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5 Parcel ID Number 00066180-000000
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11 **DEVELOPMENT AGREEMENT FOR ADDITION OF 80 UNITS**
12 **TO**
13 **OCEAN WALK HOUSING COMPLEX**
14

15 **THIS DEVELOPMENT AGREEMENT** is entered into by and between PASSCO
16 OCEAN DST, a Delaware Statutory Trust (herein referred to as the “Owner”) and the CITY OF
17 KEY WEST, a Florida municipal corporation (herein the “City”) (collectively the “Parties”),
18 pursuant to Chapter 90, Article IX of the City Code of Ordinances (the “Code”), and the Florida
19 Local Government Development Agreement Act, Sections 163.3220-163.3243, *Florida Statutes*,
20 and is binding on the “Effective Date” set forth herein.
21

22 **WITNESSETH:**

23 **WHEREAS**, Owner is the record title holder of the Ocean Walk Housing Complex
24 (herein referred to as the “Property”, or “Ocean Walk”) located in the City of Key West, as more
25 specifically described in Exhibit A hereto,; and

26 **WHEREAS**, Ocean Walk currently has 296 existing dwelling units; and

27 **WHEREAS**, The 296 existing dwelling units on Ocean Walk are located in two
28 buildings (containing 88 units and 208 units, respectively) that were constructed in 1989
29 pursuant to an agreement between the City and a previous owner of the Property; and
30

1 **WHEREAS**, Owner has identified a portion of the Property on which eighty (80) new
2 multifamily residential units shall be constructed, as depicted on the attached Site Plan (Exhibit
3 C, referred to herein as the “Site Plan”); and

4 **WHEREAS**, on January 5, 2016, the City Commission, acting pursuant to Code Section
5 90-679, made a preliminary determination to pursue negotiations with the Owner regarding
6 terms for development of 80 new residential units on the Property and to enter into a
7 Development Agreement with the Owner; and

8 **WHEREAS**, Code Section 122-1467 requires that 30% of all new multifamily residential
9 units be affordable work force housing units, so that the development of 80 additional units on
10 the Property requires that 24 of those additional units be affordable work force housing units
11 (calculated at 30% of the 80 proposed additional residential units); and

12 **WHEREAS**, in order to assure that the rental rates for the 24 affordable work force
13 housing units will remain affordable for the period required by Code Section 122-1467 (d), the
14 Owner will be required to execute a Declaration of Affordable Housing Restrictions (the “Deed
15 Restriction”) in the form attached hereto as Exhibit J, to be recorded in the Public Records of
16 Monroe County; and

17 **WHEREAS**, the Key West Planning Board issued Resolutions 2015-26 and 2017-06,
18 each allocating twenty eight (28) market rate BPAS units and twelve (12) affordable housing units to
19 the Property, a copy of the Resolutions being attached hereto as composite Exhibit E; and

20 **WHEREAS**, the Owner submitted for approval by the City of Key West an application
21 for major development plan approval for the addition of 80 new multifamily residential dwelling
22 units on the Property, consistent with the attached Site Plan ; and

1 **WHEREAS**, on June 15, 2017, the City of Key West Planning Board approved
2 Resolution No. 2017-24 for a Major Development Plan, a copy of the Resolution being attached
3 hereto as Exhibit F; and

4 **WHEREAS**, on June 15, 2017, the City of Key West Planning Board approved
5 Resolution No. 2017-25, recommending approval of the Development Agreement, a copy of the
6 Resolution being attached hereto as Exhibit G; and

7 **WHEREAS**, on August 15, 2017, the City Commission considered the comments and
8 recommendation of the City staff, the Planning Board, and comments of members of the public
9 and approved Resolution No. 17-217 (Exhibit H) granting Major Development Plan approval,
10 and approved Resolution No. 17-__ (Exhibit I) authorizing development of 80 new multifamily
11 residential units on the Property as provided in this Development Agreement; and

12 **WHEREAS**, the City has determined that the new development proposed in the Site Plan
13 is consistent with the City’s Comprehensive Plan and land development regulations and is
14 compatible with surrounding land uses; and

15 **WHEREAS**, the City has determined that this Development Agreement is consistent
16 with the Comprehensive Plan, the land development regulations, and the Principles Guiding
17 Development for the City, and further finds that this Development Agreement is in the public
18 interest, and will further the health, safety, welfare, and goals of the residents of the City.

