

Redlined/Strikethrough Development Agreement

Parcel ID Number 00006730-~~000000~~000200

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR
THE PEARY COURT AFFORDABLE HOUSING COMPLEX**

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT(hereinafter
“Development Agreement”) is entered into by and between ~~PEARY COURT HOLDINGS,~~
~~LP~~Peary Court Apartments LLC, a Delaware ~~limited partnership~~Limited Liability Company (herein
referred to as the “Owner”) and- the CITY OF KEY WEST, a Florida municipal corporation
(herein the “City”) (collectively the “Parties”), pursuant to Chapter 90, Article IX of the City Code
of Ordinances (the “Code”), and the Florida Local Government Development Agreement Act,
Sections 163.3220-163.3243, *Florida Statutes*, and is binding on the “Effective Date” set forth
herein.

WITNESSETH:

WHEREAS, the Owner is the record title holder of the Peary Court Affordable Housing
Complex (herein referred to as the “Property”, or “Peary Court”) located in the City of Key West,
as more specifically described in Exhibit A-~~hereto;-~~ Survey and Legal Description attached hereto
as Exhibit A; and

WHEREAS, The current owner, Peary Court Apartments LLC purchased the Property on
July 18, 2016 (see Attached Exhibit B- Special Warranty Deed) and wishes to amend the current
Development Agreement, Approved by City Resolution No. 16-40 to reflect changes in the
demand for the types of affordable housing to be provided at the Property and to recognize the cost
of providing affordable housing requires a more cost-effective design of unit types.

WHEREAS, Peary Court currently has vested entitlements for 160 ~~existing~~ dwelling units (157 constructed units and 3 units involuntarily destroyed by fire) historically used for military housing, and has (pursuant to a duly-issued demolition permit and the Historic Architectural Review Commission (HARC) approval) demolished a previously-existing -10,000 square foot commercial building; and

~~WHEREAS, the 160 existing dwelling units on Peary Court were constructed following the City's adoption of Resolution No. 92-75 (Exhibit B hereto), which acknowledged the historic use of Peary Court for housing and resolved to support reconstruction of the Peary Court housing; and~~

~~WHEREAS, On April 6, 2011, the City was notified that the United States Navy, with its concessional housing partner, Southeast Housing, LLC, would be pursuing the sale of the property known as the Peary Court Housing Complex and all of the structures on it, to a private entity; and~~

~~WHEREAS, the City determined that sale to a private owner would require changing the Property's Military (M) Future Land Use designation, with corresponding amendments to the Future Land Use Element, the City's Land Development Regulations and the City's Official Zoning Map; and~~

~~WHEREAS, the City conducted duly noticed public hearings on a proposed HSMDR Future Land Use Map amendment, including a transmittal hearing by the City Commission on May 29, 2012 and culminating in an adoption hearing on September 18, 2012, during which the City Commission considered the criteria identified in Code Section 90-555 together with the recommendations of City staff, DEO, and comments from the public; and~~

~~WHEREAS, on September 18, 2012, the City Commission adopted Ordinance No. 12-32 (Exhibit C), defining a new Future Land Use Map designation of "Historic Special Medium~~

~~Density Residential” (HSMDR), and applying that designation to the Property, and~~

~~WHEREAS, duly noticed public hearings on the HSMDR Zoning District amendment ordinance were held by the City Commission on September 5, 2012 and September 18, 2012, and in its deliberations the City Commission considered the criteria identified in Code Section 90-251 together with the recommendations of City staff and public comments; and~~

~~WHEREAS, on September 18, 2012, the City Commission adopted Ordinance No. 12-33 (Exhibit D) amending the zoning of the Property from Military (M) to Historic Special Medium Density Residential (HSMDR); and~~

~~WHEREAS, on October 24, 2012, the State of Florida Department of Economic Opportunity (DEO) found the Comprehensive Plan Future Land Use Map Historic Special Medium Density Residential (HSMDR-FLUM) amendment to be consistent with the Principles for Guiding Development for the City of Key West Area of Critical State Concern as set forth in Section 380.0552(7), Florida Statutes, and accordingly issued its Notice of Intent to find Ordinance No. 12-32 compliant (Exhibit E); and~~

~~WHEREAS, on November 20, 2012 the State of Florida Department of Economic Opportunity (DEO) found the amendments to the Land Development Regulations, approved through Ordinance No. 12-33, for the Historic Medium Density Residential (HSMDR) Zoning District, to be compliant (Exhibit F), and the amendments became effective as of December 12, 2012; and~~

~~WHEREAS, WHEREAS, City Code Section 122-611(e) requires submission and approval of a Development Agreement with any development plan submitted for approval on the a~~ property within the HSMDR Zoning District, thereby superseding the requirement in Code

