

Site A:
Application Package

1. Application
2. Site Project Scope
3. Construction Cost Estimate
4. Construction Schedule
5. Deed
6. Appraisal and Cost Estimate
7. Property Appraiser Record Card
8. Noticing

KEY WEST HOTEL COLLECTION
SITE A – FAIRFIELD INN & SUITES

Project Description Narrative
(Special considerations – Design features)

In addition to the items listed in Section 108-229 of the City of Key West Code of Ordinances, that are included on the site plan sheet, below there are the special considerations applicable to this Proposed Development.

DESIGN FEATURES	
1	The proposed Limited service Hotel will be located at 3252 North Roosevelt Boulevard, and consist of 135 renovated key with an approximate 4,900 SF new lobby and registration building.
2	As part of the amenities offered by the proposed Hotel, this development includes a brand new pool and deck, located in the same area where the existing pool and deck are.
3	The existing buildings that are planned to remain will be fully renovated including the enhancing of their exterior appearance. This will be achieve by the introduction of new architectural components, such as, screens, louvers, decorative railings, brand new exterior lighting package, new exterior guestroom walls.
4	The proposed hotel is being designed to follow the Industry Standards for Green Design, which complies with the requirements of the applicable energy conservation code.
5	The design of the Hotel street frontage including the drop-off zone will allow the free pedestrian movement along North Roosevelt Boulevard. The Hotel drop-off zone will have a demarcated drop-off zone, which allow for the appropriate drop-off and pick-up of both guest and visitors with no interference on the street thru traffic.
6	The proposed hotel includes the following site improvements: <ul style="list-style-type: none"> • A 6ft tall brand new fence to screen the proposed hotel from adjacent residential uses. • Heavily vegetated buffer adjacent to the new fence. • New water feature. • New paving areas to enhance the sense of arrival to the proposed hotel.
7	All hotel service incoming and outgoing will take place on the rear side of the new lobby building.
8	The proposed hotel also includes 42" min roof parapets (New building only) for the purpose of concealing all roof top equipment. This feature enhances the

	overall appearance of the Hotel.
9	The site offers a tremendous exposure to the North Roosevelt Boulevard which drives the design and the space organization to promote and maximize pedestrian interaction between the indoors and the street corridor. The proposed hotel offers a great focal destination that fits very well with the spirit and intent of the district.
10	The proposed facility has been designed to be one of the modern City Landmarks, which blends with the near context providing an appropriate scale for the district, interest and warmth to create a dynamic interaction with the district residents. The proposed hotel has been designed with a great exterior appearance, pleasant interior environment, and to be a contributor to the Key West gateway.
11	The hotel design includes an integral exterior sign and lighting design that works consistently with the intent of providing the city with an elegant and modern landmark

END OF THE DOCUMENT

HOTEL PROGRAM SUMMARY

Food & Beverage			
Breakfast Area		67 Seats	
	Modules	Keys	Percentage
Guestrooms			
King Guestroom	51	51	38%
Double Queen Guestroom	65	65	49%
Suites	25	17	13%
TOTAL GUEST ROOMS	141	133	100%

HOTEL PROGRAM DETAIL

A. Public Areas

1. Food & Beverage			
a. Breakfast Area	1,500		
b. Corner Market	75		
c. Main Vending Area	65		
	<u> </u>		
Sub Total			1,640
2. Function			
a. Connect & Print Zone	200		
	<u> </u>		
Sub Total			200
4. Recreation			
a. Outdoor Pool & Spa (1500 SF)	0		
c. Exercise Room	295		
d. Pool Restrooms	80		
	<u> </u>		
Sub Total			375
5. Public Circulation			
a. Lobby/Lounge	900		
b. Vestibules	145		
c. Circulation	600		
d. Public Toilets	120		
	<u> </u>		
Sub Total			1,765
PUBLIC AREAS TOTAL			4,180 Square Feet

B. Guest Rooms

1. Guest Room Modules	
a. King Guestroom	
11'-11" x 18'-0-1/4" Sleeping Area	
11'-11" x 22'-9 1/4" = 276 SF/ Module	
276 x 51 = SF of Total Modules	14,076
d. Queen Queen	
11'-11" x 18'-0-1/4" Sleeping Area	
11'-11" x 22'-9 1/4" = 276 SF/ Module	
276 x 65 = SF of Total Modules	17,940
e. Suites	
17'-0" x 22'-0" Sleeping Area	
17'-0" x 27'-6" = 468 SF/ Module	

468 x 17 = SF of Total Modules	7,956	
Sub Total		39,972

GUEST ROOM TOWER TOTAL **39,972 Square Feet**

Note: Exterior walkways are in addition to sf noted above

C. Administration & Back-of-House

1. General & Administrative			
a. Work Area	250		
b. General Manager's Office	130		
c. Administration Storage	45		
d. Circulation & Miscellaneous	<u>100</u>		
Sub Total			525
2. Food & Beverage Preparation & Storage			
a. Food Prep	<u>400</u>		
Sub Total			400
3. General Service			
a. Circulation & Miscellaneous	<u>300</u>		
Sub Total			300
4. Employee Facilities			
a. Employee Breakroom	210		
b. Circulation & Miscellaneous	42% <u>150</u>		
Sub Total			360
5. Housekeeping & Laundry			
a. Laundry Room	635		
b. Linen Chute Room (None)	0		
c. Janitor Closet	40		
d. Circulation & Miscellaneous	<u>75</u>		
Sub Total			750

BACK-OF-HOUSE TOTAL **2,335 Square Feet**

SUMMARY

A. Public Areas	4,180
B. Guest Room Tower	39,972
C. Administration & Back-of-House	2,335
TOTAL	46,487 Square Feet
SQUARE FEET PER GUEST ROOM	350

D. Parking

Parking Spaces (Including Handicap Spaces)	134 Spaces Total
Proposed Handicap Spaces	5
Bike Parking Spaces	47 Total

Scope Narrative

KEY WEST HOTEL COLLECTION:
SITE A – FAIRFIELD INN & SUITES

Site Improvements:

- Develop landscaping at property perimeter, existing courtyards, pool, and “Sense of Arrival” to create resort like privacy
- Demolish existing reception and Waffle House building
- Install new pool with expanded pool deck experience including a water feature and pool side bar
- Exterior lighting enhancements to compliment new landscaping
- Asphalt repairs, curb cuts, paving, drainage improvements as necessary

Public Building:

- Provide new 4,900 SF new hotel arrival public building located near existing guestroom building “A”
- Renovate 2500 SF of existing guestroom building “A” to serve as new BOH
- Provide new Porte Cochere

Guestroom Buildings:

- Complete renovation of all existing guestrooms
- Extend ~ 17 guestrooms to create suites in Building “D”
- Provide new elevated walkway to service guestrooms in Building “D”
- Reposition rooms to achieve a 60:40 queen queen to king ratio
- Replace exterior skin and existing window system
- Provide new handrails, finishes, and architectural features at on-grade and elevated walkways
- Replace existing roof
- Install life safety system required by code
- Install new sprinkler systems
- Install new HVAC in form of PTAC

FFE & OSE

- Provide all new FF&E and OS&E throughout entire resort



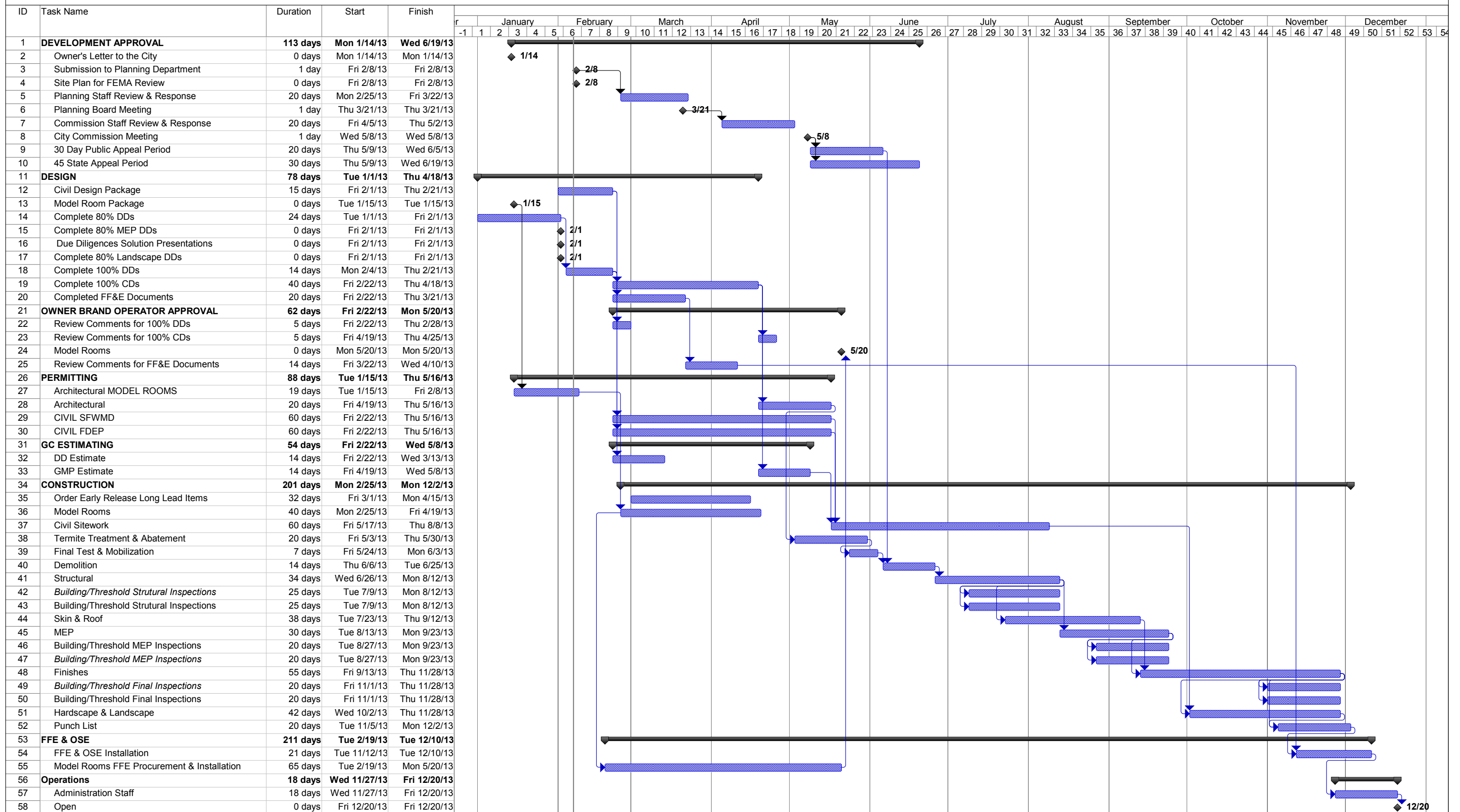
CONCEPTUAL CONSTRUCTION EXPENDITURES ESTIMATE

SITE A - KEY WEST

Site: A	Scope Description	Estimated Labor Cost	Estimated Material Cost	Total Estimate Cost	Estimated Expenditure - Key West
	Demolition	\$272,000	\$48,000	\$320,000	\$320,000
	Utility / Drainage / Paving	\$52,500	\$97,500	\$150,000	\$150,000
	Landscaping / Pool / Lighting	\$140,000	\$210,000	\$350,000	\$350,000
	Pavilions / Stairs / Pool Bar	\$112,500	\$137,500	\$250,000	\$250,000
	New Lobby Building	\$715,000	\$585,000	\$1,300,000	\$1,300,000
	Porte Cochere	\$65,000	\$65,000	\$130,000	\$130,000
	Back Of House Renovations	\$150,000	\$100,000	\$250,000	\$250,000
	Existing Guestroom Building Renovations	\$2,100,000	\$1,400,000	\$3,500,000	\$3,500,000
	Structral & Infrastructure Improvements	\$455,000	\$245,000	\$700,000	\$700,000
	Housing Expenses			\$150,000	\$150,000

Conceptual Construction Budget:	\$7,100,000
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KEY WEST HOTEL COLLECTION SITE - A



Return to:
Robert H. Gebaide, Esq.
BAKER & HOSTETLER LLP
200 South Orange Avenue
SunTrust Center, Suite 2300
Post Office Box 112
Orlando, Florida 32802
(407) 649-4000

11/09/2006 9:57AM
DEED DOC STAMP CL: PW \$175,000.00

Doc# 1612035
Bk# 2250 P# 2288

Parcel ID#: 00065060-000000

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, made and entered into as of this 8th day of November, 2006, between SH Key West, Ltd., a Florida limited partnership, whose mailing address is 506 Fleming Street, Key West, Florida 33040 ("SH Key West"), as to a fifty and one-half percent (50.5%) tenancy in common interest; SH 8, LLC, a Florida limited liability company, whose mailing address is 506 Fleming Street, Key West, Florida 33040, as to a twenty-four and seventy-five one hundredths percent (24.75%) tenancy in common interest ("SH8"); Norman Beznos, a resident of the State of Michigan, whose mailing address is 31731 Northwestern Hwy., Ste 250W, Farmington Hills, MI 48334, as to a three and three hundred twenty-seven thousandths percent (3.327%) tenancy in common interest, which interest is not homestead property, LESA Associates, L.L.C., a Michigan limited liability company, ("LESA Associates") whose mailing address is 31731 Northwestern Hwy., Ste 250W, Farmington Hills, MI 48334, as to a five and seven hundred twenty-one thousandths percent (5.721%) tenancy in common interest; World Holdings U.S.A. Limited Partnership, a Delaware limited partnership ("World Holdings"), whose mailing address is 31731 Northwestern Hwy., Ste 250W, Farmington Hills, MI 48334, as to a three and three hundred twenty-seven thousandths percent (3.327%) tenancy in common interest; and Mary Szelinski, as Trustee of the Paola M. Luptak Irrevocable Family Trust u/t/a dated 8/7/1992 (the "Luptak Trust"), whose mailing address is 31731 Northwestern Hwy., Ste 250W, Farmington Hills, MI 48334, as to a twelve and three hundred seventy-five thousandths percent (12.375%) tenancy in common interest (SH Key West, SH 8, Norman Beznos, LESA Associates, World Holdings and the Luptak Trust are hereinafter referred to collectively as the "Grantor"); and JLW Key West 1, LLC, a Florida limited liability company, whose mailing address is 506 Fleming Street, Key West, Florida 33040, hereinafter referred to as the "Grantee".

The total of all of the tenancy in common interests of all of the individual Grantors listed above is a one hundred percent (100.00%) interest in the land set forth below.

WITNESSETH:

That the Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, to it in hand paid, the receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantee, its successors and assigns forever, in total all that certain parcel of land lying and being in the County of Monroe, State of Florida, with an address of 3852 N. Roosevelt Boulevard, Kew West, Florida, as more particularly described in the Exhibit "A" annexed hereto and by this reference made a part hereof.

TOGETHER WITH all the improvements, tenements, hereditaments, and appurtenances thereto belonging or in anyway appertaining and together with all rights and easements of record.

SUBJECT TO all matters listed in Exhibit "B" annexed hereto and by this reference made a part hereof.

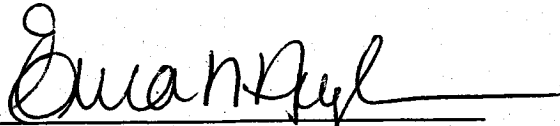
TO HAVE AND TO HOLD the above described premises, with the appurtenances, unto the said Grantee, its successors and assigns, in fee simple forever.

And the Grantor does specially warrant the title to said land subject to the matters referred to above and will defend the same against the lawful claims of all persons claiming by, through or under the Grantor, but not otherwise.

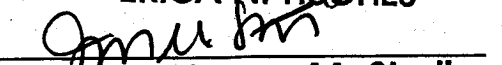
IN WITNESS WHEREOF, the Grantor has caused these presents to be duly executed in its name, on the date set forth below its name, and by those thereunto duly authorized.

WITNESSES:

GRANTORS:




Name: ERICA N. HUGHES


Name: Jenny M. Sterling

SH Key West, Ltd., a Florida limited partnership

By: SH Key West, Inc., a Florida corporation, its general partner


By: Robert A. Spottswood, President

STATE OF FLORIDA)
COUNTY OF MONROE)SS

The foregoing instrument was sworn to and subscribed before me this 8th day of November, 2006 by Robert A. Spottswood, as President of SH Key West, Inc., a Florida corporation, the general partner of SH Key West, Ltd., a Florida limited partnership, on behalf of the company, who appeared before me and is personally known to me or produced identification.

(Notary Seal)



Martha A. Galbraith
MY COMMISSION # DD255413 EXPIRES
December 1, 2007
BONDED THRU TROY FAIN INSURANCE, INC.

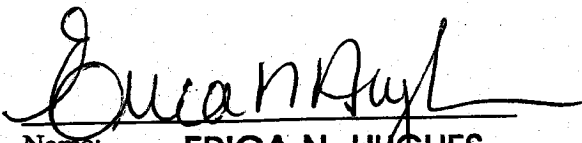


Notary Public, State of FLORIDA

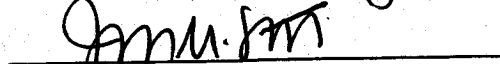
My commission No.: _____

My Commission Expires: _____

WITNESSES:



Name: ERICA N. HUGHES



Name: Jenny M. Sterling

GRANTORS:

SH 8, LLC, a Florida limited liability company

By: SH 8 Manager, LLC, a Florida limited liability company, its Manager

By: Spottswood Hotels, Inc., a Florida corporation, its Manager and Sole Member

By: 
Robert A. Spottswood, President

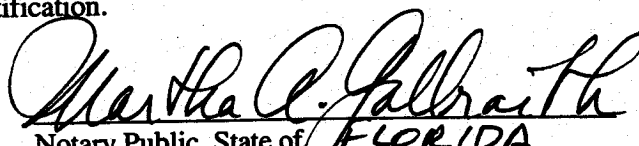
STATE OF FLORIDA
COUNTY OF MONROE)SS

The foregoing instrument was sworn to and subscribed before me this 8th day of November, 2006 by Robert A. Spottswood, as President of Spottswood Hotels, Inc., a Florida corporation, the Manager and Sole Member of SH 8 Manager, LLC, a Florida limited liability company, the Manager of SH 8, LLC, a Florida limited liability company, on behalf of the company, who appeared before me and is personally known to me or produced _____ identification.

(Notary Seal)



Martha A. Galbraith
MY COMMISSION # DD255413 EXPIRES
December 1, 2007
BONDED THRU TROY FAIR INSURANCE, INC.


Notary Public, State of FLORIDA
My commission No.: _____
My Commission Expires: _____

WITNESSES:

GRANTORS:

Janice J. Laubert
Name: JANICE J. LAUBERT

By: Norman Beznos
Norman Beznos

Cathy Carroll
Name: CATHY CARROLL

STATE OF Michigan
COUNTY OF Oakland)SS

The foregoing instrument was sworn to and subscribed before me this 3rd day of November, 2006 by Norman Beznos, individually, who appeared before me and is personally known to me or produced _____ identification.

(Notary Seal)

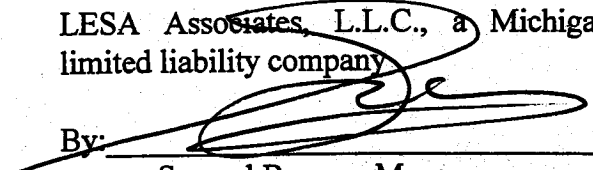
Janice J. Laubert
Notary Public, State of Michigan
My commission No.: _____
My Commission Expires: 06-05-08

Janice J. Laubert
Notary Public, Macomb County, MI
My Commission Expires: 06-05-08
Acting in Oakland County, MI

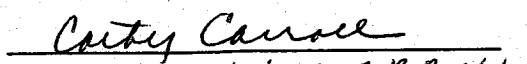
WITNESSES:

GRANTORS:

LESA Associates, L.L.C., a Michigan limited liability company

By: 
Samuel Beznos, Manager


Name: JANICE J. LAUBERT

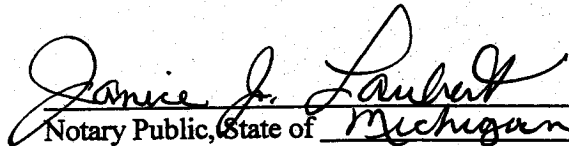

Name: CATHY CARROLL

STATE OF Michigan)
)SS
COUNTY OF Oakland)

The foregoing instrument was sworn to and subscribed before me this 3rd day of November, 2006 by Samuel Beznos, as Manager of LESA Associates, L.L.C., a Michigan limited liability company, on behalf of the company, who appeared before me and is personally known to me or produced _____ identification.

(Notary Seal)

Janice J. Laubert
Notary Public, Macomb County, MI
My Commission Expires: 06-05-08
Acting in Oakland County, MI


Notary Public, State of Michigan
My commission No.: _____
My Commission Expires: 06-05-08

WITNESSES:

GRANTORS:

Paola M. Luptak Irrevocable Family Trust
U/T/A 8/7/1992

Mary Szelinski

By: Mary Szelinski
Its: Trustee

Janice J. Laubert
Name: JANICE J. LAUBERT

Cathy Carroll
Name: CATHEY CARROLL

[fix notary]
STATE OF Michigan)
)SS
COUNTY OF Oakland)

Mary Szelinski, Trustee of the Paola M. Luptak
Irrevocable Family Trust U/T/A 8/7/1992

The foregoing instrument was sworn to and subscribed before me this 31st day of November, 2006 by ~~Robert A. Spottwood, as President of SH Key West, Inc., a Florida corporation, the general partner of SH Key West, Ltd., a Florida limited partnership, on behalf of the company,~~ who appeared before me and is personally known to me or produced _____ identification.

(Notary Seal)

Janice J. Laubert
Notary Public, Macomb County, MI
My Commission Expires: 06-05-08
Acting in Oakland County, MI

Janice J. Laubert
Notary Public, State of Michigan
My commission No.: _____
My Commission Expires: 06-05-08

EXHIBIT "A"

Legal Description

A parcel of land located and situate on the Island of Key West, County of Monroe, State of Florida, being more particularly described by metes and bounds as follows:

Starting at the intersection of the Northerly property line of Duck Avenue and the Southeast corner of Block 15, KEY WEST FOUNDATION COMPANY'S PLAT NO. 2, recorded in Plat Book 1, Page 189; thence North $21^{\circ} 22'20''$ West, 135.00 feet along the Westerly property line of Roosevelt Boulevard to the Point of Beginning; thence South $68^{\circ} 45'40''$ West, 240.00 feet to a corner; thence North $21^{\circ} 22'20''$ West, 600.00 feet; thence North $68^{\circ} 45'40''$ East, 240.00 feet to the Westerly property line of Roosevelt Boulevard; thence South $21^{\circ} 22'20''$ East, 600.00 feet along the Westerly property of Roosevelt Boulevard to the Place of Beginning, all in Tract 22 of the land of the Key West Improvement Company, Inc.

EXHIBIT "B"

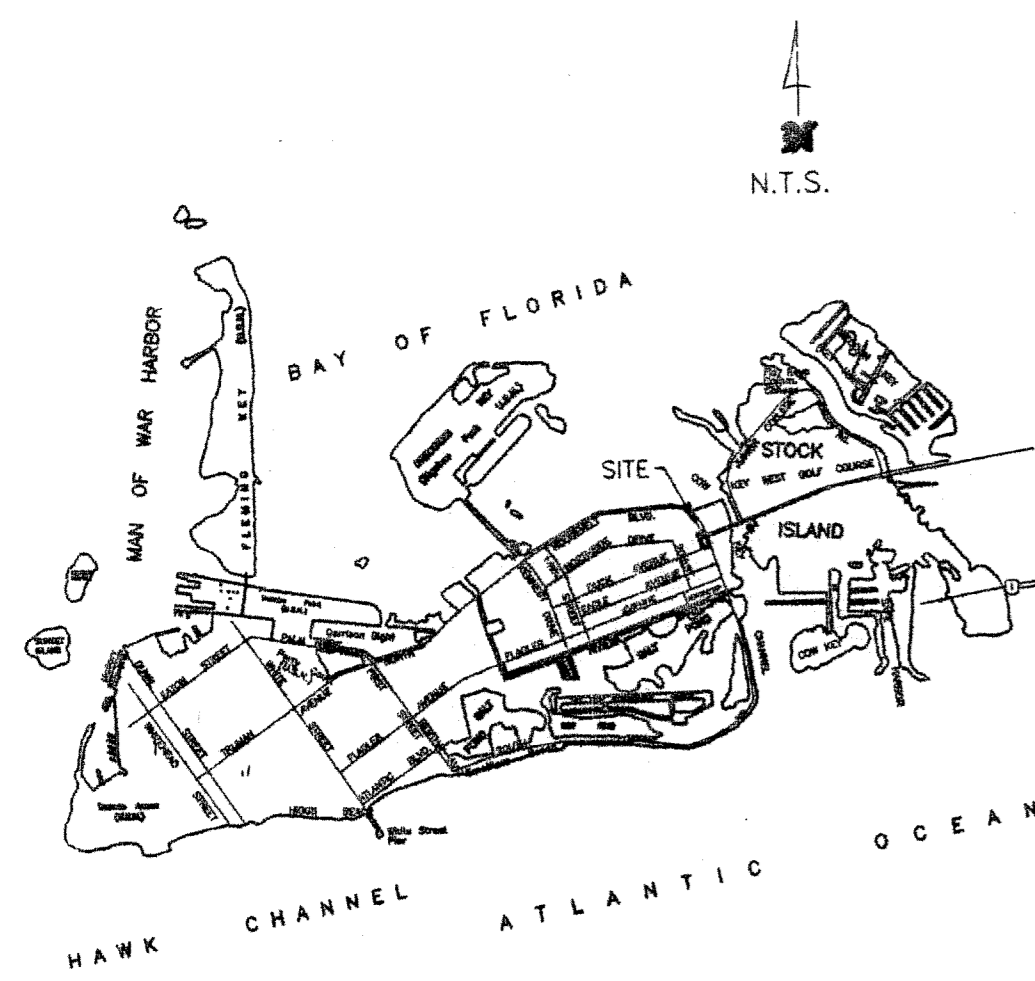
**Doc# 1612035
Bk# 2250 Pg# 2296**

Title Exceptions

1. Taxes and assessments for the year 2007 and subsequent years.
2. Easement to the Utility Board of the City of Key West, Florida recorded in Official Records Book 598, Page 252, Public Records of Monroe County, Florida.
3. Easement to the Utility Board of the City of Key West, Florida recorded in Official Records Book 601, Page 547, Public Records of Monroe County, Florida.
4. State Law under Chapter 76-190 and Chapter 22F8.02 of the Florida Administrative Code for Land Planning for the Florida Keys Area of Critical Concern recorded in Official Records Book 668, Page 43, and Final Judgment recorded in Official Records Book 1788, Page 1257, Public Records of Monroe County, Florida.
5. City of Key West Area of Critical State Concern, Rule 27F-15 of the Florida Administrative Code, adopted by the Administration Commission pursuant to Section 380.05, Florida Statutes, on February 7, 1984, effective February 28, 1984, recorded in Official Records Book 906, Page 200, Public Records of Monroe County, Florida.
6. City Ordinance No. 81-43 and Amendment 82-5 thereof, which provides for the assessment and collection of waste in the City of Key West, Monroe County, Florida.
7. Code of Ordinances of the City of Key West, Section 74, which provides for the assessment and collection of sewer charges.
8. Terms, covenants, conditions and other matters contained in the Lease dated January 2, 1998, and made by Jupiter Hotels Limited Partnership, an Illinois limited partnership and Northlake Foods, Inc., a Georgia corporation, a Memorandum/Short Form of which was recorded June 17, 1998, in Official Records Book 1521, Page 1338, of the Public Records of Monroe County, Florida, which does not contain an option or right of purchase.
9. Agreement for Grant of Easement to TCI Cablevision of Georgia, Inc. recorded in Official Records Book 1755, Page 224, Public Records of Monroe County, Florida.
10. Any rights, interests or claims arising from the following matters shown on the survey prepared by Frederick H. Hildebrandt, dated March 3, 1999, and last updated October 19, 2006, Drawing No. 06-500:

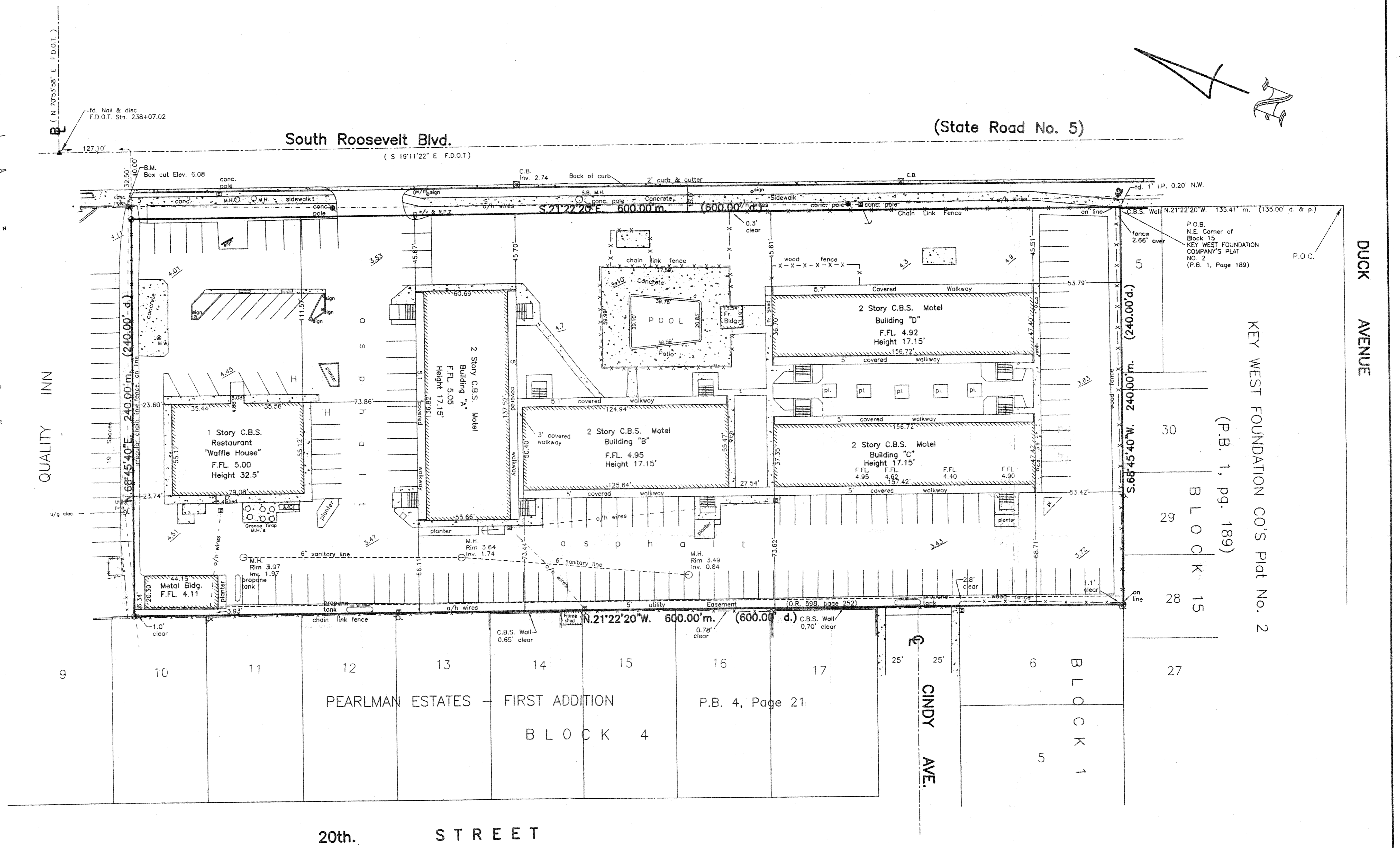
Chain link fence encroaches on Southerly boundary line.

**MONROE COUNTY
OFFICIAL RECORDS**



LOCATION MAP
City of Key West & Stock Island

LEGAL DESCRIPTION:
A Parcel of land located and situate on the island of Key West, County of Monroe, State of Florida, being more particularly described by metes and bounds as follows:
Starting at the intersection of the Northerly property line of Duck Avenue and the Southeast corner of Block 15, KEY WEST FOUNDATION COMPANY'S PLAT NO. 2, as recorded in Plat Book 1, page 189; thence N 21°22'20" W, 135 feet along the Westerly property line of Roosevelt Boulevard to the Point of Beginning; thence S 68°45'40" W, 240 feet to a corner; thence N 21°22'20" W, 600 feet; thence N 68°45'40" E, 240 feet to the Westerly property line of Roosevelt Boulevard; thence S 21°22'20" E, 600 feet along the Westerly property line of Roosevelt Boulevard to the place of beginning, all in Tract 22 of the lands of the Key WEST IMPROVEMENT COMPANY, INC..



QUALITY INN

DUCK AVENUE

PEARLMAN ESTATES - FIRST ADDITION P.B. 4, Page 21

BLOCK 4

KEY WEST FOUNDATION CO'S Plat No. 2 (P.B. 1, pg. 189)

BLOCK 15

BLOCK 1

CINDY AVE.

20th. STREET

SURVEYOR'S NOTES:
North arrow based on plat
Reference Bearing: R/W So. Roosevelt Blvd. per deeds
▲ denotes existing elevation
Elevations based on N.G.V.D. 1929 Datum
Bench Mark No.: NOS 1982 Elevation: 5.1440
Monumentation:
⊙ = set 1/2" Iron Pipe, P.L.S. No. 2749
● = Found 1/2" Iron Bar
△ = Set P.K. Nail, P.L.S. No. 2749
▲ = Found P.K. Nail

Abbreviations:
Sty. = Story
R/W = Right-of-Way
fd. = Found
p. = Plat
m. = Measured
d. = Deed
M.H.W. = Mean High Water
O.R. = Official Records
Sec. = Section
Twp. = Township
Rge. = Range
N.T.S. = Not to Scale
C = Centerline
Elev. = Elevation
B.M. = Bench Mark
P.C. = Point of Curvature
P.T. = Point of Tangency
P.O.C. = Point of Commencement
P.O.B. = Point of Beginning
P.B. = Plat Book
pg. = page
Elec. = Electric
Tel. = Telephone
Ench. = Encroachment
O.L. = On Line
C.L.F. = Chain Link Fence
o/h = Overhead
u/g = Underground
F.F.L. = Finish Floor Elevation
L.B. = Low Beam
Rad. = Radial
Irr. = Irregular
conc. = concrete
I.P. = Iron Pipe
I.B. = Iron Bar
B = Baseline
C.B. = Concrete Block
C.B.S. = Concrete Block Stucco
cov.d. = Covered
P.I. = Point of Intersection
wd. = Wood
R = Radius
A = Arc (Length)
D = Delta, (Central angle)
w.m. = Water Meter
Bal. = Balcony
Pl. = Planter
Hyd. = Fire Hydrant
F.W. = Fire Well
A/C = Air Conditioner

⊙ = Concrete Utility Pole
⊙ = Wood utility Pole
⊙ = Wood Utility Pole with Guy wire
⊙ = Fire Well
⊙ = Monitoring Well
⊙ = Water Meter
⊙ = Water Valve
⊙ = Electric Manhole
⊙ = Electric Utility Vault
⊙ = Man Hole
⊙ = Sanitary
⊙ = Storm Water Catch Basin
⊙ = Invert
⊙ = Backflow Prevention Valve
⊙ = Polyvinyl Pipe
⊙ = Reinforced Concrete pipe
⊙ = Fire Hydrant
⊙ = Light
⊙ = sign
F.D.O.T. = Florida Department of Transportation

Field Work performed on: 2/23/99

10/19/06: Update, cert. detail
7/30/99: New Certification

Spottswood Properties - Days Inn 3852 South Roosevelt Blvd., Key West, FL.			
BOUNDARY SURVEY		Dwn No.: 06-500	
Scale: 1"=30'	Ref. file: 141-54	Flood panel No.: 1509-K	Dwn. By: F.H.H.
Date: 3/3/99		Flood Zone: AE	Flood Elev.:
REVISIONS AND/OR ADDITIONS			
3/11/99: Certification		7/28/99: Utility Easements	
5/28/99: Parking, Zoning, Area, Cert., Setbacks			
7/8/99: type's, cert., easements			
c:\drawing\key west\spottswood properties\days inn			

FREDERICK H. HILDEBRANDT
ENGINEER PLANNER SURVEYOR

3152 Northside Drive
Suite 201
Key West, FL 33040
(305) 293-0466
Fax: (305) 293-0237

SURVEYOR'S CERTIFICATE

This Certificate and the attached survey are made for the benefit of:
Spottswood Hotels, Inc., a Florida corporation, and its assigns
Spottswood Companies, Inc., a Florida corporation, and its assigns
J.L. Woode Ltd., LLC, a Delaware limited liability company, and its assigns
LaSalle Bank National Association
Baker & Hostetler LLP
Chicago Title Insurance Company
JLW Key West 1, LLC, a Florida limited liability company
SH Key West, LTD., a Florida limited partnership
DLA Piper US LLP

I hereby certify

- That the survey was made on the ground and is correct.
- That the survey shows a complete legal description of the land and any easements appurtenant to the land necessary for access or utilities and an indication of the total acreage or square foot area of the land.
- That the survey shows the location of the perimeter of the subject property by courses and distances and all lines described by reference to the line of another piece of property.
- That all field measurements on the survey are balanced, both as to angles and distances, so as to provide a mathematical closure. That the survey shows the point of beginning, if applicable, basis of bearings, assumed or otherwise, the scale and a north arrow. That the survey shows the following information for any curve: length of arc, radius, central angle and bearing to the radius point from the beginning and end points of the curve.
- That the survey shows the location of all easements and rights-of-way, including all easements and rights-of-way shown as exceptions on Chicago Title Insurance Company commitment for title insurance No. 630601391 dated October 4, 2006 at 5:00 p.m. That the survey shows the location of all easements referred to in the title binder, showing the book and page of recording of all easements on the survey, and stating that all easements are located pursuant to the book and page of the recorded easements.
- That the survey shows established building lines and setback, height and bulk restrictions of record or disclosed by applicable zoning or building codes (in addition to those recorded in subdivision maps).
- That the survey shows all dedicated public streets, easements or rights-of-way providing access to the land, and whether such access is paved to the property line of the land and that the width of all of the foregoing are indicated.
- That the survey shows lines of streets abutting the subject property and the width thereof, and that ingress and egress to the subject property is provided by South Roosevelt Blvd., (U.S. Highway 1) (State Road No. 5), the same being a dedicated public right-of-way maintained by the Island of Key West, and the State of Florida.
- That the survey shows encroachments and the extent thereof in feet and inches (if practicable) upon the subject property, including, but without limitation, over, under or across buildings, easements and encroachments either way across the boundary lines of the subject property (or if any improvements located upon the land encroach upon other lands).
- That the survey shows the exterior dimensions of all buildings at ground level and the square footage of the exterior footprint of all buildings, or gross floor area of all buildings at ground level and the height of all buildings above grade at a defined location, if applicable.
- That the survey shows all substantial, visible improvements (in addition to buildings) such as signs, parking areas or structures, swimming pools, tennis courts, etc.
- That the survey shows the relation of the improvements by distances to the perimeter of the subject property, the established building lines and the street lines.
- That the survey shows all parking areas and, if striped, the striping and the type (e.g. handicapped, motorcycle, regular, etc) and number of parking spaces, if applicable.
- That the survey shows the location of all easements necessary to bring utilities to the Property, together with the location of all utilities (i.e., sewer, water, electric, telephone and gas service) serving or existing on the property as evidenced by on-site observation or as determined by records provided by client, utility companies and other appropriate sources (with reference as to the source of information) (for example): (a) railroad tracks and sidings; (b) manholes, catch basins, valve vaults or other surface indications of subterranean uses; (c) wires and cables (including their function) crossing the surveyed premises, all poles on or within ten feet of the surveyed premises, and the dimensions of all crosswires or overhangs affecting the surveyed premises; and (d) utility company installations on the surveyed premises.
- That the survey shows the location of all matters affecting the land, including fences, pipelines and streams.
- That the survey shows all observable evidence of earth moving work, building construction or building additions within recent months.
- That the survey shows all observable evidence of site use as a solid waste dump, sump or sanitary landfill.
- That if the subject property is described as being on a field map or plot, a legend relating the survey to said map or plot is on the survey.
- That the survey shows any coastal body of water or navigable waterway within 150 feet of the subject property, if applicable.
- That the survey shows all applicable coastal construction lines, bulkhead lines, mean high water marks and erosion control lines must be shown on the survey or a statement contained therein that same do not lie within the boundary of the subject property.
- That the subject property does not serve any adjoining property for drainage, ingress or egress or any other purpose, except as shown on the survey.
- That the subject property is within special flood hazard area 12016B, Panel 1509 K, AE, Elevation 8', dated 2/18/05 as shown in the most recent Flood Hazard Boundary Maps prepared by the Department of Housing and Urban Development.
- That the Subject Property is zoned General Commercial under zoning codes of the Island of Key West.
- That the survey shows any significant observations not otherwise disclosed.
- That the survey represented hereon meets the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA, ACSM and NSPS in 2005, and pursuant to the Accuracy Standards (as adopted by ALTA and ACSM and in effect on the date of this certification) of an Urban Survey. This instrument is not valid unless it bears an original signature and an embossed surveyor's seal.

Zoning: CG General Commercial
Area: 144,000 S.F. (3.3058 Ac.)
Parking: 138 Spaces
2 Handicapped

Setbacks: Side: 20'
Front & Back: 48'
(note Motel grandfathered in)

FIRM: 12016B, 1509 K
Zone: AE 8'
2/18/06

Schedule B, Section 2 Items:

- Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest of mortgage thereon covered by this Commitment. Not plottable on survey.
- Standard Exceptions:
 - Rights or claims of parties in possession not shown by Public Records. Not applicable.
 - Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey and inspection of the premises. Shown on survey.
 - Easements or claims of easements, not shown by the Public Records. Not applicable.
 - Any lien, or right to a lien, for service, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records. Not applicable.
 - Taxes or special assessments which are not shown as existing liens by the Public Records. Not applicable.
 - Any claim that any portion of said lands are sovereign lands of the State of Florida, including submerged, filled or artificially exposed lands and lands accreted to such lands. Not applicable.
 - Taxes and assessments for the year 2006 and subsequent years. Not applicable.
- Standard exceptions (b) and (c) may be removed from the policy when a satisfactory survey and surveyor's report and inspection of the premises is made.
- Standard exceptions (a) and (d) may be removed upon receipt of a satisfactory affidavit-indemnity from the party shown in title and in possession stating who is in possession of the lands and whether there are improvements being made at date of commitment or contemplated to commence prior to the date of closing which will not have been paid for in full prior to the closing.
- Easement to the Utility Board of the City of Key West, Florida recorded in Official Records Book 598, Page 252, Public Records of Monroe County, Florida. Shown on survey.
- Easement to the Utility Board of the City of Key West, Florida recorded in Official Records Book 601, Page 547, Public Records of Monroe County, Florida. Covers entire property.
- State Law under Chapter 76-190 and Chapter 22F8.02 of the Florida Administrative Code for Land Planning for the Florida Keys Area of Critical Concern recorded in Official Records Book 668, Page 43, and Final Judgment recorded in Official Records Book 1788, Page 1257, Public Records of Monroe County, Florida. Not plottable.
- City of Key West Area of Critical State Concern, Rule 27F-15 of the Florida Administrative Code, adopted by the Administration Commission pursuant to section 380.05, Florida Statutes, on February 7, 1984, effective February 28, 1984, recorded in Official Records Book 906, Page 200, Public Records of Monroe County, Florida. Not plottable.
- City Ordinance No. 81-43 and Amendment 82-5 thereof, which provides for the assessment and collection of waste in the City of Key West, Monroe County, Florida. Not plottable.
- Code of Ordinances of the City of Key West, Section 74, which provides for the assessment and collection of sewer charges. Not plottable.
- Terms, covenants, conditions and other matters contained in the Lease dated January 2, 1998, and made by Jupiter Hotels Limited Partnership, an Illinois limited partnership and Northlake Foods, Inc., a Georgia corporation, a Memorandum/Short Form of which was recorded June 17, 1998, in Official Records Book 1521, Page 1338, of the Public Records of Monroe County, Florida. Covers entire property.
- Declaration of License Agreement between Days Inn of America, Inc., a Delaware corporation and SH Key West, Ltd., a Florida limited partnership recorded in Official Records Book 1628, Page 2456, Public Records of Monroe County, Florida. Covers entire property.
- Agreement for Grant of Easement to TCI Cablevision of Georgia, Inc. recorded in Official Records Book 1755, Page 224, Public Records of Monroe County, Florida. Covers entire property.
- Terms, covenants, conditions and other matters contained in any unrecorded Lease(s) and all rights hereunder of the Lessee(s) and of any person claiming by, through or under the Lessee(s). Not plottable.

DATED: 10/31/06

FREDERICK H. HILDEBRANDT
Professional Land Surveyor & Mapper No. 2749
Professional Engineer No. 36810
State of Florida

10/19/06: Update, cart, detail
7/30/98: New Certification

Spottswood Properties - Days Inn 3852 South Roosevelt Blvd., Key West, FL			
BOUNDARY SURVEY		Dwn No.: 06-500	
Scale: 1"=30'	Ref: 141-54	Flood panel No.: 1509 K	Dwn: By F.H.H.
Date: 3/3/99	Fld	Flood Zone: AE	Flood Elev: 8'
REVISIONS AND/OR ADDITIONS			
3/11/99: Certification		7/28/99: Utility Easements	
5/28/99: Parking, Zoning, Area, Cart, Setbacks			
7/28/99: 1/28/99: cart, easements			
Drawing: Key West Spottswood Properties Days Inn			

FREDERICK H. HILDEBRANDT
ENGINEER PLANNER SURVEYOR

3152 Northside Drive
Suite 201
Key West, FL 33040
(305) 293-0466
Fax: (305) 293-0237

CHICAGO TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

CHICAGO TITLE INSURANCE COMPANY, a corporation of Missouri, herein called the Company, for a valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor; all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

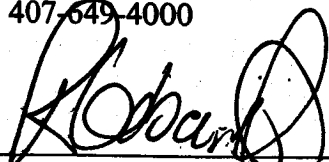
This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate six months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company.

IN WITNESS WHEREOF, Chicago Title Insurance Company has caused this Commitment to be signed and sealed as of the effective date of Commitment shown in Schedule A, the Commitment to become valid when countersigned by an authorized signatory.

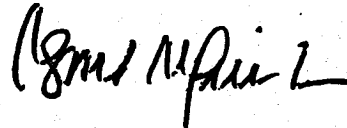
BAKER & HOSTETLER, LLP
200 South Orange Avenue
SunTrust Center, Suite 2300
Orlando, Florida 32802

407-649-4000


Authorized Signature

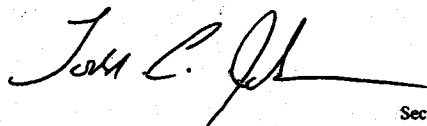
CHICAGO TITLE INSURANCE COMPANY

By:



President

ATTEST:



Secretary



**A.L.T.A. COMMITMENT
CHICAGO TITLE INSURANCE COMPANY
SCHEDULE A**

Office File Number

Effective Date
~~October 26, 2006~~
~~At 5:00 PM~~

November 8, 2006

Commitment Number

1. Policy or Policies to be issued:

OWNER'S POLICY (10-17-92)
with Florida Modifications
Proposed Insured:

\$25,000,000.00

JLW KEY WEST 1, LLC, a Florida limited liability company

LOAN POLICY (10-17-92)
with Florida Modifications
Proposed Insured:

To be determined

LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its successors and/or assigns

2. The estate or interest in the land described or referred to in this Commitment and covered herein is fee simple, and title thereto is at the effective date hereof vested in:

~~SH KEY WEST, LTD, a Florida limited partnership~~

Pa.j
JLW Key West 1, LLC

3. The Land is described as follows:

A parcel of land located and situate on the Island of Key West, County of Monroe, State of Florida, being more particularly described by metes and bounds as follows:

Starting at the intersection of the Northerly property line of Duck Avenue and the Southeast corner of Block 15, KEY WEST FOUNDATION COMPANY'S PLAT NO. 2, recorded in Plat Book 1, Page 189; thence North 21° 22'20" West, 135.00 feet along the Westerly property line of Roosevelt Boulevard to the Point of Beginning; thence South 68° 45'40" West, 240.00 feet to a corner; thence North 21° 22'20" West, 600.00 feet; thence North 68° 45'40" East, 240.00 feet to the Westerly property line of Roosevelt Boulevard; thence South 21° 22'20" East, 600.00 feet along the Westerly property of Roosevelt Boulevard to the Place of Beginning, all in Tract 22 of the land of the Key West Improvement Company, Inc.

Note: This Commitment consists of insert pages labeled in Schedule A, Schedule B-Section 1, and Schedule B-Section 2. This Commitment is of no force and effect unless all schedules are included, along with any Rider pages incorporated by reference in the insert pages.

**A.L.T.A. COMMITMENT
CHICAGO TITLE INSURANCE COMPANY
SCHEDULE A**

Note: This Commitment consists of insert pages labeled in Schedule A, Schedule B-Section 1, and Schedule B-Section 2. This Commitment is of no force and effect unless all schedules are included, along with any Rider pages incorporated by reference in the insert pages.

