing four residential dwelling units and up to an additional Sixty-two (62) residential dwelling units, along with up to 9,600 square feet of non-residential floor area consisting of the existing marina ship store and office, marina repair shop, storage space, and showers and laundry facilities all of which currently exist today, which facilities may be converted to another non-residential use of equal or lesser impact, prior to the expiration of this Development Agreement subject to the terms of the Effective Code. As of the date of this Development Agreement, Owner has been awarded Twenty-Three (23) Market Rate Residential Dwelling Unit and Thirty-Nine (39) Affordable Residential Dwelling Unit building permit allocations pursuant to the City's

Building Permit Allocation System (the “BPAS Units”). Owner has already developed Four (4) Affordable Residential Dwelling Units. The BPAS Units which have been awarded to Owner shall not expire until the expiration of this Development Agreement, irrespective of when such BPAS Units were acquired by Owner or issued to Owner.

a. Building Heights. No new building shall exceed Forty (40) feet as measured from the crown of the nearest road. The crown of the road is 5.36 feet as depicted on the topographical survey submitted with the Major Development Plan.

b. Affordable Work Force Housing. Prior to the issuance of the certificate of occupancy for the new residential units proposed herein, Owner shall cause to be executed a declaration or restrictive covenant in a form acceptable to the City Attorney restricting the use and occupancy of the Thirty-Nine (39) new Affordable Workforce Housing Dwelling units (“Affordable Units”) subject to the terms of the Effective Code. The form shall include the Effective Code 122-1467 that:

“(a) *New market-rate multifamily residential housing.* At least ten percent of all new multifamily residential units constructed each year shall be low income affordable housing of at least 400 square feet each, as defined herein and 20 percent shall be affordable housing (median income) housing of at least 400 square feet each, as defined herein. Residential or mixed use projects of less than ten residential or mixed use units shall be required to develop at least 30 percent of units of at least 400 square feet each as affordable (median income), but may contribute a fee in lieu for each unit to the affordable work force housing trust fund, if approved by the city commission. The per unit fee shall be \$200,000.00

(representing construction cost, less land cost, of a 400 square foot unit). The 30 percent affordability requirement shall be determined on a project by project basis and not on a city-wide basis. Vested units shall be subject to this subsection if not otherwise governed by law or agreement. For every required affordable housing (median income) unit, a developer may increase the sales or rental rates to affordable housing (middle income) so long as another unit's sales or rental rate is decreased to affordable housing (low income).

(b) *New affordable work force housing.* The maximum total rental and/or sales price for all new affordable work force housing units in a single development shall be based on each unit being affordable housing (moderate income). The rental and/or sales price may be mixed among affordable housing (low income), (median income), (middle income) and (moderate income) in order that the total value of rental and/or sales does not exceed ten percent of the rental and/or sales of all the units at affordable housing (moderate income).”

(c) *Demonstration of continuing affordability.* Demonstration of continuing affordability shall be by deed restriction or any other mutually acceptable method that effectively runs with the land and is binding on owners, successors in ownership, or assigns. The deed restriction shall be in a form provided by the city and shall be for a period of at least 50 years. It shall be recorded in the county records. During the final year of the deed restriction, the city commission may act by Resolution to renew the affordability restriction for an additional 50-year term.

Seven (7) of the new affordable workforce housing units shall comply with Section 122-1467 (a), and the remaining Thirty Two (32) affordable workforce housing units shall comply with Section 122-1467 (c).

The terms of this section shall survive expiration of the Development Agreement.

5. Conceptual Site Plan; Minor Revisions.

a. The Conceptual Site Plan for Sunset Marina dated May 12, 2016, prepared by the Engineer of Record is attached as Exhibit “B” and incorporated herein. The Conceptual Plan is not dimensioned but consists of the general building location and configuration of the structures and the parking and landscape areas on the site and is hereby approved by this Development Agreement. All subsequent site plans, site plan approvals, and building permits shall comply with the Conceptual Site Plan; provided, however, that the site plans that are submitted for Major Development Plan review, may deviate from the Conceptual Site Plan as provided in City Code.