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

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

1 **B. DEFINITIONS.** For the purposes of this Development Agreement, the following
2 terms shall have the following meanings. Terms not defined in this Development Agreement
3 shall be as defined in the City Code, Chapter 163, *Florida Statutes*, or, if not defined in the Code
4 or statute, shall be understood according to their usual and customary meanings.

5
6 1. “Access Agreement” means that Public Access Agreement recorded at
7 Monroe County OR Book 1653 at pages 854-886. The Access Agreement pertains to, among
8 other things, maintenance of the private paved roads that were constructed and are being utilized
9 to provide access between Ocean Walk and South Roosevelt Blvd.

10 2. “Affordable Work Force Housing” means housing as defined in Article V,
11 Division 10 of Chapter 122, Sections 122-1465 through 122-1467 and 122-1469 of the City
12 Code.

13 3. “Baseline Green Building Certification” means the Florida Green Building
14 Coalition (FGBC) Bronze level certification or Leadership in Energy and Environmental Design
15 (LEED) certification.

16 4. “Building Permit Allocation” means a residential permit allocation under
17 Article V, Division 10, of Chapter 122, Sections 108-986 through 108-998 of the City Code.

18 5. “City Code” means the Code of Ordinances of the City of Key West in
19 effect on the Effective Date of this Development Agreement.

20 6. “Comprehensive Plan” means the City’s Comprehensive Plan in effect on
21 the Effective Date of this Development Agreement.

1 7. “Development” shall refer to the development of the Property for the uses,
2 densities and intensities permitted by this Development Agreement, subject to the conditions,
3 obligations, restrictions and terms contained herein.

4 8. “The Easements” means the private roads and access easements as defined
5 and depicted in the Access Agreement.

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

8 10. “Maintenance Agreement” means the agreement contemplated and
9 described in the Access Agreement, governing “financial responsibility for maintenance, repair
10 and other expenses relating [to] the Easements”.

11 11. “Site Plan” shall refer to the Site Plan dated Feb. 16, 2016, approved by the City
12 Commission in Resolution 17- (Exhibit H)

13 12. “Prerequisite Standards” shall mean “prerequisites, major construction/renovation”
14 as defined in City Code Section 86-9 and are the minimum standards for new development
15 required in order to be eligible to receive an allocation award from the City BPAS, including
16 Baseline Green Building Certification, pursuant to City Code Sections 108-995 through 108-997.

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

19 14. “Public facilities” means those facilities identified in Section 163.3221, *Florida*
20 *Statutes*.

21 **C. TERMS OF AGREEMENT.**

22 **1. Legal Description; Ownership and Equitable Interests in the Property.**

23 The legal description of the Property subject to this Development Agreement is attached hereto

1 as Exhibit "A" and incorporated herein by reference. As evidenced by the Special Warranty
2 Deed conveying the Property (a copy of which is attached hereto as Exhibit "B"), fee simple
3 title to the Property is vested in in Passco Ocean DST , a Delaware Statutory Trust ("Owner")
4 by virtue of Warranty Deed recorded August 25, 2017 in Official Records Book 2870, Page
5 1933 of the Public Records of Monroe County, Florida. Owner has an address c/o Passco
6 Companies, LLC, 2050 Main St., Suite 650, Irvine CA, 92614; its Manager is Passco Ocean
7 Manager, LLC, whose sole member is Passco Companies, LLC. Owner operates under a
8 Deed of Trust executed by and between Ocean Depositor LLC, a Delaware limited liability
9 company ("Depositor") and Delaware Trust Company ("Trustee"). Trustee's address is 251
10 Little Falls Drive, Wilmington DE 19808, and its Chairman is Joseph McFadden. The sole
11 member of Depositor is Passco Companies, L.L.C., a Delaware limited liability company,
12 whose President is Larry K. Sullivan. Depositor's address is the same as Owner's.