**A.L.T.A. COMMITMENT
CHICAGO TITLE INSURANCE COMPANY
SCHEDULE B - Section 1**

Commitment Number

I. ~~The following are requirements to be complied with:~~

1 ~~Instrument(s) necessary to create the estate or interest to be insured must be properly executed, delivered and duly filed for record.~~

~~a) Deed from SH Key West, Ltd., a Florida limited partnership, to Norman Beznos as to an undivided 3.327% interest, Lesa Associates, L.L.C., a Michigan limited liability company as to an undivided 5.721% interest, World Holdings U.S.A. Limited Partnership, a Delaware limited partnership as to an undivided 3.327% interest, Paola M. Luptak, as Trustee of the Paola M. Luptak Irrevocable Family Trust w/t/a dated August 7, 1992 as to an undivided 12.375% interest, and Spottswood Hotels, Inc., a Florida corporation as to an undivided 24.75% interest, conveying the lands described in Schedule A hereof, together with the following (as to SH Key West, Ltd.):~~

- ~~✓ i. Proof of its current good standing in the State of Florida as a limited partnership.~~
- ~~✓ ii. Satisfactory evidence must be furnished showing that all of the corporate general partner(s) or limited partnership(s) acting as general partner(s) are in good standing in their state(s) of incorporation or organization.~~
- ~~iii. Affidavit pursuant to F.S. 689.045 from one of the partners not executing the proposed deed, stating the names of the currently existing partners of said partnership, confirming that there is no limitation on the authority of any of the partners to sign deeds and confirming that the partnership has not been dissolved.~~

~~b) Deed from Spottswood Hotels, Inc., a Florida corporation to SH 8, LLC, a Florida limited liability company, conveying an undivided 24.75% interest in the land described in Schedule A. (NOTE: If the proposed instrument of conveyance is to be executed by an Officer other than a Chief Executive Officer, President or Vice President, a certified Resolution authorizing said Officer to sign on behalf of the corporation must be recorded.)~~

~~✓ c) Deed from SH 8, LLC, a Florida limited liability company to the Proposed Insured Owner, conveying an undivided 24.75% interest in the land described in Schedule A.~~

~~✓ d) Deed from Norman Beznos to the Proposed Insured Owner, conveying an undivided 3.327% interest in the land described in Schedule A.~~

~~NOTE: If the Grantor(s) is/are individuals and the property is homestead property, the spouse(s) of said Grantor(s) must join in the execution of the Deed. If not homestead, then a statement to that effect must be reflected on the Deed.~~

~~✓ e) Deed from Lesa Associates, L.L.C., a Michigan limited liability company to the Proposed Insured Owner, conveying an undivided 5.721% interest in the land described in Schedule A.~~

~~✓ f) Deed from World Holdings U.S.A. Limited Partnership, a Delaware limited partnership, to the Proposed Insured, conveying an undivided 3.327% interest in the lands described in Schedule A hereof, together with the following:~~

- ~~✓ i. Proof of its current good standing in the State of Delaware as a limited partnership.~~
- ~~✓ ii. Satisfactory evidence must be furnished showing that any corporations, limited partnerships or limited liability companies acting as general partners are in good standing in their states of incorporation or organization.~~
- ~~iii. Affidavit pursuant to FS 689.045 from one of the general partners, stating the names of the currently existing general partners of said partnership, confirming that there is no limitation on the authority of~~

RG

N/A

DA

**A.L.T.A. COMMITMENT
CHICAGO TITLE INSURANCE COMPANY
SCHEDULE B - Section 1**

any of the general partners to execute and deliver the deed or mortgage required above, and confirming that the partnership has not been dissolved.

g) Deed from Paola M. Luptak, as Trustee of the Paola M. Luptak Irrevocable Family Trust u/t/a dated August 7, 1992 to the Proposed Insured Owner, conveying an undivided 12.375% interest in the land described in Schedule A.

h) Warranty Deed from SH Key West, Ltd., a Florida limited partnership to the Proposed Insured Owner, conveying an undivided 50.50% interest in the land described in Schedule A.

i) Mortgage from JLW Key West 1, LLC, a Florida limited liability company to Proposed Insured Lender, encumbering the land described in Schedule A.

2 Payment of the full consideration to, or for the account of, the grantors or mortgagors.

3 Payment of all taxes, charges, assessments, levied and assessed against subject premises, which are due and payable.

4 Partial Release of the land described in Schedule A from the Mortgage and Security Agreement from SH Marathon, Ltd. and SH Key West, Ltd., both Florida limited partnerships, to Republic Bank, recorded August 18, 1999, in Official Records Book 1592, Page 971, of the Public Records of Monroe County, Florida.

5 Partial Release of the land described in Schedule A from the Mortgage and Security Agreement from SH Marathon, Ltd. and SH Key West, Ltd., both Florida limited partnerships, to Republic Bank, recorded August 18, 1999, in Official Records Book 1592, Page 994, of the Public Records of Monroe County, Florida.

6 Release of the Assignment of Leases, Rents, Revenues, Income, Profits, Permits, Approvals, Licenses, Warranties and Other Agreements executed by SH Key West, Ltd., a Florida limited partnership, to Republic Bank, recorded August 18, 1999, in Official Records Book 1592, Page 1038, of the Public Records of Monroe County, Florida.

7 With regard to JLW Key West 1, LLC, a Florida limited liability company, the following is required:

A. Satisfactory evidence must be furnished showing that JLW Key West 1, LLC is currently in good standing.

(Note) Proof of the issuance of the Certificate of Organization by the Secretary of State in the event said company was formed prior to October 1, 1993.

B. A certified copy of the Articles of Organization and Operating Agreement must be furnished and the Company reserves the right to make additional requirements and/or exceptions upon review of same.

- or -

Record in the Public Records of Monroe County, Florida, a Certificate from the keeper of the records of the company certifying:

1. Whether the management of the company is/was vested in the members or in the manager(s); 2. The names and positions, if any, that the managing members have/had or the names of the then active manager(s) of the company, on the date of the deed/mortgage to be insured or of a previously recorded deed.

C. Affidavit from the managing member or the manager(s), whichever is applicable, confirming that there has been no dissolution of the company resulting from transfers of member's interest, or otherwise.

RS

pay off

**A.L.T.A. COMMITMENT
CHICAGO TITLE INSURANCE COMPANY
SCHEDULE B - Section 1**

~~8 Proof of payment of any and all assessments taxed or levied against subject property by the County of Monroe, and/or municipality.~~

~~90 DO Payment of real estate taxes and assessments for the year 2006.~~

~~10 With regard to Lesa Associates, L.L.C., a Michigan limited liability company, the following is required:~~

~~A. Satisfactory evidence must be furnished showing that Lesa Associates, L.L.C. is currently in good standing.~~

~~(Note) Proof of the issuance of the Certificate of Organization by the Secretary of State in the event said company was formed prior to October 1, 1993.~~

~~B. A certified copy of the Articles of Organization and Operating Agreement must be furnished and the Company reserves the right to make additional requirements and/or exceptions upon review of same.~~

~~- or -
Record in the Public Records of Monroe County, Florida, a Certificate from the keeper of the records of the company certifying:~~

~~1. Whether the management of the company ~~is~~ was vested in the members or in the manager(s); 2. The names and positions, if any, that the managing members have/had or the names of the then active manager(s) of the company, on the date of the deed/mortgage to be insured or of a previously recorded deed.~~

~~C. Affidavit from the managing member or the manager(s), whichever is applicable, confirming that there has been no dissolution of the company resulting from transfers of member's interest, or otherwise.~~

~~11 Recording of affidavit from trustee or attorney for the Paola M. Luptak Irrevocable Family Trust w/t/a dated August 7, 1992 stating at least the following: (1) name of the trustee(s), (2) legal description of the trust property, (3) an affirmative statement that the trustee has full power and authority to do the required act and excerpts of the trust describing such authority, (4) affirmation that no contrary powers or restrictions appear in the trust document, and (5) affirmation that the trust has not been revoked and is in full force and effect.~~

RS

Need original
(~~XXXXXXXXXX~~)
~~XXXXXXXXXX~~
~~XXXXXXXXXX~~

• Clos; Affidavit Received (4)
• Trustee Affidavit

**A.L.T.A. COMMITMENT
CHICAGO TITLE INSURANCE COMPANY
SCHEDULE B - Section 2**

Commitment Number

II. ~~Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.~~

Satisfactory evidence must be furnished showing that Spotswood Hotels, Inc., a corporation organized under the laws of Florida, is currently in good standing in that state.

PLW

1 Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this, ~~Commitment.~~

2 ~~Standard Exceptions:~~

a. ~~Rights or claims of parties in possession not shown by the Public Records.~~

PLW

b. ~~Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey and inspection of the premises.~~

c. ~~Easements, or claims of easements, not shown by the Public Records.~~

d. ~~Any lien, or right to a lien, for service, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.~~

e. ~~Taxes or special assessments which are not shown as existing liens by the Public Records.~~

f. ~~Any claim that any portion of said lands are sovereign lands of the State of Florida, including submerged, filled or artificially exposed lands and lands accreted to such lands.~~

6

g. ~~Taxes and assessments for the year 2007 and subsequent years.~~

NOTE: Standard Exception 2(f) of the commitment, which is Special Exception Number 6 on the policy when issued, is hereby deleted.

~~Standard exceptions (b) and (c) may be removed from the policy when a satisfactory survey and surveyor's report and inspection of the premises is made.~~

~~Standard exceptions (a) and (d) may be removed upon receipt of a satisfactory affidavit-indemnity from the party shown in title and in possession stating who is in possession of the lands and whether there are improvements being made at date of commitment or contemplated to commence prior to the date of closing which will not have been paid for in full prior to the closing.~~

5 Easement to the Utility Board of the City of Key West, Florida recorded in Official Records Book 598, Page 252, Public Records of Monroe County, Florida.

6 Easement to the Utility Board of the City of Key West, Florida recorded in Official Records Book 601, Page 547, Public Records of Monroe County, Florida.

7 State Law under Chapter 76-190 and Chapter 22F8.02 of the Florida Administrative Code for Land Planning for the Florida Keys Area of Critical Concern recorded in Official Records Book 668, Page 43, and Final Judgment recorded in Official Records Book 1788, Page 1257, Public Records of Monroe County, Florida.

8 City of Key West Area of Critical State Concern, Rule 27F-15 of the Florida Administrative Code, adopted by the Administration Commission pursuant to Section 380.05, Florida Statutes, on February 7, 1984, effective February 28, 1984, recorded in Official Records Book 906, Page 200, Public Records of Monroe County, Florida.

NOTE: On loan policies, junior and subordinate matters, if any, will not be reflected in Schedule B.

**A.L.T.A. COMMITMENT
CHICAGO TITLE INSURANCE COMPANY
SCHEDULE B - Section 2**

- 9 City Ordinance No. 81-43 and Amendment 82-5 thereof, which provides for the assessment and collection of waste in the City of Key West, Monroe County, Florida.
- 10 Code of Ordinances of the City of Key West, Section 74, which provides for the assessment and collection of sewer charges.
- 11 Terms, covenants, conditions and other matters contained in the Lease dated January 2, 1998, and made by Jupiter Hotels Limited Partnership, an Illinois limited partnership and Northlake Foods, Inc., a Georgia corporation, a Memorandum/Short Form of which was recorded June 17, 1998, in Official Records Book 1521, Page 1338, of the Public Records of Monroe County, Florida, which does not contain an option or right of purchase.
- 12 Agreement for Grant of Easement to TCI Cablevision of Georgia, Inc. recorded in Official Records Book 1755, Page 224, Public Records of Monroe County, Florida.
- 13 Any rights, interests or claims arising from the following matters shown on the survey prepared by Frederick H. Hildebrandt, dated March 3, 1999, and last updated October 19, 2006, Drawing No. 06-500:

Chain link fence encroaches on Southerly boundary line.

Tax Information:

RE Number: 00065060-000000

Alternate Key: 1065587

2006 taxes are due in the gross amount of \$51,312.70

Commitment revised November 3, 2006.

14. Final policy to reflect recording (on November 9, 2006) of LaSalle mortgage, Assignment of Rents and Leases, UCC-1 and License Agreement with Coach Tour Tran, et. al.

NOTE: On loan policies, junior and subordinate matters, if any, will not be reflected in Schedule B.

CHICAGO TITLE INSURANCE COMPANY
REPORT TO AGENTS ON STATUS OF TITLE

NUMBER: 630601391

TO: Robert Gebaide, Esquire
Baker & Hostetler
200 S. Orange Avenue
Suite 2300
Orlando, Florida 32801

This report on the status of title is being furnished at your request to assist in the preparation of a CHICAGO TITLE INSURANCE COMPANY (the Company) title insurance commitment and policy to be issued by your office. Only the results of an examination of the record title are reflected herein.

After you have reviewed this report, you must still -

- (a) Add requirements to Schedule "B" you find necessary from your analysis of the present transaction, surveys, prior title evidence and exceptions to Schedule B reflecting matters you may have actual knowledge of which are not already shown in Schedule "B".
- (b) Review the transaction in accordance with criteria discussed in the Standard Underwriting Risk section of the Underwriting Guide.
- (c) If the amount of the policy(ies) to be issued exceed your agency limits, obtain written authorization to issue the commitment from the Company. This report is NOT authorization to issue the commitment.

This report has been furnished to you in a format that will allow for part of it to be used as the inserts for the title insurance commitment to be issued. You will need to complete Schedule A as well as add any additional requirements you deem necessary as a result of the above. You must keep a copy of the entire report in your file.

This report consists of the following:

- This leader sheet
- Schedule A
- Schedule B - Section 1
- Schedule B - Section 2

NOTE: Personal property tax information has NOT been searched.

THIS REPORT IS PROVIDED FOR THE SOLE PURPOSE OF THE ISSUANCE OF A CHICAGO TITLE INSURANCE COMPANY COMMITMENT AND POLICY BY THE ADDRESSEE AS AUTHORIZED BY THE COMPANY. THE COMPANY DISCLAIMS LIABILITY TO THE ADDRESSEE OR ANY THIRD PARTY IN THE EVENT THIS INFORMATION IS USED FOR A PURPOSE OTHER THAN AS STATED.

CHICAGO TITLE INSURANCE COMPANY

By: _____
Susan M. Holland

Date: November 3, 2006

STANDARD EXCEPTIONS FOR OWNER'S POLICY

The owner's policy will be subject to the mortgage, if any, noted under item one of Section 1 of Schedule B hereof and to the following exceptions: (1) rights or claims of parties in possession not shown by the public records; (2) encroachments, overlaps, boundary line disputes, and any matters which would be disclosed by an accurate survey and inspection of the premises; (3) easements, or claims of easements, not shown by the public records; (4) any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records; (5) taxes or special assessments which are not shown as existing liens by the public records.

CONDITIONS AND STIPULATIONS

1. The term "mortgage," when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions, the Exclusions from Coverage and the Conditions and Stipulations of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

**AMERICAN LAND
TITLE ASSOCIATION
STANDARD FORM
COMMITMENT**



58374

Prepared by: Bert W. Pinder, Jr.
Utility Board - City of Key West

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598
252

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that
EID, Park, Scheer & Associates, Inc.
hereinafter called grantor(s) do hereby grant an easement to THE UTILITY
BOARD OF THE CITY OF KEY WEST, FLORIDA, hereinafter called grantee, for
public utility purposes, in, under, over and across the hereinafter described
land, in the management, operation, maintenance, extension, construction and
improvement, thereof, to wit:

On the Island of Key West In Monroe County, Florida,

A part of the Parcel of land described in Official Records Book, 538,
page 1050 of Public Records, Monroe County, Florida and more particularly
described as follows:

A strip of land five (5') feet in width, extending along the entire
Westerly boundary line of the Parcel of land described in Official Records
Book 538, at page 1050 of Public Records, Monroe County, Florida.

STATE OF FLORIDA
DOCUMENTARY STAMP TAX
00.30
COUNTY PINELLAS

058374

Together with the right of ingress and egress over property of the
grantor(s), so as to afford the grantee complete use and enjoyment of this
easement, including the right to cut and trim, from time to time, trees,
brush, over-hanging branches and other natural obstructions on the above
described land, which may injure or interfere with the full and complete
use of the aforesaid easement.

This easement shall terminate if at any time its use is discontinued
for year(s).

IN WITNESS WHEREOF, these presents have been executed by the grantor(s)
herein, all as of the 18th day of October A.D. 1974.
Signed, Sealed and Delivered in the presence of:

EID, PARK, SCHEER & ASSOCIATES, INC.

Patricia Bliss
(Witness)

Paul C. Scheer
(Seal) President

Juan M. Buzon
(Witness)

Attent:
Paul C. Scheer
(Seal) Secretary

STATE OF FLORIDA
COUNTY OF PINELLAS

RECORDED IN OFFICIAL RECORDS BOOK
MONROE COUNTY, FLORIDA
RALPH W. WHITE
CLERK OF CIRCUIT COURT

On October 18, 1974, before me the undersigned, a Notary Public in and for said County and State, personally appeared Paul C. Scheer and Donna L. Schmitt, President and Secretary, respectively, of EID, Park, Scheer & Associates, Inc. whose names are subscribed to the within instrument and acknowledged that as such officers executed the same.

SEAL
Carol A. ...
Notary Public in and for
said County and State

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES JULY 21, 1977
BORN [illegible] [illegible]

60299

Prepared By: Bert W. Pinder, Jr.
Utility Board - City of Key West

EASEMENT

OFF REC 601 PAGE 547

KNOW ALL MEN BY THESE PRESENTS, that

Eld, Park, Scheer and Associates, Inc.

hereinafter called grantor(s) do hereby grant an easement to THE UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA, hereinafter called grantee, for public utility purposes, in, under, over and across the hereinafter described land, in the management, operation, maintenance, extension, construction and improvement, thereof, to wit:

On the Island of Key West in Monroe County, Florida,

This is an easement, of a general sense. This easement is for a specific purpose, of installing three (3) poles, overhead wiring, transformers, two (2) down guys and all appurtenances necessary to supply service to the Parcel of land described in Official Records Book 538 at page 1050 of Public Records, Monroe County, Florida and this easement being and lying on this Parcel of land described in OR 538 at page 1050, Public Records, Monroe County.

In consideration of the placing of electrical distribution lines in a manner most favorable to the Grantor being said Grantor does by these presents agree to save Grantee harmless of and from any and all claims which may arise from anchoring guy lines to Grantor's building, a deviation from the usual policy of Grantee in such installations, done specifically at Grantors request.

This easement is a general easement, on the Parcel of land described in Official Records Book 538 at page 1050 of Public Records Monroe County, Florida and is to be used for the sole purpose of installing only three (3) poles, two (2) down guys, overhead wiring, transformers and all appurtenances necessary, as per attached sketch hereby made a part of this document.

Together with the right of ingress and egress over property of the grantor(s), so as to afford the grantee complete use and enjoyment of this easement, including the right to cut and trim, from time to time, trees, brush, over-hanging branches and other natural obstructions on the above described land, which may injure or interfere with the full and complete use of the aforesaid easement.

This easement shall terminate if at any time its use is discontinued for two year(s).

IN WITNESS WHEREOF, these presents have been executed by the grantor(s) herein, all as of the 10th day of Dec. A.D. 1974.
Signed, Sealed and Delivered in the presence of:

Ray H. Miller (Witness)
Richard E. Eld (Seal)
Richard E. Eld (Seal)
Richard E. Eld (Seal)

STATE OF FLORIDA ss
COUNTY OF MONROE

On December 10, 1974, before me the undersigned, a Notary Public in and for said County and State, personally appeared Richard E. Eld Vice President known to me to be the person(s) whose names subscribed to the within instrument and acknowledged that executed the same.

RECORDED IN OFFICIAL RECORD BOOK
MONROE COUNTY, FLORIDA
RALPH W. WHITE
CLERK OF CIRCUIT COURT
MONROE COUNTY, FLORIDA

SEAL *Richard E. Eld*
Notary Public in and for
said County and State
MY COMMISSION EXPIRES MAY 17, 1978
BONDED THROUGHOUT INSURANCE UNDERWRITERS

STATE OF FLORIDA
DOCUMENTARY
DEPT. OF REVENUE
STAMP TAX
JAN 1975
00.30



668/43

1412
CIA



Department of Administration

Division of State Planning

660 Apalachee Parkway - IBM Building

TALLAHASSEE

32304

(904) 458-1115

August 9, 1976

95228

R.G. Whittle, Jr.
STATE PLANNING DIRECTOR

Roubin O'D. Ashow
SECRETARY

Lt. Gov. J. M. "Jim" Williams
GOVERNOR

A F F I D A V I T

STATE OF FLORIDA)
COUNTY OF LEON)

Before me this day personally appeared R. G. Whittle, Jr., Director, Division of State Planning, who being duly sworn, deposes and says that attached herewith are true and correct copies of the legal descriptions of the Big Cypress Area of Critical State Concern boundaries within Monroe County, Florida, and of the Florida Keys Area of Critical State Concern boundaries within Monroe County, Florida to be recorded in the Public Records of Monroe County pursuant to Chapter 70-190, Laws of Florida. The Big Cypress boundary area was established in Section 380.055(3), Florida Statutes (1975). The Florida Keys critical area boundary was established by rule adopted by the Administration Commission on April 15, 1975, and appears in Chapter 22F-8.02, Florida Administrative Code.

R. G. Whittle, Jr.
R. G. Whittle, Jr., Director
Division of State Planning

Sworn to and subscribed before me this 9th day of August, 1976.

H. M. F. [Signature]
Notary Public
State of Florida at Large

My commission expires _____
Notary Public, State of Florida at Large
My Commission Expires Dec. 10, 1977

11/10/76
11/10/76

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LAND PLANNING

CHAPTER 22F-8

RULES

OF THE

DEPARTMENT OF ADMINISTRATION

ADMINISTRATION COMMISSION

CHAPTER 22F-8

LAND PLANNING

PART B

BOUNDARY AND PRINCIPLES FOR GUIDING
DEVELOPMENT FOR THE FLORIDA KEYS
AREA OF CRITICAL STATE CONCERN

- 22F-8.01 Purpose
22F-8.02 Boundary
22F-8.03 Principles for Guiding Development
22F-8.04 Administration
22F-8.05 Effective Date
22F-8.06 Periodic Reconsideration

22F-8.01 Purpose. Pursuant to Section 7, Article II, of the Florida Constitution, and Section 3A0.05, Florida Statutes, it is the purpose of these rules to define the boundary of the Florida Keys Area of Critical State Concern and to provide principles for guiding development within the critical area in order to conserve and protect the natural, environmental, historical and economic resources, the scenic beauty, and the public facilities within the Area of Critical State Concern. It is the further purpose of these rules to provide a land and water management system that will preserve water quality, provide for the optimum utilization of the limited water resources of the area, facilitate orderly and well-planned development, and protect the health, welfare, safety and quality of life of the residents of the state. To effectively and equitably accomplish such purposes these rules should be implemented by local governments through existing administrative processes. These processes should be strengthened to the end that local government is able to achieve the purposes herein stated without the continuation of the designation of area of critical state concern. All existing rights of private property should be preserved in accordance with the constitution of the State of Florida and the United States.

General Authority: 380 F.S., Law Implemented 280.05 F.S. (Munroe)—New 8-16-72.

22F-8.02 Boundary. The following area is hereby designated as the Florida Keys Area of Critical State Concern:

All lands in Monroe County, except:

- 1) that portion of Monroe County included within the designated exterior boundaries of the Everglades National Park and areas north of said Park;
- 2) all lands seaward of mean high water that are owned by local, state, or federal governments; and
- 3) excluding any federal properties.

General Authority: 380 F.S., Law Implemented 280.05, F.S. (Munroe)—New 8-16-72.

22F-8.03 Principles for Guiding Development

- A. Objectives to be achieved**
- 1) Strengthen local government capabilities for managing land use and development to the end that local government is able to achieve the objectives herein stated without the continuation of the designation of area of critical state concern;
 - 2) Protection of tidal mangroves and associated shoreline and marine resources and wildlife;
 - 3) Minimize the adverse impacts of development on the quality of water in and around the Florida Keys;
 - 4) Protection of scenic resources of the Florida Keys and promotion of the management of unique, tropical vegetation;
 - 5) Protection of the historical heritage of the Florida Keys and the Key West Historical Preservation District;
 - 6) Protection of the value, efficiency, cost-effectiveness and amortized life of existing and proposed major public investments, including:
 - a. the Florida Keys Aqueduct and water supply facilities;
 - b. sewage collection and disposal facilities;
 - c. solid waste collection and disposal facilities;
 - d. Key West Naval Air Station;
 - e. repair and replacement of the Overseas Highway bridges and maintenance and expansion of other transportation facilities.
 - 7) Minimize the adverse impacts of proposed public investments on the natural and environmental resources of the Florida Keys; and
 - 8) Protection of the public health, safety, welfare and economy of the Florida Keys, and the maintenance of the keys as a unique Florida resource.
- B. Elements Requiring Regulation**
- 1) Planning and Administration
 - a. Each local government jurisdiction should adopt a plan and policies for future land use within its boundaries which are consistent with these principles. Such plans and policies should be implemented through zoning ordinances and maps which are kept current and made available for reasonable public distribution and inspection. Development orders should be issued in conformance with the policies and standards of the land use plan and zoning ordinances and maps.
 - b. Issuance of development orders should be coordinated with and made contingent upon the

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LAND PLANNING

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Subp. Sec. 22

provision of adequate public facilities and services for the existing population and the proposed development.

c. Special zoning districts should be created for:

Noise and hazard zones of the Key West Naval Air Station as delineated by the U.S. Navy Office of the Chief of Naval Operations. Development within such zones should be limited to that compatible with air operations. Implementation of this section should be closely coordinated with the Office of the Chief of Naval Operations. Similar districts should be created around civilian airfields in cooperation with the Florida Department of Transportation and the Federal Aviation Administration. Codes for airfield districts should clearly specify height limits for structures and other appropriate restrictions on development necessary to protect air operations and public health and safety.

d. A community impact assessment statement should be submitted and approved prior to the issuance of zoning and zoning orders or site plan approval for the following developments:

- 1. Any development which includes buildings in excess of 35 feet in height.
- 2. Any intensive land uses including: residential uses of 10 or more dwelling units per acre, 50 or more total dwelling units; and
- 3. All business, commercial or industrial uses of 5 or more acres.

Such developments should be encouraged to use clustering and designs which would reduce public facilities costs and improve the scenic quality of the development. In addition, they should conform to appropriate setback and open space requirements, stringent landscaping and land use compatibility requirements, and building and siting requirements to reduce hurricane and fire damage potential and limit and control access to the Overseas Highway.

The community impact statement should be designed to enable local governmental officials to determine the proposed development's favorable or unfavorable impact on the environment, natural resources, economy and the potential of the project to meet local or regional housing needs. The statement should also require information relative to the project's potential impact of public facilities, including water, sewer, solid waste disposal and public transportation facilities.

2) Site Alteration Regulations

a. Site alteration and landscaping regulations should provide for:

- 1. A land clearing permit of limited duration issued upon approval of a site plan which includes a natural vegetation map, reflecting minimal clearing required for survey.
- 2. Limitation of the site and species of trees allowed to be removed in clearing, including reasonable exceptions for structure sites and public safety. The ordinance should provide protection for tropical hammocks in which the predominant tree species are tree cactus or mature tree species characteristic of West Indian tropical hardwood hammocks.
- 3. Revegetation and landscaping of cleared sites after construction.
- 4. Standards which would protect mangrove areas landward of the mean high water line. Such standards should, to the extent possible, protect the

functions of the mangrove areas with regard to natural and biologic functions, water quality maintenance, storm surge protection, and storm surge protection. Special attention shall be given to protection of the functions of the dunes, fringing mangrove communities which lie landward of mean high water.

3) Waste Control and Water Quality Protection

a. The Monroe County Waste Collection and Disposal District, in cooperation with municipal jurisdictions, should establish county-wide criteria and regulations for the methods and location of the disposal of all solid waste, water effluents and residuals.

b. Site alteration and installation regulations should provide for:

- 1. Retention of construction related runoff or discharge of such runoff into adequately sized natural vegetative filtration areas in a manner approximating the natural runoff regime.
- 2. Permanent drainage systems which make maximum use of natural drainage systems, vegetative retention and filtration.
- 4) Protection of Public Facilities and Landmarks

a. The Monroe County Waste Collection and Disposal District, in cooperation with the municipal jurisdictions and the Florida Keys Aqueduct Authority, should amend all applicable planning codes to provide for the mandatory installation of water conserving fixtures in all new development and redevelopment.

b. Business, commercial and industrial development adjacent to the Overseas Highway should provide off street parking, service roads and limited controlled access points to the highway. Except in case of extreme hardship highway access from any development within 200 feet of a bridge or levee ramp should be prohibited.

c. Existing and future waste treatment and disposal sites should be protected from encroachment by land uses which would endanger their functions or existence.

5) Historical Resource Protection

a. A management and enforcement plan and ordinance should be adopted by the City of Key West providing that designs and uses of development and reconstruction within the Key West Historical Preservation District shall be compatible with the existing unique architectural style and shall protect the historical value of the District.

b. In accordance with Chapter 266.207(1), F.S., the City of Key West should establish an Architectural Review Board with the duties and responsibilities prescribed. Furthermore, pursuant to Chapter 380.031(6), F.S., the Architectural Review Board should receive notice of all applications for development within the designated area of Key West and participate in hearings as provided. General Authority 288 F.S. Law Implemented 240 G.S. Statute-New 2-18-76.

22F-8.04 Administration.

1) The above guidelines are oriented towards protection of natural and historical resources and public investments of regional and state importance. The regulations developed pursuant to these principles should be:

a. Performance oriented to maximize design

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Flexibility.

b. Supplementary and complementary to existing county and municipal land use regulations.

c. Administered by the appropriate local governmental jurisdictions in the same manner as local ordinances and codes.

2) The South Florida Regional Planning Council is hereby requested to offer technical assistance to the local jurisdiction in preparing land development regulations consistent with these principles.

General Authority 380 F.S. Law Implemented 380.05 F.S. History—New 5-18-75

22F-8.05 Effective Date. These rules shall take effect twenty (20) days after filing with the Secretary of State.

General Authority 126.54(1), 380.05 F.S. Law Implemented 380.05 F.S. History—New 5-18-75.

22F-8.06 Periodic Reconsideration. The Division of State Planning shall, semi-annually or at the direction of the Administration Commission, from the effective date of this Chapter, appraise the progress made by all involved elements of state and local government in solving the problems of the Florida Keys Area of Critical State Concern, and shall report to the Administration Commission a status report which shall include the Division's recommendations for any changes or deletions of the rules in this Chapter, including without limitation the boundaries of the Area and the principles for guiding development. Such report shall also include comments and recommendations from local government.

General Authority 240 F.S. Law Implemented 380.05 F.S. History—New 5-18-75.

BIG CYPRESS

MONROE

Boundary. All that certain lot, piece or parcel of land situate lying and being in Monroe County in the State of Florida being more particularly bounded and described as follows:

Beginning at the point of intersection of Dade, Collier and Monroe County boundary lines in the Northeast corner of Section 1, Township 54 South, Range 34 East and; thence

(1) Running South along the Dade and Monroe Counties boundary line to the boundary of Everglades National Park, a distance of 13 miles; thence

(2) In a Westerly and Northerly direction along the boundary of Everglades National Park to its point of intersection with the Collier and Monroe Counties boundary line which point is in the Northwest corner of Section 3, Township 54 South, Range 31 East; thence

(3) Turning and running East along the boundary line of Collier and Monroe Counties a distance of 21 miles to the point or place of beginning.

22-074-G

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Doc ID 1035
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CHAPT 76- 190

1 A bill to be entitled
 2
 3 An act relating to areas of critical state
 4 concern; adding subsection (19) to s. 380.05,
 5 Florida Statutes, requiring the recordation of
 6 the boundaries of areas of critical state
 7 concern by the state land planning agency;
 8 providing an effective date.
 9

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Subsection (19) is added to section 380.05,
14 Florida Statutes, to read:

15 380.05 Areas of critical state concern.--
 16 (19) Within 30 days after the designation of an area
 17 of critical state concern, the state land planning agency
 18 shall record a legal description of the boundaries of the area
 19 of critical state concern in the public records of the county
 20 or counties in which the area of critical state concern is
 21 located. The boundaries of the areas of critical state
 22 concern currently designated on the effective date of this act
 23 shall be recorded in the manner provided by this section
 24 within 60 days after the effective date of this act.

25 Section 2. This act shall take effect upon becoming a
26 law.

27
28
29 566

30 Approved by the Governor JUN 20 1976

31 Filed in Office Secretary of State JUN 21 1976

FILE #1303551
BK#1788 PG#1257

IN THE 16TH CIRCUIT COURT OF
FLORIDA, IN AND FOR MONROE
COUNTY

Thora Ambrose, *et al*,

Plaintiffs,

vs.

Monroe County and the Village of Islamorada,
Political Subdivisions of the State of Florida,
and State of Florida, Department of
Community Affairs,

Defendants.

CASE NO. 97-20-636-CA-18

FINAL SUMMARY JUDGMENT FOR CERTAIN PLAINTIFFS

This cause came before the Court on April 2, 2002, on cross-motions for Final Summary Judgment. The Court, having heard argument from all parties, and after reviewing the record including pleadings, judicially noticed documents, and answers to interrogatories ~~on file~~ together with the affidavits filed by Plaintiffs, concludes there is no genuine issue as to any material fact and that the following Plaintiffs are entitled to judgment as a matter of law.

Final Summary Judgment is GRANTED in favor of the following Plaintiffs, and against Defendants.

Dorothy S. Abbott (Trustee), Stanley Alukonis, Richard Bauer and Ellen Bauer, Jill Berle, James Bernadt and Lynda C. Cody (T/E), Larry Biagi, Rudolph Blakey, Rachel M. Brooks (Individually and as Trustee), Steven B. Brown and Carol A. Brown, Tod J. Brown and Rose M. Brown, Samuel Burstyn, P.A., Edward Cabassa and Barbara Cabassa, Jose L. Campo and Maria Campo-Hunter (T/E), Giraldo Castellon, Reynolds Cochrane and America Cochrane, Thomas F. Collins and Patricia Collins, Eugene Cowart and Martha Cowart, Thomas J. Cunningham and Carmel S. Cunningham, James Davidson and Duffield W. Matson III (T/C), Randolph Dawdy, Aurelio A. Del Valle and Maria C. Del Valle, George R. Doster Jr. and Gail E. Doster Jr., Elizabeth Ennis (Trustee), Oscar M. Fell and Rosetta E. Fell, Ellan Fitzgerald (Trustee), Peter E. Flisock and Olinga M. Flisock, Antonio M. Garcia and Debra Garcia and Antonio M. Garcia, III (T/C), Karl Gollnast and Theresia Gollnast, Regina M. Gonzalez, David Hindelang and Ruth R. Hindelang, Raimundo Hung-Simons, Aldyth Innis (Trustee), Richard J. Johnson, Michael J. Kohut Living Trust, Gary Leonard and Karen Leonard, Loschim, Inc., Jack L. Lytton and Maria G. Lytton, Thomas Mawhinney, Richard C. May and Carol May, Raymond V. McHugh, Richard F. Milanese, Norman Neaderhiser, Jr. and Phyllis Neaderhiser, Jr. (Individually and as Trustees), Nils M. Norling and Mary Norling (Trustees), Donald Oliver and Rose Marie Oliver, Richard Olsen and Gisela Olsen, John D. Palmer (Trustee), Laurette C. Patterson, Charles W. Peabody, Jr. and Susan M. Peabody, Jr., Ernest C. Popplein III and Susan M. Popplein III, John D. Prior

160

and Henry M. Prior and Lane B. Prior (T/C), Keith P. Radenhausen, William Sears and Paulette Sears (Individually and as Trustees), Ramon Singler and Roxanne Singler, Col. Jack D. Smith, R. Tucker (Trustee), Marie Wilson, and Richard D. Worden and Linda L. Worden (hereinafter "Plaintiffs").

The prevailing Plaintiffs constitute approximately one-fifth of the Plaintiffs in this case. The Court reserves jurisdiction to enter additional Final Judgments for the remaining Plaintiffs as it may become appropriate.

I. NATURE OF CASE

Plaintiffs own platted lots in Monroe County, Florida, within the boundaries of the Florida Keys Area of Critical State Concern (or "ACSC"). They seek a declaration of their rights under Subsection 380.05(18), Fla. Stat. (2001). Plaintiffs assert § 380.05(18) is a legislative grant of vested rights, superior and in addition to common-law vested rights. They aver that § 380.05(18) prohibits the State, and its agencies and political subdivisions, from "limiting or modifying in any way," the development rights that appertained to their platted lots before the Florida Keys ACSC was designated, or before any such limiting regulations were adopted *after* the Florida Keys ACSC designation.¹

Defendants have enacted, rescinded, approved, and rejected a plethora of Land Development Regulations ("LDRs") since the Florida Keys was designated an ACSC. They argue that 380.05(18) is no more than a statement of common-law vested rights. If the Court holds otherwise, Defendants argue that (a) construction of a home is not "development authorized by" recordation of a subdivision plat, (b) that subdivisions recorded in Monroe County prior to 1973

¹ Plaintiffs rely on the underscored words in § 380.05(18) as follows.

(18) Neither the designation of an area of critical state concern nor the adoption of any regulations for such an area shall in any way limit or modify the rights of any person to complete any development that has been authorized by registration of a subdivision pursuant to chapter 498 or former chapter 478, by recordation pursuant to local subdivision plat law, or by a building permit or other authorization to commence development on which there has been reliance and a change of position, and which registration or recordation was accomplished, or which permit or authorization was issued, prior to the approval under subsection (6), or the adoption under subsection (8), of land development regulations for the area of critical state concern. If a developer has by his or her actions in reliance on prior regulations obtained vested or other legal rights that in law would have prevented a local government from changing those regulations in a way adverse to the developer's interests, nothing in this chapter authorizes any governmental agency to abridge those rights.

were not recorded "pursuant to local subdivision plat law," or that (c) provisions of Chapter 163, Fla. Stat., supercede § 380.05(18).

II. MATERIAL FACTS NOT IN DISPUTE

The Florida Keys portion of Monroe County, Florida, is an Area of Critical State Concern. Section 380.0552, Fla. Stat. (2001). Each Plaintiff owns an interest in one or more undeveloped, platted lots in a subdivision that was platted and recorded in the Public Records of Monroe County, Florida, between April 24, 1924, and June 27, 1971. Clerk's Affidavit Authenticating Plats and Plaintiffs' Affidavits on file.

III. CONCLUSIONS OF LAW

A. Area of Critical State Concern Designation

The enabling legislation for Areas of Critical State Concern is the Florida Environmental Land and Water Management Act, Ch. 72-317, Laws of Fla., effective July 1, 1972, at Section 380.05, Fla. Stat. Subsection 380.05(18) was enacted as part of Ch. 72-317, and reads as follows.

(18) Neither the designation of an area of critical state concern nor the adoption of any regulations for such an area shall in any way limit or modify the rights of any person to complete any development that has been authorized by registration of a subdivision pursuant to chapter 498 or former chapter 478, by recordation pursuant to local subdivision plat law, or by a building permit or other authorization to commence development on which there has been reliance and a change of position, and which registration or recordation was accomplished, or which permit or authorization was issued, prior to the approval under subsection (6), or the adoption under subsection (8), of land development regulations for the area of critical state concern. If a developer has by his or her actions in reliance on prior regulations obtained vested or other legal rights that in law would have prevented a local government from changing those regulations in a way adverse to the developer's interests, nothing in this chapter authorizes any governmental agency to abridge those rights.

On March 3, 1975, the Division of State Planning (now the Department of Community Affairs, or "DCA") recommended, to the Florida Administration Commission (the Governor and Cabinet, or "Commission"), that the Florida Keys be designated an ACSC. *Askew v. Cross Key Waterways*, 372 So. 2d. 913, 917 (Fla. 1978) ("*Askew*"). The Commission held public meetings in Key West on March 28 and April 15, 1975, to receive comments on the proposal. Ten days

later, April 25, 1975, the Commission designated the Florida Keys ACSC, and promulgated the "Principles for Guiding Development" therein, at Ch. 22F-8, Fla. Admin. Code (or "FAC").

The First District Court of Appeal rescinded the 1975 Florida Keys ACSC designation in *Cross Key Waterways v. Askew*, 351 So. 2d 1062 (Fla. 1st DCA 1977). The Supreme Court affirmed, holding both the *selection* of an ACSC, *and* creating its Principles for Guiding Development, was not delegable to an administrative agency. *Askew, supra*. After the Supreme Court's decision was final on February 15, 1979, the Legislature created the Florida Keys ACSC by statute. Sec. 6, Ch. 79-73, Laws of Fla., codified at § 380.0552, Fla. Stat. (2001). Section 380.0552 became effective July 1, 1979.

B. Statutory Construction

Clear Intent of Statute. The first canon of statutory construction is to apply the plain meaning of the words in the statute. Florida's appellate courts have made it clear that legislative history and intent is a proper criterion within the rules of statutory interpretation, when and if there is a need to resort to the rules of statutory construction. However, the law is clear that legislative intent is primarily determined from the language of the statute, even if the language must be clarified by dictionary definitions, as set forth by Judge (now Florida Supreme Court Justice) Pariente in *State v. Cohen*, 696 So. 2d 435 (Fla. 4th DCA 1997), as follows.

The rules of statutory construction require that courts give statutory language its plain and ordinary meaning, unless the words are defined by statute. ... In the absence of a statutory definition, the plain and ordinary meaning of words can be ascertained, if necessary, by reference to a dictionary. ... When the language of a statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation to alter the plain meaning. *See T. R. v. State*, 677 So. 2d 270, 271 (Fla. 1996); *Overstreet v. State*, 629 So. 2d 125, 126 (Fla. 1993); *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984). ... However, legislative intent is determined primarily from the language of a statute. *See Overstreet*, 629 So. 2d at 126. When faced with an unambiguous statute, the courts of this state are without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power. *Holly*, 450 So. 2d at 219... This principle is "not a rule of grammar; it reflects the constitutional obligation of the judiciary to respect the separate powers of the legislature. *State v. Brigham*, 694 So. 2d 793, 797 (Fla. 2nd DCA 1997).

Defendants argue that § 380.05(18) requires more than "mere ownership" of a platted lot and, if § 380.05(18) does apply to mere ownership, construction of a home on a platted lot is not "development authorized" by a subdivision plat. As to the first point, Defendants misinterpret § 380.05(18) by ignoring its punctuation and the word "or." Defendants' interpretation of the statute differs from its actual language as follows, where ~~struck through~~ text would have to be stricken by the Court, and double underlined text would have to be added to the Legislature's language.

(18) ... by recordation pursuant to local subdivision plat law, ~~or~~ and by a building permit or other authorization to commence development, on which there has been reliance and a change of position,

The disjunctive word "or" appears before the phrase "by a building permit or other authorization," not the conjunctive word "and," as Defendants would erroneously have the Court read the law. Subsection 380.05(18) provides three avenues to its vested rights, as follows.

1. registration of a subdivision under Ch. 498 or former Ch. 478, Fla. Stat.,
2. recordation of a subdivision pursuant to local subdivision plat law, *or*
3. a building permit or other authorization to commence development on which there has been reliance and a change of position.

Despite Defendants' efforts to insert one, there is no comma after the phrase "authorization to commence development." The phrase "on which there has been reliance and a change of position" modifies only the third avenue to vesting. The sole prerequisite to vesting, that must be met by a person relying on "recordation pursuant to local subdivision plat law," is the date of recordation must precede the *approval* or *adoption* of the LDRs that "limit or modify the rights of any person" to "complete development" on a platted lot. As to the first duty of the Trial Court in determining whether the language of Section 380.05 is clear and unambiguous, the Court finds the language to be clear and definite. The Court holds that the Plaintiffs' construction of § 380.05(18) is correct.

Legislative History and Intent. This Court need not consider legislative intent if the statute is clear and unambiguous, as stated by the Florida Supreme Court in *Forsythe v. Longboat Key Beach Erosion District*, 604 So. 2d 452, 454-455 (Fla. 1992), as follows.

It is a fundamental principle of statutory construction that where the language of a statute is plain and unambiguous there is no occasion for judicial interpretation. As this Court set forth more than 70 years ago in *Van Pelt v. Hilliard*:

The Legislature must be understood to mean what it has plainly expressed and this excludes construction. The Legislative intent being plainly expressed, so that the act read by itself or in connection with other statutes pertaining to the same subject is clear, certain and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms. Cases cannot be included or excluded merely because there is intrinsically no reason against it. Even where a court is convinced that the Legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity. If a Legislative enactment violates no constitutional provision or principle it must be deemed its own sufficient and conclusive evidence of the justice, propriety and policy of its passage. Courts have then no power to set it aside or evade its operation by forced and unreasonable construction. If it has been passed improvidently the responsibility is with the Legislature and not the courts. Whether the law be expressed in general or limited terms, the Legislature should be held to mean what they have plainly expressed, and consequently no room is left for construction, but if from a view of the whole law, or from other laws *in pari materia* the evident intent is different from the literal import of the terms employed to express it in a particular part of the law, that intent should prevail, for that, in fact is the will of the Legislature. 2 SUTHERLAND'S STATUTORY CONSTRUCTION, § 366, p. 701.

75 Fla. 792, 798-99, 78 So. 693, 694-95 (1918) ... [*String citations omitted*]. The sum of these cases is that this Court is without power to construe an unambiguous statute.

Although the Court believes the statutory language is unambiguous, in light of Defendants' arguments, the importance of this case, and the possibility that an appellate Court may find the statutory language ambiguous, the Court further considers the legislative history and intent. Fortunately, the State Archivist was able to provide the legislative history of Senate Bill 629, the 1972 bill that became § 380.05, Fla. Stat.²

² The Legislative History, a certified copy from the State Archivist, is part of Plaintiffs' Motion for Summary Judgment filed November 23, 1999. It is referred to here as History.

A June 16, 1972, letter from the Chairman of the Senate Natural Resources and Conservation Committee, to Richard H. Barry, sketches the history of Chapter 72-317, Laws of Florida (History at 145), and other documents in the History fill in the dates, as follows.

- ◆ SB 629 was introduced in the Senate on February 10, 1972, where it was sequentially referred to the Natural Resources and Conservation, and Ways and Means, Committees. History at 236. The original Bill is in History at 184-216. Governor Askew is credited with introducing the Bill. History at 286.
- ◆ A Committee Substitute (SB/CS 629) was amended and reported favorably, with a 5-2 vote, by the Committee on Natural Resources and Conservation on February 22, 1972. History at 137. The CS (without the amendments of 2/22/72) is in History at 149-182. The SB/CS 629 reported out by Natural Resources, that went to Ways and Means, is in History at 353-370.
- ◆ The Bill was very controversial. History at 237-316
- ◆ The Ways and Means Committee debated SB/CS 629 on March 6 (History at 104-136) and March 9, 1972 (History at 85-103). Ways and Means amended the Natural Resources CS, but reported out a three year "Study Committee" bill as their CS. History at 2.
- ◆ The Senate debated the bill on March 20, 1972. Somehow, not made clear in the historical materials, the Bill's proponents sidetracked the "Study Committee" bill and the Senate reverted to the previous CS as amended by Ways and Means. See 2nd Engrossed CS for SB 629, History at 3-17.
- ◆ On Monday, March 27, 1972, the Tampa Tribune quoted Senator Graham as saying the votes were there to pass the bill, but the session would probably end on Friday, March 31, without the bill coming to a vote. History at 286.
- ◆ The Senate debated the bill on March 27 and 28, 1972, passing it on the 28th.
- ◆ The House adopted the Senate Bill on April 5, 1972.

The original version of SB 629, as introduced and as adopted by the Senate Natural Resource and Conservation Committee, had the following language at § 16. History at 67.

6 (16) Neither the designation of an area of
7 critical state concern nor the adoption of any
8 regulations for such an area shall in any way limit
9 or modify the rights of any person to complete any
10 development that has been authorized by a building
11 permit or other authorization to commence development
12 on which there has been substantial reliance and
13 a material change of position, and which was issued
14 prior to the publication of the proposed rule
15 designating the area of critical state concern. If

16 a developer has by his actions in reliance on prior
17 regulations obtained vested rights that in law
18 would have prevented a local government from changing
19 those regulations in a way adverse to his interests,
20 nothing in this act authorizes any governmental agency
21 to abridge those rights.

This is common-law vested rights language, as Defendants ask this Court to find in § 380.05(18). The bill provided only common law vested rights, requiring (i) a permit or other authorization to commence development, (ii) "substantial" reliance, and (iii) a material change of position. This language turned out to be unacceptable to the Senate Ways and Means Committee.

At the Ways and Means Committee's March 6, 1972, hearing on CS/SB 629, four amendments were considered, after which the Committee rejected the Bill on an 8-8 tie vote. The first three amendments, all by Senator Haverfield of Miami,³ were to subsection 16. Sen. Haverfield's Amendment #1 added "or other legal" after the word "vested" on line 17. Sen. Haverfield's Amendment #2 replaced the words "to commence," on line 11, with "permitting." Sen. Haverfield's Amendment #3 replaced the word "issued," on line 13, with "in effect." History at 106-8. Amendments 1-3 were adopted by voice vote. History at 104.

Then, Senator Plante of Oviedo (Seminole County) offered Amendment #4, which would strike everything after the enacting clause, and substitute an "Environmental Land Management Study Committee" for the substance of CS/SB 629. History at 110-14. Sen. Plante's Amendment #4 failed on a 6-10 vote. History at 105. Resuming debate on March 9, 1972, the Ways and Means Committee first adopted the following amendment offered by Senator Pope of St. Augustine (St. John's County), to line 10.