Section 90-679 for the City Commission to make a preliminary determination of whether or not to enter into a Development Agreement and to pursue negotiations with the Owner; and

WHEREAS, pursuant to recommendation of the Department of Economic Opportunity (DEO); the City Commission, through Ordinance No. 12-33, authorized an exception within the HSMDR Zoning District to the affordable housing and workforce housing Ordinance criteria, so that the development of Peary Court ~~requires~~would allow the addition of 48 affordable work force housing units (calculated at 30% of the 160 existing residential units); and

WHEREAS, Owner has identified a ~~portion~~method of ~~the Property, consisting of land previously occupied by the demolished commercial building and vacant land adjacent thereto (collectively, “the Affordable Housing Site”), on which forty eight (48)~~constructing fifteen (15) new affordable work force housing ~~units shall~~one-bedroom units within the existing triplex and quadraplex units (“Conversion Units”). Thirty three (33 two-bedroom units will be constructed in discrete clusters in new buildings that will not require the demolition of any existing structures. Site layout, open space, parking, landscape and drainage, as depicted on the attached Affordable Housing Survey Site Plan (Exhibit GC, referred to herein as the “Site Plan”);”) will meet all the requirements of the City Land Development Regulations; and

WHEREAS, on ~~August 28, 2013~~July 18, 2016, the Owner executed a Declaration of Affordable Rental Housing Restrictions (~~the “Declaration”;~~Exhibit D), which was recorded at Monroe County Official Record Book ~~2648, 2806, Page 182,~~ subsequently amended by Amendment to Affordable Housing-1651, (hereinafter being referred to as the “Deed Restriction (the “Amendment”), which was recorded at Monroe County Official Record Book 2657, Page 648-650 (the Declaration, as amended by”) by which Owner encumbered the entire Property so that all existing and all newly constructed units will be restricted as set forth in the Amendment, being

~~referred to herein as the “Deed Restriction”), by which the Owner undertook to continue the use of 48 dwelling units on the Property as affordable housing pending construction of 48 new affordable housing units; and~~

~~WHEREAS, the Owner submitted for approval by the City of Key West an application for major development plan approval for the addition of 48 new affordable residential dwelling units on the Affordable Housing Site consistent with the attached Site Plan in Exhibit G; and~~

~~WHEREAS, on October 15, 2015 the City of Key West Planning Board approved Resolution No. 2015-48 for a Major Development Plan, a copy of the Resolution being attached hereto as Exhibit I; and~~

WHEREAS, the Site Plan has been reviewed and approved by the Historic Architectural Review Commission ~~(referred to in this Agreement as “HARC”) to ensure that the mass, scale, size, proportion, and screening of the proposed new affordable housing structures are compatible with the existing community fabric and /or designated staff; and~~

WHEREAS, on ~~October 15, 2015,~~ _____, the City of Key West Planning Board approved Resolution No. ~~2015-049, 21-~~ _____, recommending approval of the Development Agreement, a copy of the Resolution being ~~attached~~ hereto as Exhibit ~~JE~~; and

WHEREAS, on ~~date,~~ _____ the City Commission considered the comments and recommendation of the City staff, the Planning Board, and comments of members of the public and approved Resolution No. ~~16—21—~~ (Exhibit ~~K—~~) ~~granting Major Development Plan approval, and approved Resolution No. 16— (Exhibit LF)~~ authorizing development of the Affordable Housing ~~Site~~units as provided in this Development Agreement; and

WHEREAS, the City has determined that the new development proposed in the Site Plan is consistent with the City's Comprehensive Plan and ~~land-development-regulations~~Land Development Regulations and is compatible with surrounding land uses; and

WHEREAS, the City has determined that this Development Agreement is consistent with the Comprehensive Plan, the ~~land-development-regulations~~Land Development Regulations, and the Florida Statutes Principles Guiding Development for the City, and further finds that this Development Agreement is in the public interest, and will further the health, safety, welfare, and goals of the residents of the City.

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 Development Agreement, the following terms shall have the following meanings. Terms not defined in this Development Agreement shall be as defined in the City Code, 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 Article V, Division 10 of Chapter 122, Sections 122-1465 through 122-1467 of the City Code as it existed on the date of execution of the Deed Restriction.

~~2. "Baseline Green Building Certification" means the Florida Green Building Coalition (FGBC) Bronze level certification or Leadership in Energy and Environmental Design (LEED) certification.~~

~~3.2.~~ “Building Permit Allocation” means a residential permit allocation under Article ~~VX~~, Division ~~4011~~, of Chapter ~~122108~~, Sections 108-986 through 108-998 of the City Code.