6. Phasing. The Property may be developed in one or more construction phases prior to the expiration of this Development Agreement.

7. Additional Development Conditions. The following additional conditions, terms, restrictions, and other requirements have been determined by the City of Key West to be necessary for the public health, safety, and welfare of its citizens and are acknowledged and accepted by the Owners by their execution of this Development Agreement.

a. **Fire Safety.** As part of a Major Development Plan, the Owner shall submit a Life Safety Plan that shall be approved by the City of Key West Fire Marshal’s Office. The

location and number of fire hydrants required to be installed on the Property shall be coordinated with the City of Key West Fire Marshal's Office and shall be shown on the Life Safety Plan.

b. Timing of Permit Applications. Prior to submitting a building permit application to the City, the Owner shall submit applications for all necessary permits from state, regional and federal agencies, including but not limited to the South Florida Water Management District, Florida Keys Aqueduct Authority, The Utility Board of the City of Key West, and KW Resort Utilities Corp.

c. Impact Fees. The developer shall pay impact fees according to the City's impact fee ordinance applicable to all development in the City of Key West. Pursuant to Section 54-90 of the Effective Code, the applicable impact fee shall be adjusted to credit trips estimated for pre-existing land uses and the portion of the application fee due to the workforce housing component shall be 50%.

d. Additional Conditions by Mutual Agreement. Nothing in this Agreement shall preclude the parties from applying additional conditions, by mutual agreement, during final site plan review or permitting.

e. Green Features. In an effort to preserve natural resources, conserve money on utilities and to increase marketability the Owner shall comply with all provisions required under its BPAS allocation awards.

f. Other Ordinances. Owner will comply with the currently effective provisions of the Art in Public Places Ordinance and the Sustainability Ordinance, as applicable.

8. Annual Progress Reports; Notice of Intent to Proceed. Pursuant to City Code Section 90-688(b), the Owner shall provide the City Planning Department an annual progress report indicating all activities and achievements since the execution of the Development Agreement and, if applicable, since the previous periodic report.

9. Easements: The easements on the Property are attached as Composite Exhibit “C” and incorporated herein.

10. Concurrency and Public Facilities. The required public facilities that will service the development authorized by this Development Agreement, the entity that shall provide the facilities, the date that new facilities, if any, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of development, are set forth in the Concurrency Report or Statement provided under Chapter 94 of the City Code and under Chapter 163 of Florida Statutes, which is attached as Exhibit “D” and incorporated herein. The required public facilities that will serve the development are as follows:

a. Domestic potable water is provided by Florida Keys Aqueduct Authority. Additional coordination is required with the Authority.

b. Electric service is provided by Keys Energy. Additional coordination is required with the entity.

c. Solid waste service shall be provided by the City of Key West waste handling provider. Recycling of all recyclable material shall be required on each site of the Property.

d. Wastewater treatment shall be provided by KW Resort Utilities Corp.

e. Re-Use water shall be provided by KW Resort Utilities Corp. and shall replace any requirement for construction of a cistern(s).

f. Fire service will be provided by the City of Key West Fire Department.

g. All public facilities identified above are available as of the date of this Development Agreement and are projected to be available concurrent with the impacts of the development.

h. Recreational facilities: The development provides for on-site amenities for owners and guests of the Property. The Owner is not required to provide off- site recreational facilities.

11. All Permits Approved or Needed. Owner has submitted an application for a Major Development Plan approval for approval by the City Commission for the development of Sixty (60) additional residential dwelling units in addition to the existing buildings existing on the property today consistent with the Conceptual Site Plan and the Comprehensive Plan and Land Development Regulations in effect at the time of the Major Development Plan application submittal.

12. Mutual Cooperation. The City agrees to cooperate with the Owner in a timely manner providing or granting all permits, licenses, approvals, or consents necessary or appropriate to fully implement this Development Agreement. The City and the Owner agree to cooperate fully with and assist each other in the performance of the provisions of this Development Agreement.

