

## SETTLEMENT AGREEMENT

This Settlement Agreement is entered as of the **9th** day of August 2024 (“**Effective Date**”), by Harborside, LLC, a Florida limited liability company (“**Harborside**”) and the City of Key West, Florida, a municipal corporation (“**City**”). The City and Harborside may collectively be referred to as the “**Parties.**”

### RECITALS

**WHEREAS**, in connection with Harborside’s development of the Marker Resort located at 200 William St., Key West, FL 33040 (“**Marker**”), Harborside and the City entered into that certain Parking Agreement dated July 25, 2012 (“**Parking Agreement**”) wherein the City and Harborside agreed that the City would provide 26 parking spaces at the City’s Caroline Street Key West Bight Parking Lot (“**Bight Lot**”) in exchange for payments to the City;

**WHEREAS**, the Parties are parties are currently litigating that certain lawsuit related to the Parking Agreement styled Harborside LLC, a Florida Limited Liability Company, Plaintiff, v. City of Key West, a municipal corporation of the State of Florida, Defendant, in the Circuit Court of the Sixteenth Judicial Circuit in and for Monroe County Florida, Case No. 2023-CA-550-K (“**Lawsuit**”);

**WHEREAS**, the Parties desire to resolve the Lawsuit by amending the Parking Agreement in the specific manner set forth in this Settlement Agreement;

**NOW, THEREFORE**, the City and Harborside agree as follows:

**1. Settlement Terms.** The City and Harborside hereby stipulate and agree as to the following facts and legal issues associated with the Parking Agreement and the Lawsuit:

A. Despite allegations to the contrary in the Lawsuit, the Parties hereby confirm that neither the City nor Harborside has been in breach of the Parking Agreement from the inception of the Parking Agreement on July 25, 2012, through the Effective Date of this Settlement Agreement.

B. On or before August 1, 2024, Harborside shall pay the City the agreed upon sum of **\$400,000.00** (“Parking Arrearages”), representing all amounts owed from Harborside to the City under Parking Agreement through the Effective Date of this Settlement Agreement. Upon its receipt of cleared funds from Harborside for the Parking Arrearages, the City will release and waive all claims for any additional amount from Harborside allegedly due under the Parking Agreement for the period of time before the Effective Date of this Settlement Agreement.

C. Starting on the Effective Date of this Settlement Agreement and continuing thereafter, paragraphs 4, 5, 6, 7, and 8 of the Parking Agreement shall be deleted and shall be replaced with the amended terms set forth below in paragraph 2 of this Settlement Agreement.

## **2. Amendment of the Parking Agreement.**

- A. Paragraph 4 of the Parking Agreement is hereby replaced with the following text:

Starting on the Effective Date of this Settlement Agreement, Harborside's paying overnight guests ("Hotel Guests" or, when singular, "Hotel Guest") will have the right to use, as available at the time a parking space is desired and exclusively on a first-come-first-served basis, up to 26 parking spaces ("Parking Spaces") in the City's Caroline Street Key West Bight Parking Lot ("Bight Lot"). Use of the Bight Lot Parking Spaces by Hotel Guests shall be by special placard made available by Harborside to its Hotel Guests, and such placards shall be placed in each Hotel Guest's vehicle in a manner making the placard visible to any parking enforcement official. The term "Hotel Guests" does not include employees of Harborside or Harborside's visitors that are not registered as overnight guests of Harborside when the placard is issued. The fact that any Bight Lot parking space may be occupied and not actually available to a Hotel Guest at the specific time the Hotel Guest desires an opportunity to use one of the Parking Spaces shall not be considered a breach of the City's obligation to provide any Parking Spaces or access to parking at the Bight Lot under this Parking Agreement. The parties also agree that the issuance of placards to Hotel Guests under this Parking Agreement will be exclusively to address (i) Harborside's overflow parking needs that may arise on rare occasions when substantially all of Harborside on-site parking spaces are occupied and (ii) Harborside's oversized vehicle needs that may arise when a Hotel Guest's vehicle is too large to be parked on one of Harborside's on-site spaces.

- B. Paragraph 5 of the Parking Agreement is hereby replaced with the following text:

The number of Parking Spaces at the Bight Lot to which Hotel Guests will have the right to use, as available at the time a parking space is desired and exclusively on a first-come-first-served basis, shall not be adjusted up or down and, instead, shall remain 26.