~~4.3.~~ “City Code” means the Code of Ordinances of the City of Key West in effect on the Effective Date of this Development Agreement.

~~5.4.~~ “Comprehensive Plan” means the City’s Comprehensive Plan in effect on the Effective Date of this Development Agreement.

~~6.5.~~ “Development”, “Redevelopment”, or “Redevelopment Plan” shall refer to the development of the Property for the uses, densities and intensities permitted by this Development Agreement, subject to the conditions, obligations, restrictions and terms contained herein.

~~7.6.~~ “Site Plan” shall refer to the Affordable Housing Survey Site Plan dated _____, -approved by the City Commission in Resolution ~~16—21—~~, which is attached hereto as Exhibit C.

~~8.7.~~ “Effective Date” shall refer to the date this Development Agreement becomes effective, as set forth in herein.

~~9.—“Prerequisite Standards” shall mean “prerequisites, major construction/renovation” as defined in City Code Section 86-9 and are the minimum standards for new development required in order to be eligible to receive an allocation award from the City BPAS, including Baseline Green Building Certification, pursuant to City Code Section 108-995.~~

~~10.8.~~ “Property” shall refer to the parcel described in Exhibit “A” that is the subject of this Development Agreement.

~~11.9.~~ “Public facilities” means those facilities identified in Section 163.3221, *Florida Statutes*.

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 hereto as Exhibit “A” and incorporated herein by reference. As evidenced by the Special Warranty Deed conveying the Property (a copy of which is attached hereto as Exhibit ~~“M”~~), ~~the Owner of the Property is Peary Court Holdings, LP, a Delaware limited partnership formerly known as Peary Court Holdings, LLP, whose general partner is Peary Court Advisors, LLC. Peary Court Advisors, LLC (“Advisors”) is a Delaware limited liability company whose Manager is Wexford Capital LP (“Wexford”), a Delaware limited partnership authorized to do business in Florida, whose address is 411 W. Putnam Ave., Greenwich, CT 06830. The general partner of Wexford is Wex GP LLC, also known as Wexford GP LLC, whose address is 411 W. Putnam Ave., Greenwich, CT 06830, and whose executive officers are the same as Advisors. Peary Court Holdings, LP is registered with the Florida Secretary of State as a foreign limited partnership doing business in Florida. The limited partners of Peary Court Holdings, LP are as follows:~~

- ~~—Peary Court Fund Holdings L.P. and 13th Floor Sponsor, LLC; the address of both is 4949 SW 7th Ave., Miami, FL 33155, and their manager is Arnaud Karsenti.~~
- ~~—White St Partners, LLC, a Florida limited liability company whose address is 150 SE 2d Ave., Suite 800, Miami, FL 33131, and whose members are IVG1 LLC, a Florida limited liability company (Everett M. Atwell, Jr. and James Landers, Managers) and Integra Real Estate, LLC, a Florida limited liability company (Paulo de Melo and Nelson Stabile, Managers; additionally, Victor M. Ballestas is a non-manager principal of Integra Real Estate).~~
- ~~—Wexford Spectrum Fund, L.P., whose address is Wexford Plaza, 422 W. Putnam Ave., Greenwich Conn. 06830, and whose executive officers are Joseph Jacobs, President, and Arthur Amron, Vice President.~~

~~White St. Partners, LLC, has been designated by Owner as the memberB”), the Owner of the~~
~~Property is Peary Court Apartments LLC and such entity is~~ responsible for negotiation of this Agreement and for development of the Property.

2. Duration of Agreement; Renewal. This Development Agreement shall remain in effect for a period of five (5) years, commencing on the Effective Date set forth below. This Development Agreement may be renewed or extended pursuant to City Code Section 90-682(a)(2) and *Florida Statute* § 163.3229.

3. Existing Development. The Property consists of the following development located in the City of Key West on the historic Peary Court military housing site: 160 existing ~~dwelling units (157 units and 3 units involuntarily destroyed by fire, entitled to be rebuilt as of right). The previously existing 10,000 square foot commercial building, previously utilized as a drive thru bank, has been demolished by Owner pursuant to a duly issued demolition permit.~~vested dwelling unit entitlements .