Insert the following: after the word "by"
"registration of the subdivision pursuant to Chapter 478,
Florida Statutes," or recorded pursuant to local
subdivision plat law, or by

³ Laws of Florida 1972 lists the home cities and districts of Florida Senate and House members.

The clause "registration of the subdivision pursuant to Chapter 478, Florida Statutes," is typewritten on the amendment sheet attributed to Senator Pope. The clause "or recorded according to local subdivision plat law" is handwritten on the same sheet. History at 117. The Committee vote record, History at 92, has this handwritten notation above the column headed Amendment #1: "*to which Pope offered amend.*" It is apparent that Senator Pope amended his amendment #1 to include the recordation language.

Amendment #2 on March 9, 1972, was offered by Senator Pope as an amendment to lines 14 and 15, and was approved by voice vote. History at 92-93, 133. Amendment #2 replaced lines 14 and 15 with the following language.

"prior to the adoption or approval by the state land planning agency of the land development regulations for the area of critical state concern. If" [Typewritten in History.]

There were two more amendments by Senator Pope that day, neither relevant to this inquiry, History at 93, 98. The Committee approved two amendments by Senator Haverfield, removing the words "material" and "substantial" from lines 13 and 12. History at 94, 99-100, 128-29.

In what must have been a surprising tack, Senator Williams re-introduced Senator Plante's "Study Amendment," striking everything after the enacting clause and replacing the entire substance of the bill with a study committee. The study committee amendment was approved by a 10-8 vote. History at 94. The gutted bill was recommended favorably to the whole Senate by a 14-3 vote. The Senate, however, passed the bill with section 16 reading as it did just before the study committee amendment passed in the Ways and Means Committee. The following ~~struck through~~ and underlined text shows how the Ways and Means Committee amended section 16 of SB 629.

(16) Neither the designation of an area of critical state concern nor the adoption of any regulations for such an area shall in any way limit or modify the rights of any person to complete any development that has been authorized by registration of the subdivision pursuant to Chapter 478, Florida Statutes, or recorded pursuant to local subdivision plat law, or by a building permit or other authorization to commence permitting development on which there has been substantial reliance and a material change of position, and which was issued in effect prior to the adoption or approval by

the state land planning agency of the land development regulations for the area of critical state concern. If prior to the publication of the proposed rule designating the area of critical state concern. If a developer has by his actions in reliance on prior regulations obtained vested or other legal rights that in law would have prevented a local government from changing those regulations in a way adverse to his interests, nothing in this act authorizes any governmental agency to abridge those rights.

The Trial Court concludes, on reviewing the legislative history, that § 380.05(18) was carefully, intentionally, and materially amended by Senators Pope and Haverfield, and by the Ways and Means Committee, to create stronger vested rights protection for owners of platted lots in Areas of Critical State Concern, than the common-law provision in the original SB 629. The Defendants' arguments that the statute provides only for common-law vested rights are neither supported by the clear and unambiguous language, nor the legislative history, of the statute.

Development Authorized by Approved Plat. The Court is unconvinced by the County's argument that approving and recording a plat does not authorize the development of single-family homes on the lots. Monroe County's Motion for Summary Judgment. The Illinois, Ohio, and Michigan cases cited by the County address whether a lot owner has common-law vested rights in dimensional specifications that existed when the lots were platted. The issue of whether the construction of a single-family home was *authorized* by virtue of an approved subdivision plat was not addressed in any of the cases cited. The Court concludes that the words "development that has been authorized by ... recordation pursuant to local subdivision plat law," in § 380.05(18) include the construction of a single-family home on a platted, residential subdivision lot.

Local Subdivision Plat Law. Defendants argue that Monroe County plats were not recorded "pursuant to local subdivision plat law." Prior to June 11, 1925, plats were valid once they were filed and recorded in the County Seat. Florida's first "plat law" was Chapter 10275, Laws of Florida, adopted June 11, 1925. Section 10 of Chapter 10275 required the grantor to place upon a plat, before recordation, a certificate —

... of approval by the County Commissioners, Town Board, or Council, or the Board of Commissioners (in municipalities having a commission form of government) or their accredited representatives, having jurisdiction over the land described in said ... plat.

Chapter 10275 was named "The Plat Act of 1925." See *Dade County v. Harris*, 90 So. 2d 316 (Fla. 1956). The 1925 law was re-designated Ch. 177, Fla. Stat., in 1955. Chapter 177 was substantially expanded in 1971 to create State-wide uniformity after the 1968 Constitution granted limited home rule to counties and municipalities. Ch. 71-339, Laws of Fla. Section 10 of the Plat Law of 1925, requiring local government approval, is now § 177.071, Fla. Stat. (1997).

Florida counties and municipalities are not sovereign units of government. They are subdivisions of the State of Florida. As subdivisions of the state, they have only those powers granted by Legislature. Non-charter counties, such as Monroe, did not have the authority to adopt their own ordinances until limited home rule was granted by Article VIII of the 1968 Constitution. Section 125.66, Fla. Stat., was adopted by the Legislature in 1969 to effectuate Article VIII. In early 1972, when the Legislature was debating the Environmental Land and Water Protection Act, few counties had platting ordinances — the DCA has identified only seven counties that had pre-1973 Special Acts dealing with plats.⁴ The Court does not find the existence of Special Acts in seven counties sufficient to show that Monroe County was not governed by a local subdivision plat law prior to 1973.⁵ The Court notes that Senators Pope, the author of the platted lot amendments to § 380.05(18), did not hail from any of those seven counties. Senator Pope was from St. Augustine, in St. John's County (a non-charter county)

The County's platting requirements are still subservient to Chapter 177, Fla. Stat. (1997). The Court concludes that Ch. 177, the Plat Act of 1925, still in force throughout the state, and followed in every county since 1925, was the local subdivision plat law throughout Florida until counties and municipalities adopted supplemental ordinances (or Special Acts). The Court also concludes that plats recorded in the County Seat prior to June 11, 1925, were recorded pursuant to local subdivision plat law, such as it was at the time.

⁴ The Department of Community Affairs' Request for Judicial Notice includes copies of pre-home rule Special Acts relating to platting, for Volusia, Leon, Pinellas, Alachua, Hendry, Escambia, and Hernando Counties.

⁵ Monroe County adopted its first platting ordinance in 1973, No. 3-1973. Ordinance 3-1973 supplemented, but did not replace, Sec. 177, Fla. Stat. Ordinance 3-1973 was superseded in 1986 by the plat section of the *380 Plan*.

C. Area of Critical State Concern Regulations and Their Impact on Platted Lots

From 1979 to 1986, DCA provided technical assistance to Monroe County's local governments, as mandated by § 380.05(7), to help draft § 380.0552-compliant Comprehensive Plans and LDRs ("380 Plans"). In February 1986, by Resolution 49-1986, Monroe County submitted a 380 Plan to DCA for approval, or rejection, pursuant to § 380.05(6), Fla. Stat. In response, DCA approved portions of the County's 380 Plan and rejected others. Ch. 9J-14.003-.004, FAC (1986). After rejecting portions of the 380 Plan, Ch. 9J-14.003, FAC, DCA recommended a large number of 380 Plan amendments to the Commission, for adoption pursuant to its authority at § 380.05(8), Fla. Stat. DCA's amendments were approved, Ch. 28-20.019-.021, FAC, and the 380 Plan became effective September 15, 1986..

Several provisions of the 380 Plan adversely affect – even render impossible – the rights to build homes on platted lots. Without attempting to be exhaustive, the Court notes that these provisions include (i) low-density, overlay Land Use Districts,⁶ (ii) restrictive vegetation-based overlay zones, and (iii) a change in the ability to build upon platted lots.

A review of the Property Record Cards on file⁷ shows several instances where NA (Native), SR (Suburban Residential), and SS (Sparsely Settled) land use (zoning) districts are superimposed ("overlaid") on parts or all of platted subdivisions. NA zoning allows ½ dwelling unit (DU) per upland acre; SR zoning one DU/acre, and SS zoning ½ DU/acre. The Property Record Cards show that platted lot areas typically range from ⅛ to ¼ acre. Where, prior to the 380 Plan, these lots allowed one DU per lot, the overlay zones make it necessary to own about four to eight lots to build one single-family home in SR, and eight to sixteen lots in SS and NA.

The 380 Plan also introduced Land Use District⁸ and habitat⁹ Open Space Ratios ("OSR's") to the Florida Keys. The effect of OSR's on platted lots is similar to that of low-den-

⁶ The County's "Land Use District Map" (zoning map) shows the lots and blocks of platted subdivisions, but overlays low-density land use districts, affecting parts or all of some subdivisions, as though their plats had been rescinded and the lots returned to acreage status.

⁷ Plaintiffs' responses to discovery, filed by DCA.

⁸ Section 9.5-262, Monroe County Code (hereinafter "MCC") (open space ratios assigned to land use districts)

sity Land Use District overlays. OSR's impose restrictions on "development, use, or occupation" of land, and range up to 95% on offshore islands. There is no Land Use District OSR for IS (Improved Subdivision) districts, but SR, SS, and NA Land Use District OSR's are 50%, 80%, and 80-90%, respectively. Where upland habitats, such as hammocks and pinelands, overlay platted subdivisions, habitat OSR's that go as high as 90% restrict owners of typical 1/4 to 1/4 acre lots to as little as 550 to 1,100 ft² of useable building area.

In 1986, DCA recommended, and the Commission approved, the following definition of the IS (Improved Subdivision) Land Use District.

The purpose of this district is to accommodate legally vested residential development rights of the owners of lots in subdivisions that were lawfully established and improved prior to the adoption of these regulations. ... improved lots are those which are served by a dedicated and accepted existing road of porous or nonporous material, that have a Florida Keys Aqueduct Authority approved potable water supply, and that have sufficient uplands to accommodate the proposed use in accordance with required setbacks. This districts is not intended to be used for new land use districts of this classification within the County. [Emphasis added.]

Ch. 28-20.020(9), FAC (1986). The effect of this regulation is indistinguishable from legislative rescission of those portions of a plat that did not have the listed infrastructure in place on September 15, 1986.

In 1992, Monroe County adopted Ordinance No. 016-1992, titled "Dwelling Unit Allocation Ordinance," limiting residential growth in the Florida Keys to 255 DU's per year, and adopting a point system under which property owners compete with each other for building permits. Applicants garnering the most points win "permit allocations," that are handed out quarterly. §§ 9.5-120 - 124, MCC. Also referred to as the Rate of Growth Ordinance ("ROGO"). Ordinance 016-1992 was approved by DCA, and became effective on July 13, 1992. Ch. 9J-14.014, FAC. The ROGO has since been amended, including amendments by the Administration Commission, as part of the DCA/Commission amendments to the County's 2010 Plan. Ch. 28-20.025 and 28-20.100, FAC. ROGO places a substantial burden on every application for a resi-

⁹ Section 9.5-343, MCC (open space ratios applicable to habitat type).

dential building permit in the Florida Keys ACSC. In both its growth cap and its point system, the ROGO is inconsistent with the vested rights protected by § 380.05(18).

There have been many changes to the ordinances and regulations affecting the owners of platted lots since the Florida Keys was designated as an ACSC in 1979. The parties resisted the Court's suggestion that they prepare a complete list of all local and state regulations that adversely affect the rights of owners of platted, Florida Keys' lots. The Court agrees that making such a list is not feasible at this time. However, the Court finds there are several major, and undoubtedly many minor, regulatory impediments to the vested rights established by § 380.05(18), as the Court discusses above. These regulatory impediments have been promulgated for 16 years in complete disregard of the rights protected by § 380.05(18).

D. Rulings on Defenses Presented

1. **Preemption of § 380.05(18) by Chapter 163.** DCA argues that Chapter 163 preempts § 380.05(18). DCA's cites § 163.3211, Fla. Stat., as support for its position:

Conflict with other statutes. - Where this act may be in conflict with any other provision or provisions of law relating to local governments having authority to regulate the development of land, the provisions of this act shall govern unless the provisions of this act are met or exceeded by such other provision or provisions of law relating to local government, including land development regulations adopted pursuant to chapter 125 or chapter 166. Nothing in this act is intended to withdraw or diminish any legal powers or responsibilities of state agencies or change any requirement of existing law that local regulations comply with state standards or rules.

DCA's argument, that *any* Comprehensive Plan provision or LDR that has been drafted "pursuant to Chapter 163" trumps *all* state laws, is a broad interpretation of the statute indeed. The phrases "relating to local governments having authority to regulate the development of land," "law relating to local government," and "adopted pursuant to chapter 125 or chapter 166," suggest that Chapter 163 should be read as superceding earlier statutes that gave counties and municipalities the authority to enact LDRs. It does not suggest, at least to this Court, that local governments may enact their own Statutes of Limitation, and alter the Constitutionally-protected

property rights of Florida citizens, because right-thinking people are writing "land development regulations" that are superior to every other aspect of civilized behavior in the State of Florida.

The argument raised by DCA is similar to that raised by Monroe County in *Latorre v. Monroe County*, Case No. 96-1109-CA-25 (16th Jud. Cir. Fla., Payne, J.). In *Latorre*, Monroe County attempted to supercede the State of Florida's four-year Statute of Limitations with County Ordinance No. 27-1991. In Ordinance No. 27-1991, Monroe County tried to preempt Florida Statute 95.11(3)(a) where violations of the County's floodplain ordinance were involved. The notion of a County Ordinance trumping a State Statute is hard to comprehend, yet Monroe County has done it before in the name of Land Development Regulations.

The Trial Court is unimpressed with DCA's argument that Chapter 163 trumps all other laws of Florida in the name of growth management.

Some Regulations not Adopted Pursuant to Section 380.05. Defendants argue that "some" Florida Keys land use regulations were adopted under the authority of Section 380.05 (Areas of Critical State Concern), and that others were adopted under the authority of Sections 163.3161-.3244, Fla. Stat. (Local Government Comprehensive Planning Act). Their argument is that Monroe County "would have" adopted certain regulations "anyway," even if it were not an ACSC, and that "those" regulations should not be preempted by 380.05(18). The Court invited Defendants to identify which regulations were promulgated under which authority, but the invitation was declined. After reviewing the Florida Keys ACSC portions of the Florida Administrative Code, the Court finds it cannot accept the Defendants' argument. The Court finds it impossible to determine which LDRs the County would have adopted "anyway," when the County was always under the heavy thumb of the DCA. Furthermore, Defendants' argument is inconsistent with §163.3184(14), Fla. Stat., which negates its argument.

(14) AREAS OF CRITICAL STATE CONCERN.-No proposed local government comprehensive plan or plan amendment which is applicable to a designated area of critical state concern shall be effective *until it has been reviewed and approved as provided in § 380.05.*

Department of Community Affairs' Continuing 380 Oversight. DCA performs the ACSC oversight for the State of Florida, approving and rejecting proposed amendments to Comprehensive Plans and LDRs, and recommending those amendments it deems necessary to the Commission. DCA also reviews every development order issued in an ACSC, and may appeal same to the Florida Land and Water Adjudicatory Commission ("FLWAC," the Governor and Cabinet). Section 380.07, Fla. Stat. (2001). The extent of DCA's oversight of the Florida Keys ACSC is reflected in the number and volume of Florida Keys' ACSC rules it has promulgated. From 1986 through 1996, DCA promulgated 100 approvals and rejections of Monroe County Comprehensive Plans and LDRs, in 39 separate rule sections, an average of 9.1 approvals or rejections per year. See Ch. 9J-14.001 through 14.040, FAC (1976-2001).

Administration Commission's Continuing 380 Oversight. Following its initial amendments in 1986, the Commission promulgated additional amendments to Monroe County's 380 Plan on October 5, 1989 and August 12, 1992. Ch. 28-20.022, -.023, and -.024, FAC. On January 2, 1996, July 17, 1997, and July 26, 1999, the Commission amended the Monroe County Year 2010 Comprehensive Plan and LDRs (2010 Plan). Ch. 28-20.025 and 20.100, FAC (1996). The State's 2010 Plan amendments alone, promulgated under the DCA's and Administration Commission's Chapter 380 authorities, take up thirty-three fine print pages of the Florida Administrative Code.

The Court concludes that the continuing oversight by DCA and the Administration Commission flows exclusively from the designation of the Florida Keys as an ACSC. The Court finds that there are no LDRs or Comprehensive Plan provisions in effect in the Florida Keys that did not go through the oversight process of Chapter 380, and that every such regulation or provision is subject to preemption by § 380.05(18).

Failure to Exhaust Administrative Remedies. Defendants argue that Plaintiffs should have (i) petitioned for a declaratory statement from DCA, pursuant to § 120.65, Fla. Stat., (ii) petitioned for vested rights under § 9.5-184, MCC, and (iii) applied for building permits and appealed the denials to FLWAC.

Declaratory Statement Remedy. As Plaintiffs are in doubt about the effect of local government regulations, as well as state regulations, on their right to develop their property, and local governments are not subject to the Administrative Procedure Act, Plaintiffs are allowed to proceed directly to Circuit Court. *Hill, et al. v. Monroe County, Florida Dept. of Community Affairs, and Florida Administration Commission*, 581 So. 2d 225 (Fla. 3d DCA 1991) (property owners not required to exhaust Ch. 120 remedy before suing County and state agency in Circuit Court).

Administrative Vested Rights Remedy. As to the argument that Plaintiffs should have sought vested rights under the administrative provision in the *2010 Plan*, section 9.5-184, MCC,¹⁰ that provision specifically declined to recognize vested rights set forth in § 380.05(18). Section 9.5-184, MCC, added two common-law vested rights requirements, (i) detrimental reliance and (ii) commencement of construction, to the "mere ownership" requirement of § 380.05(18). At least 22 of the 90 prevailing Plaintiffs *did* exhaust this administrative "remedy." They petitioned Monroe County for vested rights in January 1997, pursuant to § 9.5-184, MCC. Their petitions were denied by the Monroe County Commission on March 10, 1999, by County Commission Resolution 110-1999, adopting the Recommended Order excerpted below.¹¹

3. The Petitioners in this cause have all filed petitions to confirm vested rights to build one single-family home per platted lot, relying on the language contained in Section 380.05(18), Florida Statutes, ... Specifically, the Petitioners acknowledge that their claims for vested rights rest solely upon their ownership of platted lots.

5. Pursuant to Policy 101.18.2(2)(a), an applicant for a vested rights determination shall first have the burden of establishing that the applicant has reasonably relied upon an official act of the county. Pursuant to subsection (2), a properly recorded subdivision plat may constitute such an official act. Monroe County acknowledges that these Petitioners have satisfied the first element of the vested rights test by virtue of their ownership of platted, recorded subdivision lots.

6. Pursuant to subsection (b), the applicant must satisfy the second element of vested rights in demonstrating that the applicant "has made such a substantial change of position or has incurred such extensive obligations and expenses that it would be highly

¹⁰ This "remedy" only existed for one year, from January 6, 1996 until January 5, 1997

¹¹ Plaintiffs' Notice of Filing and Request for Judicial Notice, April 29, 2002.

inequitable or unjust to affect such rights by requiring the applicant to now conform to the Comprehensive Plan and land development regulations." Finally, the applicant must also demonstrate pursuant to subsection (c) "that the development has commenced and has continued in good faith without substantial interruption."

7. As indicated hereinabove, the Petitioners herein do not assert their entitlement to vested rights determinations upon a claim that they have satisfied these last two elements. ...

10. Specifically, the Petitioners' positions rely first on their assertion that the State of Florida's passage of Section 380.05(18), Florida Statutes, preempts the latter two elements of Policy 101.18.2, as being in conflict with Section 380.05(18), Florida Statutes. Second, the Petitioners' positions rely on an interpretation of Section 380.05(18), Florida Statutes which would provide that this provision, standing alone, guarantees the owners of platted, recorded subdivision lots the right to develop a single-family dwelling on each platted lot.

11. Inasmuch as the ability, authority, and jurisdiction to decide matters of statutory interpretation is within the purview of the Courts of this State, the undersigned has no jurisdiction to determine same.

12. Based on the foregoing, it is the recommendation of the hearing officer that the Petitioners' requests for vested rights be denied.

Monroe County's one-year vested rights ordinance squarely conflicted with state law, and the County could not, by virtue of its being a subordinate body of the State of Florida, enforce an ordinance or regulation that conflicts with a state law. In *F.Y.I. Adventures, Inc. v. City of Ocala*, 698 So. 2d 583, 584 (Fla. 5th DCA 1997), the Fifth DCA cites to the Supreme Court's holding in *Thomas v. State*, 614 So. 2d 468 (Fla. 1993), as follows.

This meaning of conflict was approved in *Thomas*. The court stated that if an area of law is not preempted by the state law, then a city can pass ordinances concurrently on subjects regulated by state statute. But an ordinance, which is inferior to a state statute, cannot forbid what the statute expressly licenses, authorizes or requires. Nor may it authorize what the statute forbids.

The vested rights ordinance in question, if it was still in effect today, would be subject to invalidation on preemption grounds. The Trial Court finds that Monroe County's administrative vested rights procedure was no remedy at all, and that it would have been futile for all 500+ plaintiffs in this case to have paid the required \$500 filing fee and obtained a decision that the County had no jurisdiction to hear the plaintiffs' claims. The County's decision in Resolution 110-1999 confirms the Court's conclusion. See *Monroe County v. Gonzalez*, 593 So. 2d 1143

(Fla. 3rd DCA 1992) (no need to exhaust where administrative remedy cannot grant the relief sought).

Appeal to FLWAC. The third exhaustion argument presented by Defendants, that Plaintiffs should have applied for permits, and appealed to FLWAC, pursuant to § 380.07(2), if turned down, is disingenuous at best. Subsection 380.07(2) provides, in pertinent part:

Whenever any local government *issues any development order* in any area of critical state concern, ... Within 45 days after the order is rendered, the owner, the developer, or the state land planning agency may appeal the order to the [FLWAC] (Emphasis added.)

The only *development order* that can be issued for a single-family home on a platted lot is a building permit.¹² The only way to obtain a building permit in the Florida Keys ACSC is to submit a full set of plans into the ROGO process, and the ROGO is one of the principal regulations Plaintiffs argue is preempted by § 380.05(18). The local governments' ROGO processes allow the government to keep an applicant in the queue for a minimum of four years without issuing or denying a building permit. Forcing Plaintiffs to expend the time and money necessary to complete the ROGO process would force them to endure the very process that they believe is barred by state law. In short, the proposed FLWAC appeal route is a classic example of a "too little, too late" administrative remedy. See *Warner v. City of Miami*, 490 So. 2d 1045 (Fla. 3rd DCA 1986) (exhaustion not required where record clearly shows that the administrative remedy could not have provided adequate or timely relief); *Communities Financial Corp. v. Department of Environmental Regulation*, 416 So. 2d 813, 816 (Fla. 1st DCA 1982) (exhaustion not required where the promised administrative remedies are too little or too late).

Here, the Plaintiffs are seeking to invalidate certain state and local regulations that apply to platted lots in the Florida Keys ACSC. They are not in Court seeking building permits, only a declaration of their *right to build* free of regulations that are inconsistent with § 380.05(18). Defendants have not identified an administrative remedy that would provide Plaintiffs the relief

¹² The term "development order" must include denials of building permits, or there would be no purpose in allowing the owner or developer to appeal to FLWAC.

that they can obtain in Circuit Court. The Court finds that there was no adequate or timely administrative remedy that could grant Plaintiffs the relief they seek here. *See Berkowitz v. City of Tamarac*, 654 So. 2d 982 (Fla. 5th DCA 1995), *rev. denied*, 654 So. 2d 982 (Fla. 1995) (where Plaintiff is seeking remedy than cannot be obtained in administrative proceedings, he is not required to exhaust administrative remedies).

Other Defenses. Many other defenses were raised during the course of this proceeding. All were considered and, even though not discussed here, rejected by the Court.

IV. CONCLUSION

The Court concludes that the minimum use of a platted, residential lot is a single-family home,¹³ and that use is authorized when a local government approves a residential subdivision plat. When Subsection 380.05(18), Fla. Stat., became law on July 1, 1972, development of platted lots in Areas of Critical State Concern became vested, and any local or state ordinance, regulation, resolution, or policy that, by its language or effect, limits or modifies such development of a lot platted prior to July 1, 1972, is preempted by Subsection 380.05(18), Fla. Stat., and such ordinance, regulation, resolution, or policy may not be applied to such platted lots to prevent the construction of a single family home.. The Court's decision today does not prevent local governments, or the State, from acquiring such lots by the exercise of eminent domain, or by purchasing lots from willing sellers.

RELIEF SOUGHT BY PLAINTIFFS

Plaintiffs seek a declaration of the extent of the vested rights provided for in § 380.05(18), Fla. Stat. They seek ancillary relief as permitted by Sections 86.011(2), 86.101,

¹³ Subsection 380.05(18) does not limit its scope to residential lots, and the Court must conclude the statute also applies to platted lots that are designated, on the plat itself, for a use other than residential. The Court has reserved jurisdiction to enter final judgment for the approximately 400 remaining Plaintiffs, and this situation may well arise in that context. To determine the uses authorized on a non-residential, platted lot, the parties should be guided by the uses authorized by the local government's zoning ordinances as they existed prior to Area of Critical State Concern designation.

and 86.111, Fla. Stat. (2001), and continuing jurisdiction by this Court. Plaintiffs' Motion for Summary Judgment, November 23, 1999, Order on Summary Judgment, March 30, 2000.

RELIEF GRANTED

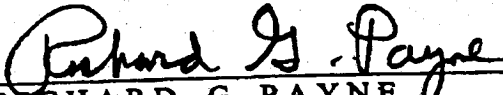
Based upon the foregoing, it is hereby ORDERED, ADJUDGED, AND DECREED:

- A. that this Court has jurisdiction over the parties and the subject matter of this action;
- B. that this Court declares Subsection 380.05(18), Fla. Stat. (2001) creates a vested right to complete the development authorized by the recordation, and approval of the County Commission if the plat was recorded after June 10, 1925, of a plat in the Official Records of Monroe County prior to July 1, 1972, and that the minimum development authorized by a subdivision plat is the construct a single-family home, unless the lot is designated for a non-residential use on the face of the plat, in which case the development authorized is that which was allowed by Monroe County's zoning regulations prior to July 1, 1979, the effective date of the Florida Keys Area of Critical State Concern designation;
- C. that the prevailing Plaintiffs named in this Judgment each own one or more lots in subdivisions platted, according to the local subdivision plat laws in effect at the time of platting, between April 24, 1924, and June 27, 1971;
- D. that the subdivision plats filed with the Court on April 2, 2002, and listed on Exhibit A attached hereto, satisfy the requirements of Subsection 380.05(18), and development of the lots therein, as described above, is thereby vested;
- E. that the following platted subdivisions, filed with the Court on April 2, 2002, were approved after July 1, 1972, and do not satisfy the requirements of Subsection 380.05(18): Port Largo Fifth Addition; Amended Plat of Dolphin Harbour; Stirrup Key Subdivision, Allotment of Dock Area "A"; Buccaneer Point; 1st Revision to Venetian Shores Plat No. 6; Reformed Plat of Grassy Key Beach; Dolphin Estates; Valhalla Island Amended Plat; Lambert Subdivision; Amended & Revised Plat of Shark Key; Sunrise Isle; and Pine Key Yacht Club Estates.
- F. that the vested rights created by Subsection 380.05(18), Fla. Stat. (2001), are superior to, and preempt, any of the State of Florida, and local governments, that were approved or adopted pursuant to Subsections 380.05 or 380.0552, Fla. Stat. and are solely applicable to, or in, the Florida Keys Area of Critical State Concern, if said ordinance, resolution, regulation, rule, or policy limits or modifies, in any way, the ability of the owner of a lot platted and recorded as set forth above. This includes those Comprehensive Plan provisions and Land Development Regulations described in Section II-C of the Court's opinion, *supra*;
- G. that Defendants are enjoined from applying or enforcing any such ordinance, resolution, regulation, rule, or policy that in any way limits or modifies Plaintiffs' vested rights to construct one single-family home on one platted lot in a subdivision listed in Exhibit A;

- H. that the Monroe County zoning codes and land development regulations in effect on June 30, 1979, apply to Plaintiffs' rights to develop said platted lots;
- I. that the Court interprets the statutory phrase "in any way limit or modify," to include temporal delays of greater than 30 days in issuing building permits, requiring Plaintiffs to obtain permit allocations pursuant to growth-limitation processes, short- and long-term moratoria, limiting clearing or building areas, or imposing any other dimensional limitations, to less than what was allowed by Monroe County's zoning code prior to July 1, 1979, limiting development to less than one dwelling unit per lot, and the like. The Court does not interpret said phrase to include Plaintiffs' obligations to obtain building permits, submit building plans for review pursuant to any national or state-wide building codes adopted by the local governments, pay fees that were required in 1979, as adjusted for inflation, and the like;
- J. that this judgment applies to successors-in-title of the prevailing Plaintiffs;
- K. that Monroe County and the Village of Islamorada shall provide a Development Letter to any Plaintiff, or a successor-in-title of any Plaintiff, within 10 working days of a written application therefore, a written determination stating that the applicant is entitled to a building permit at any time the applicant chooses or, if such is not the case, any and all reasons why the local government believes the applicant is not entitled to such a building permit. Development Letters shall be transmitted to the Department of Community Affairs as a "development order" would be;
- L. that the Court awards costs of this action to Plaintiffs, pursuant to the Uniform Rules and an appropriate motion. Said motion may be submitted any time up to 30 days after the resolution of this matter for all remaining Plaintiffs.
- M. that the Court reserves and retains jurisdiction over the parties and the subject matter for five years after this Judgment becomes final, to enter judgments for or against the remaining Plaintiffs, for the purpose of reviewing the Development Letters described above for compliance with this final judgment, and for any additional or further relief that may be necessary to effectuate this judgment.

DONE AND ORDERED in chambers, in Key West, FL, this 28th day of May

2002.


RICHARD G. PAYNE
CIRCUIT JUDGE

cc: James S. Mattson, Esq.
Andrew M. Tobin, Esq.
Karen Cabanas, Esq.
David Jordan, Esq.
Mitchell Bierman, Esq.

Richard Grosso, Esq.
Samuel Reiner II, Esq.

FILE #1303551
BK#1788 PG#1279

MONROE COUNTY
OFFICIAL RECORDS

ORDINANCE NO. 81-43

AN ORDINANCE AMENDING CHAPTER 16 OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA; PROVIDING FOR DEFINITIONS OF TERMS; AUTHORIZING A SOLID WASTE CHARGE ON REAL PROPERTY; PROVIDING FOR COLLECTION OF UNPAID SOLID WASTE; AUTHORIZING A LIEN AGAINST REAL PROPERTY FOR UNPAID SOLID WASTE CHARGES; AUTHORIZING A LIEN FOR LOT CLEARING; PROVIDING THAT ONLY FRANCHISEES MAY ENGAGE IN SOLID WASTE COLLECTION; PROVIDING FOR SOLID WASTE COLLECTION FEES FOR COMMERCIAL PROPERTY; PROVIDING FOR NOTIFICATION OF CITY MANAGER UPON ISSUANCE OF CERTIFICATE OF OCCUPANCY; PROVIDING THAT OWNER OF REAL PROPERTY IS RESPONSIBLE FOR PAYMENT OF SOLID WASTE CHARGES; PROVIDING THAT ALL REAL PROPERTY SHALL BE KEPT CLEAR OF NOXIOUS MATERIAL; PROVIDING REQUIREMENTS FOR SOLID WASTE RECEPTACLES; PROHIBITING STORAGE OF GARBAGE SO AS TO CAUSE POLLUTION; PROHIBITING UNLAWFUL DISPOSAL OF SOLID WASTE; REQUIRING LITTER RECEPTACLES AT PUBLIC ESTABLISHMENTS; REQUIRING ANTI-LITTER SIGNS AT PRIVATE ESTABLISHMENTS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THE PROVISIONS OF THIS ORDINANCE; AND PROVIDING WHEN ORDINANCE GOES INTO EFFECT.

BE IT ENACTED by the City Commission of the City of Key West, Florida, as follows:

Section 1. That Chapter 16 of the Code of Ordinances of the City of Key West, Florida, is amended to read as follows:

Section 16-1. Definitions.

Commission shall refer to the City Commission of the City of Key West.

Bulky items shall mean any tangible item such as furniture, appliances, bicycles, motor vehicles or similar property not having a useful purpose to the owner or abandoned by the owner and not included within the definitions of garbage, garden trash, or rubbish.

Collector refers to a person authorized by the Commission under the provisions of a franchise agreement, to collect and transport solid waste within his respective service area.

Commercial includes all nonresidential and industrial establishments, but not limited to and without regard to, whether they are profit or nonprofit organizations or retail and/or wholesale establishments, motels, hotels, stores, schools, churches, hospitals, office buildings, restaurants, service stations, garages, laundries, cleaning establishments, public or private institutions of all types, and all other business required to obtain occupational licenses.

Garbage means materials resulting from the preparation, cooking and serving of food, market wastes, trimmings and other discarded matter from meat or produce, including containers in which packaged and any other matter, of any nature whatsoever, which is subject to decay, putrefaction and the generation of noxious or offensive gases or odors,

or which, during or after decay, may serve as breeding or feeding material for flies or other germ carrying insects, or any container of the material defined herein.

Improved property refers to all residential, commercial or industrial property that generates or is capable of generating solid waste.

Industrial wastes shall mean the waste products of canneries, slaughterhouses or packing plants, condemned food products, agricultural waste products, waste and debris from brick, concrete block, roofing shingle or tile places, debris and wastes accumulated from land clearing, excavating, building, rebuilding, and altering of buildings, structures, roads, streets, sidewalks or parkways and other solid waste products generated from industrial processing or manufacturing.

Manager shall refer to the City Manager or his designee.

Litter is hereby defined as including all garbage, rubbish, garden trash and all waste materials including, but not limited to, bottles, glass, cans, scrap metal, junk, paper, disposable packages or containers and all other similar materials, and any substance of any kind or nature whatsoever that creates a public health, safety or fire hazard or a public nuisance.

Multiple-family residence refers to a building or structure that is designed for and capable of housing conveniently two (2) or more individuals or families in separate quarters.

Owner refers to the person owning an interest in improved property.

Person shall mean any individual, firm, co-partnership, corporation, company, association, executor, administrator, trustee, church, religious sect, religious denomination, society, organization or league, or any other legal entity, whether singular or plural, masculine or feminine as the context may require.

Public way is hereby defined as any and all streets, roads, alleys, piers, bulkheads, boardwalks, lanes, trails, waters, or other public ways, and any and all public parks, squares, beaches, parks and any and all recreational facilities operated by the state, county, federal government or special governmental district.

Residential property shall mean any structure or shelter, or any part thereof, used, or constructed for use, as a residence for one or more families or individuals and includes the classification "multiple family resident" as defined herein. Residential units shall be construed to mean a single-family dwelling, each living unit in a duplex or condominium dwelling or apartment house and each mobile home tie down on a mobile home parcel except mobile home parcels in rental parks.

Rubbish shall mean refuse accumulations of paper, excelsior, rags or wooden or paper boxes or containers, sweepings, and all other accumulations of a nature other than garbage, which are usual to housekeeping and to operation of stores, offices and other business places, also any bottles, cans or other containers which, due to their ability to retain water, may serve as breeding places for mosquitoes or other water breeding insects.

Refuse means all solid wastes including, but not limited to, garbage, rubbish, ashes, street cleaning, dead animals, bulky items, industrial wastes and trash.

Solid waste means garbage, rubbish, refuse, bulky items and other discarded solid or liquid materials, including materials resulting from industrial, commercial, agricultural and community activities. The term "waste" shall be synonymous with "solid waste".

Solid waste disposal system refers to the total plan of the board for the collection, billing and disposal of solid waste within the city.

Solid waste facility shall mean and include land, equipment and buildings, constructed and maintained, by the City to transfer and/or dispose of solid waste within the City.

Transfer station means a site and equipment designated by the City for the purposes of transferring refuse from collection vehicles to long haul transport vehicles.

Trash shall mean and include all horticultural trimmings and all accumulations of grass, weeds, palm fronds, leaves, flowers, shrubs, vines, tree limbs, and other similar accumulations incidental to yard keeping.

Section 16-2. Annual charge for collection, transfer, and disposal service.

(a) The Commission shall on annual basis, determine, fix and levy upon all improved residential properties within the City, a solid waste charge for the availability of waste collection, transfer and disposal service as set forth herein. Said charges shall be set by resolution after public hearing.

(b) The fact that any residential unit located in the City is occupied or is capable of being occupied shall be prima facie evidence that garbage or solid waste is being produced or accumulated upon such premises. Temporary residential vacancy, regardless of duration, shall not constitute grounds for a refund or excuse the nonpayment of any solid waste charge. A solid waste charge for waste collection and disposal shall be levied against all existing and newly constructed residential units for which a certificate of occupancy has been issued, as provided herein.

(c) Solid waste charges or fees may be established or revised at any time by the Commission and the charge or fee, once established by resolution shall be applied to the individual record cards of each parcel of improved property in the City as shown by the records of the City on January first of the current year and the record owner or owners of said property shall be charged the annual solid waste disposal charge in accordance with the provisions contained herein.

(d) The annual charges for residential collection of solid waste shall be for each consecutive calendar year, payable in advance of the service. The annual payment shall be due and payable no later than the first day of January of the service year.

(e) The solid waste charges shall be set by the Commission by resolution after public hearing.

(f) Solid waste charges shall be applied to all individual residential units (including those residential in apartment houses, condominium buildings and trail parks). Each multiple-family residential unit shall be considered as a single-family residential unit and be charged as such.

(g) Solid waste charges for residential units shall be billed on an annual basis and shall cover service for the twelve-month period from January first through December thirty-first of the service year. Payment of the annual charge for residential collection shall be by an annual payment for the full charge made no later than January first of the service year.

Section 16-3. When waste charges due; collection.

Any time after January second of any service year, if the annual payment has not been paid, the residential charge shall continue as a lien if the Manager shall cause to be filed, in the office of the clerk of the circuit court of Monroe County, a notice of lien or statement showing a legal description of the real property against which the lien is claimed. The property location by street and number, the name of the owner as reflected by the records of the county and an accurate statement of the total amount of unpaid and delinquent solid waste charges claimed to be due shall be provided. However, prior to said lien, the Manager may first remind the property owner of his delinquency, but such a reminder notice is not mandatory upon the Manager and wherever possible should be given. A copy of such notice of lien shall also be mailed to the owner of the property involved as shown by the records of the City. Such notice of lien shall be filed in the official records maintained by the clerk of the circuit court for such purpose, which contain an index listing alphabetically the names of owners against whom such liens have been filed. In the event the City fails to file a notice of lien as aforesaid by December thirty-first of the year for which said delinquent residential charges had occurred, said lien shall cease to exist. Such liens, if filed, may be discharged and satisfied by payment to the City of the aggregate amount specified in the waste lien docket book, together with interest thereon from the date the waste charge become delinquent to the payment date with interest computed at the rate of ten (10) per cent per annum, together with an additional sum for abstracting and recording cost if any. When such lien has been fully paid or discharged, the City shall promptly cause evidence of the satisfaction or discharge of such lien to be entered in the official records. Any person, firm, corporate or legal entity, other than the present owner of the property involved, who pays any such lien held by the City and shall be subrogated to the rights of the City in respect of the enforcement of such lien. Delinquent charges after recordation of the lien may be collection by appropriate civil action for damages; and in addition to the collection of the lien, interest as called for in the ordinance shall be collected, together with attorneys fees and costs for collection of same.

Section 16-4. Special assessment after annual roll established.

(a) Residential Charges. The building official shall notify the manager of the issuance of any certificate of occupancy for any residential property in the City, together with the name of the owner of such property and a description of the property and the nature of the improvement; and the Manager shall affix the solid waste charge against such improved property in accordance with this ordinance and the rates established for such type of improvement; and such property shall be added to city's

solid waste records. The solid waste charge shall be prorated to reflect the number of months actual collection service remaining in the service year that said property became obligated to receive garbage and trash collection service. The waste charges shall become a lien against the property from the date of issuance of the certificate of occupancy. The property owner shall pay the solid waste charge prior to issuance of the certificate of occupancy.

(b) Commercial Charges. The franchise collector shall notify the manager of any account being serviced by him which is delinquent in payment of the monthly service charge due. Such franchise collector shall in writing notify the manager of the name of the owner of the property, and the amount due. The manager shall enter such information in the city's solid waste records, and said property shall be liened as of the date of such entry, and a notice of lien shall be filed in the Official Record Books of Monroe County and thereafter shall be collectible in the same manner and shall have the same status as the regular annual waste charge levied against residential properties by the city.

(c) Lot clearing and/or mowing charges. After having given written notice to a property owner whose property was cleared or mowed by the city pursuant to the provisions of Section 16-9, the Manager shall in writing notify the Commission of the name of the owner of said property, the legal description of same, and of the City's costs of clearing and/or mowing said land; and the board shall by resolution affix the charge against such property for the cost of such clearing and/or mowing, and such property shall be liened as of the date of said resolution; and a notice of lien shall be filed in the official record books of the county and a copy mailed by certified mail to the property owner, and thereafter said lien shall be collectible in the same manner and shall have the same status as the regular annual charge levied against residential properties by the City for garbage and trash collection and disposal.

Section 16-5. Only franchisees permitted to carry on private collection service.

No person, other than persons holding duly authorized franchises issued by the Commission, shall engage in or carry on within the limits of the City a private garbage collection service, or enter into a business for the collection and disposal of garbage, nor shall any person other than a duly licensed franchise holder transport or cause to be transported along or over the highways, roads, streets and thoroughfares of the City any garbage, except as provided in this article.

Section 16-6. Service fees for commercial establishments.

Service fees as established by the Commission for commercial establishments shall be billed and collected by franchise collectors and shall be payable on a monthly basis.

Section 16-7. County building department to notify district manager upon issuance of certificate of occupancy.

The building official shall notify the manager of the issuance of any certificate of occupancy of any residential property in the City and the Manager shall

collect directly from the property owner until an assessment is levied against such units in accordance with the annual assessment procedures delineated in this article. The franchise collector shall have the obligation to collect solid waste from any such unit.

Section 16-8. Owner responsible for paying or causing special assessment to be paid.

(a) It shall be the duty of the owner of each lot, tract, or parcel of land in any area in the City, having a residential unit situate thereon, except as may be otherwise provided herein, to subscribe to the garbage collection service and pay or cause to be paid the solid waste charges due for each residential unit.

(b) It shall be the duty of the owner of each lot, tract or parcel of land in any area in the district where waste collection and disposal service is provided, having improved commercial property situate thereof, to pay or cause to be paid the waste collection charges due for such commercial establishment by subscribing to the collection service provided by the franchise collector as provided for in section 16-6.

(c) Failure on the part of the owner of such residential property to make such solid waste payment and/or to subscribe to said residential garbage collection service is hereby declared illegal and in addition to such lien as provided for herein shall constitute a violation of the Code of Ordinances and punishable as provided in Section 1-13 of the Code of Ordinances.

(d) Failure to subscribe and/or failure to pay the franchise collector is hereby declared to be illegal, and violation shall result in the imposition of a lien against such commercial property in accordance with this ordinance, and in addition to such lien, the owner of such commercial land shall be subject to the penalties of section 1-13 of the Code of Ordinances.

Section 16-9. Premises to be cleaned of debris and noxious material.

(a) For the purposes of promoting the health, safety, and general welfare of the residents of the City, the Manager is hereby authorized and empowered to require that lands in subdivisions and outside of subdivision including vacant lands and/or improved property with residences thereon within the unincorporated area of the City be cleared of debris and any noxious material, be the same garbage, litter, rubbish, refuse, solid waste, trash or industrial waste and high grass or weeds which tend to be a breeding place or haven for snakes, rodents, insects, and vermin of all kinds and character, or which tend to create a fire hazard or endanger the lives and property of the residents of the City, or which tend to create a traffic hazard, or which tend to create a nuisance or other unsightly or unsanitary condition.

(b) For the purposes of health, safety and general welfare of the resident of platted residential subdivisions in the City, all residential subdivision lots, vacant or occupied, shall be mowed and/or cleared of debris no less than once each three (3) months as follows: Once during the period from January first through March thirty-first; once during the period from

April first through June thirtieth; once during the period from July first through September thirtieth; and once during the period from October first through December thirty-first.

(c) Upon a determination by the manager that lands in the City should be cleared in accordance with the provisions of this section, the Manager shall make written demand on such property owner by U.S. certified mail, return receipt requested, directed to his address as shown on the current tax rolls of the county, that his property be cleared in accordance with the provisions of this section and that if such demand is not complied with within thirty (30) days from the date thereof, the land described in such demand will be cleared and/or mowed by the City and the costs thereof will constitute a lien against said land.

(d) Thereafter, if such land not be cleared or mowed within the thirty-day period allotted by such demand, the employees of the City may enter upon such land and clear and/or mow same, and the costs for same be imposed by lien procedure authorized by Section 16-4.

(e) The legal owner of said land shall be responsible for compliance with section 16-9; and in addition to the lien provided for under this section, any owner of property failing to comply with the written demand as provided for hereunder shall be guilty of a violation of this ordinance in accordance with the penalty provided for in section 1-13 of the Code of Ordinances.

(f) Any unauthorized accumulations of refuse and/or failure to keep a parcel mowed on any property as set forth in this section is hereby declared to be illegal and prohibited.

Section 16-10. Container and receptacle requirements.

(a) Every premise occupies as a dwelling, store or other place of business in the city shall have and maintain a proper watertight metal garbage container or plastic container for receiving garbage. It shall be provided with a good, tight and closely-fitting metal or plastic cover, which cover shall be so constructed as to shed all rain water and to prevent the access of flies to the contents of the can. Such cover shall be kept on at all times except when removed for the purpose of disposing of or removing garbage, or for securing or airing the garbage can immediately after it has been emptied, or before fresh garbage has been deposited in it.

(b) Residential receptacles for storage of refuse may not exceed thirty (30) gallons in capacity and fifty (50) pounds unless it can be mechanically dumped.

(c) Garbage and rubbish may be placed in the same containers. Garden trash will be collected with the garbage if it is placed in containers not exceeding set limits. Containers shall not exceed thirty gallons in capacity.

(d) It shall be unlawful to fail to provide sufficient containers to contain all refuse between collections. Unless special arrangements are made, no refuse will be collected unless placed in proper containers.

(e) Infectious, inflammable and explosive materials, and human or animal wastes shall not be placed in containers for regular collection. Refuse, clothing, bedding, or other refuse from homes or other places where highly in-

fectious or contagious diseases have prevailed should be disposed of under the supervision and direction of the county health officer.

Section 16-11. Bundling of brush, etc.

Brush and similar materials must be tied securely in bundles weighing not more than fifty (50) pounds and not more than four (4) feet long unless containerized.

Section 16-12. Storage of garbage so as to cause air pollution prohibited.

No person shall permit his garbage to be so stored or kept in an exposed manner as to render the air or soil impure or unwholesome.

Section 16-13. Unlawful disposal of solid waste.

(a) No person shall dispose of any garbage, rubbish, offal or industrial waste, except through the franchise collector. Inhabitants of the city may transport to the city dump tree limbs, cuttings, leaves, grass and weeds from their individual premises, provided that such persons using city facilities shall be required to pay the fee established by the City Commission.

(b) No person shall case, place, sweep, or deposit anywhere within the City, any refuse in such a manner that the same may be carried or deposited by the elements upon street, sidewalk, alley, sewer, parkway or other public place or into occupied premises or unoccupied property within the City, except this shall not prohibit the placement of clean fill upon any private land.

(c) No person shall throw, place or deposit, or cause to be thrown, place or deposit, any offal, trash, junk, vehicle, garbage or filth of any kind, into or on any of the public streets, roads, highways, bridges, alleys, lanes, thoroughfares, waters, canals, or vacant lots, or upon the premises of any other person within the limits of the City.

Section 16-14. Litter receptacles required for privately owned establishments serving the public.

(a) The proprietors of all privately owned establishments which serve the public including, but not limited to, drive-in restaurants, retail shopping centers, grocery stores, convenience stores, gasoline service stations, commercial parking lots, camp grounds, trailer parks and all other such establishments shall be required to place litter receptacles of a size and nature suitable to the need and bearing in large print there on the label "TRASH". The nature of such receptacles, their size, composition, number and place of location shall be determined by the proprietors based on the size, location and circumstances of said establishment. The type and number of such litter receptacles shall be based on the nature and type of business and the customers of such establishments. Failure on the part of proprietors to provide adequate receptacles shall result in action by the City to compel compliance. Such proprietors shall be responsible for the removal of litter from such litter receptacles when necessary.

(b) Such proprietors shall, within thirty (30) days of notification by the City in reference to such litter receptacles, comply with the terms of this section.

Section 16-15. Owners of privately owned establishments required to post signs warning against violations of anti-litter provisions.

(a) The proprietors of all privately owned establishments which serve the public including, but not limited to, drive-in restaurants, retail shopping centers, grocery stores, convenience stores, gasoline service stations, commercial parking lots, camp grounds, trailer parks and other such establishments, shall be required to prominently place signs warning persons against violation of the anti-litter ordinance and its possible criminal sanctions.

(b) The nature, content, number, location, size and composition of said signs shall be determined by the proprietor of each based on the size, location and circumstances, the volume of potential litter generated by such establishments, and the need for such signs caused by the nature and type of business and customers of such establishments.

(c) Failure on the part of the proprietor to provide such signs shall result in action by the City to compel compliance. Such proprietors shall, within thirty (30) days of notification by the board of the required information, comply with the terms of this section. The City may produce such signs and offer them for sale at cost and with no profit to the City to establishments requiring them.