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

17 **3. Existing Development.** The Property consists of 17.11 acres of land located at
18 3900 South Roosevelt Boulevard in the City of Key West, Florida, containing 296 dwelling
19 units within two multifamily buildings . One building is 26.6 feet in height with covered
20 parking on the ground floor and apartments on the second and third floors. The other
21 building is 43.5 feet in height with covered parking on the ground floor and apartments on
22 the second through fifth floors. All of the existing units are rental units.

23 **4. Site Plan.**

1 **a. Uses, Densities and Intensities.** The residential use densities and
2 intensities, existing and proposed, conform with HDR Zoning District standards. The Property is
3 allowed a maximum density of 22 units per acre. The Site Plan proposes the addition of 80
4 units, for a total of 376 residential dwelling units on the Property. No commercial development is
5 proposed.

6 **b. Building Permit Allocations.** The Site Plan encompasses construction on
7 the Property of 80 new multifamily residential units, all of which have received City of Key
8 West Building Permit Allocation System (“BPAS”) allocations.

9 **c. Conformity with Major Development Plan.** The following development
10 features shall conform to the Major Development Plan as approved by City Commission
11 Resolution No. 17-217 (Exhibit H) and to the specifications set forth on the Site Data sheet
12 attached as Exhibit D:

- 13 1. Open Space.
- 14 2. Recreational facilities, which shall conform to the access requirements of
15 Paragraph 9(j), below.
- 16 3. Types and locations of units, which shall be subject to adjustment within the
17 standard deviations range set forth in Paragraph 5.
- 18 4. Parking for vehicles and bicycles shall be provided at the locations depicted on
19 the Site Plan, in the quantities specified in Exhibit C.
- 20 5. Landscaping, which shall also conform to requirements imposed by the Tree
21 Commission. Buffers shall conform to the dimensions and quantities set forth on
22 Exhibit C.

1 6. Solid waste and recycling container storage, which shall also conform to the
2 requirements of Paragraph 9(c), below.

3 7. Fencing.

4 8. Utilities and Mechanical Equipment, installed as provided in Paragraph 9,
5 below.

6 9. Streets. The existing streets providing access to the Ocean Walk units shall be retained, and
7 internal driveways shall be extended and improved, at Owner's expense, as depicted on the Site
8 Plan subject to adjustment of location within the standard deviations range set forth in Paragraph
9 5(a). The subject Property, together with other adjacent properties including Salt Ponds
10 Condominium, Suites at Sunrise, Sunrise at Seaside, Las Salinas Condominium, and Seaside,
11 share two private roads, commonly known as "Hotel Road" and the "Seaside Road" (collectively
12 referred to as the "Access Roads") for vehicular ingress to and egress from Roosevelt Blvd.

13 As one of the adjacent landowners whose residents utilize the Access Roads and benefit from
14 the Easements, Owner will cooperate in good faith with other adjacent landowners benefitting
15 from the Easements (including without limitation Las Salinas Condominium Association,
16 Seaside Condominium Association, Salt Ponds Condominium Association, Sunrise at Seaside
17 Condominium Association, and Doubletree Grand Key Resort) to negotiate the terms of, execute
18 and record the Maintenance Agreement as contemplated by and described in the Access
19 Agreement. Owner acknowledges its shared financial responsibility for maintenance, repair and
20 other expenses relating to the Easements, and accordingly will, together with the other "adjacent
21 landowners benefitting from the Easement", make enforceable provision for payment of ratably
22 apportioned financial responsibilities incurred with respect to maintenance and repair of the
23 Access Roads. Owner acknowledges and agrees that, should it fail to comply with its

1 responsibilities and obligations under the Maintenance Agreement, then it shall be subject to the
2 enforcement provisions set forth in Paragraph 9 of the Access Agreement (as recorded at OR
3 Book 1653 at p. 857.)

4 Owner shall be responsible to maintain in good repair the new lighting and sidewalks depicted
5 on the Site Plan. Additionally, (1) during construction of the new multifamily residential units
6 at Ocean Walk, Owner will provide daily cleanup of construction debris on the Access Roads,
7 and (2) Owner will temporarily keep its security gates in "open" position, commencing during
8 construction, until completion, 1 year after commencement, or until Las Salinas replaces its rear
9 exit gate, whichever first occurs.