4. Site Plan.

a. Uses, Densities and Intensities. The residential uses, densities and intensities, existing and proposed, conform with HSMDR Zoning District standards. The Property is allowed a maximum density ~~density~~ of 8.6 units per acre. The Site Plan proposes up to an additional 48 units, for a total of 208 residential dwelling units on the Property which is equivalent to 8.6 units per acre. No commercial development is proposed.

b. Building Permit Allocations. The Site Plan encompasses construction on the Property of up to 48 new affordable work force housing units. The City through its adopted Comprehensive Plan has reserved to the Property 48 affordable residential dwelling unit

allocations from the City of Key West Building Permit Allocation System required to construct the new affordable work force housing units as depicted on the Site Plan. ~~That allocation~~The forty eight (48) BPAS Allocations reserved and committed to the Peary Court site shall each be ~~awarded~~individually assigned to a particular address and unit at the time the City issues the building ~~permits~~permit for ~~the~~each affordable work force housing ~~units~~unit.

c. **Conformity with Majorthe Land Development Plan.Regulations Development Standards.** The following development features shall conform to the ~~Major Development Plan as approved by City Commission Resolution No. 16-039 (Exhibit K)~~ and to ~~the specifications set forth on~~Land Development Regulations in effect the ~~Site Data sheet attached as Exhibit N~~time of this Development Agreement:

1. Open Space.
2. Recreation Areas, which shall conform to the access requirements of Paragraph ~~109~~(j), below.
3. Types and locations of units, which shall be subject to adjustment within the standard deviations range set forth in Paragraph ~~65~~5.
4. Parking for vehicles and bicycles ~~shall be~~is provided at the locations depicted on the Site Plan, ~~in the quantities specified in Exhibit N.~~
5. Landscaping, which ~~shall also conform to requirements imposed~~is already in place will be augmented by ~~the Tree Commission. Buffers shall conform to the dimensions~~new plantings and ~~quantities set forth on Exhibit N.~~the removal of certain exotic plantings, while maintaining mature shade trees

6. Solid waste and recycling container storage, ~~which shall also conform to the requirements of Paragraph 10(e), below~~ is currently in place, will be augmented by new facilities to serve the new units.

7. Fencing.

8. Utilities and Mechanical Equipment, ~~installed as provided in Paragraph 10, below.~~

9. Streets. The existing internal streets providing access to the affordable housing units shall be retained, and ~~internal streets shall be extended and improved, at Owner's expense, slightly modified to better serve all units as depicted on the Site Plan subject to adjustment of location within the standard deviations range set forth in Paragraph 6(a).~~

5. **Minor Site Plan Modifications.** Minor Site Plan modifications shall require approval pursuant to City Code Section 108-91(e). ~~Adjustment C. including , but not limited to, those listed in such section , as well as minor additions of affordable housing unit size sidewalks to the new units and locationssmall reductions of improvements as depicted on the Site Plan may be authorized by the City Planner upon submission of building permit applications, within the following ranges of standard deviations:~~

~~(a) locations of buildings and other improvements: deviations not exceeding ten (10) feet, except for deviations for which the Land Development Regulations require a variance.~~

~~(b) unit size: deviations not exceeding twenty percent (20%) of the floorpervious area of the unit or units, provided that minimum unit size shall comply with the provisions of Paragraph 7, below, to accommodate the sidewalks.~~

6. Affordable Work Force Housing; Timing of Development; Deed Restriction.

The Owner shall be allowed to develop up to forty-eight (48) affordable work force housing units, all of which shall - be at least 400 square feet in size pursuant to City Code Section 122-1467, subject to the following conditions:

a. ~~Owner shall reserve, maintain and operate 48 existing dwelling units on the Property as interim affordable housing, subject to the provisions of the Deed Restriction. That obligation to maintain the 48 units of interim affordable housing shall expire upon issuance of a certificate of occupancy for the~~Upon issuance of a Certificate of Occupancy for any of the 48 new affordable work force housing units.

b. ~~Upon issuance of a Certificate of Occupancy for the 48 new affordable work force housing units, the Deed Restriction, the newly constructed units (including Conversion Units) shall be amended by Owner so as to amend the description of the Property subject to the Declaration, by substituting the description of the new units for those units identified on Exhibit “A” to the Amendment, subject to the current Deed Restriction applicable to the entire site. Owner shall provide a copy of the recorded amendment, showing the book and page where recorded, Certificate of Occupancy for each new unit to the City Planning Department and the Key West Housing Authority within two weeks after recordation~~issuance.

c. The affordable work force housing unit income categories and rental rates for the 48 new affordable work force housing units shall conform to the provisions of the Deed Restriction. ~~The classification of the identified units may vary, provided that the total value of rental does not exceed ten percent (10%) of the rental of all the units at affordable housing (moderate income) pursuant to City Code Section 122-1467(c).~~

~~—d.— The new affordable housing units shall be available for persons who meet and continue to meet the eligibility requirements for affordable work force housing set forth in City Code Section 122-1469. Continuing compliance with those eligibility requirements shall be determined by the Key West Housing Authority, or such other entity as may be designated by City, with an annual report to the City Manager verifying compliance with Code Section 122-1467(e).~~