Section 16-16. Presumption as to discarded litter.

Any litter discarded or deposited in violation of this article which can be established to have been in the possession or ownership of any person, shall be presumed to have been discarded or deposited by such person; this presumption may be rebutted by competent evidence or testimony establishing that such item of litter had left the ownership or possession of such person prior to being deposited or discarded in violation of this article.

Section 2. All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 3. This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 5th day of October, 1981.

Read and passed on final reading at a regular meeting held this 19th day of October, 1981.


CHARLES MCCOY, MAYOR

ATTEST:

JOSEPHINE PARKER, CITY CLERK

ORDINANCE NO. 82-5

AN ORDINANCE AMENDING SECTIONS 16-1, 16-2, AND 16-3 OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA (AS ENACTED BY ORDINANCE NO. 81-43); PROVIDING FOR DEFINITIONS OF TERMS; AUTHORIZING A SOLID WASTE CHARGE ON REAL PROPERTY; PROVIDING FOR COLLECTION OF UNPAID SOLID WASTE CHARGES; PROVIDING FOR QUARTERLY PAYMENTS OF SOLID WASTE CHARGES; AUTHORIZING A LIEN AGAINST REAL PROPERTY FOR UNPAID SOLID WASTE CHARGES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THE PROVISIONS OF THIS ORDINANCE; AND PROVIDING WHEN ORDINANCE GOES INTO EFFECT.

BE IT ENACTED by the City Commission of the City of Key West, Florida, as follows:

Section 1. That Sections 16-1, 16-2, and 16-3 of the Code of Ordinances of the City of Key West, Florida (as enacted by Ordinance No. 81-43) are hereby amended to read as follows:

Section 16-1. Definitions.

Commission shall refer to the City Commission of the City of Key West.

Bulky items shall mean any tangible item such as furniture, appliances, bicycles, motor vehicles or similar property not having a useful purpose to the owner or abandoned by the owner and not included within the definitions of garbage, garden trash, or rubbish.

Collector refers to a person authorized by the Commission under the provisions of a franchise agreement, to collect and transport solid waste within his respective service area.

Commercial includes all nonresidential and industrial establishments, but not limited to and without regard to, whether they are profit or nonprofit organizations or retail and/or wholesale establishments, motels, hotels, stores, schools, churches, hospitals, office buildings, restaurants, service stations, garages, laundries, cleaning establishments, public or private institutions of all types, and all other business required to obtain occupational licenses.

Garbage means materials resulting from the preparation, cooking and serving of food, market wastes, trimmings and other discarded matter from meat or produce, including containers in which packaged and any other matter, of any nature whatsoever, which is subject to decay, putrefaction and the generation of noxious or offensive gases or odors, or which, during or after decay, may serve as breeding or feeding material for flies or other germ carrying insects, or any containers of the material defined herein.

Improved property refers to all residential, commercial or industrial property that generates or is capable of generating solid waste.

Industrial wastes shall mean the waste products of canneries, slaughterhouses or packing plants, condemned food products, agricultural waste products, waste and debris from brick, concrete block, roofing shingle or tile places, debris and wastes accumulated from land clearing, excavating, building, rebuilding, and altering of buildings, structures, roads, streets, sidewalks or parkways and other solid waste products generated from industrial processing or manufacturing.

Manager shall refer to the City Manager or his designee.

Litter is hereby defined as including all garbage, rubbish, garden trash and all waste materials including, but not limited to, bottles, glass, cans, scrap metal, junk, paper, disposable packages or containers and all other similar materials, and any substance of any kind or nature whatsoever that creates a public health, safety or fire hazard or a public nuisance.

Multiple-family residence refers to a building or structure that is designed for and capable of housing conveniently two (2) or more individuals or families in separate quarters.

Owner refers to the person owning an interest in improved property.

Person shall mean any individual, firm, co-partnership, corporation, company, association, executor, administrator, trustee, church, religious sect, religious denomination, society, organization or league, or any other legal entity, whether singular or plural, masculine or feminine as the context may require.

Public way is hereby defined as any and all streets, roads, alleys, piers, bulkheads, boardwalks, lanes, trails, waters, or other public ways, and any and all public parks, squares, beaches, parks and any and all recreational facilities operated by the state, county, federal government or special governmental district.

Residential property shall mean any structure or shelter, or any part thereof, used, or constructed for use, as a residence for one or more families or individuals and includes the classification "multiple family resident" as defined herein. Residential units shall be construed to mean a single-family dwelling, each living unit in a duplex or condominium dwelling or apartment house and each mobile home tie down on a mobile home parcel or on a condominium parcel/site.

Rubbish shall mean refuse accumulations of paper, excelsior, rags or wooden or paper boxes or containers, sweepings, and all other accumulations of a nature other than garbage, which are usual to housekeeping and to operation of stores, offices and other business places, also any bottles, cans or other containers which, due to their ability to retain water, may serve as breeding places for mosquitoes or other water breeding insects.

Refuse means all solid wastes including, but not limited to, garbage, rubbish, ashes, street cleaning, dead animals, bulky items, industrial wastes and trash.

Solid waste means garbage, rubbish, refuse, bulky items and other discarded solid or liquid materials, including materials resulting from industrial, commercial, agricultural and community activities. The term "waste" shall be synonymous with "solid waste".

Solid waste disposal system refers to the total plan of the board for the collection, billing and disposal of solid waste within the city.

Solid waste facility shall mean and include land, equipment and buildings, constructed and maintained by the City to transfer and/or dispose of solid waste within the City.

Transfer station means a site and equipment designated by the City for the purposes of transferring refuse from collection vehicles to long haul transport vehicles.

Trash shall mean and include all horticultural trimmings and all accumulations of grass, weeds, palm fronds, leaves, flowers, shrubs, vines, tree limbs, and other similar accumulations incidental to yard keeping.

Section 16-2. Annual charge for collection, transfer, and disposal service.

(a) The Commission shall on annual basis, determine, fix and levy upon all improved residential properties within the City, a solid waste charge for the availability of waste collection, transfer and disposal service as set forth herein. Said charges shall be set by resolution after public hearing.

(b) The fact that any residential unit located in the City is occupied or is capable of being occupied shall be prima facie evidence that garbage or solid waste is being produced or accumulated upon such premises. Temporary residential vacancy, regardless of duration, shall not constitute grounds for a refund or excuse the nonpayment of any solid waste charge. A solid waste charge for waste collection and disposal shall be levied against all existing and newly constructed residential units for which a certificate of occupancy has been issued, as provided herein.

(c) Solid waste charges or fees may be established or revised at any time by the Commission and the charge or fee, once established by resolution shall be applied to the individual record cards of each parcel of improved property in the City as shown by the records of the City on January first of the current year and the record owner or owners of said property shall be charged the annual solid waste disposal charge in accordance with the provisions contained herein.

(d) The annual charges for residential collection of solid waste shall be each consecutive calendar year, payable in advance of the service. Solid waste charges may be paid annually or quarterly at the option of the property owner. The annual payment or the first quarterly payment shall be due and payable no later than the first day of January of the service year. The second quarterly payment shall be due no later than April first of the service year. The third quarterly payment shall be due no later than July first of the service year. That fourth quarterly payment shall be due no later than October first of the service year. Each payment shall become delinquent one month after the due date. The option of the property owner to pay quarterly shall be made prior to or on

January first of the service year by written application and payment of one-fourth of the annual charge plus a reasonable administrative charge to be set by the City Commission.

(e) The solid waste charges shall be set by the Commission by resolution after public hearing.

(f) Solid waste charges shall be applied to all individual residential units (including those residential units in apartment houses, condominium buildings and trailer parks). Each multiple-family residential unit shall be considered as a single-family residential unit and shall be charged as such.

(g) Solid waste charges for residential units shall be billed on an annual basis and shall cover service for the twelve-month period from January first through December thirty-first of the service year. Payment of the annual residential charge shall be either by an annual payment for the full charge made no later than January first of the service year or shall be, at the option of the owner, payable quarterly as described in paragraph (d) above.

Section 16-3. When waste charges due; collection.

Any time after January second of any service year, if the annual payment has not been paid, the residential charge shall continue as a lien if the Manager shall cause to be filed, in the office of the clerk of the circuit court of Monroe County, a notice of lien or statement showing a legal description of the real property against which the lien is claimed. The property location by street and number, the name of the owner as reflected by the records of the county and an accurate statement of the total amount of unpaid and delinquent solid waste charges claimed to be due shall be provided. However, prior to said lien, the Manager may first remind the property owner of his delinquency, but such a reminder notice is not mandatory upon the Manager and wherever possible should be given. Solid waste charges for residential units shall be billed on an annual basis and shall cover service for the twelve-month period from January first through December thirty-first of the service year. Payment of the annual residential charge shall be either by an annual payment for the full charge made no later than January first of the service year or shall be, at the option of the owner, payable quarterly as described in paragraph (d) above. A copy of such notice of lien shall also be mailed to the owner of the property involved as shown by the records of the City. Such notice of lien shall be filed in the official records maintained by the clerk of the circuit court for such purpose, which contain an index listing alphabetically the names of owners against whom such liens have been filed. In the event the City fails to file a notice of lien as aforesaid by July first of the subsequent service year for which said delinquent residential charges had occurred, said lien shall cease to exist. Such liens, if filed, may be discharged and satisfied by payment to the City of the aggregate amount specified in the waste lien docket book, together with interest thereon from the date the waste charge became delinquent to the payment date with interest computed at the rate of ten percent (10%) per annum, together with an additional sum of ten dollars (\$10.00) for abstracting and recording cost if any. When such lien has been fully paid or discharged, the City shall promptly cause evidence of the satisfaction or discharge of such


lien to be entered in the official records. Any person, firm, corporate or legal entity, other than the present owner of the property involved, who pays any such lien held by the City and shall be subrogated to the rights of the City in respect of the enforcement of such lien. Delinquent charges after recordation of the lien may be collected by appropriate civil action for damages; and in addition to the collection of the lien, interest as called for in the ordinance shall be collected, together with attorneys fees and costs for collection of same.

Section 2. All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

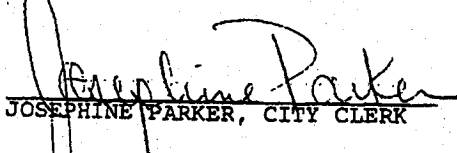
Section 3. This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 1st day of March, 1982.

Read and passed on final reading at a regular meeting held this 15th day of March, 1982.


DENNIS J WARDLOW, MAYOR

ATTEST:


JOSEPHINE PARKER, CITY CLERK

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Sec. 74.01 Applicability.

The provisions of sections 74.01 through 74.60 shall be applicable to all persons and property within the city limits of the City of Key West, and to any other persons or property who may from time to time utilize the services or facilities of the sewer utility of the city.

(Ord. No. 79-18, § 1(1-1-1) 6-4-79)

Sec. 74.02 Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in sections 74.01 through 74.60 shall be as follows:

Base charge unit shall mean a unit of measure for billing purposes designated as a waste connection to the city's sewerage system, each unit being defined as a residential user (residential living space), an unmetered well or cistern owned and used by a residential user, or (as determined by the city) wastes equivalent to the average residential dwelling unit waste water contribution to the city's sewerage system per month by a non-residential user.

BOD (biochemical oxygen demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees centigrade, expressed in milligrams per liter.

Building drain shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (one and five-tenths (1.5) meters) outside the inner face of the building wall.

Building sewer shall mean the extension from the building drain to the public sewer or other place of disposal.

*Editor's note—Former provisions pertaining to sewers were derived from the 1958 Code, and Ord. No. 72-43, § 1, adopted Dec. 18, 1972.

Cross references—Construction specifications, 31.00; subdivisions, § 34.14 et seq.; zoning, 35.00; marine sanitation devices for live-aboard vessels, § 43.05; street excavations, § 76.04 et seq.; water management, 77.00.

State law reference—Sewer systems, F.S. Ch. 367.

City shall mean the City of Key West, Monroe County, Florida.

Combined sewer shall mean a sewer receiving both surface runoff and sewage.

Director shall mean the director of the sewer facility of the City of Key West, or his authorized deputy, agent, or representative.

Equivalent residential unit, shall mean a unit of measure for billing purposes equivalent to a water consumption of three thousand (3,000) gallons per month of normal domestic strength sewage.

Extra-normal strength sewerage shall mean sewerage with a BOD (biochemical oxygen demand) exceeding three hundred fifty (350) milligrams per liter and/or TSS (total suspended solids) exceeding three hundred fifty (350) milligrams per liter, and not containing industrial wastes, prohibited discharges, or harmful wastes as set forth in sections 74.01 through 74.60 inclusive.

Garbage shall mean solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.

Industrial wastes shall mean the liquid wastes from industrial manufacturing processes, trade, or business as distinct from sanitary sewage.

Infiltration and inflow shall mean ground water and surface water that enters into the sewerage system through cracked pipes, joints, manholes or other openings.

Living unit shall mean a single-family dwelling, apartment, mobile home, condominium unit, motel or hotel unit to which service is made available by the utility and which is offered for human occupancy, whether or not such unit is occupied. For purposes of commercial billing, any

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warehouse, office, room or other unit separately occupied or offered for commercial occupancy shall be considered a living unit.

Major contributing industry, as defined by 40 Code of Federal Regulations 128.124.

Natural outlet shall mean any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

Normal domestic strength sewerage shall mean sewerage with a biochemical oxygen demand (BOD) not exceeding three hundred fifty (350) milligrams per liter and total suspended solids (TSS) not exceeding three hundred fifty (350) milligrams per liter and not containing industrial wastes, prohibited discharges, or harmful wastes as set forth in sections 74.01 through 74.60 inclusive.

Person shall mean any individual, firm, company, association, society, corporation, or group.

pH shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

Private sewage treatment plant shall mean an arrangement of services and structures used for treating sewage which is not owned or controlled by public authority.

Property shredded garbage shall mean the wastes from preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch (1.27 centimeters) in any dimension.

Public sewer shall mean a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

Sanitary sewer shall mean a sewer which carries sewage and to which storm, surface, and groundwaters are not intentionally admitted.

Sewage shall mean a combination of the watercarried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface, and groundwaters as may be present.

Sewage treatment plant shall mean any arrangement of devices and structures used for treating sewage.

Sewage works shall mean all facilities for collecting, pumping, treating, and disposing of sewage.

Sewer shall mean a pipe or conduit for carrying sewage.

Shall is mandatory; *may* is permissive.

Sludge shall mean any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four-hour concentration of flows during normal operation.

Storm drain (sometimes termed "storm sewer") shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

Suspended solids shall mean solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

Utility shall mean the sewer utility of the city.

Watercourse shall mean a channel in which a flow of water occurs, either continuously or intermittently.

(Ord. No. 79-18, § 1(1-1-2) 6-4-79; Ord. No. 85-11, § 1, 3-19-85; Ord. No. 87-21, § 1, 7-6-87; Ord. No. 89-33, § 1, 9-11-89; Ord. No. 96-2, § 1, 2-21-96)

Sec. 74.03 Authority of director to enter private property for purposes of inspection, observation, measurement, etc.

(a) The director and other duly authorized employees of the city agents or independent contractors, as designated by the city manager, bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of sections 74.01 through 74.60 inclusive. The direc-

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tor or his representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.

(b) The director and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all private properties through which the city holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within said easement. All entry and subsequent work, if any, on said easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

(Ord. No. 79-18, § 1(1-7-1, 1-7-3), 6-4-79; Ord. No. 92-17, § 1, 4-7-92)

Sec. 74.04 Observance of company's safety rules by city; indemnification of company by city.

While performing the necessary work on private properties referred to in section 74.03 preceding, the director, or duly authorized employees of the city shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death of the city employees and the city shall indemnify the company against loss or damage to its property by city employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as are required in section 74.39.

(Ord. No. 79-18, § 1(1-7-2) 6-4-79)

Sec. 74.05 Unlawful deposits.

It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public property within the city, or

any area under the jurisdiction of said city, any human or animal excrement, garbage, or other objectionable waste.

(Ord. No. 79-18, § 1(1-2-1) 6-4-79)

Sec. 74.06 Discharges to natural outlets.

It shall be unlawful to discharge to any natural outlet within the city, or in any area under the jurisdiction of said city, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this chapter.

(Ord. No. 79-18, § 1(1-2-2) 6-4-79)

Sec. 74.07 Use of septic tanks, cesspools, etc.

Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.

(Ord. No. 79-18, § 1(1-2-3) 6-4-79)

Sec. 74.08 Connection required where public sewer available.

The owner of all houses, buildings or properties used for human occupancy, employment, recreation, or other purposes, situated within the city and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the city, is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this chapter, within ninety (90) days after date of official notice to do so, provided that said public sewer is within one hundred (100) feet (thirty and five-tenths (30.5) meters) of the property line.

(Ord. No. 79-18, § 1(1-2-4) 6-4-79)

Sec. 74.09 Additional requirements for major contributing industries.

(a) Section 307(b) of the Federal Water Pollution Control Act, as amended, required all municipal sanitary sewers with major contributing industries to comply with the pretreatment standards of 40 Code of Federal Regulation (CFR) Part 128.

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Therefore, the sewer use ordinances of all municipalities which have received a grant under Public Law 92-500 must require this compliance.

(b) Any major contributing industry within the City of Key West as defined by 40 CFR 128.124 shall comply with 40 CFR 128 and any other regulation as shall from time to time be established by EPA or other appropriate regulating governmental agency.

(Ord. No. 79-18, § 1(1-2-5) 6-4-79)

Sec. 74.10 Damaging equipment of sewerage system prohibited.

No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the sewerage works. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

Sec. 74.11 Penalties for violation.

(a) Any person found to be violating any provisions of section 74.01 through 74.09 and 74.12 through 74.41 shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently erase all violations.

(b) Any person who shall continue any violation beyond the time limit provided for in subsection (a) above, shall be guilty of violations of this section and shall be penalized as provided in section 1.13 of this Code or by the city code enforcement board. Each day in which any such violation shall continue shall be deemed a separate offense.

(c) Any person violating any of the provisions of this chapter shall become liable to the city for any expense, loss, or damage occasioned the city by reason of such violation.

(Ord. No. 79-18, § 1(1-8-1—1-8-3), 6-4-79; Ord. 92-33, § 1, 7-7-92)

Sec. 74.12 Private sewage treatment plant—Required, when.

Where a public sanitary or combined sewer is not available under the provisions of section 74.08 the building sewer shall be connected to a private sewage treatment plant complying with the provisions of this chapter.

(Ord. No. 79-18, § 1(1-3-1), 6-4-79; Ord. No. 87-21, § 2, 7-6-87)

Sec. 74.13 Same—Permit; application, fee.

Before commencement of construction of a private sewage treatment plant to process fewer than five thousand (5,000) gallons per day (g.p.d.) of sewage the owner shall first obtain a written city permit signed by the director. The application for such permit shall be made on a form furnished by the city, and shall be accompanied by:

- (1) Three (3) complete sets of blueprints for the proposed plant and site plan;
- (2) A fee in the amount of two thousand five hundred dollars (\$2,500.00), to be expended for inspection and engineering review, the unexpended portion of which shall be promptly refunded to the applicant;
- (3) An executed contract between the applicant and a treatment plant operator certified by the State of Florida for the operation and maintenance of the proposed plant, which shall include or incorporate a letter of coordination for an approved dump site to dispose of sludge and other materials collected from the proposed plant;
- (4) An executed contract providing for performance of quarterly laboratory analyses using procedures which comport with all state and federal requirements, and providing that said analyses are to be submitted directly to the City of Key West Sewer Department from the testing laboratory.

The contracts referred to in subsections (3) and (4) above shall extend for a term not to expire before March 31, 1989.

(Ord. No. 79-18, § 1(1-3-2), 6-4-79; Ord. No. 87-21, § 3, 7-6-87)

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Sec. 74.14 Same—Inspection.

A permit for a private sewage treatment plant shall not become effective until the installation is completed to the satisfaction of the director. He shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the director when the work is ready for final inspection, and before any underground portions are covered.

(Ord. No. 79-18, § 1(1-3-3), 6-4-79; Ord. No. 87-21, § 4, 7-6-87)

Sec. 74.15 Same—Compliance with recommendation of state department of public health required; area of lot; discharge to natural outlet prohibited.

The type, capacity, location, and layout of a private sewage treatment plant shall comply with all recommendations of the Department of Public Health of the State of Florida. No permit shall be issued for any private sewage treatment plant employing subsurface soil absorption facilities where the area of the lot is less than forty-eight thousand four hundred (48,400) square feet. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

(Ord. No. 79-18, § 1(1-3-4), 6-4-79; Ord. No. 87-21, § 5, 7-6-87)

Sec. 74.16 Connection with public sewer upon availability.

At such time as a public sewer becomes available to a property served by a private sewage treatment plant, as provided in section 74.08, a direct connection shall be made to the public sewer in compliance with these provisions, and any septic tanks, cesspools, and similar private sewage disposal facilities shall be abandoned and filled with suitable material.

(Ord. No. 79-18, § 1(1-3-5), 6-4-79; Ord. No. 87-21, § 6, 7-6-87)

Sec. 74.165 Discontinuance of on-site sewage treatment and disposal systems (OSTDSs).

(a) *Intent.* This section establishes a procedure for abandonment of existing onsite sewage treatment and disposal systems (OSTDS) and connec-

tion to the City of Key West central sewage collection and treatment system. This section also establishes a procedure for inspecting and ensuring that OSTDS's located in areas where sewer connections to the municipal treatment plant are unavailable within two hundred (200) feet of city sewer connections are inspected and brought up to secondary levels of treatment through installation of aerobic treatment plants.

The intent of this section is to produce a discontinuance of existing OSTDS's and for the properties previously served by them to be connected by sewer lines to the city's central sewage treatment and collection system. For properties not within two hundred (200) feet of city sewer lines, the intent is that all units be inspected and that those that are certified as functioning properly are issued annual operating permits. If an OSTDS is not properly functioning, the intent is that it be upgraded to an aerobic treatment unit providing secondary treatment, i.e. an effluent that shall not exceed twenty (20) milligrams per liter of carbonaceous biochemical oxygen demand (CBOD), five (5) days or twenty (20) milligrams per liter of total suspended solids (TSS) on a permitted annual average basis.

(b) *Properties within two hundred (200) feet of sewer connection requirements.*

- (1) Within ninety (90) days of the effective date of Ordinance No. 98-33, an owner of an improved property without current service to the city's sewage treatment plant and whose property (at any point of the property line) is located within two hundred (200) feet of an existing city sewer line shall provide for the property to be connected to the City of Key West central sewage treatment and collection system. The existing OSTDS shall then be discontinued.
- (2) In the event the city brings an existing sewer line to within two hundred (200) feet of any point of the property line of an improved property without such current service, then within ninety (90) days of notice from the city of such availability the property owner shall connect to the sewer line; provided, however, that the

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director of utilities may grant an extension of time to comply with this subsection.

- (3) In the event of sewer connection as provided in subsections (b)(1) or (b)(2), then the existing on-site system shall be abandoned and the property owner shall take all required steps to pump out and seal the facility in accordance with State of Florida regulations governing abandoned OSTDSs.
- (4) The city by and through the Monroe County Health Department shall provide written notice to all property owners that are subject to this subsection (b).

(c) Properties not within two hundred feet of sewer connection requirements.

- (1) For improved properties for which city sewer lines are not yet available within two hundred (200) feet of any point of the property line, the property owner within ninety (90) days of the effective date of Ordinance No. 98-33 shall cause the OSTDS to be inspected and pumped out. If it does not pass inspection according to the standards set forth herein, the unit shall be upgraded at the owner's expense to an aerobic treatment unit providing secondary treatment, i.e. an effluent that shall not exceed twenty (20) milligrams per liter of carbonaceous biochemical oxygen demand (CBOD), five (5) days or twenty (20) milligrams per liter of total suspended solids (TSS) on a permitted annual average basis. If after inspection, the OSTDS is certified to be functioning properly, the property owner shall apply for and be issued a one-year operating permit to be issued by the Monroe County Health Department.
- (2) Owners of improved properties with OSDTS's that are subject to the requirements of subsection (c)(1) shall cause their OSTDS's to be pumped out prior to inspection by a licensed septic tank contractor who is registered by the State of Florida to haul septage. The system shall be in-

spected by either a licensed septic tank contractor or plumber registered with the State of Florida, or by a registered professional engineer in the State of Florida, in the presence of authorized personnel from the Monroe County Health Department. Upon successful inspection, the property owner shall apply for an annual operating permit. The Monroe County Health Department shall issue the permit within sixty (60) days of this inspection and finding of adequacy.

- (3) At the time of the inspection, the structural components of the system shall be checked for cracks, leaks, missing or broken deflection or discharge devices; the structural integrity of the tank bottom, sides and lid; and any other evidence that the system is failing to provide satisfactory service, including a comparison of tank volume to current usage and design considerations for the standards at the time of installation.
- (4) Following the inspection, the inspector shall submit a signed, written OSTDS Inspection Report Form 1 to the Monroe County Health Department and to the property owner. The report must fully describe the existing system, residential or commercial structure, and shall:
- Specify the date that the system was pumped out;
 - Specify the total number of gallons of septage removed;
 - Describe the elevation, location, and functional status of the tank and drainfield; and,
 - Contain the inspector's certification that the inspector personally inspected the system and that the description of the system is accurate.
- (5) If the inspector's certification attests that the OSDTS does not meet acceptable standards according to the criteria provided herein, the property owner shall be required, within thirty (30) days of receipt of the inspector's certification, to apply for

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a permit and pay the fees pursuant to 64D-6.030, Florida Administrative Code, to upgrade the sewage system to an aerobic treatment plant providing secondary treatment, i.e. an effluent that shall not exceed twenty (20) milligrams per liter of carbonaceous biochemical oxygen demand (CBOD) five (5) days or twenty (20) milligrams per liter of total suspended solids (TSS) on a permitted annual average basis. The property owner shall, within one (1) year of such determination, complete the installation of a secondary treatment system.

(d) *Status of existing operating permits.* On the date Ordinance No. 98-33 becomes effective, all finally approved OSTDS permits previously issued by the Florida Department of Health and Rehabilitative Services, its predecessors and successors, and/or the City of Key West Building Department for all residential and commercial structures including houses, mobile homes, single-family and multifamily rental units and businesses which are served by an OSTDS, are bound by the terms of this section.

(e) *Certification review and permit.* The Monroe County Health Department shall review the certifications (OSTDS Inspection Report Form 1) issued as a result of the inspection of the OSTDS and within ninety (90) days of their receipt shall:

- (1) Issue a finding that the property owner must discontinue the OSTDS and connect to the City of Key West central sewage treatment and collection system in the event that city sewer lines are available on adjacent public right of way or two hundred feet from the property;
- (2) Issue a finding that the property owner must upgrade the existing OSTDS as provided herein;
- (3) Issue a finding that the existing permit satisfies the requirements of this section; or
- (4) Issue a finding of incomplete information, providing the property owner thirty (30)

days to respond with either an amended Inspection Form 1 or an amended application for a permit.

(f) *Approved systems.* Owners of approved systems for which an operating permit has been obtained may continue to use the approved system so long as:

- (1) The system is properly and lawfully maintained and remains in satisfactory operating condition;
- (2) The operating permit is renewed in accordance with these regulations; and
- (3) The city has not yet extended sewer line connections to within two hundred (200) feet of the property line.

(g) *Permit renewal.* All permits shall be renewed by the property owner prior to the expiration date by submittal of OSTDS Inspection Report Form 2 (as attached hereto) to the Monroe County Health Department, accompanied by the appropriate fees, pursuant to chapter 64E-6.030, Florida Administrative Code.

(h) *Septic tank contractors, engineers and plumbers requirements and prohibitions.*

- (1) All licensed septic tank contractors and plumbers doing business in the city and registered with the State of Florida, and registered professional engineers doing business in the State of Florida, must receive certification by the Monroe County Health Department to be eligible to submit system evaluations pursuant to this section.
- (2) No licensed septic tank contractor, engineer or plumber shall falsify information on the OSTDS Inspection Report Forms or operating permit applications. In such event, the contractor, engineer or plumber shall be subject to license revocation by the city and its contractor's examining board. In addition, the city shall reserve the right to pursue all other civil and criminal remedies.

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(i) *Property owners; prohibitions.* Property owners in the city are in violation of this section if structures on their property are served by an OSTDS and the property owner:

- (1) Fails to provide sewer lines from his improved property to within two hundred (200) feet of a municipal sewer connection as determined by the City of Key West Utility Director such that all structures can be provided with sewer service by connection to the city's sewage treatment collection system within the appropriate time as herein specified; or
- (2) Fails to submit an application for an operating permit by the date specified subsequent to an inspection and finding that the existing septic system qualifies for an annual operating permit by meeting acceptable standards as provided herein; or fails to submit a permit request to install an aerobic treatment plant when the existing OSTDS does not meet the standards provided herein; or fails to take steps in a timely manner to rectify a system that has been inspected and found to require a permit or connection to the municipal system. Failure to connect to the municipal sewage system, obtain an operating permit, or renew an existing permit by the date specified creates a rebuttable presumption that the OSTDS is operating in an unsafe or insanitary manner, and creates reasonable cause to find that a sanitary nuisance exists under Chapter 386, Florida Statutes.

(j) *Penalties.* A violation of this section 74.165 shall subject the property owner either to the penalty set forth in section 1.13 of the Code of Ordinances or to code enforcement action pursuant to Chapter 13 of the Code of Ordinances. In addition, a property owner shall be subject to all applicable State of Florida and federal sanctions pursuant to environmental statutes and administrative rules.

(Ord. No. 98-33, § 1, 12-1-98)

Sec. 74.17 Operation and maintenance of private systems; prohibition against stockpiling of sludge deposits.

The owner shall operate and maintain the private sewage treatment plant in a sanitary

manner at all times, at no expense to the city. All sludge deposits must be transported to an approved sludge depository and shall not be stockpiled at the site in excess of seven (7) days.

(Ord. No. 79-18, § 1(1-3-6), 6-4-79; Ord. No. 87-21, § 7, 7-6-87)

Sec. 74.18 Additional requirements for private treatment plants.

No statement contained herein shall be construed to interfere with any additional requirements that may be imposed by city, state or federal health officials.

(Ord. No. 79-18, § 1(1-3-7), 6-4-79; Ord. No. 87-21, § 8, 7-6-87)

Sec. 74.19 Abandonment upon availability of public sewer.

When a public sewer becomes available, the building sewer shall be connected to said sewer within sixty (60) days, and the private sewage disposal system shall be cleaned of sludge and filled with clean bank-run gravel or dirt.

(Ord. No. 79-18, § 1(1-3-8) 6-4-79)

Sec. 74.20 Shallow injection wells prohibited; temporary exemptions.

(a) It shall be illegal to construct and operate in the city any shallow injection well used for sewage disposal.

(b) Upon application and showing of a great public need or necessity and lack of reasonable alternative the city commission may grant an exemption to (a). The grant of an exemption shall not operate to exempt any applicant from the provisions of section 74.08 requiring connection to sanitary sewer when available within one hundred (100) feet of applicant's property line.

(c) Any shallow injection well permitted pursuant to subsection (b) above is subject to provision of well depth of not less than one hundred fifty (150) feet with casing depth of not less than one hundred (100) feet. There shall be no less than tertiary level of treatment defined as nutrient stripping meeting a standard of no more than one and five-tenths (1.5) parts per million of phosphorus as the average over two (2) consecu-

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tive quarters and no more than nitrogen content ten (10) parts per million (10 ppm). At the expense of the permit holder, the permit holder is to submit reports to the city commission documenting that the above-noted standards relating to nutrient stripping are being met pursuant to testing of said effluent; and in the event that said standards are not met for two (2) consecutive quarters, said permit shall come before the city commission for review and possible revocation.

(d) Monitoring and testing standards required by subsection (c) above shall be conducted as required by Florida Administrative Code Chapter 17.601.100 through 17.601.900. (Ord. No. 85-10, §§ 1-3, 3-5-85; Ord. No. 91-26, § 1, 9-3-91; Ord. No. 92-1, § 1, 1-21-92; Ord. No. 92-10, § 1, 3-3-92)

Sec. 74.21 Permit required to open or make connection to public sewer.

No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof, including the opening, removing of or tampering with any manhole cover, without first obtaining a written permit from the director. (Ord. No. 79-18, § 1(1-4-1) 6-4-79; Ord. No. 96-2, § 2, 2-21-96)

Sec. 74.22 Classes of building sewer permits.

There shall be two (2) classes of building sewer permits: (1) for residential and commercial service, and (2) for service to establishments producing industrial wastes. In either case, the owner or his agent shall make application on a special form furnished by the city. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the director. A permit and inspection fee of ten dollars (\$10.00) for a residential or commercial building sewer permit and one hundred dollars (\$100.00) minimum for an industrial building sewer permit shall be paid to the city at the time the application is filed. (Ord. No. 79-18, § 1(1-4-2) 6-4-79)

Sec. 74.23 Owner to bear expenses for installation; indemnification of city of building sewer.

All costs and expenses incident to the installation and construction of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer. (Ord. No. 79-18, § 1(1-4-3) 6-4-79)

Sec. 74.24 Separate building sewers required; exception.

A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one (1) building sewer. (Ord. No. 79-18, § 1(1-4-4) 6-4-79)

Sec. 74.25 Use of old sewers.

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the director, to meet all requirements of this chapter. (Ord. No. 79-18, § 1(1-4-5) 6-4-79)

Sec. 74.26 Construction specifications.

The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city. (Ord. No. 79-18, § 1(1-4-6) 6-4-79)

Sec. 74.27 Elevation of building sewer.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to

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the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.
(Ord. No. 79-18, § 1(1-4-7) 6-4-79)

Sec. 74.28 Prohibited connections into sanitary sewers.

No person shall make connection of roof downspouts, exterior foundation, drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.
(Ord. No. 79-18, § 1(1-4-8) 6-4-79)

Sec. 74.29 Specifications for connection to public sewer.

The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the director before installation.
(Ord. No. 79-18, § 1(1-4-9) 6-4-79)

Sec. 74.30 Inspection of connection to public sewer.

The applicant for the building sewer permit shall notify the director when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the director or his representative.
(Ord. No. 79-18, § 1(1-4-10) 6-4-79)

Sec. 74.31 Excavations to be guarded.

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.
(Ord. No. 79-18, § 1(1-4-11) 6-4-79)

Sec. 74.32 Infiltration and Inflow and other discharges to sewer prohibited; providing for remedial action.

(a) It shall be unlawful for a person to allow or to cause infiltration and inflow to enter the city's sewerage system from private property. In the event the director determines that infiltration and inflow is entering the sewerage system from private property, he shall provide written notice to the property owner (or his agent) of such defect. The director may require that the owner make repairs to laterals, or make other repairs as the director determines necessary, within thirty (30) days of the sending of such notice. If, in the judgment of the director, the defect presents an emergency, the director may require immediate repairs. Upon receipt of notice, the property owner may request a hearing with the director at which the owner or his agent may present evidence to rebut the determination of the director or to negotiate terms of the repair. The director may deny such hearing in an emergency situation.

If the property owner fails to correct the infiltration and inflow problem immediately in the case of emergency or otherwise on a timely basis, the director on behalf of the city may undertake either or both of the following actions:

- (1) Institute penalty proceedings against the property owner as provided in section 1.13 of the Code of Ordinances or by referral to the city's code enforcement board. To the extent that this subsection conflicts with section 74.11 hereof, this subsection shall prevail.
- (2) Make a written finding of the emergency nature of the infiltration and inflow, after consultation with the city manager and city attorney. In the event the director determines an emergency, he may authorize city workers or agents of the city to enter onto the private property for the limited purpose of effecting repairs. In such event, the city shall bill the property owner the cost of repairs, payable within fifteen (15) days of mailing. Failure of the property owner to pay the bill timely shall entitle the city to place a lien on the property by an appropriate filing in the circuit court. The

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city shall foreclose the lien in the manner provided by the laws of the State of Florida, and when applicable the lien shall have priority pursuant to Section 159.17, Florida Statutes.

(b) No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, pool water, roof runoff, surface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer; provided however, that uncontaminated cooling water or unpolluted industrial process waters may be discharged into a storm sewer or natural outlet upon the prior written approval of the director in accordance with written standards for such discharge that are issued from time to time by the director.

(Ord. No. 79-18, § 1(1-5-1), 6-4-79; Ord. No. 96-2, § 3, 2-21-96)

74.33 Prohibited discharges to public sewers.

No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

- (a) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas.
- (b) Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant, including but not limited to cyanides in excess of two (2) milligrams per liter (mg/l) as cyanides (CN) in the wastes as discharged to the public sewer.
- (c) Any waters or wastes having a pH lower than 5.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.

- (d) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc. either whole or ground by garbage grinders.

(Ord. No. 79-18, § 1(1-5-3) 6-4-79)

Sec. 74.34 Reserved.

Editor's note—Ord. No. 96-2, § 4, adopted Feb. 21, 1996, deleted § 74.34, discharge of unpolluted drainage, derived from Ord. No. 79-18, § 1(1-5-2), adopted June 4, 1979.

Sec. 74.35 Discharge of potentially harmful wastes.

No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the director that such wastes can harm either the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his opinion as to the acceptability of these wastes, the director will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewage treatment plant, and other pertinent factors. The substances prohibited are:

- (a) Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit (sixty-five (65) degrees centigrade).
- (b) Any water or waste containing fats, wax, grease, or oils, whether emulsified or not, in excess of one hundred (100) mg/l or containing substances which may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150) degrees Fahrenheit (zero and sixty-five (65) degrees centigrade).

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- (c) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the director.
- (d) Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not.
- (e) Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the director for such materials.
- (f) Any waters or wastes containing phenols or other taste- or odor-producing substances, in such concentrations exceeding limits which may be established by the director as necessary, after treatment of the composite sewage, to meet the requirements of the state, federal, or other public agencies of jurisdiction for such discharge to the receiving waters.
- (g) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the director in compliance with applicable state or federal regulations.
- (h) Any waters or wastes having a pH in excess of 9.5.
- (i) Materials which exert or cause:
 - (1) Unusual concentrations of inert suspended solids (such as, but not limited to, fuller's earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).
 - (2) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).
 - (3) Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.
- (4) Unusual volume of flow or concentration of wastes constituting slugs as defined herein.
- (j) Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment process employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

(Ord. No. 79-18, § 1(1-5-4) 6-4-79)

Sec. 74.36 Actions of director regarding potentially harmful wastes.

If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in section 74.35, and which in the judgment of the director, may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the director may:

- (a) Reject the wastes;
- (b) Require pretreatment to an acceptable condition for discharge to the public sewers;
- (c) Require control over the quantities and rates of discharge; and/or
- (d) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of section 74.42.

If the director permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the director, and subject to the requirements of all applicable codes, ordinances, and laws.

The director shall notify the city manager in writing of conditions present to which actions in this section are applicable.

(Ord. No. 79-18, § 1(1-5-5) 6-4-79)

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Sec. 74.37 Grease, oil, sand interceptors.

Grease, oil, and sand interceptors shall be provided when, in the opinion of the director, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be located as to be readily and easily accessible for cleaning and inspection.

(Ord. No. 79-18, § 1(1-5-6) 6-4-79)

Sec. 74.38 Preliminary treatment; flow-equalizing facilities.

Where preliminary treatment for flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

(Ord. No. 79-18, § 1(1-5-7), 6-4-79)

Sec. 74.39 Control manhole.

When required by the director, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the director. The manhole shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.

(Ord. No. 79-18, § 1(1-5-8) 6-4-79)

Sec. 74.40 Measurements, testing, analysis of wastes.

All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples

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taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. (The particular analyses involved will determine whether a twenty-four-hour composite of all outfalls of a premises is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from twenty-four-hour composites of all outfalls whereas pH's are determined from periodic grab samples).
 (Ord. No. 79-18, § 1(1-5-9) 6-4-79)

Sec. 74.41 Special agreements between city and industrial users.

No statement contained in this article shall be construed as preventing any special agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment therefor, by the industrial concern.
 (Ord. No. 79-18, § 1(1-5-10) 6-4-79)

Sec. 74.42 Monthly rates and charges for system, service. (See Resolution No. 92-30)

Amended Ord. 95-37
 Monthly rates and charges to be charged by the city for the availability or provision of sewerage service and the use of the city's sewer collection, transmission, treatment, and disposal system shall be as follows, except as provided in subsection (j) below:

- (a) *Components.* Charges shall be based on three (3) components: A base charge component; a proportional use component; and an extra-normal strength component. The sum total of these components shall be the monthly sewerage service charge for each customer.
- (1) Base charge component. The base charge component rates and charges for sewerage services, assessable to a base

charge unit, shall be composed of three (3) subcomponents: A debt service subcomponent; a base administration, operations, maintenance, and replacement subcomponent; and a collection system restoration subcomponent. The base charge shall be determined as a pro rata allocation to each base charge unit of the sum of the costs of the Key West sewerage system incurred for and allocable to the debt service of the system, to administration, operations, maintenance, and replacement costs attributable to the system's existence, to base operations, and to costs of collection system restoration. This component of rates and charges shall be determined annually and shall be set by resolution of the city commission.

- a. Debt service subcomponent. The debt service subcomponent shall be a charge determined as a base charge unit pro rata share of the required payments for the currently outstanding debt service of the sewerage system, except for adjustments in this subcomponent made for the United States Navy, which satisfied part of its capital contribution requirements by a lump sum payment of a connection charge.
- b. Base administration, operations, maintenance, and replacement subcomponent. The base administration, operations, maintenance, and replacement subcomponent shall be a charge determined as a base charge unit pro rata share of the referenced costs, determined by the city manager or designee as being attributable to the system's existence and to the system's basic operations and related activities and requirements that are not attributable to system requirements imposed by the waste contributions of system users.
- c. Collection system restoration subcomponent. The collection system

Amended Ord. 96-18
 Amended Ord. 96-29

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restoration subcomponent shall be a charge determined as a base charge unit pro rata share of the annually budgeted investment designated for use in the planned twenty-year collection system restoration program.

- (2) **Proportional use component.** The proportional use component of rates and charges for sewerage services, assessable to a user of the Key West sewerage systems (a customer account) shall be determined as the sum of the pro rata allocations to the user's monthly units of waste contributions to the system (each one thousand (1,000) gallons of actual/estimated wastes per month) of costs of the system incurred for and allocable to administration, operations, maintenance, and replacement attributable to the system receiving, treating, and disposing of users' contributions of wastes of normal or domestic strength. This component of rates and charges shall be determined annually and shall be set by resolution of the city commission.
- (3) **Extra-normal strength component.** The extra-normal strength component of rates and charges for sewerage services shall be assessable to commercial, industrial, and other nonresidential users of the Key West sewerage system, determined by the city manager or designee as contributing wastes having an average strength per month in excess of three hundred fifty (350) milligrams per liter of biochemical oxygen demand (BOD) and in excess of three hundred fifty (350) milligrams per liter of total suspended solids (TSS). The extra-normal strength component shall be determined by generally accepted cost accounting principles and shall be expressed as the costs of treating and disposing of a pound of BOD and a pound of TSS. The component shall be applied as a surcharge for wastes contributed to the system having in excess

of three hundred fifty (350) milligrams per liter of BOD and in excess of three hundred fifty (350) milligrams per liter of TSS. The extra-normal strength component shall be calculated by the city manager or designee at such time as it is determined that any user of the Key West sewage system is contributing extra-normal strength wastes.

- (b) *Estimates of flow, extra-normal strength, and base charge units.*

- (1) **Sewage flow.** Sewage flow shall be estimated by obtaining monthly water consumption data for each sewerage system user and multiplying by a factor representing the assumed percentage of water being contributed to the sewer system. Monthly waste water contribution shall be estimated for each account by the city from FKAA water meter reading data or from water meters installed on privately owned wells and cisterns.

In the event that water furnished by the FKAA or any other water supply source or system shall be used exclusively for irrigation purposes or for any other application from which the water does not enter the city's sanitary sewer facilities, the user may, at the user's own expense, install a "deduct meter" to separately meter such water. The city manager or designee shall determine: Approved meter types; frequency of maintenance and testing; criteria for meter location; and requirements for meter replacement. After the city is notified by the user of the installation of such a meter, the city shall maintain, repair, and read said meter, and may bill the owner's sewer account for such charge. The water measured by such meter will be excluded from the calculation of chargeable sewer flow. Meters shall be considered property of the city. Employees or agents of the city may enter upon the premises during business hours for purposes of maintenance,

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repair, and reading, and may remove meters from the property for purposes of maintenance and repair.

For any residential living space using unmetered wells or cisterns as the sole source of water supply, a base charge shall be assessed for each such living space. The monthly waste water flow (proportional use) component of the user charge for such residential wells and/or cisterns shall be based on an amount of water equal to the average monthly flow for residential system users. In addition to the proportional use component, a flat monthly well surcharge shall be assessed for each residential living space served by the unmetered wells and/or cisterns. The "well surcharge" shall be assessed to account for the exposure of the waste water system to unmetered flows and the likelihood that wells are contributing more than the average monthly flow for residential system users.

For any residential system user having a metered water connection to the FKAA water system, and owning wells and/or cisterns currently in use and connected to the waste water system, a base charge shall be assessed for the FKAA water system connection, but no base charge shall be assessed for the wells and/or cisterns. However, a minimum flow charge based on the estimated average monthly residential waste water flow shall be assessed, if the FKAA meter reading is less than said average. In addition, regardless of the amount of metered FKAA water consumption, the flat monthly well surcharge to be established by the city manager or designee shall be assessed for each residential living space served by an unmetered well or cistern connected to the city's waste water system. Owners of single-family residences and duplexes, including mobile homes, may, but shall not be required to, install water meters on their private water supplies.

Wells and cisterns used by all nonresidential users and that are connected to the city's waste water system shall be metered at the user's expense in accordance with Code of Ordinances, section 74.451. The city shall bill monthly sewerage service charges to such users in accordance with Code of Ordinances, section 74.452.

All wells and cisterns of all residential and nonresidential users within the city limits of the city shall be assumed to be active wells and cisterns connected to the city's sanitary sewer system. The holder of record title to the property may demonstrate otherwise by filing with the city a notarized affidavit, supported by available documentation, declaring that the well or cistern is not active or connected and does not discharge water before or after use into the sanitary sewer system of the City of Key West.

- (2) Extra-normal strength. The extra-normal strengths of wastes shall be estimated by the city by periodically monitoring wastes contributed to the system by users deemed as frequently or consistently having waste discharges of strengths in excess of those defined as being of domestic or normal strength. The monitoring of wastes shall be performed in accordance with current industry standards and procedures for waste flow sampling and laboratory testing. The amounts of extra-normal strength waste components, expressed in pounds of biochemical oxygen demand (BOD) and total suspended solids (TSS), to which the extra-normal strength surcharge shall be applied, shall be calculated from monitoring data. The estimated amount of such waste component shall be applicable for twelve (12) billing periods or until an adjustment is made resulting from a user request for adjustment in accordance with the appeals and adjustment provisions of this section.

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- (3) **Base charge units.** For purposes of determining the number of base charge units chargeable to each sewerage system user, the average monthly water consumption shall be calculated annually for residential users on the basis of a three-year rolling average.

The average monthly water consumption per residential dwelling unit shall be calculated from FKAA water billing records, from city sewer department data files, and from the city's water well and cistern meter readings data for all residential users of the sewerage system owning such wells and cisterns, currently in use, who have elected to install, at their own expense, water meters. The water consumption records and meter reading data shall be adjusted prior to calculation of the monthly average residential consumptions, to account for nonuse, meter errors, customers misclassifications and other data errors.

Each residential dwelling unit shall be defined as one (1) base charge unit regardless of the source of water for that dwelling unit.

The total annual water consumption from FKAA and city meter reading data, adjusted, for each nonresidential user of the sewerage system shall be divided by the number of water bills rendered to such FKAA water customer, and the quotient of that division shall be divided by the monthly average water consumption for residential users of the sewerage system, calculated as prescribed herein. The quotient of the second division will show the number of base charge units, and fraction thereof, that such sewerage system user shall be assessed, provided, however, that the number of said base charge units shall not be less than one (1). The resulting number of base charge units, including fractions thereof, shall be billed to such nonresidential

users for the twelve (12) billing periods following such determination.

- (c) **Adjustments to monthly rates and charge components and subcomponents.** In so much as the city commission desires to provide a sewerage service discount to senior citizens and other citizens that are totally and permanently disabled, adjustments to the base charge components shall be made as specified herein.

Senior citizen residential base charge adjustment. The senior citizen residential base charge adjustment shall mean a reduction of fifteen (15) percent of the base charge component of residential rates and charges assessed to qualified senior citizens and other citizens who are totally and permanently disabled. Any subscriber who is sixty (60) years of age or older by October 1st of the year in which senior citizens base charge adjustment is established, or who is totally and permanently disabled, and whose total annual income does not exceed such amount as shall be established by the city manager and approved by resolution of the city commission, shall, upon submission of such proof of age, disability, and income as the city manager may reasonably require, be entitled to a discount in the amount of fifteen (15) percent of the annual charge against the single residential unit in which said subscriber lives.

- (d) **Adjustment to waste components.** In so much as the characteristics of sewage of an individual system user may vary from the normal domestic strength sewage and will cause additional expense to the city's sewer department, the city manager or designee shall, upon determining that a user may be discharging extra-normal domestic strength sewage into the city's sewerage system, initiate and perform sampling and laboratory testing of the user's waste, in accordance with current industry standards, as provided herein, and shall adjust the value

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of extra-normal strength factor to which the extra-normal strength component of rates and charges shall be applied. The city manager may thereby recompute the extra-normal strength surcharge component of the user's monthly sewerage service charge.