13. Development to Comply with Permits and City Comprehensive Plan and Code Provisions. The development authorized by this Development Agreement shall be developed in accordance with a Major Development Plan approval and all required permits, and in accordance

with all applicable provisions of the Effective Comprehensive Plan and Effective Code as provided herein. No certificate of occupancy issued or final inspection performed for an individual building until all plans for that building are approved by the City and the Owner has complied with all conditions in permits issued by the City and other regulatory entities for that building.

14. Finding of Consistency. The City finds that the Conceptual Plan for the development authorized herein is consistent with the Effective Comprehensive Plan and the Effective Code except as to setbacks, which variances have been requested and are a requirement of approval of the Major Conditional Use application. All development approved pursuant to this Development Agreement shall be consistent with the Conceptual Plan and consistent with the Effective Comprehensive Plan and Effective Code, except as expressly provided for herein.

15. Compliance With Permits, Terms, Conditions, and Restrictions Not Identified Herein. The failure of this Development Agreement to address a particular permit, condition, term, or restriction shall not relieve the Owner of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

16. Laws Governing.

a. For the duration of this Development Agreement, all development of the Property shall comply with and be controlled by this Development Agreement and provisions of the Effective Comprehensive Plan and the Effective Code. The provisions of Affordable Housing of the Effective Code shall survive the expiration of this Development Agreement.

b. Pursuant to Section 163.3233, Florida Statutes (2014), the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that: (a) the new laws and policies are not in conflict with the laws and policies

governing this Development Agreement and do not prevent redevelopment of the land uses, intensities, or densities set forth in this Development Agreement; (b) the new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that it shall apply to a development that is subject to a Development Agreement; (c) the new laws and policies are specifically anticipated and provided for in this Development Agreement; (d) the City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Development Agreement; or (e) the Development Agreement is based on substantially inaccurate information supplied by the Owner. However, nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

c. If state or federal laws enacted after the effective date of this Development Agreement preclude any party's compliance with the terms of this Development Agreement, this Development Agreement shall be modified or revoked as is necessary to comply with the relevant state or federal laws. However, this Development Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common law.

17. Amendment, Renewal, and Termination. This Development Agreement may be amended, renewed, or terminated pursuant to City Code Section 90-689 as follows:

a. As provided in City Code Section 90-689 and Section 163.3237, Florida Statutes (2014), this Development Agreement may be amended or cancelled by mutual consent of the parties or their successors in interest by an instrument in writing signed by the parties or their successors, as applicable.

b. As provided in Section 163.3229, Florida Statutes (2014), this Development Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirements in Section 163.3225, Florida Statutes (2014): the City shall conduct at least two (2) public hearings, one of which may be held by the local planning agency at the option of the City. Notice of intent to consider renewal of the Development Agreement shall be advertised approximately seven (7) days before each public hearing in a newspaper of general circulation and readership in the City of Key West, Florida, and shall be mailed to all affected property owners before the first public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing. The notice shall specify the location of the land subject to the Development Agreement, the development uses on the Property, the population densities, the building intensities, and height and shall specify a place in which a copy of the Development Agreement can be obtained.

c. Pursuant to Section 163.3235, Florida Statutes (2014), this Development Agreement may be revoked by the City if the City finds, on the basis of competent substantial evidence, that there has been a failure to comply with the terms of this Agreement by Owner.

18. Breach of Agreement and Cure Provisions.

a. If the City concludes that there has been a material breach of this Development Agreement, prior to revoking this Agreement, the City shall serve written notice on the Owner identifying the term or condition the City contends has been materially breached and providing the Owner with sixty (60) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Development Agreement. Each of the following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the Owner, shall be

considered a material breach of this Development Agreement: (1) failure to comply with the provisions of this Agreement; and (2) failure to comply with terms and conditions of permits issued by the City for the development authorized by this Development Agreement.

b. If the Owner concludes that there has been a material breach in the terms and conditions of this Development Agreement, the Owner shall serve written notice on the City identifying the term or condition that the Owner contends has been materially breached and providing the City with sixty (60) days from the date of receipt of the notice to cure the breach. The following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the City, shall be considered a material breach of this Agreement: failure to comply with the provisions of this Development Agreement; or failure to timely process any application for site plan approval or other development approval required to be issued by the City for the development authorized by this Development Agreement.

c. If a material breach in this Development Agreement occurs and is not cured within the time periods provided above, the party that provided notice of the breach may elect to terminate this Agreement as provided herein or may seek to enforce this Agreement as provided by herein.

d. If the City waives a material breach in this Development Agreement by the Owner, such a waiver shall not be deemed a waiver of any subsequent breach.