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:

a. Fire Safety. The Redevelopment Plan shall ~~include no fewer than~~rely upon the existing number of fire hydrants and/or fire wells required to conform to all applicable fire safety requirements, as determined by the Fire Marshal of the City of Key West. On-site fire protection shall be provided in accordance with the ~~2013 Fire Prevention code, Ch. 69A-60, F.A.C.~~2020 (7th Edition) Fire Prevention code, Ch. 69A-60, F.A.C. Notwithstanding the foregoing Owner shall be entitled to rely upon the fire protection methods specified in the Information Bulletin Number 1 to contractors prepared by the architect of record, Bert Bender, dated July 28, 2021, which is Exhibit G.

b. Timing of permit applications. Prior to submitting a building permit application to the City, the Owner shall secure all permits required for that work pursuant to applicable state, regional and federal regulations, ~~including but not limited to the South Florida Water Management District,~~ and shall also secure any necessary permits or authorizations from the City of Key West Utilities Dept.

c. Fair Housing Requirements. ~~New units constructed on the~~The Property shall continue to comply with all applicable requirements of the ADA and state and federal fair housing acts.

~~d. **Signage.** A Signage Plan shall be submitted to the City Planning Department for approval prior to the issuance of building permits for the new affordable housing units.~~

~~e. **Building Heights.** Building heights~~ New buildings' height shall not exceed the maximum building height allowed in the HSMDR Zoning District applicable to the Property. Existing buildings converted to include new units will not have roof elevations changed from that existing as of the time of this Development Agreement. For the purpose of measuring building heights of new residential and accessory structures other than interior fences, the- base elevation shall be 6.09 feet NGVD, which is the elevation of the crown of the road on White Street immediately in front of the main entrance to the Property at the intersection of White and Southard Streets (See site elevation determination by ~~Donald Craig~~ the City of Key West, attached hereto as Exhibit ~~O~~ H).

~~f. **Site Design.**~~ e. **Site Design.** The development of the Property shall be consistent with all bulk and site design requirements in the City Code, including but not limited to open space, setbacks and buffering, lighting, landscaping, parking, utilities and stormwater management as determined by the Major Development Plan required for the Property redevelopment.

~~g. **Impact Fees.**~~ g. **Impact Fees.** Owner shall pay impact fees (i.e., sewer, solid waste, traffic and library impact fees) for the 48 new affordable housing units, in the amounts set forth in the impact fee schedule established by the City Code at the rates in effect on the date of building permit issuance, unless waived by the City Commission to the extent allowed by law.

~~h. **Energy Efficiency / Green Building.**~~ g. **Energy Efficiency / Green Building.** Owner shall sustainably construct the Conversion Units in conformance with the Prerequisite Standards for minor improvements to

existing structures recognized in the BPAS system, pursuant to City Code Section 86-9 and 108-997 (b) (2), or shall be entitled to an exemption to the prerequisites according to Section 108-997(b)(1)d. because 100% of the units will be affordable work force housing units. The choice shall be at the sole discretion of the Owner.

~~h. Flood damage avoidance.~~ ~~h. Wind Load.~~ The finished floor elevation of the first habitable floor of all Conversion Units, units shall not be less than the finished floor elevation of the compliant structures in which they will be constructed. The finished floor elevations of new units in new buildings shall meet the requirements of the City Building and Floodplain management regulations.

~~i. Wind Load.~~ Owner shall ensure that all new structures (including doors, windows, and cladding) meet all applicable codes, to withstand the peak wind loads specified in the ~~2013~~2020 Florida Building Code: (7th Edition).

~~i. 8. Annual Progress Reports.~~ . As required by the Deed Restriction (Exhibit D) annual reports on the project's consistency with City's affordable housing income and eligibility requirements shall be submitted to the Key West Housing Authority.

~~9 Energy Efficiency / Green Building.~~ Owner shall sustainably construct the new residential structures in conformance with the Prerequisite Standards for BPAS, including Baseline Green Building Certification, pursuant to City Code Section 86-9 and 108-995.

~~j. Flood damage avoidance.~~ The finished floor elevation of the first habitable floor of all new units shall be no less than 1.5 feet above base flood elevation.