- (e) *Adjustment in base charge units.* Upon written appeal in a form prescribed by the city manager or designee, and satisfactory presentation and verification of data on and affidavits related to water consumption from all sources, including wells and cisterns, for six (6) months preceding the date of the appeal, the city manager or designee may adjust the number of base charge units by use of the average monthly water consumption for the preceding six (6) months divided by the number of gallons most recently estimated to be the average monthly residential contribution to the waste water system, provided that the number of whole base charge units thus determined shall not be less than the number of living units for multiple-family occupancies, whether transient or permanent in nature, nor shall the number of base charge units be less than one (1). The city manager or designee may from time to time require a sewerage system user who has made such an appeal to present further evidence as to water consumption, but only at intervals of six (6) months or more, as the city manager or designee shall choose. Charges shall be adjusted retroactively to the date that the appeal and adequate supporting data, as described above, are filed.
- (f) *Adjustment in estimated flow.* Upon written appeal in a form prescribed by the city manager or designee, and presentation of satisfactory, verifiable water consumption data for the six (6) months preceding the date the appeal, along with appropriate affidavits related thereto, the city manager or designee may adjust the estimated sewage flow to the average of the water consumption for the preceding six (6) months. The city manager or designee may from time to time require a customer who has made such an appeal to present further evidence as to water consumption, but only at intervals of six (6) months or more, as the city manager or designee shall choose. Charges for proportionate use of the system shall be adjusted retroactively to the date the appeal and adequate supporting data, as described above, are filed.
- (g) *Adjustment for measured of other than normal domestic strength sewage (extra-normal strength wastes).* Upon written appeal in a form prescribed by the city manager or designee, and presentation and verification of certified laboratory results of tests performed on the customer's discharge for a period of at least eight (8) weeks, or otherwise in conformance with current waste water industry practices, the city manager or designee may recompute the measure for other than normal domestic strength sewage and recalculate the extra-normal strength surcharge component of the user's monthly sewerage service charge. Charges so adjusted shall be retroactive to the date that the appeal and results of such tests are filed.
- (h) *City manager to establish uniform estimates of flow.* The city manager or designee shall establish a schedule of estimated sewage flows based on the various occupancies, for use in estimating said sewage flows and base charge units where no accurate base data, as described in subsection (b), are available. Such schedule of estimated sewage flows shall be presented to the city commission, which may adopt and amend the schedule by resolution. In the event that no schedule is adopted by the city commission, or any occupancy is not addressed in the adopted schedule, the city manager or designee shall set an interim schedule of estimated flows and base charge units to be effective until an applicable schedule is adopted by the city commission.
- (i) *City manager to review rates and user charges annually.* The city manager or

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designee shall cause to be performed annually a user charge rate study, which, together with recommendations on rates and user charges contained herein, shall be presented to the city commission at least sixty (60) days prior to the end of the fiscal year, for its use in determining the base charge component and proportional use components as set forth in subsection (a)(1) and (2) above.

(j) *Annual sewer rates, charges and components.*

- (1) The base charge component of the sewerage service user charge is hereby determined to be twenty-two dollars and nine cents (\$22.09), adjusted automatically each October 1, commencing October 1, 2000, by fifty (50) percent of the percentage increase in the CPI-(U), U.S. City Averages (as of June).
- (2) The proportional use charge component of the sewerage service user charge is hereby determined to be three dollars and ninety-seven cents (\$3.97) per one thousand (1,000) gallons per month of actual or estimated sewage flow per user.
- (3) The extra-normal strength charge component of the sewerage service user charge is hereby determined to be fifty-seven cents (\$0.57) per pound of biochemical oxygen demand (BOD) and twenty-six cents (\$0.26) per pound of total suspended solids (TSS) contributed per month per user in excess of the amount accounted for in waste at a rate of three hundred fifty (350) mg/l for BOD and for TSS.
- (4) The flat monthly alternative water surcharge is hereby determined to be five dollars and seventy-six cents (\$5.76).
- (5) The assumed percentage of water being contributed to the sewer system, as referred to in Ordinance No. 89-33, subsection (b)(1), continue to

be eighty (80) percent. This figure times the average monthly residential water consumption, the product then divided by the average number of residential dwelling units, yields an average residential monthly wastewater production (rounded to the nearest hundred gallons), or monthly base charge unit (BCU), of three thousand two hundred (3,200).

- (k) [*Section inapplicable to contractual arrangement.*] The methods set forth in this section for determination of monthly rates and charges for the availability or provision of sewerage service and the use of the city's sewer collection, transmission, treatment, and disposal system shall be inapplicable to sewerage system users with which the City of Key West has entered into a separate contractual service arrangement.

(Ord. No. 79-18, § 1(1-9-1), 6-4-79; Ord. No. 83-42, 9-19-83; Ord. No. 85-11, § 2, 3-19-85; Ord. No. 88-54, § 1, 12-18-88; Ord. No. 89-33, § 2, 9-11-89; Ord. No. 92-51, 9-22-92; Ord. No. 93-47, 9-21-93; Ord. No. 94-40, 9-20-94; Ord. No. 95-37, § 1, 11-7-95; Ord. No. 96-18, § 1, 9-17-96; Ord. No. 96-29, § 1, 12-17-96; Ord. No. 99-22, § 1, 10-20-99)

Editor's note—Formerly, § 74.42 was followed by a section setting an equivalent residential unit rate of \$27.00 per month as derived from Ord. No. 88-54, § 2, adopted Dec. 19, 1988, and designated as § 74.425. Such section was repealed by Ord. No. 89-33, § 4, adopted Sept. 11, 1989.

Sec. 74.43 Connection charges.

Before any person shall newly connect any unit to the sewer system, he shall pay for such connection and availability of sewer, a connection charge to be assessed by the director in accordance with the following:

- (a) *Residential customer connection:* one thousand dollars (\$1,000.00) for each living unit.
- (b) *Commercial customer connection:* One thousand five hundred dollars (\$1,500.00) per connection point to the sewer system plus the greater of:
 - (1) Four hundred dollars (\$400.00) for each additional living unit served by the connection point.

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- (2) One thousand dollars (\$1,000.00) for each six thousand (6,000) gallons per month increment of flow estimated through the connection point, by the director. Such estimates of flow shall be made by the director in accordance with normal flows expected from the plumbing fixtures, being serviced by the connection. Where the use or occu-

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pancy of a commercial unit changes, the director shall assess an additional connection fee where estimate of flow increases as a result of said change.

- (c) *Low income residential and commercial connections.* Qualified low income customers or commercial units shall be assessed a one hundred dollar (\$100.00) connection fee for each residential unit or commercial connection point. A qualified low income customer or unit is defined as low income eligible by residency in a HUD, HUDAG, or KWHHA project or compound consisting of not less than fifty (50) HODAG developed residential units located on government owned or leased property or by location as an auxiliary facility (laundry room, management office, etc.) within said qualified property.
- (d) *Unit* is defined as any property, building or structure, or any addition or increase thereto requiring or involving legal connection to sanitary sewer, whether or not there is an existing main connection point to the sanitary sewer.
- (e) *Installment payments.*
- (1) Commercial customers located in the Bahama Village portion of the city's community redevelopment area, established in chapter 19 of the Code of Ordinances, may opt to pay sewer connection fees on an installment payment plan basis. This option shall apply only to new businesses established after the effective date of this subsection (e)(1) [December 4, 1997]. The owner(s) of any business who opts to pay sewer connection fees shall execute a promissory note in favor of the City of Key West. The note shall state a term of years not to exceed ten (10) years and an interest rate of four (4) percent; provided, however, that the precise term of years shall be determined by the city manager. The note shall be secured by a lien against the property recorded in the public records.

- (2) Any person or business located within the city boundaries who agrees to convert from septic tank use to the city sewer system may opt to pay sewer connection fees on an installment payment plan basis. This option shall apply only to persons or businesses who convert from septic tank use to the city's sewer system after the effective date of this subsection (e)(2) [December 4, 1997]. Any person or owner(s) of any business who opts to pay sewer connection fees shall execute a promissory note in favor of the City of Key West. The note shall state a term of years not to exceed ten (10) years and an interest rate of four (4) percent; provided, however, that the precise term of years shall be determined by the city manager. The note shall be secured by a lien against the property recorded in the public records.
- (3) Installment payments under this section shall be made on a monthly basis as part of the customer's sewer bill. They are deemed payment of sewer services pursuant to chapter 159, Florida Statutes.
- (Ord. No. 79-18, § 1(1-9-2), 6-4-79; Ord. No. 83-42, 9-19-83; Ord. No. 91-8, § 2, 5-7-91; Ord. No. 91-20, § 1, 8-20-91; Ord. No. 92-34, § 1, 7-7-92; Ord. No. 97-23, § 1, 12-2-97)

Sec. 74.44 Sewer impact fee.

This section shall be known and may be cited as the "sewer impact fee" ordinance. In addition to all other rates and charges described in this chapter, each person who shall receive a building permit for development that creates an increased demand for the city sewer system services shall pay a sewer impact fee in the manner and amount set forth in this section, and such fees shall be used by the city only in such manner as set forth in this section.

- (a) *Definitions:*

Capital improvements includes planning, engineering, acquisition and construction, but does not include routine maintenance.

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City sewer system includes all sewage works and sewage treatment plants owned and controlled by the City of Key West.

Feepayer is a person who is required to pay a sewer impact fee under the terms of this section.

- (b) No building permit approval requiring payment of a sewer impact fee shall become final until any applicable sewer impact fee shall be paid according to the provisions of this section.
- (c) No person shall receive a building permit, a certificate of occupancy, or connect to the city sewer system any property, building or structure until a sewer impact fee shall be paid in accordance with this section and in the amount required by this subsection (c); however, if previously unavailable public sewer is newly extended to a person with property, building or structure, bringing said public sewer within one hundred (100) feet of the property line said person shall have six (6) months from the date of connection to pay for said connection. Payment shall be equally divided over the six-month period, payable in monthly installments with interest assessed at an amount equal to eight (8) percent per annum on the monthly balance:
- (1) The sewer impact fee shall be paid in the amount of two dollars (\$2.00) per gallon per day of sewage flow for the estimated use of the development. The estimated sewage flow shall be based upon ninety-five (95) percent of actual water consumption averaged over the highest six (6) months of consumption during the three (3) years preceding hook-up into the Sigsbee Force Main Extension, South Roosevelt Extension, Hilton Haven Extension or other extensions of the sanitary sewer system approved after the effective date of this Ordinance. For those existing uses required to connect to the extended sewer systems water consumption shall be based on Florida Keys Aqueduct Authority billing data. For all new development wherever located when actual water consumption data is not available for the required three-year period, estimated sewage flow shall be for the most nearly approximate use listed as Chapter 10D-6.49, "System Size Determinations", Florida Administrative Code. A copy of such rules shall be kept on file for public view in the offices of the city clerk. Where actual water consumption data is used to estimate sewage flow, it shall be verified by the building official that FCAA is the sole source of water supplied to a location.
- (d) The feepayer shall pay the sewer impact fee to the city manager or his designee. The city manager or his designee shall record receipt of the fee in the official public record of the city and, upon full payment of the fee, shall issue to the feepayer a certified copy of such record of receipt, which may be used by the feepayer as evidence of payment.
- (e) Sewer impact fees paid under subsection (c) above shall be used by the city exclusively for the purpose of capital improvements that expand the treatment capacity of the sewer system, including but not limited to expenditures for the rehabilitation or replacement of sewers to reduce saltwater infiltration and thereby expand the existing treatment capacity of the city sewer system so as to meet the increased demand on the city sewer system which such additional connections to the system creates. The city shall separately earmark sewage treatment capacity expansion impact fees paid under subsection (c) which funds shall be disbursed only in accordance with the provisions of this section. The above notwithstanding, the city may take all steps necessary to pool cash for the purpose of investments or accounting efficiencies; provided, how-

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- ever, that separate accounting controls are maintained sufficient to earmark said monies for the purpose specified.
- (f) Any funds collected under subsection (c) not expended or encumbered by the end of the calendar quarter immediately following six (6) years from the date on which the certificate of occupancy for the development was issued may be returned to the feepayer, at his election, with interest at the rate of six (6) percent per annum. Provided, however, that any legal challenge to the payment of fees under this section shall toll the time under this subsection for repayment of the fees.
- (g) A developer who, prior to the effective date of this section, agreed as a condition of development approval to pay a sewer impact fee shall be responsible for the payment of the fee under the terms of this section.
- (h) A violation of this section shall be a misdemeanor punishable according to law; however, in addition to or in lieu of any criminal prosecution or other civil remedy provided by this chapter of the Code of Ordinances of the City of Key West, the city or any person paying the sewer impact fee shall have the power to sue in a civil court to enforce the provisions of this section.
- (i) In estimating the increased demand created by a development, the city manager or his designee shall estimate the demand of any pre-existing land use according to the table referred to in paragraph (c) unless actual measurements of usage are available. A pre-existing land use is a land use that was in existence on December 4, 1984, or a land use that commenced after December 4, 1984, and paid impact fees pursuant to this section. Proof of pre-existing land use may be established by official City, County or State records and licenses, affidavits and photographs. The Planning Official is charged with the responsibility of determining whether a pre-existing land use qualifies under this section.
- Any person aggrieved by the decision of the planning official may appeal that decision to the Board of Adjustment by filing a notice with the City Clerk within ten (10) days.
- (j) This section shall not be applicable to the construction of an accessory apartment as defined in section 35.24(1)a.
- (k) *Installment payments.*
- (1) Commercial customers located in the Bahama Village portion of the city's community redevelopment area, established in chapter 19 of the Code of Ordinances, may opt to pay sewer impact fees on an installment payment plan basis. This option shall apply only to new businesses established after the effective date of this subsection (k)(1) [December 4, 1997]. The owner(s) of any business who opts to pay sewer impact fees shall execute a promissory note in favor of the City of Key West. The note shall state a term of years not to exceed ten (10) years and an interest rate of four (4) percent; provided, however, that the precise term of years shall be determined by the city manager. The note shall be secured by a lien against the property recorded in the public records.
- (2) Any person or business located within the city boundaries who agrees to convert from septic tank use to the city sewer system may opt to pay sewer impact fees on an installment payment plan basis. This option shall apply only to persons or businesses who convert from septic tank use to the city's sewer system after the effective date of this subsection (k)(2) [December 4, 1997]. Any person or owner(s) of any business who opts to pay sewer impact fees shall execute a promissory note in favor of the City of Key West. The note shall state a term of years not to exceed ten (10) years and an interest rate of

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four (4) percent; provided, however, that the precise term of years shall be determined by the city manager. The note shall be secured by a lien against the property recorded in the public records.

- (3) Installment payments under this subsection shall be made on a monthly basis as part of the customer's sewer bill. They are deemed payment of sewer services pursuant to chapter 159, Florida Statutes.

(Ord. No. 84-50, § 1, 12-4-84; Ord. No. 89-14, § 5, 4-3-89; Ord. No. 89-28, § 6, 8-21-89; Ord. No. 90-32, § 2, 12-17-90; Ord. No. 91-8, § 3, 5-7-91; Ord. No. 92-4, § 1, 2-4-92; Ord. No. 95-6, § 1, 2-7-95; Ord. No. 97-23, § 2, 12-2-97)

Sec. 74.45 Deposits; other charges.

(a) Deposits:

- (1) Residential customers, deposit minimum \$ 50.00
- (2) Commercial customers, deposit minimum 150.00

The city reserves the right to set deposits for any customer to an amount equal to two (2) months' sewer bills as estimated by the director, if in the

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director's opinion, the minimum deposit is judged to be insufficient. These deposits apply to new customers and current customers that have turn-on for delinquent accounts.

(b) *Other charges:*

- (1) **Service calls.** Minimum thirty-six dollars (\$36.00) plus fifteen dollars (\$15.00) per hour, unless the basis for the call is found to be defective sewer utility facilities.

Labor. Eighteen dollars (\$18.00) per hour, per person after first hour.

Equipment. Aqua Tech, sewer cleaning truck, fifty-six dollars (\$56.00) per hour.

Backhoe/frontloader, thirty dollars (\$30.00) per hour.

General equipment. Electric snake, sewer rodder, street saw, mud pump, compactor, etc., fifteen dollars (\$15.00) per hour, plus material.

- (2) To turn on delinquent accounts (after all delinquent amounts have been paid), fifty dollars (\$50.00).

(Ord. No. 79-18, § 1(1-9-3), 6-4-79; Ord. No. 83-42, 9-19-83; Ord. No. 90-11, § 1, 6-5-90)

Sec. 74.451 Meter installation required, commercial property; maintenance, repair and reading.

(a) All owners of commercial licensed property upon which any well or cistern is located and which well or cistern discharges to the sewer system shall install, at an accessible location upon the property, meters measuring water flow within ninety (90) days of the effective date of Ordinance No. 89-34. Installation and purchase of equipment shall be at the owner's expense to conform to specifications of the City of Key West. In the event that any owner fails to perform such installation, the city may do so, and shall, in that event, bill the owner's sewer account for such installation charges. Meters shall be considered property of the city. Employees or agents of the city may enter upon the premises during business hours for such purposes, and shall notify the owner prior to entry.

(b) Employees or agents of the city shall maintain, repair, and read the meters referred to in

subsection (a) above, and the city shall bill the owner's sewer account for such charges. Employees or agents of the city may enter upon the premises during business hours for such purposes. Employees or agents of the city may remove meters from the property for purposes of maintenance and repair. The city manager or designee shall determine: Approved meter types; frequency of maintenance and testing; criteria for meter location; and requirements for meter replacement. (Ord. No. 89-34, § 1, 9-11-89)

Sec. 74.452 Sewer billing for well- and cistern-generated flows; use of estimated flow rates and actual flow rates.

Monthly charges for the use of the city sewer system for flows from wells and cisterns referred to in Code of Ordinances, section 74.451 shall be based upon: (1) the monthly water consumption for each customer, derived from meter readings; or, where such information is unavailable, (2) estimated sewage flow. The city manager or designee shall establish a schedule of estimated flows for use in estimating flows where no meter readings or other accurate data are available. Said schedule shall be presented to the city commission, which may adopt and amend it by resolution. In the event that no schedule is adopted by the city commission, the city manager or his designee shall set an interim schedule of estimated flow. The above schedule or interim schedule shall be used to determine monthly charges where meter reading or other accurate data are not available. (Ord. No. 89-34, § 2, 9-11-89)

Sec. 74.46 Owner responsible for payment.

The owner of the property being served shall be responsible for payment of all amounts due from rates and charges established by sections 74.01 through 74.60 inclusive.

(Ord. No. 79-18, § 1(1-102), 6-4-79)

Sec. 74.47 When payment due.

All bills evidencing charges for use of the sanitary sewerage system shall be payable to the city by the users of the sanitary sewerage system on the day indicated on the bill forwarded to the user,

as established by the city finance department in accordance with administratively determined billing cycles.

(Ord. No. 79-18, § 1(1-10-1), 6-4-79; Ord. No. 94-5, § 1, 1-4-94)

Sec. 74.48 Payment to city; disposition.

The rates and charges established by sections 74.01 through 74.60 inclusive, shall be paid to and collected by the city manager or his designee, by and under the direction of the city; provided, however, that all funds collected hereunder shall be segregated, maintained and disposed of utilizing accounting specifically identifiable to the sewer utility.

(Ord. No. 79-18, § 1(1-10-3), 6-4-79)

Sec. 74.49 Delinquent payments—Notice, disconnection of service, reconnection at cost to owner.

Any sewer service charge which becomes delinquent shall be assessed a one time penalty charge, which shall appear on the next billing statement, of the greater of five dollars (\$5.00) or fifteen (15) percent of the delinquent service charge amount.

If any rates, fees or charges established for the use and privilege of use of the public sanitary sewerage system of the city shall not be paid within thirty (30) days after the same shall become due and payable, the city may at the expiration of such thirty day period, and after fifteen (15) days' written notice, which notice may be given and may expire within the above-referenced thirty-day period disconnect the premises from the sewer system and collect said rates, fees or charges have not been paid. The owner of said premises may cause to have his premises reconnected at his own expense with the sewer system, provided that said owner pays to the city its actual cost of disconnecting said premises and all delinquent sewer rates, fees or charges.

Ord. No. 79-18, § 1(1-10-4), 6-4-79; Ord. No. 89-13, § 3, 9-11-89; Ord. No. 91-10, § 1, 5-21-91; Ord. No. 91-13, § 1, 6-18-91)

Editor's note—Sec. 74.49, formerly contained provisions authorizing notification of Florida Keys Aqueduct Commission to shut off the water supply to premises for which delinquent sewerage accounts had not been paid, in accordance with F.S.

§ 10 D. Such provisions have been deleted inasmuch as § 74.10 was repealed.

Sec. 74.50 Same—Payment in installments.

For a period of forty-five (45) days from the effective date of this Ordinance No. 91-10, and again from October 23, 1991 through November 1, 1991, and on a one time only basis, any property owner or person assuming legal responsibility for property, having a delinquent sewer service charge may apply to the city manager or designee for, and the city manager or designee shall grant, a waiver of outstanding penalties incurred after October, 1989 through May 21, 1991, and execution of a promissory note to repay over time all outstanding sewer service charges. In addition thereto a fifteen (15) percent penalty on the amount of said sewer service charges. In no case shall a credit balance be created for penalties paid. Property owners who have previously executed promissory notes on past due sewer service charges shall be eligible for his program. All applicants must pay a fee of one hundred dollars (\$100.00) to cover processing and administrative costs; said fee shall be nonrefundable and may, at the option of the applicant, be included in the promissory note balance. The promissory notes executed shall be payable over a period of twenty-four (24) months for charges up to five hundred dollars (\$500.00), thirty-six (36) months for charges of five hundred dollars and one cent (\$500.01) to one thousand dollars (\$1,000.00), and forty-eight (48) months for charges of over one thousand dollars (\$1,000.00). Any applicant declaring a hardship may obtain a forty-eight-month payment period. Interest at the rate of eight (8) percent per annum upon unpaid installments shall be provided for in the promissory notes. In the event of default in any payment due under a promissory note, the city shall have the right to pursue any and all remedies available to it under said note, the Key West Code of Ordinances, the provisions of Florida Statutes, or otherwise under law for collection of amounts due.

(Ord. No. 79-18, § 1(1-10-5), 6-4-79; Ord. No. 91-10, § 3, 5-21-91; Ord. No. 91-37, § 1, 10-22-91)

Note—See the editor's note following § 74.51.

Sec. 74.51 Sewer service charges shall constitute a lien.

The city shall have a lien on all lands or premises served by the city sewer system for all sewer service charges until paid, which liens shall be

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prior to all other liens on such lands or premises except the lien of state, county and municipal taxes and shall be on a parity with the lien of such state, county and municipal taxes. Such liens, when delinquent for more than thirty (30) days, may be foreclosed by the City of Key West in the manner provided by the laws of Florida for the foreclosure of mortgages on real property.

(Ord. No. 79-18, § 1(1-10-6), 6-4-79; Ord. No. 91-10, § 4, 5-21-91)

Editor's note—Disposition of provisions formerly designated as §§ 74.50—74.60, pertaining to delinquent payments, interest on charges and installments, collection of charges in default, and recordkeeping (all as derived from Ord. No. 79-18, § 1(1-10-5—1-10-15), adopted June 4, 1979), has been in the following manner:

Ord. No. 79-36, § 5, adopted Sept. 11, 1989, repealed § 74.58.

Ord. No. 91-10, adopted May 21, 1991:

§ 2 repealed §§ 74.50—74.56;

§ 3 amended § 74.57 and renumbered it as § 74.50;

§ 4 added § 74.51; and

§ 5 repealed §§ 74.59, 74.60.

MONROE COUNTY
OFFICIAL RECORDS

FILE # 1069583
BK 1521 PG 1338

RCD JUN 17 1998 11:05AM
DANNY L KOLBAGE, CLERK

This instrument prepared by:
Rufus A. Chambers, Esq.
3390 Peachtree Road, #450
Atlanta, GA 30326

MEMORANDUM OF LEASE

As of the 2nd day of January, 1998, JUPITER HOTELS LIMITED PARTNERSHIP, an Illinois limited partnership, whose mailing address is c/o Jupiter Realty Corporation, Suite 1500, 919 North Michigan Avenue, Chicago, Illinois 60611 (hereinafter referred to as "Lessor"), and NORTHLAKE FOODS, INC., a Georgia corporation (hereinafter referred to as "Lessee"), 5912 Breckenridge Parkway, Suite A, Tampa, Florida 33610-4200, entered into that certain Lease Agreement covering 2012 square feet of space located in property located at 3852 North Roosevelt Highway, Key West, Florida 30040, and lying and being in Monroe County, Florida, as more particularly described on Exhibit "A" attached hereto and made a part hereof.

Said Lease Agreement grants and contains, among other things, the rights of use in and to the above described Property for a term of five (5) years with three (3) five (5) year options to extend.

IN WITNESS WHEREOF, the parties have hereunto caused their hands and seals to be affixed.

Signed, sealed and delivered
in the presence of:

Donald Smith
Witness DONALD SMITH
Melissa R. Serono
Witness MELISSA R. SERONO

LESSOR:

JUPITER HOTELS LIMITED PARTNERSHIP,
an Illinois limited partnership

By: Jupiter Hotel Management Company,
an Illinois general Partnership

By: [Signature]
General Partner.

Signed, sealed and delivered
in the presence of:

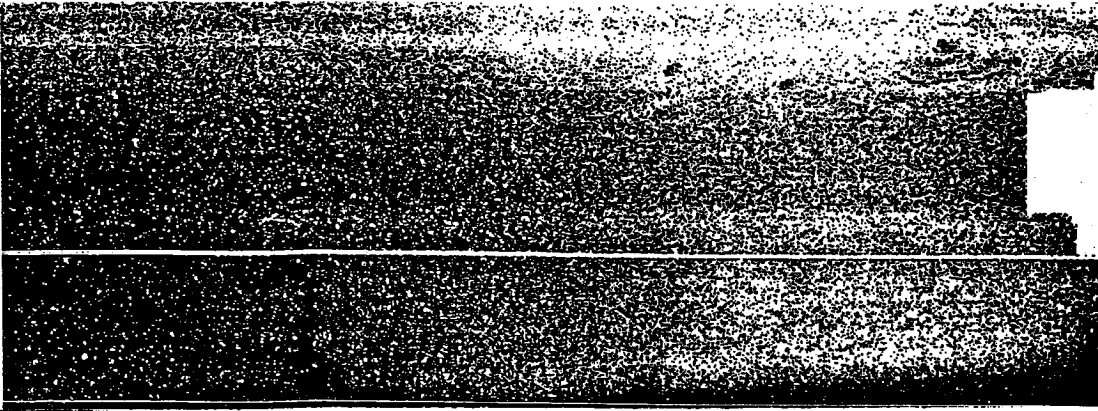
Gail Thomas
Witness GAIL THOMAS
Patty Brooker
Witness PATTY BROOKER

LESSEE:

Northlake Foods, Inc.,
a Georgia corporation

By: [Signature]
Name: Larry P. Martindale
Title: Chairman of the Board

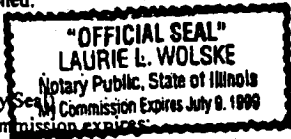
By: [Signature]
Rufus A. Chambers
Secretary



STATE OF ILLINOIS

I hereby certify that on the 14th day of January, 1998, personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Ronald A. Swish, a general partner of Jupiter Hotel Management Company, to me known to be the person who signed the foregoing instrument as such general partner, and acknowledged before me the execution thereof to be his free act and deed as such general partner for the use and purpose therein mentioned, and that the instrument is the act and deed of said general partnership.

Witness my signature and official seal at said State and County, the day and year last above mentioned.



Laurie L. Wolske
Notary Public

STATE OF GEORGIA
COUNTY OF FULTON

I hereby certify that on the 8th day of January, 1998, personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Larry P. Martindale and Rufus A. Chambers, respectively the Chairman of the Board and the Secretary of Northlake Foods, Inc., a Georgia corporation, to me known to be the person who signed the foregoing instrument as such officers, and acknowledged before me the execution thereof was the free act and deed as such officers for the use and purpose therein mentioned, and that the seal of said corporation has been affixed and that the instrument is the act and deed of said corporation.

Witness my signature and official seal at said State and County, the day and year last above mentioned.

Larry P. Martindale
Notary Public

(Notary Seal)
My commission expires:

Notary Public, DeKalb County, Georgia
My Commission Expires June 4, 1999

FILE 11069583
BK 1521 PG 1339

EXHIBIT A

LEGAL DESCRIPTION

DAYS INN KEY WEST HOTEL, KEY WEST, MONROE COUNTY, FLORIDA

A parcel of land located and situated on the Island of Key West, County of Monroe, State of Florida, being more particularly described by metes and bounds as follows:

Starting at the intersection of the Northerly property line of Duck Avenue and the Southeast corner of Block 15, KEY WEST FOUNDATION COMPANY'S PLAT NO. 2, as recorded in Plat Book 1, page 189; thence North 21° 22' 20" West 135 feet along the Westerly property line of Roosevelt Boulevard to the Point of Beginning; thence South 68° 45' 40" West 240 feet to a corner; thence North 21° 20' 20" West 600 feet; thence North 68° 45' 40" East 240 feet to the Westerly property line of Roosevelt Boulevard; thence South 21° 20' 20" East 600 feet along the Westerly property line of Roosevelt Boulevard to the place of beginning, all in Tract 22 of the lands of the KEY WEST IMPROVEMENT COMPANY, INC.

FILE #1069583
BK#1521 PG#1340
MONROE COUNTY
OFFICIAL RECORDS

JUPITER HOTELS LIMITED PARTNERSHIP, AS LANDLORD

AM)

NORTHLAKE FOODS, INC., AS TENANT

LEASE AGREEMENT

Dated: January 2, 1998

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made and entered into this 2nd day of January, 1998, by and between JUPITER HOTELS LIMITED PARTNERSHIP, an Illinois limited partnership (hereinafter referred to as "Landlord"), and NORTHLAKE FOODS, INC., a Georgia corporation, d/b/a WAFFLE HOUSE RESTAURANT (hereinafter referred to as "Tenant").

WITNESSETH:

That for and in consideration of the rentals hereinafter reserved and of the mutual covenants and agreements hereinafter set forth, the parties hereto hereby mutually agree as follows:

ARTICLE I. GRANT AND TERM

SECTION 1.01. DEMISED PREMISES. Landlord hereby leases to Tenant for the term and upon the covenants hereinafter set forth, approximately 2,012 square feet of space, as more particularly depicted in the site plan of the premises attached hereto as Exhibit 4, in the hotel known as Days Inn - Key West, or such other name as Landlord hereafter may from time to time designate (the "Hotel"). The Hotel is located at 3852 North Roosevelt Boulevard, Monroe County, Key West, Florida 33040, and is more particularly described on Exhibit A-1 attached hereto. The leased space shall hereinafter be referred to as the "Demised Premises". The Demised Premises shall include the equipment, furniture, trade fixtures and other personal property and expendable items presently located on said premises and used in connection therewith listed on the Schedule of Property attached hereto as Exhibit B.

SECTION 1.02. TERM. The term of this Lease (the "Lease Term") shall be for an initial period of five (5) years commencing on February 1, 1998 (the "Commencement Date"), and shall expire at midnight on January 31, 2003 (the "Expiration Date"), unless sooner terminated in accordance with the provisions hereof. Each consecutive twelve (12) month period beginning with the Commencement Date shall hereinafter be referred to as a "lease year".

SECTION 1.03. LICENSE TO OCCUPY DEMISED PREMISES PRIOR TO COMMENCEMENT DATE. After the date of execution and delivery hereof, Landlord shall permit Tenant and Tenant's agents or independent contractors to enter the Demised Premises prior to the Commencement Date specified in this Lease in order for Tenant to make the Demised Premises ready for Tenant's use and occupancy in accordance with the provisions of Section 4.02 of this Lease. Such entry shall be pursuant to a conditional license, which license shall be subject to the condition that Tenant and Tenant's agents, contractors, subcontractors, workmen, mechanics, suppliers, and invitees shall work in harmony and not

interfere with Landlord, its agents or guests of the Hotel. Tenant shall pay the cost of all utilities used or consumed in the Demised Premises by Tenant and its agents, contractors, subcontractors, workmen, mechanics, suppliers, and invitees during the period of such entry into and occupancy of the Demised Premises. Tenant agrees that such entry into and occupancy of the Demised Premises prior to the Commencement Date shall be deemed to be under, and Tenant shall abide by, all of the terms, covenants, conditions and provisions of the Lease, except the covenant to pay rent. Tenant further agrees that to the extent permitted by law, Landlord and its constituent partners shall not be liable in any way for any injury or death to any person or persons, loss or damage to any of Tenant's work and installations made in the Demised Premises or loss or damage to the property placed therein prior to the Commencement Date, the same being at Tenant's sole risk, unless such occurrence is solely due to Landlord's or Landlord's agent's gross negligence. It shall be a condition to the license given by Landlord to Tenant pursuant to this Section 1.02 that Tenant shall give to Landlord not less ~~than~~ five (5) days' prior written notice, which notice shall contain and/or be accompanied by: (i) a construction schedule and the plans and specifications which are required to be delivered pursuant to Section 4.02 of this Lease; (ii) the names and addresses of all contractors, subcontractors and material suppliers for whom and which such access is being requested; (iii) copies of all contracts pertaining to the performance of the work for which such access is being requested; (iv) certificates of insurance and instruments of indemnification against all claims, costs, expenses, damages and liabilities which may arise in connection with such work. All of the foregoing shall be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld.

Handwritten: 1 day prior notice

ARTICLE II. RENT AND DEPOSIT

Handwritten: 4 2833.3

SECTION 2.01. MINIMUM RENT DURING INITIAL TERM. Tenant covenants and agrees to pay annual rent ("Annual Minimum Rent") to Landlord in the amount of Thirty-Four Thousand and No/100 Dollars (\$34,000.00) for each lease year during the initial Lease Term. Annual Minimum Rent shall be paid to Landlord in monthly installments, in advance on or before the first day of each month, equal to Two Thousand Eight Hundred Thirty-Three and 33/100 (\$2,833.33) for each month during the Lease Term. Annual Minimum Rent for any partial calendar month shall be prorated based upon a fraction, the numerator of which shall be the actual number of days in such partial calendar month falling within the Lease Term, and the denominator of which shall be the number of days in such month and, if the Commencement Date does not fall on the first day of a month, the Annual Minimum Rent due for such partial calendar month shall be paid to Landlord on the Commencement Date.

SECTION 2.02. PERCENTAGE RENT.

(a) During the term of this Lease, Tenant shall pay, as Additional Rent, percentage rent determined on a semi-annual basis ("Percentage Rent") equal to five percent

(5%) (the "Percentage Rent Factor") of "Tenant's Gross Sales", less the Annual Minimum Rent payable for such calendar quarter. For purposes of this Lease, Tenant's Gross Sales is defined to mean the total amount of dollar value of all sales arising out of or payable on account of Tenant or any sublessee, franchisee, assignee or concessionaire of Tenant or any other person or persons doing business in or from the Demised Premises for cash or credit including without limitation all orders taken at or sold from the Demised Premises (whether or not said orders are filled elsewhere), all telephone orders received or filled at or from the Demised Premises, all deposits not refunded to customers, receipts or sales through any vending machines or other coin or token operated devices as may be permitted by Landlord from time to time (but excluding from vending machine or other coin-operated machines the royalty paid to Waffle House, Inc.), but excluding proceeds from any sales tax, gross receipts tax or similar tax, bona fide transfers of unused foodstuffs from the Demised Premises to any other stores or warehouses of Tenant, refunds given to customers and sales of Tenant's fixtures and equipment not in the ordinary course of Tenant's business. Each sale upon credit shall be treated as a sale for the full price in the month during which such sale is made, irrespective of the time when Tenant may receive payment from its customer, and no deduction shall be allowed for any uncollected or uncollectible credit accounts. No deduction shall be made from Tenant's Gross Sales for any franchise, income or gross receipts taxes, or for any other taxes based upon the income of Tenant.

5% =
C/P
rent
less
Annual
Minimum
rent

(b) Tenant shall keep at the Demised Premises or at Tenant's executive offices a full and accurate set of books and records adequately showing the amount of Tenant's Gross Sales in each calendar quarter during the term of this lease. Such books and records shall be kept in accordance with generally accepted accounting principles and shall be retained by Tenant for a period of not less than three (3) years following the end of the lease year to which they have reference. When and as Landlord may reasonably require, Tenant shall also furnish to Landlord any and all statements, information, and copies of sales and income tax reports and returns which show financial data for the Demised Premises, and other data evidencing Tenant's Gross Sales. Within thirty (30) days following the end of each calendar quarter, Tenant shall submit to Landlord a statement certified by an officer of Tenant setting forth the amount of Tenant's Gross Sales for such calendar quarter and showing the amount of Percentage Rent required to be paid by Tenant for such calendar quarter, if any. With such report, Tenant shall submit the Percentage Rent due to Landlord, if any. Percentage Rent attributable to periods prior to the expiration or earlier termination of this Lease shall survive the termination of this Lease.

books
keep
for 3 yr

(c) Landlord shall have the right, at any time and from time to time, to inspect the sales records of Tenant. If Tenant's Gross Sales exceed those reported, Tenant shall immediately pay the Percentage Rent due for the excess. If Tenant's Gross Sales exceed those reported by two percent (2%) or more, the Tenant shall pay Landlord's cost of audit. If Tenant's Gross Sales shall exceed those reported by two percent (2%) or more for any two (2) calendar quarters out of any five calendar quarters, the Landlord shall have the right, at its sole option, to terminate this Lease. If Tenant shall be in default due to its failure to furnish the statement of Tenant's Gross Sales for any calendar quarter during the term of this Lease for more than ten (10) days after Landlord gives Tenant written notice

audit
costs

of such default, then Landlord shall have the right, in addition to all other remedies, to cause a certified public accountant to audit, at Tenant's expense, Tenant's records and prepare and certify therefrom the Percentage Rent statement, and Tenant shall make all records available for such audit.

(d) In the event that any quarter during the term hereof is less than exactly three (3) full calendar months, then, for the purpose of computing the Percentage Rent for any such short lease quarter, the Minimum Annual Rent used to calculate Percentage Rent shall be adjusted by multiplying the Minimum Annual Rent otherwise payable for a full calendar quarter by a fraction, the numerator of which shall be the actual number of days in such short lease quarter, and the denominator of which shall be the number "91".

SECTION 2.03. PAYMENTS BY TENANT. Tenant shall pay to Landlord, without demand, deduction, set-off or counterclaim, the rent, which is hereby defined as the sum of the Annual Minimum Rent and all Additional Rent (as hereinafter defined), when and as the same shall be due and payable as provided herein. For purposes of this Lease, the term "Additional Rent" shall mean Percentage Rent and any and all other sums of money or charges payable to Landlord by Tenant under this Lease (other than Annual Minimum Rent). Except as otherwise indicated in this Lease (e.g., the payment date for Percentage Rent), Additional Rent shall be due ten (10) days after Landlord renders an invoice therefor and failure to pay such charges carries the same consequences as Tenant's failure to pay rent. All payments and charges required to be made by Tenant to Landlord hereunder shall be payable in coin or currency of the United States of America, at the address indicated herein. No payment to or receipt by Landlord of a lesser amount than the then amount required to be paid hereunder shall be deemed to be other than on account of the earliest amount of such obligation then due hereunder. No endorsement or statement on any check or other communication accompanying a check for payment of any amounts payable hereunder shall be deemed an accord and satisfaction, and Landlord may accept such check in payment without prejudice to Landlord's right to recover the balance of any sums owed by Tenant hereunder.

SECTION 2.04. RENT TAX. If at any time during the term of this Lease any tax, assessment, levy, imposition, or charge, or any part thereof, shall be measured by or based in whole or in part upon or in respect of this Lease, the Demised Premises, the operations and sales of food and beverages conducted by Tenant in the Demised Premises or other areas of the Hotel, including, without limitation, any and all sales tax on food and beverages served by Tenant at the Demised Premises or any other areas of the Hotel, or the Annual Minimum Rent or Additional Rent, or any other payments or charges due hereunder, and shall be imposed upon Landlord, then all such taxes, assessments, levies, impositions or charges, or the part thereof, to the extent that they are so measured or based, shall be deemed to be included within the term "Additional Rent" for the purpose hereof, and Tenant covenants and agrees to pay all such taxes, assessments, levies, impositions or charges. In the event such tax, assessment, levy, imposition or charge is required to be paid by Landlord, Tenant further covenants and agrees to reimburse Landlord for any sums which

M. J. [Signature]

Landlord may expend by reason of the imposition of any tax, assessment, levy, imposition, or charge. The foregoing shall not obligate Tenant to pay or reimburse Landlord for any federal income tax, state and local income taxes, federal excess profit taxes, franchise, capital stock and federal or state estate or inheritance taxes of Landlord.

SECTION 2.05. DEPOSIT. Tenant, concurrently with the execution of this Lease, has deposited with Landlord the sum of Three Thousand Five Hundred and No/100 Dollars (\$3,500.00). The deposit shall be held by Landlord as security for the full and prompt performance of each and every obligation, covenant and agreement of Tenant in this Lease, including Tenant's obligations upon termination of this Lease or termination of Tenant's right to possession. The deposit (which shall not bear interest to Tenant) may, without notice to Tenant, but need not, be applied by Landlord in order to cure any Default in any of the terms, provisions, or conditions of this Lease. The deposit shall be returned to Tenant by the Landlord, after deducting therefrom any sums owed to Landlord pursuant to provisions of this Lease, upon Tenant successfully performing each and every obligation, covenant and agreement required by Tenant to be performed hereunder. A mortgagee in possession of the Demised Premises, or any interest therein, through public or private foreclosure or the acceptance of a deed in lieu thereof, shall have no liability to Tenant for return of all or any portion of the deposit, unless, and then only to the extent that, such mortgagee has acknowledged receipt of all or any portion of Tenant's deposit. In the event Landlord applies the deposit in whole or in part against a Default by Tenant, Tenant shall, upon demand by Landlord, deposit sufficient funds to maintain the security deposit in the initial amount. Failure of Tenant to deposit additional funds as security shall constitute a Default hereunder and entitle Landlord to avail itself of the remedies provided in this Lease for non-payment of Annual Minimum Rent by Tenant. Except as provided by law, neither Landlord, nor its respective successors and assigns shall be obligated to hold the security deposit in a separate fund, but may commingle the same with other funds.

SECTION 2.06. LATE CHARGE. In the event any sums required hereunder to be paid are not received on or before the fifth (5th) calendar day after the same are due, then, Tenant shall immediately pay, as Additional Rent, a late payment service charge equal to the greater of: (a) Fifty Dollars (\$50.00), (b) Ten Dollars (\$10.00) per day for each day, after the due date of such payment, that such payment has not been received by Landlord, or (c) five percent (5%) per month of the amount required to be paid. Notwithstanding this late payment service charge, it shall be a Default by Tenant under this Lease if all payments required to be made by Tenant are not made at or before the times herein stipulated. In addition, any amount due hereunder shall bear interest from the date due until said past due amount shall be paid by Tenant to Landlord at a rate equal to two percent (2%) above the corporate base rate as announced by The First National Bank of Chicago, Illinois from time to time, which rate shall change when and as said corporate base rate changes but which rate shall not be in excess of any maximum interest rate permitted by law.

Deposit

3 Late Charge

**ARTICLE III.
EXTENSION OF LEASE TERM**

SECTION 3.01. AUTOMATIC EXTENSION. Provided that no Default is existing under this Lease either at the time the option to extend the term described below is exercised or at the commencement of an Extension Term (as defined below), and subject to the provisions of Section 19(g) below, the Term of this Lease shall automatically extend for three (3) separate and consecutive periods of five (5) years each, such term being referred to herein as an "Extension Term," commencing immediately on the expiration of the Lease Term or Extension Term, as the case may be, upon the same terms and conditions contained in this Lease (other than as set forth in this Article III to the contrary), unless Tenant notifies Landlord in writing of its intent to not extend the Lease at least one hundred eighty (180) days prior to the expiration of the Lease Term or Extension Term, as the case may be. If either party exercises its option to terminate the Lease, all successive Extension Terms shall be immediately deemed to be null and void and of no further force or effect.

*all tax
ext term
for 5 yr
period
3 into*

SECTION 3.02. EXTENSION TERM RENT. In the event this Lease is extended for any Extension Term as provided in Section 3.01 herein. Tenant agrees that the Annual Minimum Rent and the Percentage Rent Factor shall be adjusted as follows:

TERM	ANNUAL MINIMUM RENT	PERCENTAGE RENT FACTOR
First Extension	\$34,000	5%
Second Extension	\$35,700	6%
Third Extension	\$37,485	7%

**ARTICLE IV.
CONDITION OF DEMISED PREMISES**

SECTION 4.01. CONDITION OF DEMISED PREMISES. Prior to the date hereof, Tenant has had an opportunity to inspect the Premises (including, without limitation, the equipment, furniture, trade fixtures and other personal property and expendable items located on the Demised Premises). Tenant agrees to accept possession of the Demised Premises in its "AS-IS" "WHERE-IS" condition and shall be deemed to have waived any claim against Landlord related to the condition of the Demised Premises (including the restaurant equipment, furniture, trade fixtures and other personal property and expendable items located on the Demised Premises). Landlord shall deliver possession of the Demised Premises to Tenant on or before the Commencement Date in their condition as of the execution and delivery hereof, reasonable wear and tear excepted. No promise of Landlord to alter, remodel, improve, repair, decorate or clean the Demised Premises or the common areas, or any part thereof, and no representation respecting the condition of the Demised Premises or the Hotel has been made to Tenant by Landlord. Tenant hereby expressly acknowledges that Landlord has made no representations or warranties, express or implied,

as to the design or adequacy of the Demised Premises for the use set forth in Section 5.01(a), and any such representation or warranty, statutory or otherwise, is hereby waived by Tenant.

SECTION 4.02. TENANT'S WORK. All work which Tenant desires to make to the Demised Premises to operate the Demised Premises as a full-service family restaurant shall be performed at Tenant's sole cost and expense (hereinafter referred to as "Tenant's Work") in accordance with Exhibit C attached hereto and in accordance with the provisions of section 4.04 hereof. All entry into the Demised Premises and work done by Tenant shall be at Tenant's sole risk. All work performed by Tenant shall be lien free and shall be subject to Landlord's prior written approval, including, but not limited to, written approval of Tenant's plans and specifications (including any changes thereto subsequent to Landlord's written approval), and shall be in accordance with sound construction practices, all applicable laws, regulations, ordinances and codes, Landlord's insurance requirements as set forth in Section 4.03(b) and 9.01 hereinbelow, and in a first-class and workmanlike manner. Further, Landlord shall have no responsibility or liability for any loss or damage to any property belonging to Tenant. Tenant agrees to pay for all gas, electricity and other utility service used or consumed in the Demised Premises by Tenant on and after the date of delivery of possession of the Demised Premises to Tenant. Tenant shall obtain at Tenant's sole cost and expense all certificates, approvals and permits which may be necessary so that a certificate of occupancy for the Demised Premises may be issued. Copies of all such certificates (including without limitation, the certificate of occupancy) shall be delivered to Landlord. From and after the date of delivery of possession of the Demised Premises to Tenant, Tenant agrees to diligently prosecute Tenant's Work to completion.

SECTION 4.03. SUBSEQUENT ALTERATIONS BY TENANT.

(a) Other than Tenant's Work, Tenant may not make any changes, modifications or alterations to the Demised Premises, including but not limited to demolition, erecting partitions, making alterations or additions, or boring or screwing into ceilings, walls or floors, whether or not the same may be required under this Lease, without the prior written consent of Landlord in each instance, which consent may be withheld by Landlord in its sole discretion for any reason. Landlord, however, agrees to not unreasonably withhold consent to changes requested by Tenant which are necessary to comply with Waffle House requirements. Any alterations shall be performed in a first-class and workmanlike manner and in accordance with all applicable legal and insurance requirements and the terms and provisions of this Lease.

(b) Prior to the commencement of any work by Tenant, Tenant shall (i) obtain comprehensive general liability and workmen's compensation insurance in amounts and with insurance companies satisfactory to Landlord, to cover every contractor to be employed by Tenant which shall name Landlord and Hostmark Management, L.P. ("Hostmark"), being Landlord's property manager, as an additional insured, and shall deliver duplicate originals of all certificates of such insurance to Landlord for written approvals; (ii) furnish Landlord with all necessary permits, licenses, approvals, certificates and

*Copy of
Exhibit C
to
be
delivered
to
Landlord*

*Copy of
Hostmark*

authorizations for prosecution and completion of the work; and (iii) furnish Landlord with such other documents as may be reasonably requested by Landlord.

SECTION 4.04. LIEN CLAIMS. Tenant acknowledges and agrees that the interest of Landlord in the Hotel, the Demised Premises, or any part of either thereof, shall not be subject to liens for improvements made by Tenant. Tenant shall notify all contractors performing any work or making any improvements by, or at the direction of, or on behalf of Tenant that the interest of Landlord in the Hotel, the Demised Premises, or any part of either thereof, shall not be subject to liens for any such work or improvements. Further, Tenant shall not permit any lien or claim for lien for any mechanic, laborer or supplier or any other lien to be filed against the Hotel, the Demised Premises, or any part of either thereof arising out of work performed, or alleged to have been performed by, or at the direction of, or on behalf of Tenant. In the event that any such lien or claim is Ned against the Demised Premises or the Hotel or any part of either thereof as a result of any work or act performed by or on behalf of Tenant, Tenant, at its expense, shall discharge or bond over the same within (10) days from the date Tenant receives notice of the filing thereof. If Tenant fails to discharge or bond over said mechanic's lien, Landlord may bond over or pay the same without inquiring into the validity or merits of such lien. Said lien and all sums so advanced by Landlord, including Landlord's expenses and attorneys' fees, shall be paid on demand by Tenant as Additional Rent.