- C. Paragraph 6 of the Parking Agreement is hereby replaced with the following text:

Harborside shall compensate the City for the Parking Spaces annually, starting on the first anniversary of the Effective Date of this Settlement Agreement.

- D. Paragraph 7 of the Parking Agreement is hereby replaced with the following text:

On the first anniversary of the Effective Date of this Settlement Agreement, and on each anniversary of the Effective Date of this Settlement Agreement thereafter, Harborside shall pay the sum of **\$15,000.00** to the City.

- E. Paragraph 8 of the Parking Agreement is hereby replaced with the following text:

The compensation owed by Harborside under the Parking Agreement shall not be adjusted up or down and, instead, shall remain \$15,000.00 per year.

**3. Conflict.** The Parking Agreement remains in full force and effect, except as specifically amended in paragraph 2 of this Settlement Agreement. In the event of conflicting provisions, this Settlement Agreement shall prevail over the Parking Agreement.

**4. Dismissal of Lawsuit.** As consideration for this Settlement Agreement and the amendments to the Parking Agreement, Harborside and the City agree, within 5 days after the Effective Date of this Settlement Agreement, to file a stipulation for the dismissal of the Lawsuit with prejudice and with Harborside and the City to bear their own attorney's fees and costs. The stipulation for dismissal will be accompanied by a proposed agreed order to be entered by the Court that dismisses the Lawsuit with prejudice with the Parties to bear their own attorney's fees and costs.

**6. Fees and Costs.** In the event the City or Harborside seeks to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including, but not limited to, amounts incurred to prove entitlement and amount of attorneys' fees and costs, and appellate fees.

**7. No Admission of Liability.** Nothing contained in this Settlement Agreement, nor any actions taken by Harborside or the City related to this Settlement Agreement or the Lawsuit shall constitute, be construed as, or be deemed to be an admission of liability on the part of any of the Parties. Each of the Parties expressly denies any fault, wrongdoing, or liability to each other and, by entering into this Settlement Agreement, merely intends to avoid further litigation with respect to the matters covered by this Settlement Agreement and the Lawsuit.

**8. Counterparts.** This Settlement Agreement may be executed in multiple counterparts, each of which shall be deemed an original document but which altogether shall constitute a single instrument.

**9. Miscellaneous.**

A. The laws of the State of Florida shall govern the interpretation and enforcement of this Settlement Agreement and any litigation arising under or in connection with this Settlement Agreement shall be in Monroe County, Florida. All Parties agree to submit exclusively to the jurisdiction of any court, state or federal, located in Monroe County, Florida.

B. No provision of this Settlement Agreement shall be amended, waived or modified except by an instrument in writing signed by the Parties hereto, and any waiver shall not be considered a continuing waiver.

C. The inapplicability or unenforceability of any provision of this Settlement Agreement shall not limit or impair the operation or validity of any other provision of this Settlement Agreement and if a court determines that any provision of this Settlement Agreement is too restrictive or unenforceable, the court shall apply the provisions to the fullest extent

permissible by law.

D. There shall not be applied a rule of law or rule of construction whereby this Settlement Agreement or any of the terms or provisions hereof shall be construed in favor of or against either Party by reason of who prepared this Settlement Agreement, and to the fullest extent possible, shall be given its plain meaning.

E. This Settlement Agreement is the result of substantial negotiation by the Parties and their counsel and is entered into freely and voluntarily by the Parties. The Parties hereto each represent and warrant to each other that (i) they have had sufficient time to review this Settlement Agreement and consult with counsel of their choice, (ii) they have received such advice as they deem necessary as to their legal rights under, and the validity and enforceability of, this Settlement Agreement, and (iii) they fully understand the content and legal effect of this Settlement Agreement. This Settlement Agreement has been mutually agreed upon by each of the Parties both as to its substance and as to its form.

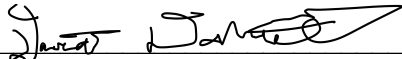
IN WITNESS WHEREOF, the Parties have entered into this Settlement Agreement as of the Effective Date.

**City of Key West, Florida,**  
a municipal corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have entered into this Settlement Agreement as of the Effective Date.

**HARBORSIDE LLC,**  
a Florida limited liability company

By:   
Print Name: David Danieli  
Title: Sr. VP Asset Management