~~9. Annual Progress Reports.~~ 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.~~

~~10.~~ **Public Facilities.** All required public facilities to serve the project are available as of the date of this Development Agreement, and capacity for each is projected to be available concurrent with the impacts of development. The following list identifies required public facilities that will service the development authorized by this Agreement, who shall provide the facilities, ~~what new facilities will be constructed;~~ and ~~a schedule to assure that~~ public existing facilities are available and concurrent with the impacts of additional development:

a. **Potable Water.** Domestic potable water is provided by Florida Keys Aqueduct Authority: (FKAA). Adequate domestic potable water transmission and potable water source capacity exist for this project. ~~No~~ There is no need for new potable water facilities, ~~other than relocation of internal distribution lines, water meters, valves, etc., is anticipated. Those distribution lines shall be installed by to serve the Owner prior to substantial completion of Conversion Units. The new buildings housing the remaining new units that they will supply be provided with water facilities to FKAA standards.~~

b. **Electric Service.** Electric service is provided by Keys Energy Services: (KEYS). No new ~~electric service~~ facilities, ~~other than the relocation of internal distribution lines, needs~~ are anticipated. ~~Those underground distribution lines shall be installed by the Owner and/or KES prior to issuance of a certificate of occupancy for the~~ serve the Conversion Units. The new buildings housing the remaining new units that they will supply be provided with electric facilities to KEYS standards

c. **Solid Waste.** Solid waste service is provided by the franchisee of the City of Key West, and adequate capacity exists for this development. ~~All solid waste from units other than multi-family units shall be limited to individual containers per household, subject to City Ordinance requirements for removal from the streets as if the internal private streets were public.~~

~~_____ d. **Wastewater.** Wastewater treatment shall be provided by City of Key West. Developer shall construct such additional or relocated wastewater collection facilities as may be required to deliver sewage generated on the Property to the City's wastewater collection facilities.~~

_____ d. **Wastewater.** Wastewater treatment shall be provided by the City of Key West Wastewater Treatment Plant, and adequate capacity exists for this development.

_____ e. **Protective Services.** Protective services other than parking enforcement shall be provided by the City of Key West.

_____ f. **Transportation.** According to the Traffic Impact statement provided ~~by~~with the ~~Owner and attached as Exhibit P~~Major Development Plan, no ~~net additional~~significant traffic impacts are anticipated. All roadways within the Property shall remain private roads.

_____ g. **Schools.** Adequate school facilities are anticipated to serve any students who may reside in the dwelling units developed under the Redevelopment Plan.

_____ h. **Existing Facilities.** 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 compliant with the ~~Redevelopment~~Major Development Plan.

_____ i. **Stormwater.** ~~Owner shall construct stormwater collection and retention facilities compliant with City Code as may be required pursuant to the Environmental Resource Permit ("ERP") that Owner shall apply for and receive from the South Florida Water Management District. Those stormwater management facilities shall be~~currently installed ~~by Owner prior to~~

~~issuance~~ are sufficient and meet the concurrency standards of certificates of occupancy for the City as demonstrated by the 48 new affordable housing units. drainage plan and report approved with the Major Development Plan.

j. Recreational facilities. The ~~Site Plan~~ existing development currently provides for on-site amenities for residents and guests of the 48 new affordable housing units. Private recreational facilities ~~shall be~~ are currently provided on the Property to serve the needs of the residents of the 48 new affordable housing units as well as the other residents on the Property. Additionally, public recreational facilities exist in the vicinity of Peary Court, adequate to serve the recreational needs of residents.

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10. Required Permits and Approvals.

Nothing in this Development ~~Agreement~~ Agreement shall be deemed to obviate the necessity of the Owner's compliance with terms and provisions of each of the required approvals listed below. ~~Prior to City Commission approval, the Major Development Plan shall be reviewed and approved by HARC to ensure that the mass, scale, size, proportion, and screening of the proposed new affordable housing structures are compatible with the existing community fabric.~~ The following is a list of other development permits and approvals needed for the development of the Property as specified and required in this Agreement:

a. Development Agreement;

~~b. Major Development Plan approval;~~

~~c. Tree Commission approval;~~

~~b. d.~~ Building and related construction permits, including but not limited to permits for paving, drainage, principal Conversion Units and for each new building containing new units.

~~c. Amendment to Major Development Plan Approval; and,~~

~~d. accessory structures, land clearing and landscaping; and~~

~~e. Federal, State, regional and local permits for stormwater improvements, driveway connections, utility connections and environmental (or endangered species takings), when and if required; and~~

~~f. Certificates of Appropriateness~~Appropriateness.

1211. Mutual Cooperation. The City agrees to cooperate with the Owner in timely reviewing and processing all applications for 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.

1312. Development to Comply with Permits and City Comprehensive Plan and Code Provisions. The Development described in and authorized by this Development Agreement shall be developed in accordance with all required permits, and in accordance with all applicable provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Agreement. No certificate of occupancy for an individual building shall be issued 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 or required herein.

1413. Finding of Consistency. The City finds that the Development authorized herein is consistent with the City's Comprehensive Plan and ~~land-development regulations~~Land Development Regulations in effect on the date of execution of this Development Agreement.

~~1514~~. Compliance ~~With~~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.