**ARTICLE V.
CONDUCT OF BUSINESS BY TENANT.**

SECTION 5.01. USE AND TRADE NAME.

(a) Tenant shall use and occupy the Demised Premises for the operation of a full-service family restaurant known as Waffle House Restaurant and for no other purpose.

(b) Tenant shall cause its employees, agents and representatives to dress and conduct themselves in a professional manner at all times and to be courteous, respectful and accommodating to all Hotel guests.

(c) Tenant shall operate its business from the Demised Premises under the trade name "Waffle House" only and under no other trade name.

(d) Tenant shall not have the right to serve alcoholic beverages at the Demised Premises.

(e) If required in order for Landlord to conform to a Days Inn license requirement, Tenant shall accept payment for meals served by its restaurant in the form of Visa and Mastercard.

(f) Tenant shall comply with its Waffle House franchise or license agreement including, without limitation, all performance standards.

SECTION 5.02. CONTINUOUS OPERATION. Tenant agrees to open for business to the public as a Waffle House restaurant as soon as practicable following completion of Tenant's Work, but in no event later than July 1, 1998, and thereafter conduct its regular business operations at the Demised Premises continuously seven (7) days each week (including state and federal holidays), from at least 6:30 a.m. until 10:30 p.m., local time, or at such different times as Landlord, in its sole discretion, shall approve. Tenant shall be authorized to operate the restaurant on a twenty-four (24) hour per day basis. Tenant agrees that it will honor all standard Days Inn or Landlord programs, including corporate employee and children's meal discounts established from time to time by Days Inn or Landlord. Tenant shall make available any meal from the menu at such discount and shall incorporate a reimbursement system from Landlord for the cost of such corporate meal discounts. Any such system shall obligate Tenant to keep accurate records of employee meals eaten in connection with such discount or program, and in no event shall Tenant make any demand, deduction, set-off or counterclaim against Rent as a result of any amounts owed to Tenant with respect to the reimbursement system.

SECTION 5.03. TENANT STATEMENT. At any time during the term of this Lease, from time to time within ten (10) days after receipt by Tenant of written request therefor from Landlord or from any mortgagee under any mortgage or any beneficiary under any deed of trust on the real property on which the Hotel or the Demised Premises is located or of which the Demised Premises forms a part, deliver, in recordable form, a duly executed and acknowledged certificate or statement to the party requesting said certificate or statement or to any other person, firm or corporation designated by Landlord, certifying: (a) that this Lease is unmodified and in full force and effect, or, if there has been any modification, that the same is in full force and effect as modified, and stating any such modification; (b) the Commencement Date of this Lease; (c) that rent is paid currently without any off-set or defense thereto; (d) the dates to which the rent and other charges payable hereunder by Tenant have been paid, and the amount of rent and other charges, if any, paid in advance; (e) whether or not there is then existing any claim of Landlord's default hereunder and, if so, specifying the nature thereof; (f) whether or not the Lease contains any exclusive use provisions; and (g) any other matters relating to the status of this Lease as shall be requested by Landlord or any such mortgagee or beneficiary from time to time; provided that, in fact, such facts are accurate and ascertainable. Any such certificate or statement by Tenant may, at the election of the requesting party, include Tenant's undertaking not to pay rent or other charges for more than a specified period in advance of the due dates therefor set forth herein. If Tenant fails to execute such certificate or statement, Tenant hereby irrevocably appoints Landlord as its attorney-in-fact to execute and deliver such certificate for Tenant, or Landlord may elect to terminate this Lease.

SECTION 5.04. UTILITIES.

(a) Tenant, at its expense, shall arrange for and pay all costs for gas, electric, water, telephone and other utility service and solid waste disposal (using the same scavenger service used by Landlord) service provided for or used in or at the Demised Premises throughout the term of this Lease. Tenant shall pay directly to the public utility company, the cost of any installation of any such services. Landlord, at its expense, shall arrange for and pay all costs for all other utilities and services provided for or used in or at the Demised Premises throughout the term of this Lease only to the extent of normal level of usage. To the extent gas service, electric service, water service, and/or solid waste disposal service provided for or used in or at the Demised Premises is not separately metered to Tenant (the "Common Utilities"), Tenant shall pay its proportionate share thereof, based upon Tenant's usage as determined by Landlord, subject to Tenant's reasonable consent as to the determination of Tenant's proportionate share of said Common Utilities. If the parties are unable to agree as to the determination of Tenant's proportionate share of the Common Utilities, the parties agree to submit the determination of Tenant's proportionate share thereof to the applicable public utility company for a determination, which determination shall be binding upon both parties.

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(b) Subject to the next succeeding sentence, Tenant shall pay to Landlord the Tenant's proportionate share of the Common Utilities (provided that Tenant has given its consent to the Tenant's proportionate share of the Common Utilities or a determination has been made by the public utility company pursuant to Section 5.04(a) above) promptly following receipt of a notice from Landlord (a "Required Payment Notice") of the amount due for Tenant's proportionate share thereof. In the event Tenant fails to promptly pay its proportionate share of the Common Utilities after receipt of a Required Payment Notice, Tenant shall pay to Landlord, in advance, the Tenant's proportionate share of Landlord's estimate of the Common Utilities in twelve (12) equal monthly installments with the monthly installment of Annual Minimum Rent. Notwithstanding the foregoing, in the event Landlord at any time determines that the amount of the Common Utilities actually used or consumed by Tenant exceeds the estimate upon which Tenant's proportionate share of the Common Utilities was computed, Tenant, following a request from Landlord, shall commence to pay with the next installment of rent due an amount sufficient to result in Tenant's paying its full proportionate share of the Common Utilities as computed on the basis of Landlord's revised estimate thereof. At the end of the Lease Term or Extension Term, as the case may be, there shall be an adjustment if the amount paid by Tenant differs from its proportionate share actually incurred in that year. Any amount due Tenant or any amount due Landlord shall be credited against or paid, respectively, in the next monthly installment of Annual Minimum Rent. Tenant's obligation to pay its proportionate share of the Common Utilities shall survive the expiration or earlier termination of this Lease.

(c) If Tenant desires electric, telegraphic, burglar alarm, telephone, computer installations or signal service (collectively, the "Additional Services"), Landlord shall, upon request and provided that any such Additional Services are feasible and compatible with Hotel systems, direct the location and method of all connections and wiring,

EXHIBIT B

Schedule of Property - NA

EXHIBIT C

Description of Tenant's Work

Building plans as drawn by Blue Water Engineering Job Number
WHKW-A0-EQ-7, dated November 10, 1997, by reference.

if any, for any such Additional Services. The installation, maintenance and use of any such Additional Services shall be at Tenant's sole expense.

(d) Tenant agrees to indemnify and hold harmless Landlord and Hostmark from and against any and all claims arising from the installation and maintenance of such Additional Services and from all costs and charges for gas service consumed on or by the Demised Premises.

SECTION 5.05. SIGNS AND ADVERTISEMENTS.

(a) Tenant may install and maintain one (1) sign in the window stating that the restaurant is operated by NORTHLAKE Foods, Inc. which sign shall be subject to the prior written approval of Landlord and shall conform to all applicable legal and insurance requirements.

(b) Tenant shall pay for all costs in connection with such signage and shall be responsible for the cost of proper installation and removal thereof and any damage caused to the Demised Premises or the Hotel thereby. No additional signs shall be installed or displayed in, on or about the Demised Premises or the Hotel without the prior written consent of Landlord. Any signs must be tasteful, shall be prepared in a professional manner (not hand-lettered) and must not, in Landlord's judgment, be confusingly similar to or impair the effectiveness of (i) any signage of the Hotel or any signage displayed in connection with the operation of the Hotel, or (ii) any signage of any other Hotel tenant or concessionaire. Any sign or display which does not meet the above criteria may be removed at any time by Landlord without notice or Landlord incurring any liability therefor.

(c) Tenant shall have the right, subject to Landlord's and Days Inn's prior written approval, which approval by Landlord shall not be unreasonably withheld to place advertising materials promoting the restaurant in the guest rooms of the Hotel. Except as otherwise provided in this Section 5.05(c), Tenant shall not, without Landlord's prior written consent, distribute, place or affix any form of advertisement in or to the common areas or guest rooms of the Hotel.

SECTION 5.06. TENANT'S WARRANTIES AND OBLIGATIONS. Tenant warrants, represents, covenants and agrees to and with Landlord, that throughout the term hereof it shall: (i) keep the Demised Premises including, without limitation, the kitchen, public areas, rest rooms, fixtures, displays, doors, windows, floors and signs clean, neat, sanitary and safe and in good order, repair and condition (including all necessary replacements, painting and decorating), and shall keep all glass in doors, windows and elsewhere clean and in good condition and shall replace promptly all glass which may become damaged or broken with glass of the same quality, ordinary wear and tear excepted; (ii) pay, before delinquent, any and all taxes, assessments and public charges imposed upon Tenant's business or fixtures, and pay when due all fees of similar nature, (iii) conduct its business at all times in a professional and businesslike manner and not interfere with the business operations of Landlord or injure or diminish the reputation of Landlord or the

Hotel; (iv) observe all restrictive covenants of record or of which Tenant is notified in writing which are applicable to the Hotel (and which do not unreasonably and materially interfere with Tenant's use and operation of the Demised Premises); (v) not use the parking areas or sidewalks or any space outside the Demised Premises or the Hotel for advertising, display, sale, storage, or any other similar undertaking, (vi) not use any advertising medium or sound devices (other than juke boxes, provided such juke boxes are not audible outside of the Demised Premises) in, on or about the Demised Premises or the Hotel, or permit any objectional odors to emanate from the Demised Premises; (vii) keep the Demised Premises sufficiently heated to prevent freezing of water in pipes and fixtures in and about the Demised Premises; (viii) keep the temperature within the Demised Premises at such levels as may be required by any federal, state or local laws, ordinances, or regulations; (ix) comply and require all of Tenant's employees, agents, concessionaires, licensees and invitees to comply with all laws, ordinances, orders and governmental regulations, and with the directions of any public officer authorized by law, with respect to the Demised Premises or the Hotel and the use and occupancy thereof; (x) operate its business in the Demised Premises under Tenant's trade name as set forth in Section 5.01 and under no other name, without the prior written approval of Landlord; (xi) conduct its business at all times in a first class, businesslike and reputable manner so as to produce the maximum volume of sales and to help establish and maintain a good reputation for the Hotel and maintain a full and complete stock of menu items so as to attain the highest possible gross sales; (xii) furnish, install and maintain all trade fixtures which shall at all times be suitable and proper for carrying on Tenant's business; (xiii) install and maintain such fire protection devices as may be required by any governmental body or insurance underwriter for the Hotel; (xiv) provide trash storage and garbage removal services, except that if Landlord, in its sole discretion, shall provide trash services, Tenant shall be obligated to use and pay for the same within ten (10) days of being billed therefor; (xv) keep the Demised Premises free from insects, vermin and other pests; (xvi) employ only such labor in the performance of any work in and about the Demised Premises as will not cause any conflict or controversy with any labor organization representing trades performing work for Landlord, its contractors or subcontractors; and (xvii) not use the name or the franchise affiliation of the Hotel as part of Tenant's trade name, in any of Tenant's promotional literature or advertising, or otherwise, except to identify the location of the Demised Premises.

SECTION 5.07. LEGAL REQUIREMENTS. Tenant shall, at its own expense, comply with (i) all laws, orders, ordinances and with directions of public officers thereunder, and (ii) all applicable Board of Fire Insurance Underwriters regulations and other requirements, respecting all matters of occupancy, condition or maintenance of the Demised Premises, whether such orders or directions shall be directed to Tenant or Landlord, and Tenant shall indemnify, defend and hold harmless Landlord from any and all costs or expenses (including, without limitation, attorneys' fees) on account thereof. Tenant shall procure and maintain all licenses and permits legally necessary for the operation of Tenant's business and allow Landlord to inspect them upon request.

SECTION 5.08. NON-PERMITTED USES. Tenant shall not exhibit, sell or offer for sale, use, rent or exchange in the Demised Premises any article, thing or service

except those specifically embraced within the permitted use provided for in Section 5.01(a), without the prior written consent of Landlord, which consent of Landlord may be withheld in Landlord's sole discretion. Without limiting the foregoing, Tenant shall not sell tickets to local tourist attractions, shows, events or sporting events, solicit, sell, rent or accept reservations for transportation, airport limousines or rental vehicles, provide tourist information services, or provide information regarding timeshare resort sales and tours.

SECTION 5.09. **SECURITY.** Tenant shall be responsible for and shall provide security for the Demised Premises, which security shall include installing and maintaining a security gate between the lobby of the Hotel and the Demised' Premises, subject to the terms of Section 4.02 hereof. Landlord shall be responsible for and shall provide security for the Common Area as defined in Section 7.01 hereinbelow.

ARTICLE VI. REAL ESTATE TAXES

SECTION 6.01. **LIABILITY.** Starting with the Commencement Date and throughout the entire term of this Lease, Tenant shall pay Landlord, as Additional Rent, Tenant's proportionate share of the Taxes (as hereinafter defined) falling due in each lease year. The term "Taxes" means the total of all taxes and assessments, general and special, ordinary and extraordinary, foreseen and unforeseen, including assessments for public improvements and betterments, assessed, levied or imposed with respect to the ownership, leasing, management, control or operation of the land and improvements included within the Hotel, taxes on rents, leases or subleases or on the privilege of leasing or subleasing. The term "Taxes" also includes all fees, costs and expenses (including attorneys' fees and court costs) paid or incurred by Landlord seeking or obtaining any refund or reduction of Taxes whether or not successful. If, at any time during the term of this Lease, the present method of taxation shall be changed so that in lieu of the whole or any part of any Taxes levied, assessed or imposed on real estate and the improvements thereon there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents for the present or any future building or buildings in the Hotel, than all such taxes assessments, levies or charges, or the part thereof so measured or based, shall be deemed to be included within the term "Taxes" for the purposes hereof. For purposes of this Lease, Tenant's proportionate share of Taxes is _____ percent (____%).

SECTION 6.02. **METHOD OF PAYMENT.** Tenant's share of Taxes shall be paid by Tenant to Landlord within fifteen (15) days following delivery by Landlord to Tenant of a copy of the tax bill.

SECTION 6.03. TENANT LIABLE FOR TAXES LEVIED.

Notwithstanding the end of the term hereof, Tenant shall continue to be liable to Landlord for all Taxes incurred by Landlord for the period of Tenant's occupancy, and Tenant shall promptly remit to Landlord any amount due to Landlord upon notice from Landlord to Tenant.

**ARTICLE VII.
COMMON AREA**

SECTION 7.01. COMMON AREA DEFINED. All areas exterior to the Demised Premises which are available for the joint use and benefit of Landlord, Tenant and other tenants of the Hotel, and their respective employees, agents, subtenants, concessionaires, licensees, customers, and other guests and invitees, including but not limited to parking areas, parking spaces, driveways, truck serviceways, passageways, sidewalks, entrances, exits, lighting facilities, loading docks (except that Tenant shall have the exclusive right to use the loading dock and service area immediately behind and serving the Demised Premises, if any), courts, roof, landscaped areas and utility lines.

SECTION 7.02. USE. During the term of this Lease, Tenant is granted, subject to Landlord's rules and regulations promulgated by Landlord from time to time, the nonexclusive license to permit its customers and invitees to use the sidewalks, customer parking areas, the entrance and exit ways designated by Landlord for ingress and egress to and from the Demised Premises. Notwithstanding anything contained in this Lease to the contrary, Landlord shall have the right, at any time and from time to time, without notice to or consent of Tenant, to change the size, location, elevation and nature of any of the common areas or any part thereof, including, without limitation, the right to locate and/or erect thereon desks, kiosks, booths, carrels, stalls, structures and other buildings and improvements of any type provided such changes do not materially interfere with Tenant's use of such common areas.

**ARTICLE VIII.
REPAIRS AND MAINTENANCE**

SECTION 8.01. LANDLORD'S OBLIGATIONS. Landlord shall keep in good repair the roof and structural supports of the Hotel of which the Demised Premises forms a part, unless such repairs are occasioned by the act or negligence of Tenant, its agents, employees, invitees, licensees or contractors. Landlord shall also use reasonable efforts to keep the Demised Premises free from insects, termites and other pests.

SECTION 8.02. TENANT'S OBLIGATIONS. If any damage to the Demised Premises or the Hotel or any equipment or appurtenance therein, including without limitation, the common areas or the HVAC equipment used for the Demised Premises, results from any act or neglect of Tenant, its agents, employees, guests, licensees or invitees, Tenant shall

be liable therefor and Landlord may, at Landlord's option, repair such damage, and Tenant shall pay to Landlord the total cost of such repairs. If Landlord elects not to repair such damage, Tenant shall promptly repair such damage at its own cost and in accordance with the provisions of Section 4.04. Tenant shall be responsible for the damage or breakage, and the repair or replacement, as necessary, of all plate glass forming a part of the exterior of the Demised Premises.

ARTICLE IX. INSURANCE, INDEMNITY AND LIABILITY

SECTION 9.01. INSURANCE.

(a) Tenant, at Tenant's sole cost and expense, shall obtain and maintain, for the term of this Lease, as such term may be extended, insurance policies providing the following coverages; (i) Tenant's fixtures, equipment, furnishings, merchandise, and other contents in the Demised Premises, for the full replacement value of said items; (ii) all perils included in the classification "fire and extended coverage" under insurance industry practices in effect from time to time in the jurisdiction in which the Hotel is located; (iii) plate glass insurance, if available; (iv) comprehensive general liability insurance coverage naming Landlord, Hostmark, and any mortgagee of Landlord, as additional insureds, which policy is to be in the minimum amount of Two Million and No/100 Dollars (\$2,000,000.00) combined single limit (including umbrella coverage) for bodily injury and property damage, and (v) host liquor coverage (and, if Tenant desires to sell or serve alcoholic beverages from the Demised Premises, and as a condition to such sale or service, dram shop liability insurance) in an amount and with an insurance company satisfactory to Landlord, which shall name Landlord, Hostmark, and any Mortgagee of Landlord as additional insureds. The minimum limits hereinbefore set forth may, at Landlord's option, be increased from time to time as deemed necessary or desirable by Landlord. Tenant shall deliver to Landlord certificates of insurance or duplicate originals of such policy prior to the commencement Date, upon all renewals thereof and not less than thirty (30) days prior to the expiration of such coverage.

(b) The policy described in this Section 9.01 shall: (i) be written by a responsible insurance company authorized to do business in the State of Florida and acceptable to Landlord; (ii) be otherwise acceptable to Landlord in both form and content; (iii) contain an express waiver of any right of subrogation by the insurance company against Landlord, Hostmark, Landlords agents and employees, and any mortgagees of Landlord; (iv) contain a provision that it shall not be canceled and that it shall continue in full force and effect unless Landlord has received at least thirty (30) days prior written notice of such cancellation or termination; (v) shall contain a provision that such policy and the coverage evidenced thereby shall be primary and noncontributing with respect to any policies carried by Landlord, and that any coverage carried by Landlord shall be excess insurance; (vi) shall contain a provision (to the extent available) that no act or omission of Landlord shall affect

about, the Demised Premises, arising from Tenant's occupancy of the Demised Premises or any other area of the Hotel or the conduct of its business or from activity, work, or anything done, permitted or suffered by Tenant in or about the Demised Premises (including, without limitation, the serving of alcoholic beverages in the Demised Premises), or from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease or due to any other act or omission of Tenant, its agents, employees, guests or invitees. In case of any action or proceeding brought against Landlord, Hostmark, any and all mortgagees, or any of their respective agents, partners, officers, servants or employees by reason of any such claims, upon notice from Landlord, Tenant covenants to defend such action or proceeding at Tenant's expense with counsel reasonably satisfactory to Landlord. Nothing herein shall require Tenant to indemnify or defend Landlord or any other party with respect to any loss caused by the gross negligence or willful misconduct of the Landlord or other indemnified party.

SECTION 9.03. LIABILITY OF LANDLORD TO TENANT. Except with respect to any damages resulting from the willful misconduct or gross negligence of Landlord, Hostmark or any other party intended to be released, their agents or employees, Tenant releases Landlord, Hostmark, any and all mortgagees and their respective agents, beneficiaries, partners, officers, servants and employees, from and waives all claims for damages to person or property sustained by Tenant or by any occupant of the Demised Premises or the Hotel, or by any other person, resulting directly or indirectly from fire or other casualty, cause or any existing or future condition, defect, matter or thing in the Demised Premises, the Hotel or any part of either thereof, or from any equipment or appurtenance therein, or from any accident in or about the Hotel, or from any act or neglect of any tenant or other occupant of the Hotel or any other person, including any agent, beneficiary, partner, officer, servant or employee of Landlord. This Section 9.03 shall apply especially, but not exclusively, to damage caused by water, snow, frost, steam, excessive heat or cold, sewerage, any gas, odors or noise, or the bursting or leaking of pipes or plumbing fixtures, falling plaster, broken glass, sprinkling, heating, ventilating or air conditioning systems, devices or equipment, or flooding, and shall apply without distinction as to the person whose act or neglect was responsible for the damage and whether the damage was due to any of the acts specifically enumerated above, or from any other thing or circumstance, whether of a like nature or of a wholly different nature. All personal property belonging to the Tenant or any occupant of the Demised Premises or to any other person that is in the Demised Premises or in the Hotel shall be there at the risk of Tenant or such other person only, and Landlord, Hostmark, and any and all mortgagees and their respective agents, beneficiaries, partners, officers, servants and employees shall not be liable for damage thereto or theft or misappropriation thereof.

or limit the obligation of the insurer to pay the amount of any loss sustained; and (vii) not be materially changed without prior notice to Landlord.

(c) Tenant shall not permit to be done any act which will invalidate or be in conflict with any fire insurance policies carried by Landlord covering the Hotel. Tenant will promptly comply with all rules and regulations relating to such policies. If the acts of Tenant or its employees or agents shall increase the rate of insurance of any policy of insurance carried by Landlord covering the Hotel or any other insurance referred to in this Lease, such increases shall be immediately paid by Tenant as Additional Rent.

(d) In the event that Tenant fails to procure, maintain and/or pay for, at the times and for the durations specified in this Section 9.01, any insurance required by this Section 9.01, or fails to carry insurance required by law or governmental regulation, Landlord may (but without obligation to do so) at any time or from time to time, and without notice, procure such insurance and pay the premiums therefor, in which event Tenant shall repay the Landlord all sums so paid by Landlord together with interest thereon as provided elsewhere herein and any costs or expenses incurred by Landlord in connection therewith, within ten (10) days following Landlord's written demand to Tenant for such payment.

(e) Landlord, at Landlord's sole cost and expense, shall obtain and maintain for the term of this Lease, as such term may be extended, an insurance policy providing coverage for the Hotel Structure of all perils included in the classification "fire and extended coverage" under insurance industry practices in effect from time to time in the jurisdiction in which the Hotel is located.

SECTION 9.02. COVENANT TO HOLD HARMLESS.

(a) Tenant hereby releases Landlord, Hostmark, any and all mortgagees and their respective agents, partners, officers, directors, servants and employees from any and all liability or responsibility for any loss or damage to property of Tenant, except if such loss or damage shall have been caused by the willful misconduct or gross negligence of the Landlord, or any one for whom Landlord may be responsible. In the event such loss or damage to property of Tenant is covered by, or required by the terms of this Lease to be covered by, valid and collectible fire insurance with standard and extended coverage endorsement, Landlord, Hostmark, any and all mortgagees and their respective agents, partners, officers, directors, servants and employees, shall not be liable to Tenant to the extent of the proceeds collected or collectible under such insurance policies or which would have been collectible under such insurance policies if maintained as required hereunder, even if such fire or other casualties shall have been caused by the fault or negligence of the Landlord, or any one for whom Landlord may be responsible.

(b) Tenant agrees to hold harmless, indemnify and defend Landlord, Hostmark, any and all mortgagees and their respective agents, partners, officers, servants and employees against claims and liabilities, including attorneys' fees, for injuries to all persons and damage to, or theft or misappropriation or loss of property occurring in or

**ARTICLE X.
DESTRUCTION OF DEMISED PREMISES**

SECTION 10.01. RECONSTRUCTION; LEASE CONTINUANCE AND RENT ABATEMENT.

(a) If all or a substantial portion of the Demised Premises and/or the Hotel shall be **damaged** by fire or other casualty, Landlord, at Landlord's sole option, may **terminate** this Lease and the term hereof upon **thirty (30)** days notice to Tenant given within ninety (90) days after the occurrence of the fire or other casualty.

(b) If Landlord does not so **terminate** this Lease, then Landlord shall repair and/or rebuild the Demised Premises and/or the Hotel, as the case may be, the term of this Lease shall continue without **interruption**, and this Lease shall remain in full force and effect. Landlord and Tenant waive the provisions of any present or future law which may be contrary to the foregoing provisions of this Article. Landlord shall not be obligated to expend more in connection with the repair of the Demised Premises than it recovers from its insurance carrier under the policy maintained pursuant to Section 9.01(e). Tenant shall, using the proceeds from the insurance provided for in Section 9.01(a), repair, restore, replace or rebuild the leasehold improvements to the Demised Premises, such that the Demised Premises shall be restored to its condition as of immediately prior to the occurrence of such casualty. If Tenant's insurance proceeds shall be less than Tenant's obligation hereunder, Tenant shall pay the entire excess cost. The Annual Minimum Rent attributable to the part of the Demised Premises that are **damaged** and which is payable hereunder during the existence of such damage, until such repair or rebuilding is substantially completed, shall be equitably abated. Equitable abatement shall terminate upon the earlier of (i) the date upon which Tenant commences to use substantially all of the Demised Premises for business with the public or (ii) the date upon which Landlord substantially completes its repair or rebuilding work. However, in no event shall Annual Minimum Rent abate, in whole or in part, if such fire or casualty was caused by the act or neglect of Tenant, its employees, agents, licensees or invitees.

**ARTICLE XI.
ASSIGNMENT, SUBLETTING AND ENCUMBERING LEASE**

SECTION 11.01. RESTRICTIONS AND PROHIBITIONS.

(a) Tenant shall not: (i) assign or otherwise transfer, mortgage, pledge or encumber or otherwise hypothecate this Lease or any of its rights hereunder or offer or **advertise** to do so; (ii) sublet the Demised Premises or any part thereof or permit the use of the Demised Premises or any part thereof by any persons other than Tenant without first obtaining the express written consent of Landlord; or (iii) **permit** the assignment or other transfer of this Lease or any of Tenant's rights hereunder by operation of law. Without limiting any of the other provisions contained in this Section 11.01 but subject to the

provisions of Section 11.03 hereof, the restrictions of this Section 11.01 shall apply to any merger, consolidation or other reorganization of Tenant, or of any corporate entity which directly or indirectly controls Tenant, and any such merger, consolidation or other reorganization shall be deemed to be an assignment of this Lease within the meaning of this Section 11.01. The sale, issuance or transfer of any voting capital stock of Tenant or any voting capital stock of any corporate entity which directly or indirectly controls Tenant or any interests in any noncorporate entity which directly or indirectly controls Tenant which results in a change in the direct or indirect voting control of Tenant shall be deemed to be an assignment of this Lease within the meaning of this Section 11.01. Any attempted or purported transfer, assignment, mortgaging, pledging, encumbering or otherwise hypothecating of this Lease or any of Tenant's interest hereunder, and any attempted or purported subletting or grant of a right to use or occupy all or a portion of the Demised Premises, in violation of this Section 11.01 shall be null and void and shall not confer any rights upon any purported transferee, assignee, mortgagee, sublessee, or occupant and shall, at Landlord's option terminate this Lease without relieving Tenant of any of its obligations hereunder for the balance of the stated term of this Lease.

(b) Tenant specifically acknowledges that no sublease or assignment, whether approved by Landlord or not, shall, (i) in any way change or otherwise affect the permitted use as set forth in Section 5.01 hereof; or (ii) violate any exclusive use or other restrictive covenant granted by Landlord of which Tenant has notice. Tenant further specifically acknowledges that any sublease, whether approved by Landlord or not, shall at all times be subject to each and every term, provision, covenant and agreement contained in this Lease. Notwithstanding any assignment or subletting to which consent is given, Tenant shall at all times remain directly, primarily and fully responsible and liable for the payment of the rent herein specified and for compliance with all of its other obligations under the terms, provisions and covenants of this Lease.

SECTION 11.02. PAYMENT OF COSTS AND EXPENSES. Any costs and expenses, including attorneys' fees (which shall include the cost of any time expended by any in-house counsel of Landlord) incurred by Landlord in connection with any proposed or purported assignment, encumbrance, transfer or sublease shall be borne by Tenant and shall be payable to Landlord on demand as Additional Rent.

SECTION 11.03. QUALIFICATIONS ON RESTRICTIONS. Landlord agrees not to unreasonably withhold consent to the assignment of this Lease by Tenant to an entity which is acquiring the business of Tenant and in connection therewith is accepting an assignment of not less than ninety percent (90%) of the restaurant leases of Tenant; provided, however, (i) such assignee shall assume in writing the obligations of Tenant under the Lease, and (ii) the net worth of such proposed assignee equals or exceeds lesser of (a) the net worth, as of the date of the assignment, of Tenant (without attributing any value to goodwill or intangibles in excess of the amount shown in Tenant's financial statement for goodwill or intangibles), and (b) \$1,000,000. Provided that the conditions set forth in clauses (i) and (ii) of the preceding sentence are satisfied, Landlord will not unreasonably withhold consent to a merger, consolidation or other reorganization of Tenant or of any corporate entity which

directly or indirectly controls Tenant. Further, in the event there are more than seventy five (75) shareholders of Tenant, the provisions of the third sentence of Section 11.01(a) shall not apply. The provisions of this Section 11.03 shall control over any contrary provision in Section 11.01 hereof. In the event Tenant seeks the consent of Landlord to an assignment of this Lease, Tenant shall pay to Landlord the reasonable third party costs incurred by Landlord in connection with its review of such request (including, without limitation, reasonable attorneys' fees).

ARTICLE XII. CONDEMNATION

SECTION 12.01. EMINENT DOMAIN.

(a) If twenty-five percent (25%) or more of the floor area of the Demised Premises shall be taken or condemned by any competent government authority, then either party may elect to terminate this Lease by giving notice to the other party not more than sixty (60) days after the date on which such possession is surrendered to the condemning authority.

(b) If twenty-five percent (25%) or more of the floor area of the Hotel, or a substantial portion of the real property on which the Hotel is located, is taken or condemned by any competent authority, then Landlord or Tenant may elect to terminate this Lease by giving notice to the other party on or before the day possession is surrendered to the condemning authority.

(c) In case of any taking or condemnation, whether or not the term of this Lease shall cease and terminate, the entire award shall be the property of Landlord; provided, however, that Landlord shall not be entitled to any award specifically made with respect to, or to Tenant, for the taking of Tenant's goodwill, lost business opportunity, trade fixtures, equipment and improvements to the extent, under the terms of this Lease, such items would not have become the property of Landlord; further provided, that any such award to Tenant shall not be in diminution of any award to Landlord.

SECTION 12.02. RENT APPORTIONMENT. Tenant's obligation to pay Annual Minimum Rent shall be apportioned or ended, as the case may be, as of the date of vesting of title or termination of this Lease as a result of such condemnation. Any purchase of all or a portion of the Hotel in lieu of a taking or condemnation under powers of eminent domain shall be deemed a taking or condemnation thereof.

ARTICLE XIII. SUBORDINATION AND FINANCING

SECTION 13.01. SUBORDINATION. This Lease and Tenant's tenancy hereunder shall be subject and subordinate at all times to the lien of any mortgage,

mortgages, deeds of trust or ground leases now or hereafter placed upon the interest of the Landlord in the Hotel and/or the Demised Premises provided that such mortgagee or ground lessor shall deliver a nondisturbance agreement pursuant to which it agrees that a default by Landlord shall not, by itself, entitle such party to terminate the Tenant's interest hereunder. This subordination shall likewise apply to each and every advance made or hereafter to be made under such mortgages, to all renewals, modifications, replacement and extensions of such leases and such mortgages, and to spreaders and consolidations of such mortgages. This Section 13.01 shall be self-operative and no further instrument of subordination shall be required. However, in confirmation of such subordination, Tenant agrees to execute and deliver such instruments as may be desired by Landlord or by any mortgagee subordinating this Lease to the lien of any present or future mortgages or deeds of trust, within ten (10) days after written request therefor by Landlord. Tenant hereby appoints Landlord its attorney-in-fact, irrevocably, which appointment is coupled with an interest, to execute and deliver any such instrument for Tenant, if Tenant fails to deliver such written instrument within said ten (10) days.

SECTION 13.02. ATTORNMENT. If and so long as this Lease is in full force and effect, subject to the provisions of Section 13.01 hereof: (i) this Lease shall remain in full force notwithstanding (A) a default under the mortgage by Landlord, (B) failure of Landlord to comply with this Lease, (C) a defense to which Tenant might be entitled against Landlord under this Lease, or (D) any bankruptcy or similar proceedings with respect to Landlord; (ii) if any such mortgagee shall become possessed of the Demised Premises, Tenant shall be obligated to such mortgagee to pay to it the rentals and other charges due hereunder and to thereafter comply with all the terms of this Lease; and (iii) if any mortgagee or purchaser at a private or public sale shall become possessed of the Demised Premises, Tenant shall, without charge, attorn to such mortgagee or purchaser as its landlord under the Lease.

SECTION 13.03. FINANCING. In the event any permanent lender for the Hotel requires as a condition to financing, modifications to this Lease, provided such modifications are reasonable, do not materially adversely affect Tenant and do not increase the rentals and other sums to be paid hereunder, Landlord shall submit to Tenant a written amendment with such required modifications and if Tenant fails to execute and return within twenty (20) days thereafter the amendments that have been submitted, then Landlord shall have the right to cancel this Lease upon twenty (20) days written notice to Tenant.

ARTICLE XIV. DEFAULTS AND REMEDIES

SECTION 14.01. DEFAULTS. If any one or more of the following events occur, said event or events shall hereby be a "Default" hereunder:

(a) if Tenant shall make an assignment for the benefit of creditors or file a petition in any state court in bankruptcy, reorganization, composition, or make an application in any such proceedings for the appointment of a trustee or receiver for all or any portion of its property;

(b) if any petition shall be filed under state law against Tenant in any bankruptcy, reorganization, or insolvency proceedings, and said proceedings shall not be dismissed or vacated within *duty* (30) days after such petition is filed;

(c) if a receiver or trustee shall be appointed under state law for Tenant for all or any portion of the property of Tenant, and such receivership or trusteeship shall not be set aside within thirty (30) days after such appointment;

(d) if Tenant fails to complete Tenant's Work and open for business and keep its doors open for business as required herein, vacates or abandons the Demised Premises and permits same to remain unoccupied and unattended, fails to continuously use the Demised Premises as a first class full-service family restaurant to serve the guests of the Hotel in the ordinary course of business, or substantially ceases to carry on its normal activities in the Demised Premises or otherwise operates its business in the Demised Premises in a manner, which is detrimental to the Hotel;

(e) if Tenant is a corporation, if any part or all of its stock representing effective voting control of Tenant, shall be transferred so as to result in a change in the present effective voting control of Tenant and such change is not consented to in writing by Landlord:

(f) if Tenant fails to pay Annual Minimum Rent, Percentage Rent, its share of Taxes, Additional Rent or any other charges required to be paid by Tenant hereunder when same shall become due and payable, and such failure shall continue for five (5) days after written notice from Landlord;

(g) If Tenant shall fail to maintain the insurance policies required to be maintained hereunder by Tenant or if Tenant shall fail to timely deliver certificate of insurance and, in either such case, such failure continues for five (5) days after written notice from Landlord;

(h) if Tenant shall fail to perform or observe any terms and conditions of this Lease (other than any failure which constitutes a Default under Section 14.01(f) or (g), above or 14.01(i) or (k), below, and such failure shall continue for thirty (30) days after written notice From Landlord; provided, however, such thirty (30) day time period may be extended up to a maximum of one hundred twenty (120) days following such written notice if such default cannot reasonably be cured within thirty (30) days but only if Tenant shall, within fifteen (15) days following the Landlord's notice, commence efforts to effect such cure and diligently thereafter prosecutes such cure;

(i) if Tenant shall be given a total of two (2) notices of Default during any one lease year, notwithstanding any subsequent cure of the Default identified in such notices;

(j) if any execution, levy, attachment or other legal process of law shall occur upon Tenant's goods, furtures, or interest in the Demised Premises;

(k) if Tenant does, or permits to be done, any act which causes a mechanics' lien claim to be filed against the Demised Premises or the Hotel and Tenant does not comply with the provisions of Section 4.04; or

(l) if Tenant fails to cure immediately any hazardous condition that Tenant has created or permitted in violation of law or in breach of this Lease with respect to any one or more of the Demised Premises or the Hotel.

SECTION 14.02. LANDLORD'S REMEDIES. Should a Default occur under this Lease, Landlord may pursue any or all of the following:

(i) Landlord may terminate this Lease, whereupon this Lease shall automatically cease and terminate and Tenant shall be immediately obligated to quit and surrender possession of the Demised Premises. Any notice to quit or notice of Landlord's intention to re-enter the Demised Premises is hereby expressly waived. If Landlord elects to terminate this Lease, everything contained in this Lease on the part of Landlord to be done and performed shall cease without prejudice, subject, however, to the right of Landlord to recover from Tenant all rent and any other sums accrued up to the time of termination or recovery of possession by Landlord, whichever is later.

(ii) Upon termination of this Lease pursuant to Section 14.02(i), Landlord may proceed to recover possession of the Demised Premises under and by virtue of the provisions of the laws of the jurisdiction in which the Hotel is located, or by such other proceedings, including reentry and possession, as may be applicable. In addition, Landlord shall be entitled to recover all equipment, furniture, fixtures, personal property and expendable items located on said Demised Premises and used in connection therewith, whether or not listed on the Schedule of Property attached hereto as Exhibit B, including any replacements thereof and additions or substitutions thereto.

(iii) Should this Lease be terminated before the expiration of the term of this Lease by reason of Tenant's Default as hereinabove provided, or if Tenant shall abandon or vacate the Demised Premises before the expiration or termination of the term of this Lease without having paid the full rental for the remainder of such term, Landlord shall have the option to relet the Demised Premises for such rent and upon such terms as are not unreasonable under the circumstances and if the full rental reserved under this Lease (and any of the costs, expenses or damages indicated

below) shall not be realized by Landlord, Tenant shall be liable for all damages sustained by Landlord, including, without limitation, deficiency in rent, reasonable attorneys' fees, brokerage fees and expenses of placing the Demised Premises in commercially reasonable rentable condition. Landlord, in putting the Demised Premises in good order or preparing the same for re-rental may, at Landlord's option, make such alterations, repairs or replacements in the Demised Premises, and the making of such alterations, repairs, or replacements shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Landlord shall in no event be liable in any way whatsoever for failure to relet the Demised Premises, or in the event that the Demised Premises are relet, for failure to collect the rent under such reletting, and in no event shall Tenant be entitled to receive the excess, if any, of such net rent collected over the sums payable by Tenant to Landlord hereunder.

(iv) Any damage or loss of rent sustained by Landlord may be recovered by Landlord, at Landlord's option, at the time of the reletting, or in separate actions, from time to time, as said damage shall have been made more easily ascertainable by successive relettings, or at Landlord's option in a single proceeding deferred until the expiration of the term of this Lease (in which event Tenant hereby agrees that the cause of action shall not be deemed to have accrued until the date of expiration of said term) or in a single proceeding prior to either the time of reletting or the expiration of the term of this Lease.

(v) Nothing contained herein shall prevent the enforcement of any claim Landlord may have against Tenant for anticipatory breach of the unexpired term of this Lease. In the event of a breach or anticipatory breach by Tenant of any of the covenants or provisions hereof, Landlord shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not provided for herein. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Demised Premises, by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.

SECTION 14.03. PERCENTAGE RENT AFTER TERMINATION OF LEASE OR TERMINATION OF TENANT'S RIGHT OF POSSESSION. For the purpose of computing Percentage Rent for any period after termination of this Lease or termination of Tenant's right of possession by Landlord, Tenant's Gross Sales from the Demised Premises shall be deemed to be the average of Tenant's Gross Sales during all of the calendar quarters, during which Tenants' operations at the Demised Premises were open to the public for such entire quarter, preceding the calendar quarter during which such termination occurred.

SECTION 14.04. ADDITIONAL REMEDIES AND WAIVERS: The rights and remedies of Landlord set forth herein shall be in addition to any other right and remedies now or hereinafter provided by law, and all such rights and remedies shall be cumulative.

No action or inaction by Landlord shall constitute a waiver of a Default and no waiver of Default shall be effective unless it is in writing, signed by the Landlord.

SECTION 14.05. CURE OF DEFAULT. If Tenant shall be in Default hereunder, Landlord shall have the option, upon ten (10) days written notice to Tenant, to cure said Default for the account of and at the expense of the Tenant. Tenant agrees to pay Landlord interest, at a rate equal to two percent (2%) in excess of the corporate base rate of interest announced from time to time by The First National Bank of Chicago, Illinois but not in excess of the maximum legal rate, for all sums paid by Landlord pursuant to the terms of this Article, and for all sums due and owing to Landlord more than five (5) days after the date such sums are due.

SECTION 14.06. EXPENSES OF ENFORCEMENT. Tenant shall pay all costs, charges and expenses, including court costs and reasonable attorneys' fees, incurred by Landlord (i) in enforcing Tenant's obligations under this Lease, (ii) in the exercise by Landlord of any of its remedies upon the occurrence of a Default hereunder by Tenant, (iii) in any litigation, negotiation or transactions in which Tenant causes Landlord, without Landlord's fault, to become involved or concerned, or in which Landlord becomes involved or concerned as a result of or in connection with this Lease, or (iv) in consideration of any request or approval of or consent to any action by Tenant which is prohibited by this Lease or which may be done only with Landlord's approval or consent, whether or not such approval or consent is given. Landlord shall pay all costs, charges and expenses, including court costs and reasonable attorneys' fees, incurred by Tenant (i) in enforcing Landlord's obligations under this Lease, (ii) in the exercise by Tenant of any of its remedies upon the occurrence of a default hereunder by Landlord, (iii) in any litigation, negotiation or transactions in which Landlord causes Tenant, without Tenant's fault, to become involved or concerned.

ARTICLE XV. RIGHT OF ACCESS

Landlord may, upon reasonable prior notice to Tenant, enter upon the Demised Premises for the purpose of inspecting, making repairs, replacements, or alterations, and showing the Demised Premises to prospective purchasers, lenders or lessees.

ARTICLE XVI. END OF TERM

SECTION 16.01. RETURN OF DEMISED PREMISES. Upon the expiration or termination of this Lease, Tenant shall quit and surrender to Landlord (i) the Demised Premises, in good order, broom clean, normal wear and tear excepted, and (ii) all fixtures, equipment, furniture, trade fixtures and other personal property located on said Demised

Premises and used in connection therewith listed on the Schedule of Property attached hereto as Exhibit B, together with any replacements thereof and additions or substitutions thereto. Subject to the foregoing and the other terms of this Lease, Tenant shall, at its expense, remove all other property of Tenant, all alterations to the Demised Premises not wanted by Landlord, and repair damage caused by such removal and return the Demised Premises to the condition in which they were prior to the installation of the articles so removed.

SECTION 16.02. HOLDING OVER. If Tenant shall hold possession of the Demised Premises after the expiration or termination of this Lease, at Landlord's option (i) Tenant shall be deemed to be occupying all of the Demised Premises as a tenant from month-to-month, at one **hundred fifty** percent (150%) of the rent in effect during the Lease Term or Extension Term, as applicable, immediately preceding such holdover and otherwise subject to all of the terms and conditions of this Lease, or (ii) Landlord, may exercise any other remedies it has under this Lease or at law or in equity including an action for wrongfully holding over. No payment by Tenant, or receipt by Landlord, of a lesser amount than the correct rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or letter accompanying any check for payment of rent or any other amounts owed to Landlord be deemed to effect or evidence an accord and satisfaction, **and** Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of the rent or other amount owed or to pursue any other remedy provided in this Lease.

ARTICLE XVII. COVENANT OF QUIET ENJOYMENT

Landlord covenants and agrees that if and so long as Tenant pays the rent and all other charges provided for herein, and performs all of its obligations provided for herein, Tenant shall at all times during the term hereof and any extensions thereof peaceably, have, hold and enjoy the Demised Premises, without any interruption or disturbance from Landlord, or any one **claiming** through or under Landlord, subject to the terms hereof. The term "Landlord" whenever used herein shall mean the then current owner of the Demised Premises, and in the event of any sale of Landlord's interest in the Demised Premises or assignment of the Landlord's interest in this Lease, or other transfer of the Landlord's interest in the Demised Premises or this Lease by operation of law, the transferee/assignee of Landlord's interest shall be fully obligated to perform all of the Landlord's obligations hereunder.

ARTICLE XVIII. RIGHTS RESERVED TO LANDLORD

Landlord shall have the following rights exercisable from time to time without notice (except as otherwise provided) and without liability to Tenant for damage or injury to property, person or business (all claims for damage being hereby released) and without

effecting an eviction or disturbance of Tenant's use or possession or giving rise to any claim for setoffs or abatement of rent:

(a) To establish or change the name, franchise affiliation, designation or street address of the Hotel.

(b) To install and maintain signs in or on any part of the Hotel outside of the Demised Premises;

(c) To enter the Demised Premises in an emergency, using such force as is reasonably necessary;

(d) To decorate, remodel, repair, alter or otherwise prepare the Demised Premises for reoccupancy at any time after Tenant vacates or abandons the Demised Premises;

(e) To make inspections, repairs, alterations, additions or improvements in or to the Demised Premises, the common areas or the Hotel including installations, repairs, replacements, additions or alterations within the Demised Premises or to wiring, conduit, pipes, ducts and other mechanical, electrical or other facilities and systems serving other areas of the Hotel, and to make repairs, additions or alterations in the Hotel which may change common areas or the method of ingress to or egress from the Demised Premises or the Hotel, convert common areas into leasable areas or change the use thereof, and to perform any acts related to the safety, protection, preservation, reletting, sale or improvement of the Demised Premises or any part of the Hotel, and for any of the foregoing purposes, Landlord may close or temporarily suspend operations of entrances, doors, corridors, elevators, escalators or other facilities or utilities serving the Demised Premises provided such activities do not materially interfere with Tenant's operations from the Demised Premises; and Tenant waives any claim for damages including the loss of business resulting therefrom;

(f) To approve the weight, size and location of safes, computers and other heavy articles in and about the Demised Premises and to require all such items and other furniture and equipment to be moved in and out of the Hotel only at such times as will not unreasonably deny or obstruct the rights, or use of, or access to, any part of the common areas of the Hotel by other tenant and Hotel guests, or threaten their safety, and in all events, at the Tenant's sole risk and responsibility;

(g) To do or permit to be done any work on or about the exterior of the Hotel, land, street or alley;

(h) To grant to any person or entity the exclusive right to conduct any business or render any service in the Hotel, other than the right to operate a general full-service family restaurant of the nature and type operated by Tenant in the Demised Premises; and

(i) To lease any portion of the Hotel to any person or entity for any use or purpose as Landlord, in its sole discretion, may determine, other than the operation of a general full-service family restaurant of the nature and type operated by Tenant in the Demised Premises.

ARTICLE XIX. MISCELLANEOUS

(a) This Lease contains the entire agreement between the parties hereto and there are no promises, agreements, conditions, undertakings, warranties, or representations, oral or written, between them or other than as herein set forth. If any provision of this Lease shall be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(b) No notice or other communications given under this Lease shall be effective unless the same is in writing, and is delivered in person or mailed by registered or certified mail, return receipt requested, first class, postage prepaid, addressed:

(1) If to Landlord, to Jupiter Realty Corporation, Suite 1500, 919 North Michigan Avenue, Chicago, Illinois 60611, with a copy to Donald I. Resnick, Esq., Jenner & Block, One IBM Plaza, Chicago, Illinois 60611, or to such other person and address as Landlord shall designate by giving notice thereof to Tenant.

(2) If to Tenant, to NORTHLAKE Foods, Inc., 5912 Breckenridge Parkway, Suite A. Tampa, Florida 33610-4200 Attn: Morris Ewing, Jr., or such other address as Tenant shall designate by giving notice thereof to Landlord. The date of service of any notice given by mail shall be the date on which such notice is deposited in the U.S. mails.

(c) It is the intent of the parties hereto that all questions with respect to the construction of the Lease and the rights and the liabilities of the parties hereto shall be determined in accordance with the laws of the State of Florida.

(d) This Lease shall bind and inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and assigns.

(e) There shall be no personal liability on Landlord, Landlord's partners or any successor in interest with respect to any provisions of this Lease. Tenant acknowledges and expressly agrees that any liability or obligation of Landlord shall be limited solely to the interest in the Hotel of the then current-owner of the Hotel for the satisfaction of any remedies of the Tenant in the event of a breach by Landlord of any of

its obligations hereunder. In no event shall any limited or general partner of Landlord be individually or personally liable for any cost, loss, expense, claim, obligation, liability or damages arising out of this Lease.