10 **d. Phasing.** The new buildings depicted on the Site Plan may be developed in
11 two phases within the timeframes established in this Agreement. If development is phased, the
12 second phase shall be completed within two years following completion of the first phase. Each
13 phase of construction shall be completed within two years following commencement of that
14 phase. Owner may apply to the Planning Department for a one-year extension of the date(s) of
15 commencement and completion of construction. All site work corresponding to a specific phase
16 shall be completed prior to the first certificate of occupancy for a dwelling unit in that phase. The
17 first phase shall commence upon issuance of a building permit for the new dwelling units within
18 that phase, and certificates of occupancy for all phases shall be issued no later than five (5) years
19 from the date of this agreement. The phasing plan is graphically depicted on the Site Plan as
20 follows: Phase 1, Building A; Phase 2, Building B. Commencement of each phase shall be
21 preceded by issuance of the following approvals: (1) City Tree Commission approval of
22 removal, relocation or other disposition of trees to be displaced by construction activities within
23 the area of that phase of construction; (2) issuance of requisite permits for construction of

1 infrastructure improvements serving the units to be constructed in that phase; and (3) issuance of
2 a City of Key West building permit. Additionally, if the phase includes land that is designated a
3 FWS Species Focus Area, as the potential habitat of a listed species, Applicant shall comply with
4 the provisions of Code Sec. Sec. 110-467 pertaining to habitat protection.

5 **5. Site Plan Modifications.** Site Plan modifications shall require approval pursuant
6 to City Code Section 108-91(C). Adjustment of housing unit sizes and locations of
7 improvements as depicted on the Site Plan may be authorized by the City Planner upon
8 submission of building permit applications, within the following ranges of standard deviations:

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

12 (b) unit sizes may be adjusted provided that the cumulative effect of such
13 adjustments does not increase the footprint of the building in which the unit is
14 located, and further provided that minimum unit size shall comply with the
15 provisions of Paragraph 6, below.

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

17 The Owner shall develop twenty-four (24) affordable work force housing units, all of which shall
18 be at least 400 square feet in size pursuant to City Code Section 122-1467, subject to the
19 following conditions:

20 a. No later than the date that a Certificate of Occupancy is issued for any of
21 the 40 additional units in Phase 1, Owner shall execute and record the Deed Restriction,
22 designating 12 dwelling units in Phase 1 (Bldg. A) on the Property as affordable work force
23 housing, and shall maintain and operate those designated units as affordable work force housing

1 pursuant to Sections 122-1467 and 122-1469 of the Code of Ordinances and the provisions of the
2 Deed Restriction, a copy of which is attached as Exhibit J. Prior to the date that a Certificate of
3 Occupancy is issued for any of the 40 additional units in Phase 2, Owner shall execute and
4 record an amendment to the Deed Restriction, designating 12 more dwelling units on the
5 Property as affordable work force housing, and shall maintain and operate those designated
6 units as affordable work force housing pursuant to Sections 122-1467 and 122-1469 of the Code
7 of Ordinances and the provisions of the Deed Restriction a copy of which is attached as Exhibit
8 J.

9 **b.** Owner shall provide a copy of the recorded Deed Restriction, showing the
10 book and page where recorded, to the City Planning Department, City Attorney, and the Key
11 West Housing Authority within two weeks after recordation.

12 **c.** The affordable work force housing unit income categories and rental rates
13 for all of the designated affordable work force housing units shall conform to the provisions of
14 the Deed Restriction and Sections 122-1467 and 122-1469 of the Code of Ordinances.