~~1615~~. Laws Governing this Agreement.

a. For the duration of this Development Agreement, all approved Development of the Property shall comply with and be controlled by this Development Agreement and provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Agreement, except for the Affordable Work Force Housing Code provisions which shall be those in effect as of the date of the Deed Restriction.

b. Pursuant to City Code Section 90-687 and Section 163.3233, *Florida Statutes*, the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that:

- (1) the new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent redevelopment of the land uses, intensities, or densities set forth in this Development Agreement;
- (2) the new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they shall apply to the redevelopment that is subject to this Development Agreement;
- (3) the City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Development Agreement; or
- (4) the Development Agreement is based on substantially inaccurate information supplied by the Owner. However, nothing in this Development Agreement shall

prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property. —

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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 Agreement, this Development Agreement shall be modified 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.

1716. Amendment, Extension, and Termination. This Development Agreement may be amended, extended, or terminated as follows:

a. As provided in Section 163.3237, *Florida Statutes*, and City Code Section 90-689, - this Development Agreement may be amended, extended or canceled by mutual consent of the parties or their successors in interest, which shall require a written document approved by the City Commission and shall require two (2) public hearings by the City.

b. As provided in Section 163.3229, *Florida Statutes*, and City Code Section 90-684, this Development Agreement may be extended by the mutual consent of the parties, subject to the public hearing requirements in Section 163.3225, *Florida Statutes*. 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 extension 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, and the building intensities and height and shall specify a place where a copy of the Development Agreement can be obtained.

c. Pursuant to Section 163.3235, *Florida Statutes*, and City Code Section 90-689, this Development Agreement may be revoked or modified 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 Development Agreement.

1817. Breach of Agreement and Cure Provisions.

a. If the City concludes that there has been a breach in 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 breached and providing the Owner with sixty (60) days from the date of receipt of the notice to cure the breach. 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 breach of this Development Agreement:

- (1) Failure to comply with the provisions of this Development Agreement;
- (2) Failure to comply with terms and conditions of permits issued by the City or other regulatory entity for the redevelopment authorized by this Development Agreement;
- (3) Failure to comply with terms and conditions of the Deed ~~Restrictions~~Restriction referred to in Paragraph ~~76~~7(b), above; ~~or~~
- (4) Failure to comply with the requirements of the Major Development Plan.

b. If the Owner concludes that there has been a breach in the terms and conditions of this Development Agreement, the Owner shall serve written notice on the City

identifying the term or condition the Owner contends has been breached and providing the City with ~~sixy~~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 breach of this Agreement:

(1) Failure to comply with the provisions of this Development Agreement;

c. If a 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 Development Agreement or may seek to enforce this Development Agreement as provided by herein.

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

1918. 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 of the parties are as follows:

PEARY COURT ~~HOLDINGS, LP:~~

~~c/o White St. Partners,~~ **APARTMENTS LLC:**

Registered Agent: ~~Integra Real Estate LLC~~ Franklin L. Zemel

2828 Coral Way Suite 303
Miami FL 33145

c/o Saul, Ewing, Arnstein and Lehr, LLP
200 East Las Olas Blvd., Suite 1000
Fort Lauderdale, Florida 33301

With a copy to:
Jeffrey D. Cornfeld
The Cornfeld Group, LLC
3850 Hollywood Boulevard
Suite 400
Hollywood, Florida 33021

TO THE CITY:

City Planning Director
P.O. Box 1409
Key West, FL 33041

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

City Attorney
P.O. Box 1409
Key West, FL 33041-1409

City Manager
P.O. Box 1409
Key West, FL 33041-1409

2019. Enforcement. In accordance with Section 163.3243, *Florida Statutes*, any party to this Development Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), *Florida Statutes*, or the state land planning agency (currently the DEO) may file an action for injunctive relief in the circuit court of Monroe County, Florida, to enforce the terms of

this Development Agreement or to challenge the compliance of this Development Agreement with the provisions of Sections 163.3220-163.3243, *Florida Statutes*.

2120. Conflicts. In the event of a conflict between the provisions of this Development Agreement and City ordinances, the terms of this Development Agreement shall control.

2221. Binding Effect. This Development Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns, and personal representatives.

2322. Assignment. This Agreement may not be assigned by Owner without the written consent of the City, which consent shall not be unreasonably withheld.

2423. 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.

2524. 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 Development Agreement.

2625. 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.

2726. Use of Singular and Plural. Where the context requires, the singular includes the plural, and the plural includes the singular.

2827. Duplicate Originals; Counterparts. This Development Agreement may be executed in any number of originals and in counterparts, all of which evidence one agreement. Only one original is required to be produced for any purpose.

2928. 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 Development Agreement.