(f) Tenant warrants and represents that there was no broker or agent instrumental in consummating this Lease. Tenant agrees to indemnify and hold Landlord harmless against any claims for brokerage or other commissions arising by reason of a breach by Tenant of this representation and warranty.

(g) Landlord hereunder shall have the right to freely assign this Lease without the consent of Tenant. In the event the Hotel of which the Demised Premises forms a part is sold, Landlord, at Landlord's sole option, may terminate this Lease and the term hereof (including all then-unexercised renewal options) upon sixty (60) days notice to Tenant given within the 120-day period before or after the date of such sale. Landlord has advised Tenant that Landlord is in the process of negotiating a sale of the Hotel to an entity affiliated with Stanford Investors ("Stanford"). Stanford intends to convert the Hotel to a time share facility. In connection therewith, (i) Tenant acknowledges that no representation has been made to it regarding the likelihood of the consummation of the time share transaction, and (ii) Landlord agrees that a sale to Stanford (or its affiliates) shall not give rise to Landlord's termination right pursuant to this Section 19(g). In the event of such early termination occurring prior to the expiration of the initial term (and, unless Tenant has elected to not extend the Term hereof, prior to the expiration of the first renewal term) of this Lease, Landlord shall pay to Tenant within ten (10) days following Tenant's timely vacating the Demised Premises, an amount of money equal to the unamortized Approved Expenditures (as defined below) for improvements to the Premises made by Tenant which have been approved by Landlord in writing prior to the installation thereof, based on a straight line ten year amortization. As used herein the term Approved Expenditures shall be the lesser of (i) the actual cost to Tenant of a particular improvement and (ii) the amount approved in writing by Landlord of the cost of any improvements as to which Tenant may seek reimbursement for the unamortized cost thereof pursuant to this provision. Tenant shall obtain the Landlord's written approval of such expenditure amounts prior to commencing any such improvement work.

(h) The terms of this Lease shall not be interpreted to, and do not mean that Landlord and Tenant are partners or joint venturers.

(i) If any provision of this Lease or the application thereof any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(j) No failure by Landlord to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Lease to be kept,

observed or performed by Tenant, and no failure by Landlord to exercise any right or remedy consequent upon a breach of any such term, covenant, agreement, provision, condition or limitation of this Lease, shall constitute a waiver of any such breach or of any such term, covenant, agreement, provision, condition or limitation.

(k) All Exhibits referred to in and attached hereto are hereby incorporated in this Lease.

(l) All references herein to the word "mortgagees" shall be interpreted to include any beneficiary of any deed of trust affecting the real property on which the Hotel is located.

(m) The obligation of Tenant under this Lease are joint and several and each entity executing this Lease on behalf of Tenant is fully and personally obligated to keep and perform all of the covenants and obligations of the Tenant under this Lease.

(n) This Lease shall not be recorded, but at the request of either party, the parties agree to execute a Memorandum of Lease in recordable form which shall set forth the legal description of the Hotel, the Lease term hereof, the renewal options hereunder, and the date on which this Lease is executed. Upon the expiration or earlier termination of this Lease, Tenant agrees to execute all documents reasonably required for recording in the public records to evidence the termination of this Lease and the relinquishment of any further claim by Tenant to the Demised Premises or the leasehold interest of Tenant under this Lease.

(o) Tenant represents and warrants to Landlord that it has all requisite corporate authority to enter into and perform the terms of this Lease. Landlord represents and warrants to Tenant that it has all requisite partnership authority to enter into and perform the terms of this Lease.

(p) LANDLORD AND TENANT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON OR IN RESPECT OF ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT HEREUNDER, TENANT'S USE OF OCCUPANCY OF THE DEMISED PREMISES, AND/OR ANY CLAIM OF INJURY OR DAMAGE.

ARTICLE XX RADON GAS DISCLOSURE

The following language is required by law in any contract involving the sale or lease of any building within the State of Florida:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit."

ARTICLE XXI TENANT'S TRADE FIXTURES

SECTION 21.01. TENANT'S TRADE FIXTURES. Landlord recognizes that from time to time throughout the initial and any extension or renewal term hereof Tenant will cause to be placed upon Demised Premises and within said building certain machinery, equipment, fixtures and trade fixtures. Landlord hereby acknowledges and agrees that all items of machinery, equipment, fixtures and trade fixtures so placed or located upon Demised Premises shall be and remain the sole property of Tenant or any lessor, secured party, or mortgagee of such equipment and trade fixtures and shall be and remain personal property regardless of the manner in which said equipment and fixtures are attached to Demised Premises; that such equipment and fixtures shall not at any time be deemed a part of the realty; and that such equipment and fixtures may be removed from Demised Premises by Tenant or its equipment or fixtures Landlord or mortgagee at any time prior to the expiration or other termination of this Lease Agreement and all extension and renewals hereof, provided, however, that Tenant shall repair any damage to said building caused by such removal. Landlord hereby agrees to execute any separate agreement to such effect required by Tenant's said Landlord or mortgagee of such equipment and trade fixtures. Notwithstanding the foregoing, in the event Tenant is in default under the terms hereof, neither Tenant nor its lender or any party claiming through Tenant may remove any such machinery, equipment, or trade fixtures unless such party shall first deposit with Landlord a damage deposit in an amount reasonably set by Landlord to ensure that any damage to the Premises caused during the removal of such machinery, equipment or trade fixtures shall be promptly repaired. Any such machinery, equipment or trade fixtures which are not timely removed by Tenant (or party claiming through Tenant) shall, at the sole election of Landlord be (i) deemed abandoned by Tenant and conveyed hereby to Landlord or (ii) stored and/or disposed of by Landlord at the sole cost of Tenant. Landlord hereby grants to Tenant the right to install at Tenant's risk and expense any and all of such fixtures during the period of construction of said improvements without obligation for payment of rental by Tenant.

ARTICLE XXII
TENANT'S RIGHT ON TERMINATION

SECTION 22.01. RIGHTS OF WAFFLE HOUSE. Landlord acknowledges and agrees, subject to the prior review and approval by Landlord, that the Demised Premises will be renovated ("Renovation") in accordance with unique designs owned by Waffle House, Inc., a Georgia corporation ("Waffle House"), and that Landlord shall have no interest of any kind in said design or the Plans and Specifications for such Renovation. Such Plans and Specifications shall identify any improvement (a "Unique Waffle House Improvement") which Tenant may desire to remove upon termination of this Lease in order to eliminate any confusion to the public regarding the Premises no longer being used as a Waffle House. Landlord warrants that upon the termination of this Lease for any reason whatsoever, it shall permit Tenant, at Tenant's own expense, to remove some or all of the Unique Waffle House Improvements as shall be necessary to distinguish the Renovations to the Demised Premises from the design of the other buildings and improvements within the Waffle House Systems, so as to eliminate any possible confusion by the public. Landlord expressly agrees and does hereby grant and give directly to Waffle House, Inc. the right to enter upon the Leased Premises from time to time following any such termination for the purpose of inspecting the Leased Premises and Tenant's compliance with the foregoing provisions. In the event Tenant fails or refuses to comply with said foregoing provisions within a reasonable time, not to exceed ten (10) days, following any such termination, this right to enter on the Leased Premises hereby granted to Waffle House, Inc. should be for the further purposes of permitting Waffle House, Inc., if it so elects, to take such action as Tenant may have taken during the term of this Lease to distinguish the Improvements from the design of other buildings and improvements within the Waffle House Franchise System, as aforementioned. If Waffle House, Inc. intends to exercise such right, it shall do so by delivery of written notice to Landlord within 15 days following expiration of the Lease and shall complete such work within 30 days following such expiration; provided, however, as a condition to such exercise, Waffle House, Inc. shall pay Landlord rent for such month at the rate payable by Tenant for the month immediately prior to such expiration.

Landlord acknowledges and agrees that Tenant shall install, or have installed, on the Leased Premises various signs, advertising the business of Tenant and that Landlord does not by virtue of this agreement or otherwise acquire any rights existing or applied for or which may be applied for in the future in connection with said signs. Said signs shall at all times be deemed personal property and shall not by any reason of attachment or connection with any realty become or be deemed a fixture or appurtenance to such realty and shall at all times be several therefrom, free of any claim or right of Landlord. Upon termination of this Lease, or any extension thereof, for any reason, Tenant or Waffle House, Inc. shall have the right to remove all said signs from the Leased Premises and Landlord agrees peaceably to surrender and deliver possession thereof.

Landlord acknowledges that benefits will accrue to it by the presence of a Waffle House Restaurant on the Leased Premises and by its continued operation throughout the


term hereof and it is in consideration of such benefits that certain rights, **privileges and options** are herein granted to Waffle House, Inc. Therefore, Landlord expressly **agrees** that notwithstanding any other provision of **this Lease**, no termination of this Lease as to Tenant nor any default by Tenant nor other actions taken by Landlord against Tenant hereunder shall affect in any manner whatsoever the rights, privileges and options of Waffle House, Inc. herein granted.

ARTICLE XXIII TERMINATION RIGHT

SECTION 23.01. TERMINATION RIGHT. In the event Tenant does not receive, on or before January 31, 1998, a building permit authorizing Tenant to perform Tenant's Work as described on Exhibit C attached hereto, Tenant may, by written notice to Landlord delivered no later than February 1, 1998, **terminate** this Lease effective as of the date such notice is delivered. In the event Tenant does not deliver a termination notice to Landlord pursuant to this Section 23.01 on or before February 1, 1998, time being of the essence **thereof**, Tenant agrees it shall have **no** right to **terminate** this Lease by reason of the refusal by the local municipality to approve (or delay in approving) Tenant's plans or to issue a building **permit** therefor.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first above written.

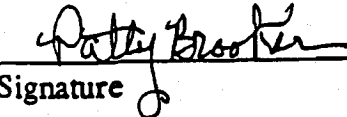
WITNESSES:



Signature

Gail Thomas

Printed Name

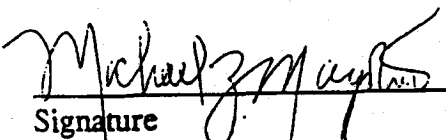


Signature

Patty Brooker

Printed Name

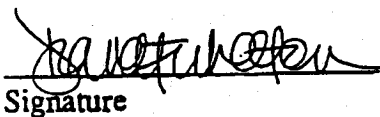
WITNESSES:



Signature

Michael Z. Maradiés

Printed Name



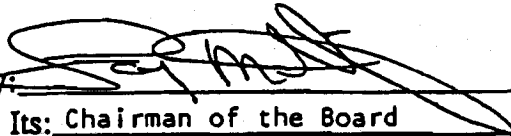
Signature

Dana F. Whelton

Printed Name

TENANT:

NORTHLAKE FOODS, INC., a Georgia corporation

By: 

Its: Chairman of the Board

LANDLORD:

JUPITER HOTELS LIMITED PARTNERSHIP, an Illinois limited partnership

By: Jupiter Hotel Management Company, an Illinois general partnership, its general partner

By: 

a general partner

STATE OF Georgia)
) ss.
COUNTY OF Fulton)

The foregoing instrument was acknowledged before me this 8th day of January, 1998, ~~1997~~ by Larry P. Martindale, of NORTHLAKE FOODS, INC., a Georgia corporation, on behalf of said corporation. He/She is personally known to me ~~and did not take an oath.~~ and did not take an oath.

Gail Thomas

Notary Public, State of Georgia

_____ at Large

Gail Thomas

(Printed Name)

My Commission Expires:

Notary Public, DeKalb County, Georgia
My Commission Expires June 4, 1999

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 14th day of January, 1998, by Dwight Smith as general partner of JUPITER HOTEL MANAGEMENT COMPANY, an Illinois general partnership, on behalf of the general partnership, as general partner of JUPITER HOTELS LIMITED PARTNERSHIP, an Illinois limited partnership, on behalf of said partnership. He is personally known to me and did not take an oath.

Laurie L. Wolske

Notary Public, State of Illinois

_____ at Large

Laurie L. Wolske

(Printed Name)

My Commission Expires

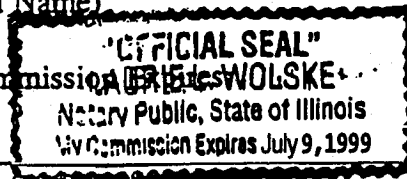


EXHIBIT A

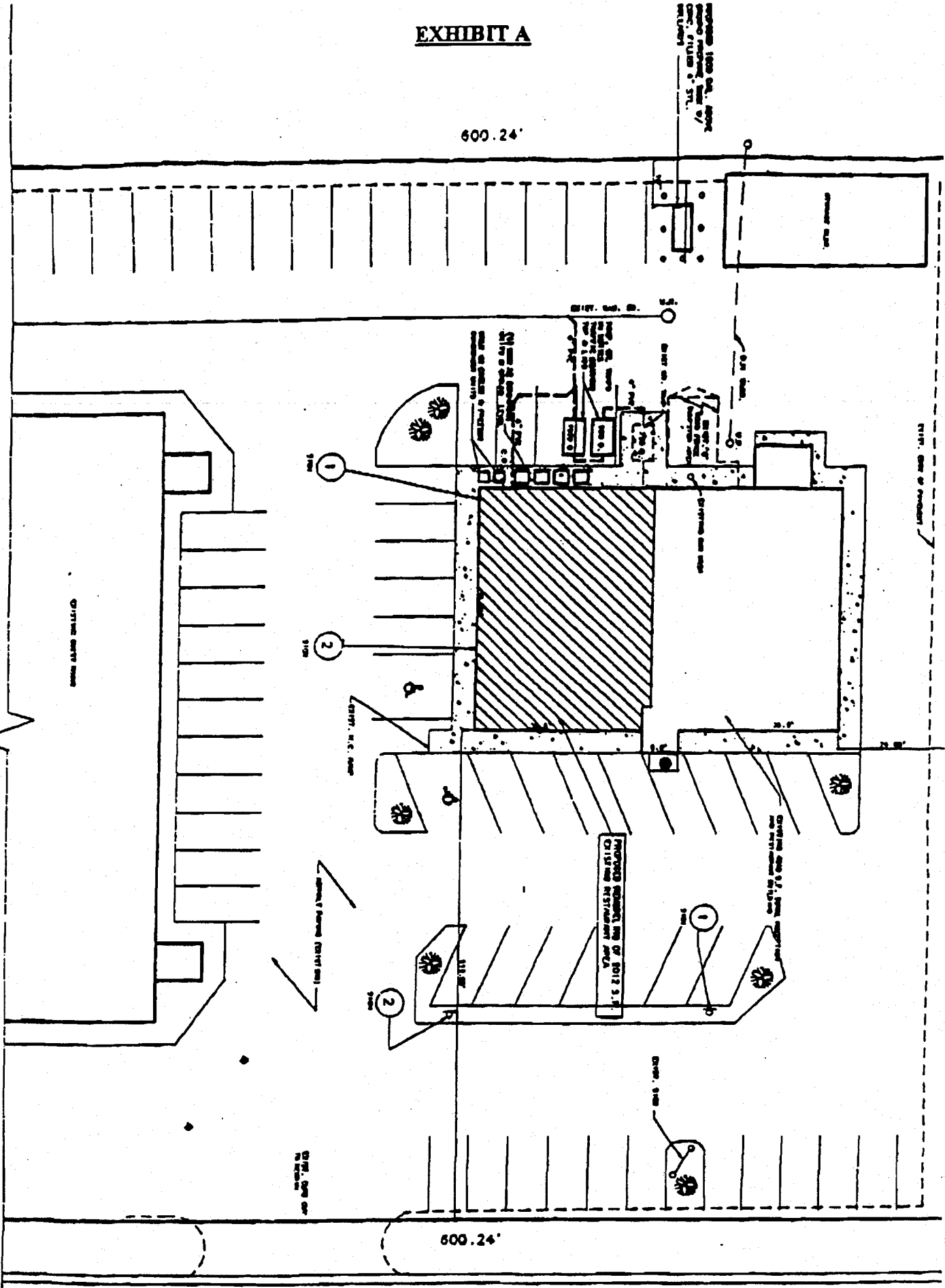


EXHIBIT A-1

LEGAL DESCRIPTION

DAYS INN KEY WEST HOTEL, KEY WEST, MONROE COUNTY, FLORIDA

A parcel of land located and situated on the Island of Key West, County of Monroe, State of Florida, being more particularly described by metes and bounds as follows:

Starting at the intersection of the Northerly property line of Duck Avenue and the Southeast corner of Block 15, KEY WEST FOUNDATION COMPANY'S PLAT NO. 2, as recorded in Plat Book 1, page 189; thence North $21^{\circ} 22' 20''$ West 135 feet along the Westerly property line of Roosevelt Boulevard to the Point of Beginning; thence South $68^{\circ} 45' 40''$ West 240 feet to a corner; thence North $21^{\circ} 20' 20''$ West 600 feet; thence North $68^{\circ} 45' 40''$ East 240 feet to the Westerly property line of Roosevelt Boulevard; thence South $21^{\circ} 20' 20''$ East 600 feet along the Westerly property line of Roosevelt Boulevard to the place of beginning, all in Tract 22 of the lands of the KEY WEST IMPROVEMENT COMPANY, INC.

AGREEMENT FOR GRANT OF EASEMENT

THIS AGREEMENT ("Agreement") dated as of October 8, 2001 is made and entered into by and between SH Key West Ltd. ("Owner"), which owns or has control over certain real estate and improvements commonly known as the Days Inn, located at 3852 N. Roosevelt Blvd., Key West, Florida, 33040 and legally described on Exhibit A ("Premises"), consisting of 126 units plus any units added or constructed in the future, and TCI Cablevision of Georgia, Inc., on behalf of itself and any entity controlling, controlled by or under common control with AT&T Broadband. (Hereinafter in the aggregate referred to as "AT&T Broadband"). Owner and AT&T Broadband desire to provide for AT&T Broadband's access to the Premises in order to install the equipment, on the terms and conditions provided herein, necessary to provide various services ("Services") to the residents of the Premises. Such Services shall include, but not be limited to, local, intra-LATA toll (or local toll), long distance, high-speed data, video/cable television (provided pursuant to any applicable agreements specifically relating to such video/cable television services) and other lawful services and applications that AT&T Broadband may provide now or in the future. Therefore, in consideration of the mutual covenants made by the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. **GRANT OF EASEMENT AND RIGHTS.** For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner hereby grants and conveys to AT&T Broadband, its successors and assigns, a non-exclusive Easement (subject to Paragraph 5 below) on, over, under, within, and through the Premises as necessary or desirable for the routing, installation, maintenance, service and operation of the Equipment (as hereinafter defined), and the marketing and provision of the Services, together with rights of ingress and egress on and over the Premises as necessary for the use and enjoyment of the Easement herein granted. Owner agrees that AT&T Broadband may from time to time enter into various agreements or arrangements with its approved designees, agents or authorized vendors (collectively, "Agents") and access to the Premises granted by Owner pursuant to this Section will extend to such Agents. After the Equipment has been installed for the provision of Services, Owner will provide AT&T Broadband's employees and Agents access to necessary portions of the Premises upon reasonable notice to perform installation and maintenance functions. In the event of an outage or other emergency, Owner will provide access to necessary portions of the Premises twenty-four (24) hours a day, seven (7) days a week so that AT&T Broadband may perform emergency repairs. AT&T Broadband will be allowed access to a residential unit by Owner only with the prior consent of the resident. In addition to the other rights granted by Owner hereunder, upon termination of this Agreement, Owner hereby grants to AT&T Broadband the right to enter the Premises in order to remove the Equipment from the Premises if AT&T Broadband so desires.

2. **TERM.** This Agreement will be effective on the date hereof and will continue for so long as AT&T Broadband may lawfully provide the Services, not to exceed fifteen (15) years from the date of this Agreement. The Easement hereby granted, and the covenants and agreements provided herein, shall run with the land and the burden upon the applicable Premises shall bind Owner, and each and every subsequent owner, thereof for the Term of the Easement.

3. **OWNER'S PREMISES; INDEMNIFICATION.**
(i) AT&T Broadband will repair at its expense any damage to the Premises to the extent caused by AT&T Broadband, its employees, or the Agents, normal wear and tear excepted. Except as otherwise set forth herein, AT&T Broadband will hold harmless and indemnify Owner from and against any and all losses or damages (including reasonable attorneys' fees) to the extent caused by AT&T Broadband's or its Agents' installation, maintenance, service, removal or operation of the Equipment, except to the extent of loss or damage arising from any negligent or intentional act or omission of Owner or its agents or employees, any resident of the Premises, or any third party.

(ii) AT&T Broadband, at Owner's reasonable expense, will repair any damage to the Equipment caused by Owner, its agents, or employees, or any resident of the Premises. Except as otherwise set forth herein, Owner will hold harmless and indemnify AT&T Broadband, its agents and employees, from and against any and all losses or damages (including reasonable attorneys' fees) arising from or with respect to any breach of this Easement or any negligent or intentional act or omission of Owner or its agents or employees, or any resident of the Premises.

4. **EQUIPMENT.** AT&T Broadband shall have the right to construct, install, own, maintain, use, operate, upgrade, repair, replace and remove such cabling, wiring, power supplies, risers, conduit, molding, network equipment, facilities and components associated therewith, and other equipment or facilities necessary for the provision of the Services ("Equipment"). Owner will have no obligation to service or maintain the Equipment. No Equipment installed by AT&T Broadband shall constitute a fixture of the Premises, but will at all times be owned by, and remain the property of AT&T Broadband, whether or not attached to or incorporated in the Premises. All such Equipment shall remain subject to AT&T Broadband's exclusive management and control, and unless otherwise required by law, neither Owner nor any resident of the Premises will have or obtain any right, title or interest therein. Owner will not, and will not permit any third party to, disturb, alter, move, attach to or use in any manner the Equipment or any portion thereof. Owner warrants that it has not granted and shall not grant to any other person or entity any easements or rights which could materially and adversely interfere with AT&T Broadband's use and operation of the Equipment. AT&T Broadband will have the right to use, and Owner agrees to assist AT&T Broadband in locating and accessing, the telephone/equipment room(s) and any already existing and available facilities, distribution and inside wiring, riser and conduit space and any rights of way, within and into the Premises, regardless of ownership, for delivery of the Services. AT&T Broadband shall have the right to construct, where necessary and at its sole cost, any additional distribution, riser and conduit facilities. Owner shall provide without charge adequate space and electricity for the Equipment.

5. **SUCCESSORS TO BOTH PARTIES.** The benefits and obligations of this Agreement will inure to and be binding upon the successors, assigns, heirs, and personal representatives of AT&T Broadband and Owner during the Term hereof. Owner shall make the assumption of this Agreement a condition of any sale, transfer or assignment of the Premises.

6. **TERMINATION.** This Agreement may be terminated prior to expiration of its term (a) by either party in the event of material breach of this Agreement after 30 days' written notice, unless the other party cures or commences to cure such breach during such 30-day period and diligently proceeds with such cure; or (b) by AT&T Broadband upon at least 60 days' written notice if AT&T Broadband is unable to continue distribution of any one or more of the Services due to any law, rule, regulation, judgment, contract with third party or other reason beyond the reasonable control of AT&T Broadband. Notwithstanding any other provision of this Agreement, in no event will either party be liable to the other for incidental or consequential damages. Upon termination of this Agreement, AT&T Broadband shall have an additional ninety (90) days to remove, transfer or sell part or all of the Equipment, in its sole discretion.

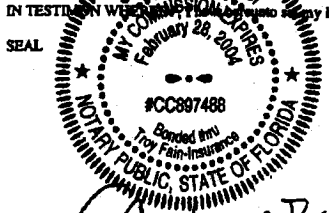
7. **AUTHORIZATIONS.** The person signing on behalf of Owner represents that he/she is the owner of the Premises or the authorized agent of the owner, with full authority to bind Owner to the terms and conditions of this Agreement. Owner represents and warrants that he/she has not entered into any exclusive agreements for the provision of Services with any person or entity in regard to the Premises. This Agreement will not be binding upon AT&T Broadband until signed by an authorized representative of AT&T Broadband.

EXECUTED on this 15 day of JAN, 2002

OWNER: [Signature]
By: [Signature]
Name: ROBERT A. Spottswood
Title: President SH Key West, Inc.

STATE OF FL
COUNTY OF MONROE

On this JAN 15 day of 2002, before me personally appeared Robert A. Spottswood to me personally known, who being duly sworn, did say that he signed the foregoing instrument and that said instrument was signed and acknowledged by SH Key West, Inc. and acknowledged said instrument to be the free act and deed of SH Key West, Inc.



Notary Public: [Signature]
My Commission Expires: 2/28/04

WITNESS: [Signature] DATE: 1/15/02
WITNESS: [Signature] DATE: 1/15/02

FILE # 1278414
BK# 1755 PG# 224

RCD Jan 24 2002 01:35PM
DANNY L KOLHAGE, CLERK

Exhibit A

AGREEMENT FOR GRANT OF EASEMENT

Legal Description

3852 N. Roosevelt Blvd., Key West, FL 33040

FILE #1 2 7 8 4 1 4
BK#1 7 5 5 PG#2 2 5

A parcel of land located and situate on the Island of Key West, County of Monroe, State of Florida, being more particularly described by metes and bounds as follows:

Starting at the intersection of the Northerly property line of Duck Avenue and Southeast corner of Block 15, KEY WEST FOUNDATION COMPANY'S PLAT NO. 2, recorded in Plat Book 1, Page 189; thence North 21°22'20" West, 135.00 feet along the Westerly property line of Roosevelt Boulevard to the Point of Beginning; thence South 68°45'40" West, 240.00 feet to a corner; thence North 21°22'20" West, 600.00 feet; thence North 68°45'40" East, 240.00 feet to the Westerly property line of Roosevelt Boulevard; thence South 21°22'20" East, 600.00 feet along the Westerly property of Roosevelt Boulevard to the Place of Beginning, all in Tract 22 of the lands of the Key West Improvement Company, Inc.

MONROE COUNTY
OFFICIAL RECORDS

A horizontal decorative bar spans the width of the page. The left portion shows a blue-tinted photograph of a modern building's exterior with balconies. The right portion is a solid light gray.

**DEPRECIATED COST ANALYSIS / APPRAISAL
PREPARED FOR GREENBERG TRAUIG, P.A.**

Prepared For
Kerri Barsh, Shareholder
Greenberg Traurig, P.A.
333 S.E. 2nd Avenue
Miami, Florida 33131

Property
Days Inn Key West
3852 North Roosevelt Boulevard
Key West, FL 33040
Parcel ID: 00065060-000000

Appraiser
Britt J. Rosen, CCIM, RZ1858
State-Certified General Real Estate Appraiser

March 13, 2013

Kerri Barsh, Shareholder
Greenberg Traurig, P.A.
333 S.E. 2nd Avenue
Miami, Florida 33131

RE: **Replacement Cost Report / Days Inn Key West Hotel**
3852 North Roosevelt Boulevard, Key West, Florida 33040
Parcel ID: 00065060-000000
File No: 122093

Dear Ms. Barsh:

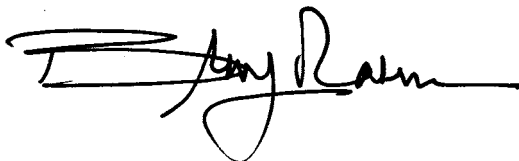
In response to your request, we have prepared an appraisal of the subject which is a “depreciated” cost analysis (referred to as “Actual Cash Value” in the FEMA guidance materials) for the structure located at 3852 North Roosevelt Boulevard, Key West, Florida 33040. The building is known as Days Inn Key West Hotel.

The 133 room hotel contains approximately 64,722 square feet and is located in Key West, along North Roosevelt Boulevard. No personal property, trade fixtures or furnishings were included, nor site improvements outside the footprint of the main hotel building.

The purpose of this appraisal is to provide an estimate of the “actual cash value” of the subject for the substantial improvement calculation required by the City of Key West's Flood Damage Prevention Ordinance and FEMA regulations. The scope of the assignment involved inspecting the property, utilizing measurements from the plans and tax records, obtaining cost data, reviewing the data and writing the report.

This report is Summary Report prepared under Standards Rule 2 of the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation. The summary format means that some of the supporting data is retained in our work file.

Sincerely,



Britt J. Rosen, CCIM
State-Certified General Real Estate Appraiser RZ1758

REPLACEMENT COST REPORT

As disclosed in the cover letter to this report, this is an appraisal report complying with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation. This appraisal report is a Summary Report prepared under Standards Rule 2 of USPAP. As such, it might not include a full discussion of the data, reasoning and analyses used in the appraisal process to develop the appraiser's opinion. Supporting documentation concerning the data, reasoning and analyses is retained in the appraiser's work file.

1. Identify the Client: Greenberg Traurig, P.A.
2. The intended users of this report are the clients and the City of Key West.
3. State the problem to be solved: To provide the “depreciated” cost analysis (replacement cost) of the existing hotel structures.
4. State the purpose of the appraisal: The purpose of this assignment is to provide information to the client to make an informed decision regarding the replacement cost of the existing structure and assist the building department in its flood plain management evaluation.
5. State information sufficient to identify the real estate involved in the consulting assignment, and state the physical and legal characteristics of the property:

Subject: Days Inn Key West Hotel is located at:
3852 North Roosevelt Boulevard
Key West, Florida 33040

Tax Folio: 00065060-000000

Legal Description: PT KW No. 22 A Parcel Of Land Lying West Of North Roosevelt Boulevard 600feet x 240feet, OR17-405/406 OR595-884 OR598-2523 OR601-547/E OR640-519/520 OR647-641/656 OR687-822 OR711-689/690 OR861-1856/1857 OR943-1115Q/C OR950-1278/1280 OR998-960/967 OR1192-342/344Q/C OR1592-951/955 OR1592-956/960 OR1592-961/965 OR1592-966/970 OR2250-1887/89 OR2250-1892/95 OR2250-2288/96, according to Monroe County, FL

Building Description: The property consists of four hotel buildings containing a total of 133 units (rooms). The buildings were constructed in 1975 and consist of poured reinforced concrete, concrete block, exterior stucco and contain approximately 64,722 square feet of occupied building area (according to the replacement cost estimate). Each building contains an elevator and the buildings were in good overall condition at the time of inspection. See attached sketches and photos.

Land Size: 144,184 Square Feet (per tax roll) or 3.31 Acres

DEPRECIATED COST ANALYSIS

(continued)

6. State the effective date of the consulting assignment: The effective date of the report is March 7, 2013; the “effective” date of the contractor's replacement “cost new” estimate. Note the property was inspected by the appraiser on October 29, 2012, however, the date of value remains March 7, 2013.
7. State the scope of work and the extent of the data collection process: The extent of the data collection includes the following: review of the Monroe County tax records, inspecting the property, photographing the interior and exterior of the hotel, and the review and use of detailed cost "new" estimate provided by Hardin Construction Company, LLC. The date of the estimate is March 7, 2013, which is the effective date of this report. The Hardin Construction Company's estimate can be found under Appendix I of this report.
8. State all assumptions, hypothetical conditions, and limiting conditions that affect the analyses, opinions, and conclusions: That there are no unusual subsurface conditions present. That the replacement of the building would use materials similar to those used and if materials are not available that were used that materials similar in utility and quality or substituted. No site improvements are included in the replacement value.
9. Summarize the information used in the consulting analyses, the consulting procedures applied, and summarize the reasoning that supports the analyses, opinions and conclusions: The detailed “cost new” estimates that are part of this report were reviewed and are relied on as the method to calculate the costs to rebuild the subject, less depreciation. This report provides a recommendation about the depreciated replacement value of the commercial structures as of the effective date of this report. The per-building valuation summary is provided on page 12 of this report.

**DEPRECIATED REPLACEMENT VALUE /
DAYS INN KEY WEST (“Actual Cash Value”)
3852 North Roosevelt Boulevard
Key West, Florida 33040**

**ELEVEN MILLION SEVEN HUNDRED THOUSAND DOLLARS
\$11,700,000**

10. Please see the signed Certification which begins on the following page.

CERTIFICATION

The undersigned certifies to the best knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions stated in this report, and are my unbiased professional analyses, opinions, conclusions and recommendations.
- I have no present or prospective interest in the property that is the subject of this report and I have no personal interest or bias with respect to the parties involved.
- My engagement in this assignment was not contingent on developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this report.
- The depreciated replacement cost is estimated at \$11,700,000 and is summarized on the following pages.
- The commercial structures were inspected on the interior and exterior by Britt J. Rosen, State-Certified General Real Estate Appraiser RZ1858. Richard C. Tyler, State-Certified General Real Estate Appraiser RZ3136, and Britt J. Rosen worked together on the report development and writing.
- We have performed no services, as appraisers or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- I, Britt J. Rosen, certify that I have at least three years experience in the field of commercial property inspections, commercial risk assessment, and commercial property replacement cost evaluation.

The effective date of this cost analysis / inspection report is March 7, 2013.



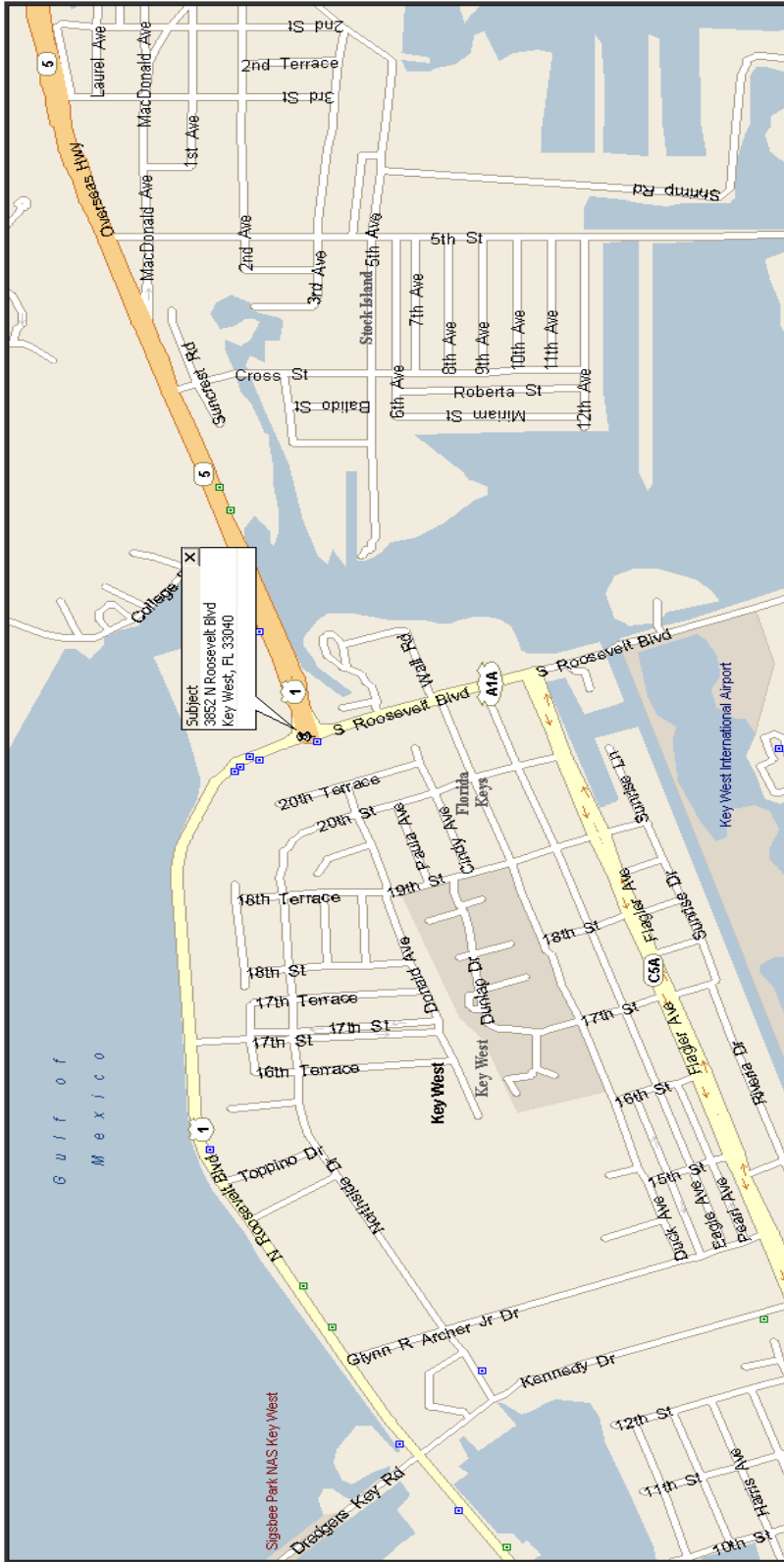
Britt J. Rosen, CCIM
State-Certified General Real Estate Appraiser RZ1758

AERIAL PHOTOGRAPH



*Note: Aerial obtained from Bing Maps
URL - <http://www.bing.com/maps>*

LOCATION MAP



PHOTOGRAPHS



View of the subject as seen from North Roosevelt Boulevard



View looking west along the north elevation of building A - ground floor

PHOTOGRAPHS



The north elevation of building A - view from the second floor



Pool area

PHOTOGRAPHS



View looking north along the east elevation of building B



Pool cabana - showers and bathroom

PHOTOGRAPHS



Building B as seen from the pool area



Looking north along the rear parking area

PHOTOGRAPHS



Building C as seen from the parking area



Looking south along Building C's east elevation

PHOTOGRAPHS



View looking northwest from the pool area



Looking south across the pool area

PHOTOGRAPHS



Typical stairs and landing



Southeast side of Building C

PHOTOGRAPHS



Typical kitchen-living area

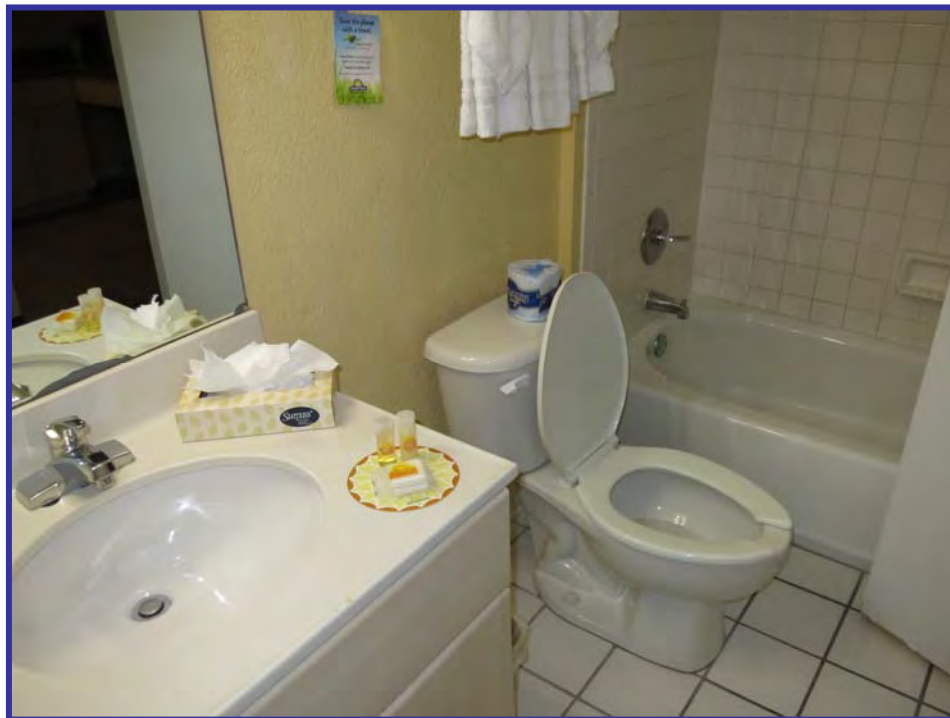


Typical kitchen

PHOTOGRAPHS



Typical bedroom



Typical bathroom

DEPRECIATED COST ANALYSIS
(continued)

Preface to Replacement Cost Calculation – Scope of Work

The approach to the replacement cost was arrived at by the following procedure. The land is not included and the total is for labor, material and equipment for the main commercial historic hotel structure only. It is an estimate of the replacement costs of the structure and not a “market value.” Site improvements are not included. The date of the depreciated replacement cost is March 7, 2013.

Cost New

As noted in the preface to this report, a replacement “cost new” estimate was provided by Hardin Construction Company, LLC, which was reviewed by the appraiser and is relied on as a method to calculate the costs to rebuild the subject of similar utility. The replacement cost “new” is \$15,200,578 and the estimates are located in Appendix I of this report.

Estimate of Depreciation

Physical depreciation is estimated using an effective age of 17 years and the remaining economic life of the building is estimated at 53 years. The physical depreciation of 23% correlates with data obtained from the Monroe County Property Appraiser's web site. The remaining economic life is typical of hotel buildings.

Summary and Reconciliation

In our opinion, the depreciated replacement cost of the subject property, as of March 7, 2013, is shown in the chart which follows:

Days Inn Key West: Cost Estimate Summary							
Description	No. of Units	Building Size SqFt (under air)	Building Size SqFt (occupied area)	Replacement Cost New Estimate	Cost Per Occupied SqFt	23% Depreciation	Depreciated Replacement Value
Building A	40	12,974	17,957	4,059,639	\$226.08	933,717	\$3,125,922
Building B	40	12,476	15,594	3,899,231	\$250.05	896,823	\$3,002,408
Building C	35	12,006	15,758	3,828,257	\$242.94	880,499	\$2,947,758
Building D	18	11,779	15,413	3,413,451	\$221.47	785,094	\$2,628,357
Total	133	49,235	64,722	\$15,200,578	\$234.86	\$3,496,133	\$11,704,445
Depreciated Replacement Value (Rounded)							\$11,700,000

DEPRECIATED REPLACEMENT VALUE
Depreciated Cost Analysis / Actual Cash Value
Days Inn Key West
3852 North Roosevelt Boulevard
Key West, Florida 33040

ELEVEN MILLION SEVEN HUNDRED THOUSAND DOLLARS
\$11,700,000

APPENDIX I
COST ESTIMATE

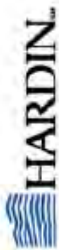


Hardin Construction Company, LLC

Conceptual Estimate
Key West Hotel Collection
Existing Site A

03/07/13

Building A	Description	Quantity	Unit	Price	Total	Total
		40	units			
		17,957	occupied sf			
		12,974	ac-sf			
			Unit			System
Owner Allowances						\$ 43,500
Transformer Fees	1 allow			21,000		
Security/Access Control	1 allow			12,000		
Material Testing	1 allow			10,500		
						2.42 per occupied sf
Sitework						\$ -
Site Improvement (NIC)	complete					
						\$ -
Foundations						\$ 136,380
Foundations Auger Cast	9,092 sf		6	54,552		
CIP Concrete GB's, Pits, Strips, & SOG	9,092 sf		9	81,828		
						7.59 per occupied sf
Structure						\$ 574,019
Reinforced Elevated Flat Slab	17,850 est		30	535,500		
Hoisting						
Tube Steel/Misc Metals	1 ls			15,000		
Roof Framing & Sheathing	31 sf		18	558		
Trade Requirements	1 ls			22,961		
						31.97 per occupied sf
Envelope						\$ 901,351
Masonry, Stucco & Insulation	1,906 sf		24	45,744		
Masonry, Stucco & Insulation	250 sf		24	6,000		
Framed Envelope						
Furring & Drywall @ Perimeter	1 ls			32,114		
Stud, Stucco, Paint Column Wraps	1,906 sf		2	4,574		
Storefront	1,530 sf		18	27,540		
Balcony Door	1 ls			483,072		
Glazed Door	4,736 sf		102	483,072		
Railings	- ea			3,600		
R-40 Average Lght Ins and Membrane	489 lf		84	41,076		
Roofing	8,885 sf		24	213,240		
Metal Roofing @ Elevator	31 sf		54	1,674		
Exterior Caulking	1,906 sf		2	4,574		
Ground Level Canopy Structure			60			
Exterior Painting	1,906 sf		3	5,718		
Walkway/Balcony Floor Coating	4,231 sf		5	20,309		
Walkway/Balcony Ceiling Coating	4,231 sf		5	20,309		



Hardin Construction Company, LLC

Conceptual Estimate
Key West Hotel Collection
Existing Site A

03/07/13

Description	Quantity	Unit	Price	Total	Total
Architectural Drawings	1	set	27,041	27,041	480
Trade Requirements	1	ls	27,041	27,041	27,041
Interiors					
Drywall Package					
Perimeter Drywall	1	ls	168,993	168,993	
Shaftwall	4,064	sf			29,261
Corridor Partition		sf			6
Demising Partition CMU w/Furring & Drywall	5,328	sf			70,330
Common Area Interior Partition		sf			5
Unit Interior Partition	7,040	sf			38,016
Unit Drywall Ceiling	4,797	sf			24,465
Textured Deck	7,691	sf			6,922
Public Door, Frame, Hardware	4	leaf	1,440	5,760	
Room Entry Door, Frame, Hardware	40	ea	1,440	57,600	
Pre-Hung Door, Frame, Hardware	40	set	486	19,440	
Bi-Fold (2 Panel) Closet Sets	40	set	360	14,400	
Double Sliding Closet Sets		set	390		
Public Finishes					
Tile Flooring & Base		sf			
Painted Walls		gsf			
Common FE Cabs and Extinguishers		ea	240		
Common Accessories		ea	600		
BOH Finishes					
Painted Walls	486	sf		437	
Guest Room Finishes					
Bath Vanity	12,488	sf			19,200
Kitchen Base	160	lf	120		
Kitchen Wall		lf	132		
Counter Tops		lf	102		
Wire Closet Shelf		sf	84		
Window Treatment	272	lf	10		2,616
Bedroom Carpet	4,736	sf	7		34,099
Kitchen Tile Splash	855	sf	22		18,458
Kitchen/Bath Tile		sf	11		
Wall Tile	4,809	sf	11		51,937
Wall Base	2,400	sf	11		25,920
Painting	3,280	lf	11		35,424
Unit Fire Extinguishers	40	unit	900		36,000
Vanity Mirror	40	ea	60		2,400
Paper Roll	40	ea	180		7,200
Unit Fire Extinguishers	40	ea	18		720
Tub/Shower Curtain Rod	40	ea	48		1,920
TOTAL					
			\$	591,915	\$
					32.96 per occupied sf

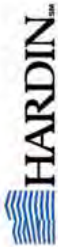


Hardin Construction Company, LLC

Conceptual Estimate
Key West Hotel Collection
Existing Site A

03/07/13

Description	Quantity	Unit	Price	Total	Total
Grab Bars	4	ea	90	360	
Residential Appliances	-	set	2,400	-	
Common Area Laundry Appliances	1	ls	18,000	18,000	
Trade Requirements	1	ls	71,030	71,030	
Systems					\$ 836,417
Elevators	2	stop	12,000	24,000	46.58 per occupied sf
Solid Waste Equipment		Owner Allow			
Fire Protection					
Guest Room	1	ls	74,871	74,871	
Walkways/Balconies	13,726	sf	3	41,178	
Fire Pump & Controller	4,231	sf	3	12,693	
Plumbing					
Guest Room (40 1 br)	1	ls	21,000	21,000	
Kitchens	1	ls	35,004	35,004	
ADA Bathroom Floor Drains	120	fixture	1,800	216,000	
Roof & Deck Drains	2	ea	1,800	3,600	
BOH Fixtures Public RR's	2	ea	240	480	
Hot Water Circulating System	8,885	sf	2	17,770	
BOH Fixtures (Laundry)	1	ls	12,000	12,000	
HVAC					
Guest Room HVAC PTAC	2	ea	600	1,200	
Conditioned Outside Air & Exhaust	1	ls	127,560	127,560	
Common Areas, Fresh Air & Exhaust	40	tn	1,800	72,000	
Toilet Exhaust Fans -Sidewall Vented	40	tn	2,400	96,000	
Dryer Vents-Sidewall	1.5	in	4,800	7,200	
Electrical					
Electrical/Fire Alarm-Finished	40	ea	600	24,000	
Phone/Data-Freewire	2	ea	180	360	
Trade Requirements	1	ls	281,355	281,355	
Cost of Work				3,083,582	3,083,582
Contingency	5.0	%		154,179	3,237,761
SDI Coverage	1.4	%		43,170	3,280,931
General Conditions	8	mos	60,000	480,000	3,760,931
CM OH	2.0	%		76,565	3,837,496
CM Fee	2.5	%		95,706	3,933,202
General Liability	1.1	%		42,111	3,975,313
P&P Bond	0.90	%		34,454	4,009,767
Design Services		Owner			
Permit Allowance		Owner			
Subtotal Mark-Ups					976,057
Building A Total					4,059,639
					\$ 226.08 per occupied sf