15 **d.** The designated affordable work force housing units shall be available for
16 persons who meet and continue to meet the eligibility requirements for affordable work force
17 housing set forth in City Code Sections 122-1467 and 122-1469. Owner shall furnish the City
18 Manager or his designee with annual information necessary to ensure continued compliance with
19 affordability criteria, including sworn tenant household verification information. Owner may
20 contract with the Key West Housing Authority to perform the annual tenant eligibility
21 verification

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1 **7. Additional Development Conditions.** The following additional conditions,
2 terms, restrictions, and other requirements have been determined by the City of Key West to be
3 necessary for the public health, safety, and welfare of its citizens:

4 **a. Fire Safety.** The Property shall be serviced by the number of fire
5 hydrants and/or fire wells required to conform to all applicable fire safety requirements, as
6 determined by the Fire Marshal of the City of Key West. On-site fire protection shall be provided
7 in accordance with the 2013 Fire Prevention code, Ch. 69A-60, F.A.C. A new fire pump, with
8 sufficient capacity to service both Building A and Building B, shall be installed on the Property,
9 and shall have received all required operating certification(s) prior to issuance of a Certificate of
10 Occupancy for Building A or Building B.

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

16 **c. Fair Housing Requirements.** New units constructed on the Property
17 shall comply with applicable requirements of the ADA and state and federal fair housing acts.

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

21 **e. Building Heights.** Building heights shall not exceed the maximum
22 building height allowed in the HDR Zoning District applicable to the Property.

1 **f. Site Design.** Development of the additional 80 units on the Property
2 shall be consistent with all bulk and site design requirements in the City Code, including but not
3 limited to open space, setbacks and buffering, lighting, landscaping, utilities, stormwater
4 management, and parking for automobiles and bicycles.

5 **g. Impact Fees.** Owner shall pay impact fees (i.e., sewer, solid waste, traffic
6 and library impact fees) for the 80 additional housing units, in the amounts set forth in the
7 impact fee schedule established by the City Code at the rates in effect on the date of building
8 permit issuance.

9 **h. Wind Load.** Owner shall ensure that all new structures (including
10 doors, windows, and cladding) meet all applicable codes, to withstand the peak wind loads
11 specified in the 2013 Florida Building Code.

12 **i. Energy Efficiency / Green Building.** Owner shall sustainably construct
13 the new residential structures in conformance with the Prerequisite Standards for BPAS,
14 including Baseline Green Building Certification, pursuant to City Code Section 86-9 and 108-
15 995 through 108-997. Additionally, the new structures, as constructed, shall meet or exceed the
16 85-points score on the BPAS criteria and point system under which they received an award of
17 building allocations under Planning Board Resolutions 2015-26 and 2017-06.

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

20 **k. Airport avigation easement.** Prior to issuance of a Certificate of
21 Occupancy for Building A or Building B, Owner shall execute and deliver to Monroe County for
22 recordation an Avigation Easement in the form attached hereto as Exhibit L or such other form
23 acceptable to Monroe County.

1 **8. Annual Progress Reports.** Pursuant to City Code Section 90-688(b), the Owner
2 shall provide the City Planning Department an annual progress report indicating all activities and
3 achievements since the execution of the development agreement and, if applicable, since the
4 previous periodic report.

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

11 **a. Potable Water.** Domestic potable water is provided by Florida Keys
12 Aqueduct Authority. Adequate domestic potable water transmission and potable water source
13 capacity exist for this project. No need for new potable water facilities, other than relocation of
14 internal distribution lines, water meters, valves, etc., is anticipated. Those distribution lines shall
15 be installed by the Owner prior to substantial completion of new housing units that they will
16 supply.

17 **b. Electric Service.** Electric service is provided by Keys Energy Services. No
18 new electric service facilities, other than the relocation of internal distribution lines, are
19 anticipated. Those distribution lines shall be installed by the Owner and/or KES prior to issuance
20 of a certificate of occupancy for the new housing units that they will supply.

21 **c. Solid Waste.** Solid waste service is provided by the franchisee of the City of
22 Key West, and adequate capacity exists for this development.

1 **d. Wastewater.** Wastewater treatment shall be provided by City of Key West,
2 which has adequate capacity to treat the sewage generated by this development. Developer shall
3 construct such additional or relocated wastewater collection facilities (the “Wastewater Delivery
4 Facilities”) as may be required to deliver sewage generated on the Property to the City’s
5 wastewater collection facilities.

6
7 **e. Protective Services.** Protective services other than parking enforcement shall
8 be provided by the City of Key West.

9 **f. Transportation.** According to the Traffic Impact statement provided by the
10 Owner and attached as Exhibit K, only de minimis additional traffic impacts are anticipated.