19. Notices. All notices, demands, requests, or replies provided for or permitted by this Development Agreement, including notification of a change of address, shall be in writing to the addressees identified below, and may be delivered by any one of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered

mail, return receipt requested, postage prepaid; or (c) by deposit with an overnight express delivery service with a signed receipt required. Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

TO THE OWNER:

Barton W. Smith, Manager
Sunset Marina, LLC
5555 College Road
Key West, Florida 33040

With a copy by regular U.S. Mail to:

Gregory S. Oropeza, Esq.
Smith | Oropeza | Hawks
138 Simonton Street
Key West, Florida 33040
Telephone: (305) 296-7227
Fax: (305) 296-8448

TO THE CITY:

City Planning Director
P.O. Box 1409
Key West, FL 33040
Telephone: (305) 809-3720
Fax: (305) 809-3739

With a copy by regular U.S. Mail to:

City Manager and City Attorney
P.O. Box 1409
Key West, FL 33041-1409
Telephone: (305) 809-3888
Fax: (305) 809-3886

20. Enforcement. In accordance with Section 163.3243, Florida Statutes (2014), any party to this Development Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes (2014), or the state land planning agency may file an action

for injunctive relief in the circuit court of Monroe County, Florida, to enforce the terms of this Agreement or to challenge the compliance of this Agreement with the provisions of Sections 163.3220-163.3243, Florida Statutes (2014).

21. Conflicts. In the event of a conflict between the provisions of this Development Agreement and City ordinances, the terms of this Agreement shall control.

22. Binding Effect. This Development Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns, and personal representatives.

23. Assignment. This Development Agreement may be assigned by the Owner, without approval by the City so long as Owner provides written notification to the City.

24. Drafting of Agreement. The parties acknowledge that they jointly participated in the drafting of this Development Agreement and that no term or provision of this Development Agreement shall be construed in favor of or against either party based solely on the drafting of the Agreement.

25. Severability. In the event any provision, paragraph or section of this Development Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the enforceability or the validity of the remaining provisions of this Agreement.

26. Applicable Law. This Development Agreement was drafted and delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida.

27. Use of Singular and Plural. Where the context requires, the singular includes the plural, and the plural includes the singular.

28. Duplicate Originals; Counterparts. This Development Agreement may be executed in any number of originals and in counterparts. All duplicate originals shall bear the verification of original recordation. Only one original is required to be produced for any purpose.

29. Headings. The headings contained in this Development Agreement are for identification purposes only and shall not be construed to amend, modify, or alter the terms of the Agreement.

30. Entirety of Agreement; This Development Agreement incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, or understandings regarding the matters contained herein. The parties agree that there are no commitments, agreements, understandings, or development orders concerning the subjects covered by this Development Agreement that are not contained in or incorporated into this Agreement and, accordingly, no deviation from the terms hereof shall be predicated upon any prior representations, agreements or approvals, whether written or oral. This Development Agreement contains the entire and exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing signed by the parties.

31. Recording; Effective Date. The City shall record this Development Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the approval of the fully executed Development Agreement by the state land planning agency. A copy of the recorded Development Agreement showing the date, page and book where recorded shall be submitted to the Owner and to the state land planning agency by hand delivery, registered or certified United States mail, or by a delivery service that provides a signed receipt showing the date of delivery, within ten (10) days after the Development Agreement is recorded. This Development Agreement

CITY OF KEY WEST

_____, 2013 By: _____

CITY CLERK`