3029. Entirety of Agreement; Incorporation of Prior Development Approvals. This Development Agreement incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, or understandings regarding the matters contained herein. ~~The Major Development Plan approval for Peary Court is incorporated 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 document 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. Notwithstanding anything contained herein to the contrary, nothing in this Development Agreement shall, or shall be deemed to, defeat, limit, alter, modify, impair, enhance, or enlarge any right, obligation, claim or remedy created by the Deed Restriction. Furthermore, notwithstanding anything contained herein to the contrary (including the terms of Paragraph 15(b)), nothing in this Development Agreement shall be deemed to provide the City with the right or ability to modify the affordable restrictions, guidelines, or any other terms set forth in the Deed Restriction without the consent of the Owner. Therefore, the City acknowledges that any future modifications to the City of Key

West Land Development Regulations, Chapter 122, Article V, Division 10, Sections 122-1465 through 122-1500 (Work Force Housing Ordinance) shall not be deemed to modify the Deed Restriction or the terms of this Development Agreement unless the Owner consents to the application of such revised Work Force Housing Ordinance. In the event of any conflict between this Development Agreement and the Deed Restriction, the Deed Restriction shall control.

~~31~~

30. **Rendition.** After this Agreement is signed by the parties, a copy of the signed Agreement shall be timely rendered by the City to the Florida Department of Economic Opportunity (DEO) as required by Rule 73C-44.003, Florida Administrative Code.

~~3331.~~ **Effective Date of Agreement.** This Agreement shall only become effective after the Florida Department of Economic Opportunity (DEO) ~~-waives its right -to appeal, the 45-day appeal period established by Section 380.07, *Florida Statutes*, - expires, or any such appeal has been finally resolved, whichever first occurs.~~ The effective date of this Agreement shall be the date that it is recorded as provided in Paragraph ~~3332~~, below.

~~3332.~~ **Recording.** As required by Section 163.3239, *Florida Statutes*, ~~- the City shall record this Development Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the effective date~~execution of this Development Agreement. 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 fourteen (14) days after the Development Agreement is recorded.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have set their hands and seals on the dates below written.

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STATE OF FLORIDA
COUNTY OF _____

~~The foregoing instrument was acknowledged before me on this _____ day of _____, 2016, by Everett Atwell, Jr., who is personally known to me or who produced _____ as identification, and who did/did not take an oath.~~

Notary Public
Name _____
(typed, printed or stamped)
~~My commission expires:~~

~~STATE OF FLORIDA~~
~~COUNTY OF _____~~

~~The foregoing instrument was acknowledged before me on this _____ day of _____, 2016, by Paulo deMelo and Nelson Stablie, who are personally known to me or who produced _____ as identification, and who did/did not take an oath.~~

Notary Public
Name _____
(typed, printed or stamped)
~~My commission expires:~~

CITY OF KEY WEST

| _____, ~~2016~~2021 By

Date Mayor

ATTEST:

CITY CLERK

LIST OF EXHIBITS

- Exhibit A: Legal ~~description~~Description and Survey of property
- Exhibit B: Copy of Special Warranty Deed, dated July 18, 2016
- Exhibit C: Site Plan
- Exhibit D: Declaration of Affordable Rental Housing Restrictions, dated July 18, 2016
- Exhibit E: Key West Planning Board Resolution No. 2021-____, Development Agreement recommendation
- Exhibit F: Key West City Commission Resolution No. 92-752021-____, Development Agreement approval
- ~~Exhibit C: Key West Ordinance No. 12-32 FLUM text and map amendment~~
- ~~Exhibit D: Key West Ordinance No. 12-33 Zoning text and map amendment~~
- ~~Exhibit E: DEO Notice dated October 24, 2012~~
- ~~Exhibit F: DEO Notice dated November 20, 2012~~
- Exhibit G: ~~Affordable Housing Site Plan, revised as of July 29, 2015 (the “Site Plan”)~~Architect’s Bulletin Number 1 dated July 28, 2021
- Exhibit H: ~~(Intentionally deleted)~~
- ~~Exhibit I: Key West Planning Board Resolution No. 2015-48, Major Development Plan recommendation~~
- ~~Exhibit J: Key West Planning Board Resolution No. 2015-49, Development Agreement recommendation~~
- ~~Exhibit K: Key West Height Reference Point Determination by the City Commission Resolution No. 16-__ Major Development Plan approval~~
- ~~Exhibit L: Key West City Commission Resolution No. 16-__ Development Agreement approval~~
- Exhibit M: ~~Copy of Special Warranty Deed~~Key West.

Exhibit N: ~~Site Data sheet (includes parking and landscaping)~~

Exhibit O: ~~Site elevation determination dated Jan. 2, 2014~~

Exhibit P: ~~Traffic Impact statement~~