11 **g. Schools.** Adequate school facilities are anticipated to serve any students who
12 may reside in the additional 80 dwelling units to be developed on the Property.

13 **h. Existing Facilities.** All public facilities identified above (i.e., electricity.,
14 water, and solid waste) are being provided to the Property and available as of the date of this
15 Development Agreement and are projected to be available concurrent with the impacts of the
16 Development compliant with the approved Major Development Plan. Fire protection and
17 wastewater collection facilities will be improved as provided in sub-paragraphs 7 (a) and 9 (d)
18 above, to meet the needs of the additional 80 dwelling units to be developed on the Property.

19 **i. Stormwater.** Owner shall construct stormwater collection and retention
20 facilities compliant with City Code as may be required pursuant to the Environmental Resource
21 Permit (“ERP”) that Owner shall have applied for prior to the effective date of this Agreement,
22 and which Owner will receive from the South Florida Water Management District. Those
23 stormwater management facilities shall be installed by Owner prior to issuance of certificates of

1 occupancy for the 80 additional housing units.

2 **j. Recreational facilities.** The Site Plan depicts the on-site amenities that are
3 available to Ocean Walk residents and guests. Private recreational facilities shall be provided on
4 the Property to serve the needs of the residents of the 80 new affordable housing units.
5 Additionally, public recreational facilities exist in the vicinity of Ocean Walk, adequate to serve
6 the recreational needs of residents.

7 **10. Required Permits and Approvals.**

8 Nothing in this Development Agreement shall be deemed to obviate the necessity of the
9 Owner's compliance with terms and provisions of each of the required approvals listed below.
10 The following is a list of development permits and approvals needed for the development of the
11 Property as specified and required in this Agreement:

- 12 a. Development Agreement;
- 13 b. Major Development Plan approval;
- 14 c. Tree Commission approval;
- 15 d. Building and related construction permits, including but not limited to permits
16 for paving, drainage, principal and accessory structures, land clearing and
17 landscaping; and
- 18 e. Federal, State, regional (including South Florida Water Management District)
19 and local permits and other approvals for stormwater improvements, driveway
20 connections, utility connections and environmental (or endangered species
21 takings), when and if required.

1 **11. Mutual Cooperation.** The City agrees to cooperate with the Owner in timely
2 reviewing and processing all applications for permits, licenses, approvals, or consents necessary
3 or appropriate to fully implement this Development Agreement. The City and the Owner agree to
4 cooperate fully with and assist each other in the performance of the provisions of this
5 Development Agreement.

6 **12. Development to Comply with Permits and City Comprehensive Plan and**
7 **Code Provisions.** The Development described in and authorized by this Development
8 Agreement shall be developed in accordance with all required permits, and in accordance with
9 all applicable provisions of the City's Comprehensive Plan and City Code in effect on the date of
10 execution of this Agreement. No building permit for either of the two new multifamily buildings
11 shall be issued until all plans for that building are approved by the City and the Owner has
12 complied with all conditions in permits issued by the City and other regulatory entities for that
13 building or required herein. No certificate of occupancy shall be issued issued for either of those
14 buildings until Owner has complied with all conditions of the Building Permit applicable to that
15 building, and has completed the infrastructure improvements required to serve the building.

16 **13. Finding of Consistency.** The City finds that the Development authorized herein
17 is consistent with the City's Comprehensive Plan and land development regulations in effect on
18 the date of execution of this Development Agreement.

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

23 **15. Laws Governing this Agreement.**

1 a. For the duration of this Development Agreement, all approved
2 Development of the Property shall comply with and be controlled by this Development
3 Agreement and provisions of the City's Land Development Regulations, Comprehensive Plan
4 and other provisions of the City Code in effect on the date of execution of this Agreement.

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

8 (1) the new laws and policies are not in conflict with the laws and policies
9 governing the Agreement and do not prevent redevelopment of the land uses,
10 intensities, or densities set forth in this Development Agreement;

11 (2) the new laws and policies are essential to the public health, safety, or welfare,
12 and the City expressly states that they shall apply to the redevelopment that is
13 subject to this Development Agreement;

14 (3) the City demonstrates that substantial changes have occurred in pertinent
15 conditions existing at the time of approval of this Development Agreement; or

16 (4) the Development Agreement is based on substantially inaccurate information
17 supplied by the Owner. However, nothing in this Development Agreement shall
18 prohibit the parties from mutually agreeing to apply subsequently adopted laws to
19 the Property.

20 c. If state or federal laws enacted after the effective date of this Development
21 Agreement preclude any party's compliance with the terms of this Agreement, this Development
22 Agreement shall be modified as is necessary to comply with the relevant state or federal laws.

1 However, this Development Agreement shall not be construed to waive or abrogate any rights
2 that may vest pursuant to common law.

3 **16. Amendment, Extension, and Termination.** This Development Agreement may
4 be amended, extended, or terminated as follows:

5 a. As provided in Section 163.3237, *Florida Statutes*, and City Code Section
6 90-689, this Development Agreement may be amended, extended or canceled by mutual consent
7 of the parties or their successors in interest, which shall require a written document approved by
8 the City Commission and shall require two (2) public hearings by the City.

9 b. As provided in Section 163.3229, *Florida Statutes*, and City Code Section
10 90-684, this Development Agreement may be extended by the mutual consent of the parties,
11 subject to the public hearing requirements in Section 163.3225, *Florida Statutes*. The City shall
12 conduct at least two (2) public hearings, one of which may be held by the local planning agency
13 at the option of the City. Notice of intent to consider extension of the Development Agreement
14 shall be advertised approximately seven (7) days before each public hearing in a newspaper of
15 general circulation and readership in the City of Key West, Florida, and shall be mailed to all
16 affected property owners before the first public hearing. The day, time, and place at which the
17 second public hearing will be held shall be announced at the first public hearing. The notice shall
18 specify the location of the land subject to the Development Agreement, the development uses on
19 the Property, the population densities, and the building intensities and height and shall specify a
20 place where a copy of the Development Agreement can be obtained.

21 c. Pursuant to Section 163.3235, *Florida Statutes*, and City Code Section 90-
22 689, this Development Agreement may be revoked or modified by the City if the City finds, on

1 the basis of competent substantial evidence, that there has been a failure to comply with the
2 terms of this Development Agreement.

3 **17. Breach of Agreement and Cure Provisions.**

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

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

11 (2) Failure to comply with terms and conditions of permits issued by the City or
12 other regulatory entity for the redevelopment authorized by this Development
13 Agreement;

14 (3) Failure to comply with terms and conditions of the Deed Restrictions referred
15 to in Paragraph 6, above; or

16 (4) Failure to comply with the requirements of the Major Development Plan.

17 b. If the Owner concludes that there has been abreach in the terms and
18 conditions of this Development Agreement, the Owner shall serve written notice on the City
19 identifying the term or condition the Owner contends has been breached and providing the City
20 with sixty (60) days from the date of receipt of the notice to cure the breach. The following
21 events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the
22 City, shall be considered a breach of this Agreement:

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

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

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

9 **18. Notices.** All notices, demands, requests, or replies provided for or permitted by
10 this Development Agreement, including notification of a change of address, shall be in writing to
11 the addressees identified below, and may be delivered by any one of the following methods:

12 (a) By personal delivery;

13 (b) By deposit with the United States Postal Service as certified or registered
14 mail, return receipt requested, postage prepaid; or

15 (c) by deposit with an overnight express delivery service with a signed receipt
16 required.

17 Notice shall be effective upon receipt. The addresses of the parties are as follows:

18 **TO OWNER:**

19 Passco Companies, LLC, 2050 Main St., Suite 650, Irvine CA, 92614
20

21 **TO THE CITY:**

22
23 City Planning Director
24 P.O. Box 1409
25 Key West, FL 33041
26

27
28 **With a copy by regular U.S. Mail to:**

1
2 City Attorney
3 P.O. Box 1409
4 Key West, FL 33041-1409
5

6 City Manager
7 P.O. Box 1409
8 Key West, FL 33041-1409
9

10
11 **19. Enforcement.** In accordance with Section 163.3243, *Florida Statutes*, any party
12 to this Development Agreement, any aggrieved or adversely affected person as defined in
13 Section 163.3215(2), *Florida Statutes*, or the state land planning agency (currently the DEO)
14 may file an action for injunctive relief in the circuit court of Monroe County, Florida, to enforce
15 the terms of this Development Agreement or to challenge the compliance of this Development
16 Agreement with the provisions of Sections 163.3220-163.3243, *Florida Statutes*.

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

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

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

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

27 **24. Severability.** In the event any provision, paragraph or section of this
28 Development Agreement is determined to be invalid or unenforceable by a court of competent

1 jurisdiction, such determination shall not affect the enforceability or the validity of the remaining
2 provisions of this Development Agreement.

3 **25. Applicable Law.** This Development Agreement was drafted and delivered in
4 the State of Florida and shall be construed and enforced in accordance with the laws of the State
5 of Florida.

6 **26. Use of Singular and Plural.** Where the context requires, the singular includes
7 the plural, and the plural includes the singular.

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

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

14 **29. Entirety of Agreement; Incorporation of Prior Development Approvals.** This
15 Development Agreement incorporates or supersedes all prior negotiations, correspondence,
16 conversations, agreements, or understandings regarding the matters contained herein. The Major
17 Development Plan approval for Ocean Walk is incorporated herein. The parties agree that there
18 are no commitments, agreements, understandings, or development orders concerning the subjects
19 covered by this Development Agreement that are not contained in or incorporated into this
20 document and, accordingly, no deviation from the terms hereof shall be predicated upon any
21 prior representations, agreements or approvals, whether written or oral. This Development
22 Agreement contains the entire and exclusive understanding and agreement among the parties and
23 may not be modified in any manner except by an instrument in writing signed by the parties.

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

4 **31. Effective Date of Agreement.** This Agreement shall only become effective after
5 the Florida Department of Economic Opportunity (DEO) waives its right to appeal, the 45-day
6 appeal period established by Section 380.07, *Florida Statutes*, expires, or any such appeal has
7 been finally resolved, whichever first occurs. The effective date of this Agreement shall be the
8 date that it is recorded as provided in Paragraph 33, below.

9 **32. Recording.** As required by Section 163.3239, *Florida Statutes*, the City shall
10 record this Development Agreement in the public records of Monroe County, Florida, within
11 fourteen (14) days after the effective date of this Development Agreement. A copy of the
12 recorded Development Agreement showing the date, page and book where recorded shall be
13 submitted to the Owner and to the state land planning agency by hand delivery, registered or
14 certified United States mail, or by a delivery service that provides a signed receipt showing the
15 date of delivery, within fourteen (14) days after the Development Agreement is recorded.

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

18 Passco Ocean DST , a Delaware Statutory Trust ("Owner")

19 By: _____
20

21 Passco Companies, LLC, sole member of its Manager, Passco Ocean Manager, LLC,
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STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by _____, authorized person of Passco Ocean, DST, on behalf of the company, who is () personally known to me. or () who has produced a driver's license as identification.

SEAL

Notary Public

CITY OF KEY WEST

_____, 2018
Date

By _____
Mayor

ATTEST:

CITY CLERK

LIST OF EXHIBITS

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- Exhibit A: Legal description of property
- Exhibit B: Copy of Special Warranty Deed
- Exhibit C: Site Plan, revised as of June 7, 2017 (the “Site Plan”)
- Exhibit D: Site Data sheet
- Exhibit E: Key West Planning Board Resolutions No. 2015-26 and 2017-06 (BPAS allocations)
- Exhibit F: Key West Planning Board Resolution No. 2017-24 (Major Development Plan recommendation)
- Exhibit G: Key West Planning Board Resolution No. 2017-25 (Development Agreement recommendation)
- Exhibit H: Key West City Commission Resolution No. 17-217 (Major Development Plan approval)
- Exhibit I: Key West City Commission Resolution No. 17-__ (Development Agreement approval)
- Exhibit J: Declaration of Affordable Housing Restrictions (the “Deed Restriction”)
- Exhibit K: Traffic Impact statement
- Exhibit L: Form of Avigation Easement