Hardin Construction Company, LLC

Conceptual Estimate
Key West Hotel Collection
Existing Site A

03/07/13

Building B	Description	Quantity	Unit	Price	Total	Total
		40	units			
		15,594	occupied sf			
		12,476	ac-sf			
Owner Allowances						
	Transformer Fees	1	allow	21,000		
	Security/Access Control	1	allow	12,000		
	Material Testing	1	allow	10,500		
					43,500	\$ 2.79 per occupied sf
Sitework						
	Site Improvement (NIC)		complete			
Foundations						
	Foundations Auger Cast	7,797	sf	6	46,782	
	CIP Concrete GB's, Pits, Strips, & SOG	7,797	sf	9	70,173	
						116,955 \$ 7.50 per occupied sf
Structure						
	Reinforced Elevated Flat Slab	15,522	esf	30	465,660	
	Hoisting		in Structure			
	Tube Steel/Misc Metals	1	ls	15,000		
	Roof Framing & Sheathing	31	sf	18	563	
	Trade Requirements	1	ls	20,051		
						501,273 \$ 32.15 per occupied sf
Envelope						
	Masonry, Stucco & Insulation	1,943	sf	24	46,632	
	Masonry, Stucco & Insulation	250	sf	24	6,000	
	Framed Envelope	1	ls	32,203		
	Furring & Drywall @ Perimeter	1,943	sf	2	4,663	
	Stud, Stucco, Paint Column Wraps	1,530	sf	18	27,540	
	Exterior Glazing	1	ls	471,750		
	Storefront	4,625	sf	102	471,750	
	Balcony Door		ea	3,600		
	Glazed Door		ea	3,000		
	Railings	428	lf	84	35,952	
	R-40 Average Lgwt Ins and Membrane	7,725	sf	24	185,400	
	Roofing					
	Metal Roofing @ Elevator	31	sf	54	1,668	
	Exterior Caulking	1,943	sf	2	4,663	
	Ground Level Canopy Structure		sf	60		
	Exterior Painting	1,943	sf	3	5,829	
	Walkway/Balcony Floor Coating	2,554	sf	5	12,259	
	Walkway/Balcony Ceiling Coating	2,554	sf	5	12,259	
	Architectural Louvers	10	sf	48	480	
						840,325 \$ 53.89 per occupied sf



Hardin Construction Company, LLC
 Conceptual Estimate
 Key West Hotel Collection
 Existing Site A

03/07/13

Description	Quantity	Unit	Price	Total	Total
Trade Requirements					
	1	ls	25,210	25,210	
Interiors					
Drywall Package	1	ls	216,697		
Perimeter Drywall	8,128	sf		58,522	
Shaftwall		in Envelope			
Corridor Partition		sf			
Demising Partition CMU w/Furring & Drywall	6,624	sf	13	87,437	
Common Area Interior Partition	240	sf	5	1,296	
Unit Interior Partition	7,040	sf	5	38,016	
Unit Drywall Ceiling	4,809	sf	5	24,526	
Textured Deck	7,667	sf	1	6,900	
Public Door, Frame, Hardware	2	leaf	1,440	2,880	
Room Entry Door, Frame, Hardware	40	ea	1,440	57,600	
Pre-Hung Door, Frame, Hardware	40	set	486	19,440	
Bi-Fold (2 Panel) Closet Sets	40	set	360	14,400	
Double Sliding Closet Sets		set	390		
Public Finishes		sf			
Tile Flooring & Base		sf	12		
Painted Walls		gsf	2		
Common FE Cabs and Extinguishers		ea	240		
Common Accessories		ea	600		
BOH Finishes		sf			
Painted Walls		gsf	1		
Guest Room Finishes	12,476	sf			
Bath Vanity	160	lf	19	19,200	
Kitchen Base		lf	132		
Kitchen Wall		lf	102		
Counter Tops		sf	84		
Wire Closet Shelf	272	lf	10	2,616	
Window Treatment	4,625	sf	7	33,300	
Bedroom Carpet	852	sy	22	18,401	
Kitchen Tile Splash		sf	11		
Kitchen/Bath Tile	4,809	sf	11	51,937	
Wall Tile	2,400	sf	11	25,920	
Wall Base	3,280	lf	11	35,424	
Painting	40	unit	900	36,000	
Unit Fire Extinguishers	40	ea	60	2,400	
Vanity Mirror	40	ea	180	7,200	
Paper Roll	40	ea	18	720	
Tub/Shower Curtain Rod	40	ea	48	1,920	
Grab Bars		ea	90		
					41.10 per occupied sf
					\$ 640,971

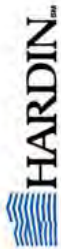


Hardin Construction Company, LLC

Conceptual Estimate
Key West Hotel Collection
Existing Site A

03/07/13

Description	Quantity	Unit	Price	Total	Total
Residential Appliances	-	set	2,400	-	-
Common Area Laundry Appliances	1 ls		18,000	18,000	18,000
Trade Requirements	1 ls		76,917	76,917	76,917
Systems					\$ 790,390
Elevators	2 stop		12,000	24,000	50.69 per occupied sf
Solid Waste Equipment		Owner Allow			
Fire Protection					
Guest Room	1 ls		67,782		
Walkways/Balconies	13,040 sf		3	39,120	
Fire Pump & Controller	2,554 sf		3	7,662	
Plumbing					
Guest Room (40 1 br)	1 ls		21,000	21,000	
Kitchens	120 fixture		32,220	216,000	
ADA Bathroom Floor Drains	1,800 fixture		1,800		
Roof & Deck Drains	2 ea		240	480	
BOH Fixtures Public RRs	7,725 sf		2	18,540	
Hot Water Circulating System	ea		1,800		
BOH Fixtures (Laundry)	1 ls		12,000	12,000	
HVAC					
Guest Room HVAC PTAC	2 ea		600	1,200	
Conditioned Outside Air & Exhaust	1 ls		127,560		
Common Areas, Fresh Air & Exhaust	40 tn		1,800	72,000	
Toilet Exhaust Fans - Sidewall Vented	40 tn		2,400	96,000	
Dryer Vents-Sidewall	1.5 tn		4,800	7,200	
Electrical					
Electrical/Fire Alarm-Finished	40 ea		600	24,000	
Phone/Data-FreeWire	2 ea		180	360	
Trade Requirements	1 ls		245,910		
Cost of Work				2,933,415	\$ 188.11
Contingency	5.0 %			194,962	
SDI Coverage	1.4 %			42,018	
General Conditions	8 mos		60,000	480,000	
CM OH	2.0 %			76,565	
CM Fee	2.5 %			95,706	
General Liability	1.1 %			42,111	
P&P Bond	0.90 %			34,454	
Design Services	Owner				
Permit Allowance	Owner				
Subtotal Mark-Ups					\$ 965,816
Building B Total					\$ 3,899,231

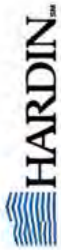


Hardin Construction Company, LLC

Conceptual Estimate
Key West Hotel Collection
Existing Site A

03/07/13

Description	Quantity	Unit	Price	Total	Total
Building C					
	35	units			
	15,758	occupied sf			
	12,006	ac-sf			
Owner Allowances					
Transformer Fees	1	allow	21,000	21,000	
Security/Access Control	1	allow	12,000	12,000	
Material Testing	1	allow	10,500	10,500	
					\$ 43,500
					\$ 2.76 per occupied sf
Sitework					
Site Improvement (NIC)		complete			\$ -
					\$ -
					\$ 118,185
					\$ 7.50 per occupied sf
Foundations					
Foundations Auger Cast	7,879	sf	6	47,274	
CIP Concrete GB's, Pits, Strips, & SOG	7,879	sf	9	70,911	
					\$ 499,836
					\$ 31.72 per occupied sf
Structure					
Reinforced Elevated Flat Slab	15,476	esf	30	464,280	
Hoisting		in Structure			
Tube Steel/Misc Metals	1	ls	15,000	15,000	
Roof Framing & Sheathing	31	sf	18	563	
Trade Requirements	1	ls	19,993	19,993	
					\$ 951,544
					\$ 60.38 per occupied sf
Envelope					
Masonry, Stucco & Insulation	1,443	sf	24	34,632	
Masonry, Stucco & Insulation	250	sf	24	6,000	
Framed Envelope					
Furring & Drywall @ Perimeter	1	ls	31,003	31,003	
Stud, Stucco, Paint Column Wraps	1,443	sf	2	3,463	
Storefront	1,530	sf	18	27,540	
Balcony Door	1	ls	592,518	592,518	
Glazed Door	5,809	sf	102	592,518	
Railings		ea	3,600		
R-40 Average Lght Ins and Membrane	428	lf	84	35,952	
Roofing	7,597	sf	24	182,328	
Metal Roofing @ Elevator	31	sf	54	1,688	
Exterior Caulking	1,443	sf	2	3,463	
Ground Level Canopy Structure		sf	60		
Exterior Painting	1,443	sf	3	4,329	
Walkway/Balcony Floor Coating	3,188	sf	5	15,302	
Walkway/Balcony Ceiling Coating	3,188	sf	5	15,302	
Architectural Louvers	10	sf	48	480	



Hardin Construction Company, LLC

Conceptual Estimate
Key West Hotel Collection
Existing Site A

03/07/13

Description	Quantity	Unit	Price	Total	Total
Trade Requirements					
	1	ls	28,546	28,546	
Interiors					
Drywall Package					
Perimeter Drywall	1	ls	137,649		
Shaftwall		in Envelope			
Corridor Partition		sf	7		
Demising Partition CMU w/Furring & Drywall	4,864	sf	13	64,205	
Common Area Interior Partition		sf	5		
Unit Interior Partition	8,540	sf	5	46,116	
Unit Drywall Ceiling	3,998	sf	5	20,387	
Textured Deck	7,713	sf	1	6,941	
Public Door, Frame, Hardware		leaf	1,440		
Room Entry Door, Frame, Hardware	35	ea	1,440	50,400	
Pre-Hung Door, Frame, Hardware	35	set	486	17,010	
Bi-Fold (2 Panel) Closet Sets	35	set	360	12,600	
Double Sliding Closet Sets		set	390		
Public Finishes					
Tile Flooring & Base		sf	12		
Painted Walls		gsf	2		
Common FE Cabs and Extinguishers		ea	240		
Common Accessories		ea	600		
BOH Finishes					
Painted Walls		gsf	1		
Guest Room Finishes					
Bath Vanity	12,006	sf	18		
Kitchen Base	140	lf	120	16,800	
Kitchen Wall		lf	132		
Counter Tops		lf	102		
Wire Closet Shelf		sf	84		
Window Treatment	238	lf	10	2,289	
Bedroom Carpet	5,809	sf	7	41,825	
Kitchen Tile Splash	857	sy	22	18,510	
Kitchen/Bath Tile		sf	11		
Wall Tile	4,208	sf	11	45,445	
Painting	2,100	sf	11	22,680	
Unit Fire Extinguishers	2,870	lf	11	30,996	
Vanity Mirror	35	unit	900	31,500	
Paper Roll	35	ea	60	2,100	
Tub/Shower Curtain Rod	35	ea	180	6,300	
Grab Bars	35	ea	18	630	
	10	ea	48	1,680	
			90	900	
					32.98 per occupied sf
					\$ 519,675
					\$ 519,675



Hardin Construction Company, LLC

Conceptual Estimate
Key West Hotel Collection
Existing Site A

03/07/13

Description	Quantity	Unit	Price	Total	Total
Residential Appliances	set		2,400		
Common Area Laundry Appliances	1 ls		18,000	18,000	
Trade Requirements	1 ls		62,361	62,361	
Systems					\$ 734,074
Elevators	2 stop		12,000	24,000	46.58 per occupied sf
Solid Waste Equipment					
Fire Protection		Owner Allow			
Guest Room	1 ls		68,274		
Walkways/Balconies	12,570 sf		3	37,710	
Fire Pump & Controller	3,188 sf		3	9,564	
Plumbing					
Guest Room (35 1 br)	1 ls		21,000	21,000	
Kitchens	1 ls		32,633		
ADA Bathroom Floor Drains	105 fixture		1,800	189,000	
Roof & Deck Drains	1,800 fixture		1,800		
BOH Fixtures Public RRs	5 ea		240	1,200	
Hot Water Circulating System	7,597 sf		2	18,233	
BOH Fixtures (Laundry)	ea		1,800		
HVAC					
Guest Room HVAC PTAC	1 ls		12,000	12,000	
Conditioned Outside Air & Exhaust	2 ea		600	1,200	
Common Areas, Fresh Air & Exhaust	1 ls		105,360		
Toilet Exhaust Fans - Sidewall Vented	1 ls		1,800	63,000	
Dryer Vents-Sidewall	35 tn		2,400	84,000	
Electrical					
Electrical/Fire Alarm-Finished	tn		4,800		
Phone/Data-FreeWire	35 ea		600	21,000	
Trade Requirements	2 ea		180	360	
Contingency	1 ls		246,870		
SDI Coverage	15,758 sf		15	236,370	
General Conditions	35 unit		300	10,500	
CM OH	1 ls		4,937	4,937	
CM Fee					
General Liability					
P&P Bond					
Design Services					
Permit Allowance					
Subtotal Mark-Ups					
Building C Total				2,866,814	\$ 181.93
Contingency	5.0 %			191,413	
SDI Coverage	1.4 %			41,193	
General Conditions	8 mos		60,000	480,000	
CM OH	2.0 %			76,565	
CM Fee	2.5 %			95,706	
General Liability	1.1 %			42,111	
P&P Bond	0.90 %			34,454	
Design Services	Owner				
Permit Allowance	Owner				
Subtotal Mark-Ups					
Building C Total				\$ 3,828,257	\$ 242.94 per occupied sf

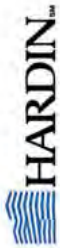


Hardin Construction Company, LLC

Conceptual Estimate
Key West Hotel Collection
Existing Site A

03/07/13

Description	Quantity	Unit	Price	Total	Total
Building D					
	18 units				
	15,413 occupied sf				
	11,779 ac-sf				
Owner Allowances					
Transformer Fees	1	allow	21,000		
Security/Access Control	1	allow	12,000		
Material Testing	1	allow	10,500		
					\$ 43,500
					\$ 2.82 per occupied sf
Sitework					
Site Improvement (NIC)		complete			
					\$ -
					\$ -
					\$ -
Foundations					
Foundations Auger Cast	7,628	sf	6	45,768	
CIP Concrete GB's, Pits, Strips, & SOG	7,628	sf	9	68,652	
					\$ 114,420
					\$ 7.42 per occupied sf
Structure					
Reinforced Elevated Flat Slab	14,579	esf	30	437,370	
Hoisting		in Structure			
Tube Steel/Misc Metals	1	ls	15,000	15,000	
Roof Framing & Sheathing	31	sf	18	563	
Trade Requirements	1	ls	18,872	18,872	
					\$ 471,805
					\$ 30.61 per occupied sf
Envelope					
Masonry, Stucco & Insulation	3,483	sf	24	83,592	
Masonry, Stucco & Insulation	250	sf	24	6,000	
Framed Envelope					
Furring & Drywall @ Perimeter	3,483	sf	2	8,359	
Stud, Stucco, Paint Column Wraps	1,530	sf	18	27,540	
	1	ls	361,110		
Exterior Glazing					
Storefront	2,905	sf	102	296,310	
Balcony Door	18	ea	3,600	64,800	
Glazed Door		ea	3,000		
Railings	484	lf	84	40,656	
R-40 Average Lgwt Ins and Membrane	6,794	sf	24	163,056	
Roofing					
Metal Roofing @ Elevator	31	sf	54	1,688	
Exterior Caulking	3,483	sf	2	8,359	
Ground Level Canopy Structure		sf	60		
Exterior Painting	3,483	sf	3	10,449	
Walkway/Balcony Floor Coating	3,258	sf	5	15,638	
Walkway/Balcony Ceiling Coating	3,258	sf	5	15,638	
Architectural Louvers	10	sf	48	480	
					\$ 765,532
					\$ 49.67 per occupied sf

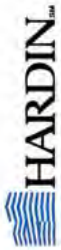


Hardin Construction Company, LLC

Conceptual Estimate
Key West Hotel Collection
Existing Site A

03/07/13

Description	Quantity	Unit	Price	Total	Total
Trade Requirements	1	ls	22,966	22,966	
Interiors					
Drywall Package	1	ls	131,925		
Perimeter Drywall		in Envelope			
Shaftwall		sf	7		
Corridor Partition		sf	6		
Demising Partition CMU w/Furring & Drywall	5,504	sf	13	72,653	
Common Area Interior Partition		sf	5		
Unit Interior Partition	5,904	sf	5	31,862	
Unit Drywall Ceiling	3,998	sf	5	20,387	
Textured Deck	7,782	sf	1	7,003	
Public Door, Frame, Hardware		leaf	1,440		
Room Entry Door, Frame, Hardware	18	ea	1,440	25,920	
Pre-Hung Door, Frame, Hardware	36	set	486	17,496	
Bi-Fold (2 Panel) Closet Sets	18	set	360	6,480	
Double Sliding Closet Sets	18	set	390	7,020	
Public Finishes					
Tile Flooring & Base		sf	12		
Painted Walls		gsf	2		
Common FE Cabs and Extinguishers		ea	240		
Common Accessories		ea	600		
BOH Finishes					
Painted Walls		gsf	1		
Guest Room Finishes	11,779	sf			
Bath Vanity	72	lf	120	8,640	
Kitchen Base	243	lf	132	32,076	
Kitchen Wall	180	lf	102	18,360	
Counter Tops	486	sf	84	40,824	
Wire Closet Shelf	216	lf	10	2,074	
Window Treatment	2,905	sf	7	20,916	
Bedroom Carpet	865	sy	22	18,676	
Kitchen Tile Splash	365	sf	11	3,942	
Kitchen/Bath Tile	2,164	sf	11	23,372	
Wall Tile	1,080	sf	11	11,664	
Wall Base	1,476	lf	11	15,941	
Painting	18	unit	900	16,200	
Unit Fire Extinguishers	18	ea	60	1,080	
Vanity Mirror	18	ea	180	3,240	
Paper Roll	18	ea	18	324	
Tub/Shower Curtain Rod	18	ea	48	864	
Grab Bars		ea	90		
					\$ 532,083
					\$ 34.52 per occupied sf



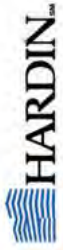
Hardin Construction Company, LLC

Conceptual Estimate
Key West Hotel Collection
Existing Site A

03/07/13

Description	Quantity	Unit	Price	Total	Total
Residential Appliances	18	set	2,400	43,200	
Common Area Laundry Appliances	1	ls	18,000	18,000	
Trade Requirements	1	ls	63,850	63,850	
Systems					577,652 \$
Elevators	2	stop	12,000	24,000	37.48 per occupied sf
Solid Waste Equipment		Owner Allow			
Fire Protection					
Guest Room	1	ls	67,239	67,239	
Walkways/Balconies	12,155	sf	3	36,465	
Fire Pump & Controller	3,258	sf	3	9,774	
Plumbing					
Guest Room (18 1 br)	1	ls	21,000	21,000	
Kitchens (18 suites)	1	ls	61,306	61,306	
ADA Bathroom Floor Drains	54	fixture	1,800	97,200	
Roof & Deck Drains	18	fixture	1,800	32,400	
BOH Fixtures Public RRs	ea	ea	240	-	
Hot Water Circulating System	6,794	sf	2	16,306	
BOH Fixtures (Laundry)	ea	ea	1,800	-	
HVAC					
Guest Room HVAC PTAC	1	ls	12,000	12,000	
Conditioned Outside Air & Exhaust	1	ea	600	600	
Common Areas, Fresh Air & Exhaust	1	ls	54,180	54,180	
Toilet Exhaust Fans -Sidewall Vented	18	tn	1,800	32,400	
Dryer Vents-Sidewall	18	tn	2,400	43,200	
Electrical					
Electrical/Fire Alarm-Finished	18	ea	4,800	86,400	
Phone/Data-FreeWire	1	ea	180	180	
Trade Requirements	1	ls	236,595	236,595	
	15,413	sf	15	231,195	
	18	unit	300	5,400	
	1	ls	4,732	4,732	

Cost of Work	2,504,991	\$	162.52
Contingency	170,673		
SDI Coverage	35,913		
General Conditions	480,000		
CM OH	68,269		
CM Fee	85,336		
General Liability	37,548		
P&P Bond	30,721		
Design Services	-		
Permit Allowance	-		
Subtotal Mark-Ups	908,460	\$	58.94
Building D Total	3,413,451	\$	221.47 per occupied sf



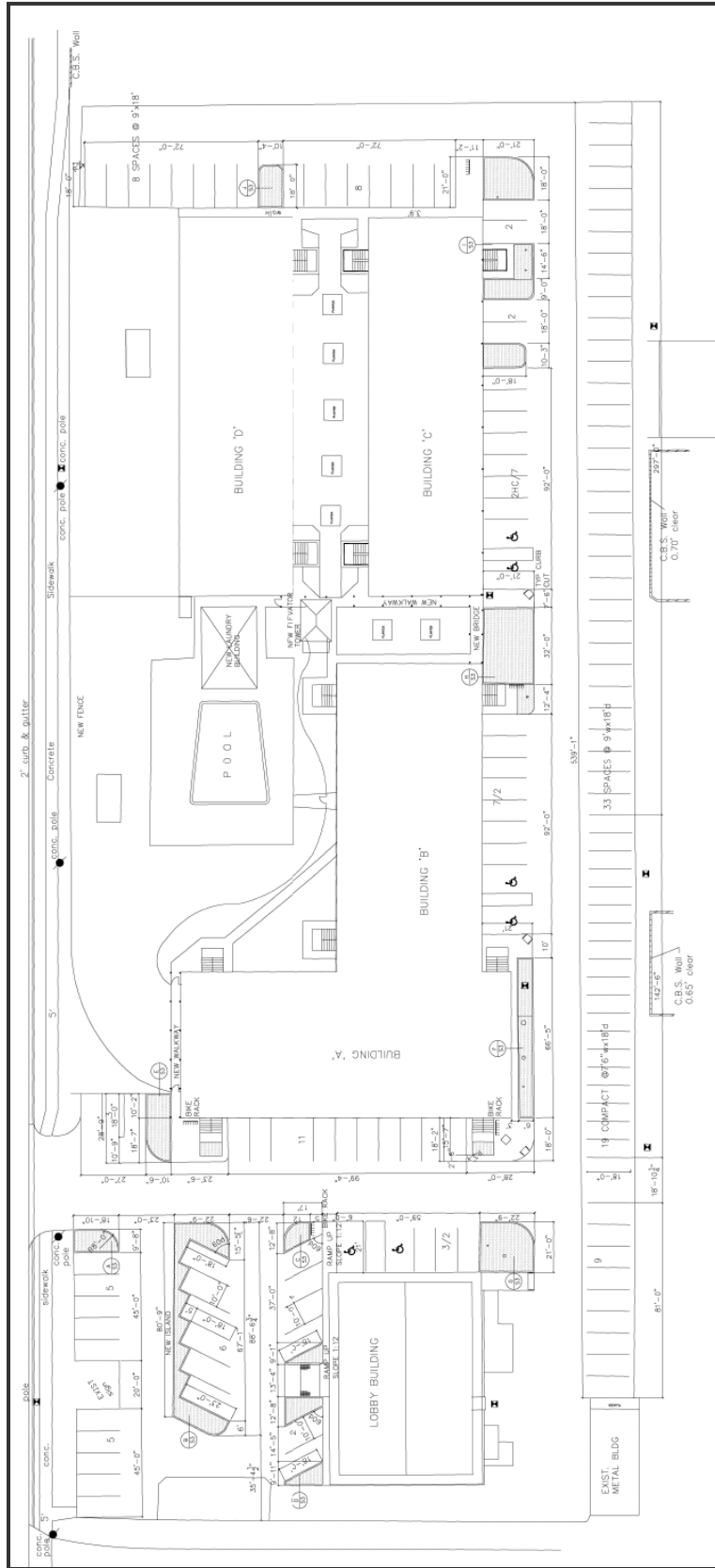
Hardin Construction Company, LLC

Conceptual Estimate
Key West Hotel Collection
Existing Site A

03/07/13

Description	Quantity	Unit	Price	Total	Total
Existing Site A Summary					
Building A Total			\$ 4,059,639	\$ 226.08	per occupied sf
Building B Total			\$ 3,899,231	\$ 250.05	per occupied sf
Building C Total			\$ 3,828,257	\$ 242.94	per occupied sf
Building D Total			\$ 3,413,451	\$ 221.47	per occupied sf
Existing Site A Grand Total			\$ 15,200,579	\$ 234.86	per occupied sf

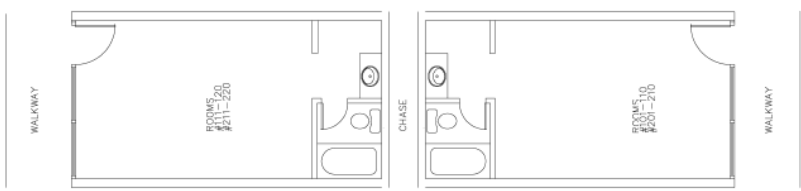
APPENDIX II
SKETCHES & DRAWINGS



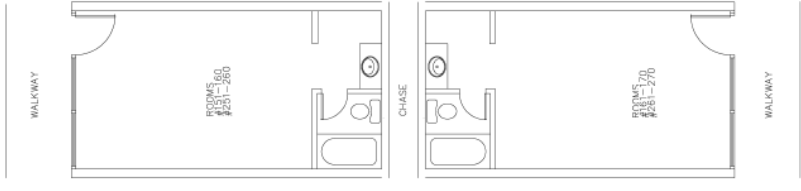
THOMAS E. POPE, P.A. ARCHITECT
610 White Street, Key West FL (305) 296 3611

date:

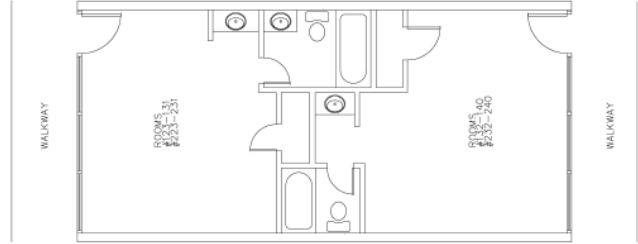
DAYS INN
3852 N. Roosevelt Blvd.
Key West FL



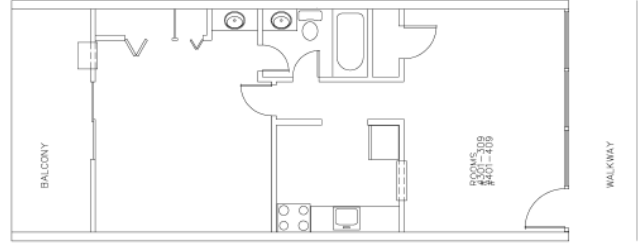
Building 'A'



Building 'B'

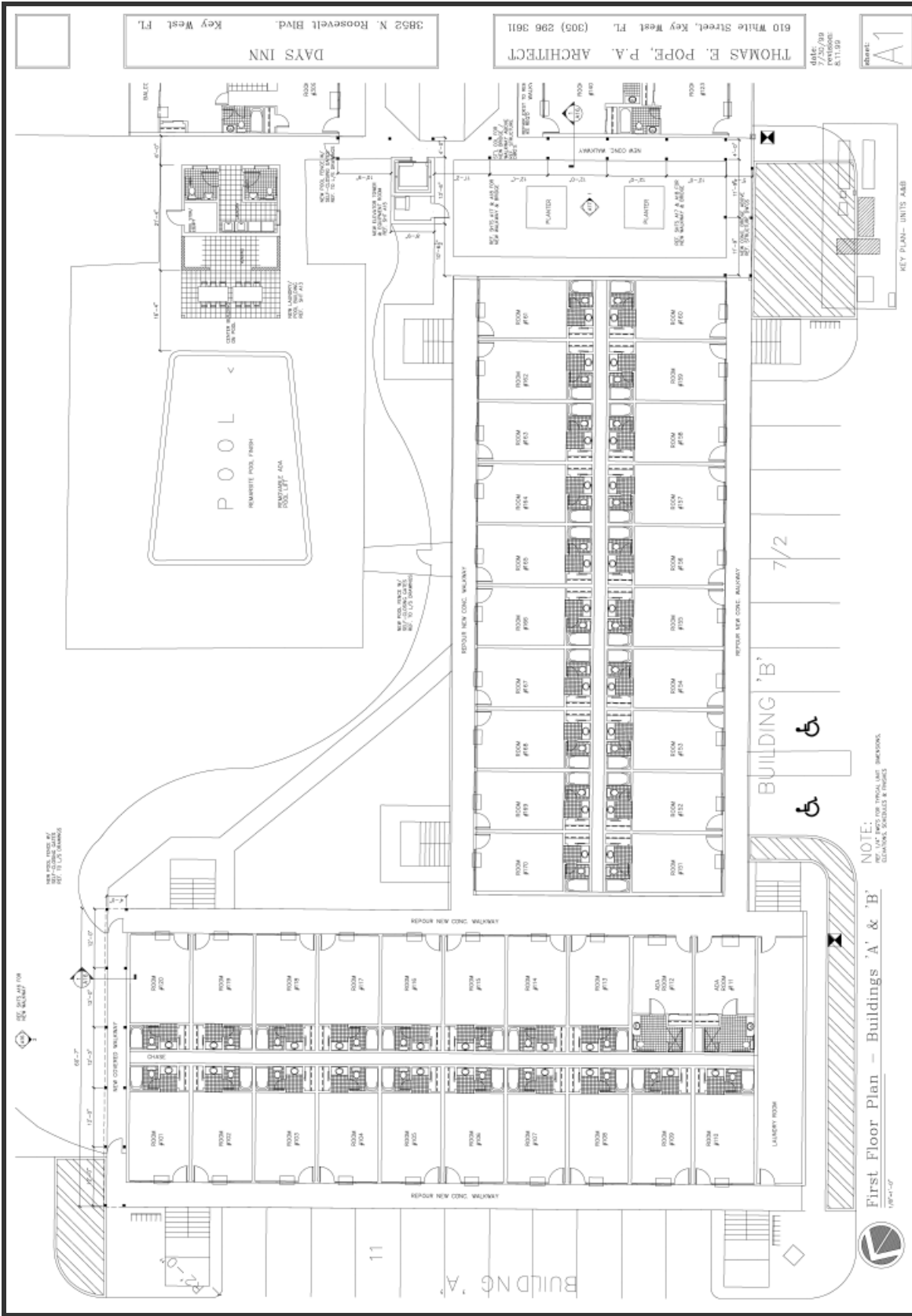


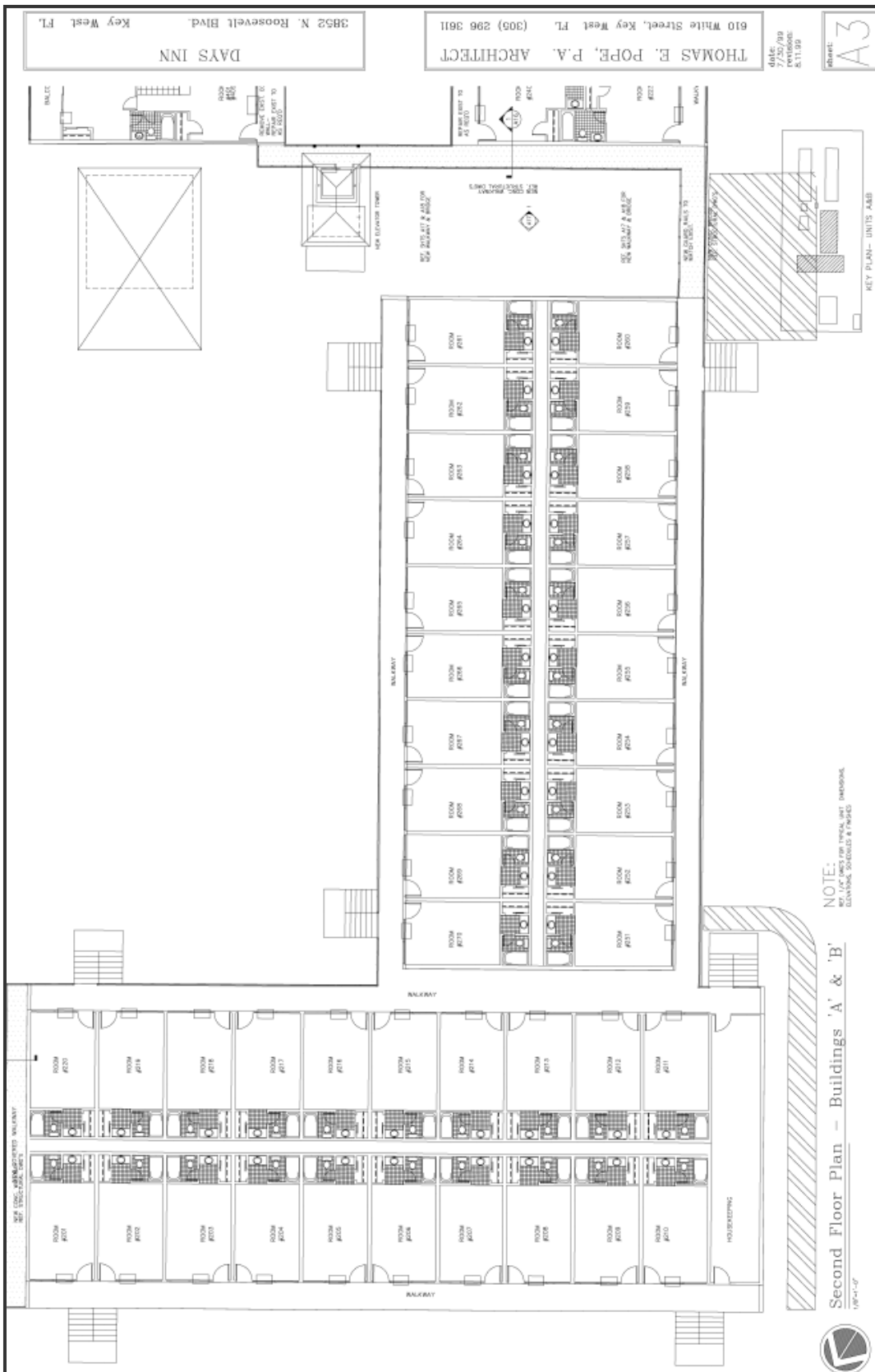
Building 'C'



Building 'D'

Existing Unit Plans
1/4"=1'-0"





DAYS INN
3852 N. Roosevelt Blvd.
Key West, FL.

THOMAS E. POPE, P.A. ARCHITECT
610 White Street, Key West, FL (305) 296 3611

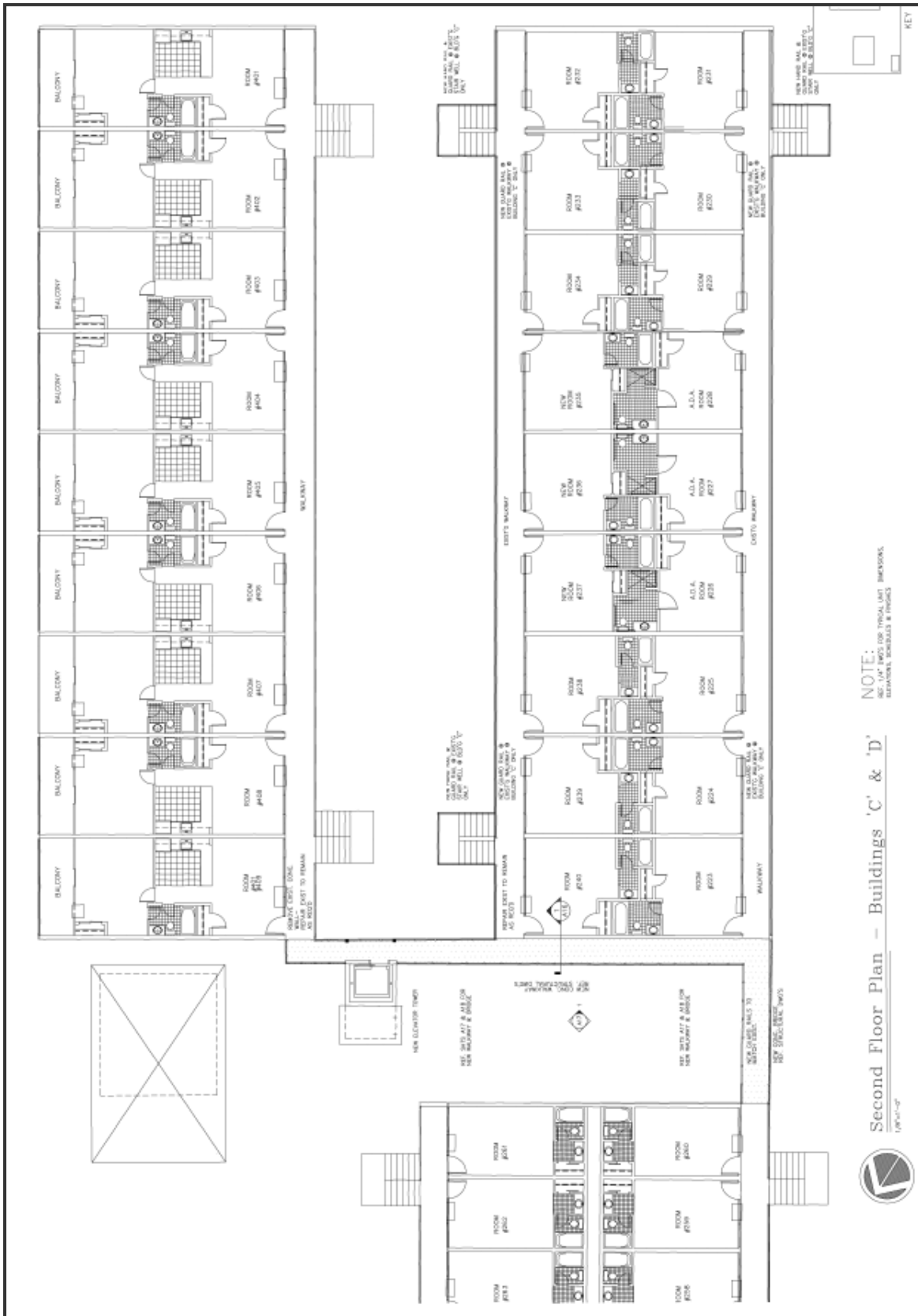
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REVISIONS:
BY: TEP
DATE: 8/1/89

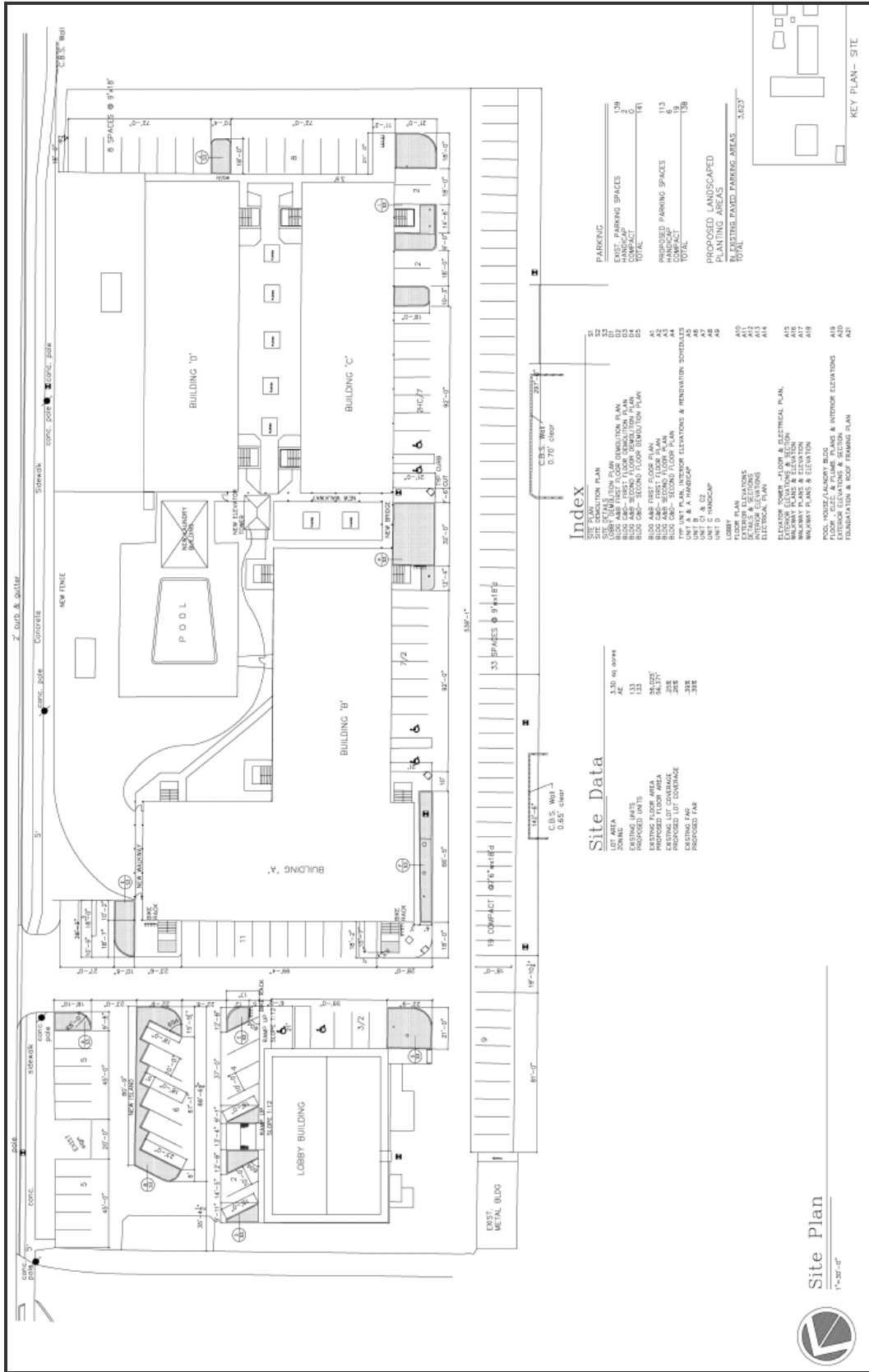
PROJECT: A3

NOTE: ALL DIMENSIONS ARE IN FEET AND INCHES.
DIMENSIONS SHOWN ARE TO FACE UNLESS NOTED OTHERWISE.

Second Floor Plan - Buildings 'A' & 'B'
1/8"=1'-0"







Site Data

120 sq. ft. area
133
133
34,377
238
328
328
328
328

Index

21	SITE PLAN LAYOUT PLAN
22	SUBMITTALS PLAN
D2	BUILDING A - FIRST FLOOR RENOVATION PLAN
D3	BUILDING B - FIRST FLOOR RENOVATION PLAN
D4	BUILDING C - SECOND FLOOR RENOVATION PLAN
D5	BUILDING D - SECOND FLOOR RENOVATION PLAN
A2	TYPE UNIT PLAN, INTERIOR ELEVATORS & RENOVATION SCHEDULES
A3	TYPE UNIT PLAN, INTERIOR ELEVATORS & RENOVATION SCHEDULES
A4	TYPE UNIT PLAN, INTERIOR ELEVATORS & RENOVATION SCHEDULES
A5	TYPE UNIT PLAN, INTERIOR ELEVATORS & RENOVATION SCHEDULES
A6	TYPE UNIT PLAN, INTERIOR ELEVATORS & RENOVATION SCHEDULES
A7	TYPE UNIT PLAN, INTERIOR ELEVATORS & RENOVATION SCHEDULES
A8	TYPE UNIT PLAN, INTERIOR ELEVATORS & RENOVATION SCHEDULES
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A97	TYPE UNIT PLAN, INTERIOR ELEVATORS & RENOVATION SCHEDULES
A98	TYPE UNIT PLAN, INTERIOR ELEVATORS & RENOVATION SCHEDULES
A99	TYPE UNIT PLAN, INTERIOR ELEVATORS & RENOVATION SCHEDULES
A100	TYPE UNIT PLAN, INTERIOR ELEVATORS & RENOVATION SCHEDULES



Site Plan
1"=30'-0"

APPENDIX III
BRITT J. ROSEN'S RESUME

BRITT J. ROSEN, CCIM

Brittix Appraisal Services, Inc.
 8603 S. Dixie Highway, Suite 305
 Miami, Florida 33143
 (305) 663-7334 / (800) 869-5517
www.brittexusa.com

EXPERIENCE

- 12/93 Present BRITTEX APPRAISAL SERVICES, INC. - Real Estate Appraisers and Consultants. State Certified General Real Estate Appraiser RZ1858.
- 7/91 - 12/93 HEDG-PETH & GALLAHER, INC. - Real Estate Appraisers and Consultants. Worked under Robert E. Gallaher, Jr., MAI on residential and commercial appraisals. License No. RI 0000684.
- 10/86 - 6/91 BRITTEX COMPANIES - President
 Licensed Real Estate Broker. Brokers residential and commercial property. 1991 CCIM designee (Certified Commercial Investment Member). License No. CQ 0259305. Licensed General Contractor. Builders of custom luxury homes. Brittix has built custom homes with sales totaling over 4.3 million dollars (nine residences totaling over 40,000 square feet). License No. CGC 020615.
- 6/83 - 10/86 KENDAR CORPORATION - Construction Manager
 In charge of 162 unit Kingston Square Condominium improvement program of over three million dollars.
- 8/80 - 6/83 FRANK J. ROONEY - General Contractor/Ft. Lauderdale
 The largest general contractor in Florida. Advanced from Estimator to Project Engineer. Project Engineer on the 27 million dollar Palmetto Yard Operations Facility for the Broward County Metrorail mass transit system.
- 6/78 - 6/86 KENDAR REALTY, INC. - Realtor and Developers
 Sold commercial real estate; over 25 million in commercial sales. Chairman of the Miami Board of Realtors Orientation Committee. Obtained the Florida real estate salespersons license in 1978 and became active in selling residential and commercial real estate.

EDUCATION 1980 - UNIVERSITY OF FLORIDA, B.A. Building Construction

AFFILIATIONS

BNI - Biscayne Connections – Speaker Rotation
 CCIM - Certified Commercial Investment Member
 CIREI - Commercial Investment Real Estate Institute
 MAR - Miami Association of Realtors
 CCIM - Board of Directors - Miami-Dade CCIM Chapter



HARDIN CONSTRUCTION COMPANY, LLC
 KEY WEST HOTEL COLLECTION
 SCHEMATIC DESIGN BUDGET

Estimated Cost of Renovation
3852 North Roosevelt Blvd.
Guestroom Bldg. #2W

SUMMARY OF WORK

DESCRIPTION	15,667 ac-sf		Site A Fairfield Inn Building 2W						
	26 key	2 fl	QTY	U/M	U/P	AMOUNT	TOTAL	COST/SF	COST/KEY
Demolition							44,038	2.81	1,694
Roof			8,060.00	sf	0.50	4,030			
Exterior Guestroom Windows & Walls			26.00	rm	200.00	5,200			
Guestroom Interiors			26.00	rm	1,000.00	26,000			
Trade Requirements			1.00	ls	8,808	8,808			
Site Improvements									
Pool Bar Modifications			-	sf	115.00	-			
Trade Requirements			1.00	ls	-	-			
New Construction									
Renovations							954,112	60.90	36,697
BOH Finishes			2,500.00	sf	30.00	75,000			
Finish Walls, Floor & Ceiling of Corridor (2W)			1,560.00	sf	20.00	31,200			
Guestroom Renovations (see detail breakdown)			26.00	rm	20,393	530,218			
Remove & Replace Balcony Rails			345.00	lf	15.00	5,175			
Replace Membrane Roofing			8,060.00	sf	6.00	48,360			
Extend Building 4 for Suites			-	each	2,700.00	-			
Elevated Walkway Improvements			1,726.00	sf	15.00	25,890			
On-Grade Walkway Improvements			1,726.00	sf	15.00	25,890			
Increased Fire Protection Work			15,667.00	sf	1.03	16,173			
Replace Domestic Water (40%)			1.00	ls	2,770.00	2,770			
Add Water Softener			1.00	ls	6,855.00	6,855			
BOH HVAC			2,500.00	sf	15.00	37,500			
BOH Plumbing			2,500.00	sf	10.00	25,000			
BOH Fire Protection			2,500.00	sf	5.00	12,500			
Electrical Upgrades (wiring, switchgear)			1.00	ls	54,999.00	54,999			
BOH Electrical			2,500.00	sf	15.00	37,500			
Trade Requirements			1.00	ls	19,082	19,082			
COST of WORK						998,149	998,149	63.71	38,390
General Conditions-Months			1	ls	-	-			
General Conditions - Staff			1	ls	62,981	62,981	62,981		
General Conditions - General Requirements						-			
General Conditions - Trade Requirements						-			
CM Overhead					0.00%	-	-		
General Liability Insurance					0.95%	10,622	10,622		
Gross Receipts Tax					0.15%	1,677	1,677		
Builder's Risk Insurance					0.00%	-	-		
P&P Bonds					0.00%	-	-		
Project Escalation					0.00%	-	-		
CM Fee					4.00%	44,726	44,726		
CONSTRUCTION TOTAL						1,118,156	1,118,156	71.37	43,006

<u>Discipline</u>	<u>Description/Location</u>	<u>Estimated Cost</u>
Environmental	Ceiling Asbestos Removal	\$56,000
	Sealants	\$6,500
	Environmental Consultant	\$3,750
	<i>Environmental Subtotal</i>	<i>\$66,250</i>
IT - Guestrooms	Data / Phone	\$3,658
	Wireless Systems	\$938
	TV Cabling	\$4,988
	<i>IT - Guestrooms Subtotal</i>	<i>\$9,583</i>



HARDIN CONSTRUCTION COMPANY, LLC
 KEY WEST HOTEL COLLECTION
 SCHEMATIC DESIGN BUDGET

Estimated Cost of Renovation
3852 North Roosevelt Blvd.
Guestroom Bldg. #2E

SUMMARY OF WORK

DESCRIPTION	15,667 ac-sf		Site A Fairfield Inn Building 2E						
	40 key	2 fl	QTY	U/M	U/P	AMOUNT	TOTAL	COST/SF	COST/KEY
Demolition							65,038	4.15	1,626
Roof	8,060.00	sf			0.50	4,030			
Exterior Guestroom Windows & Walls	40.00	rm			200.00	8,000			
Guestroom Interiors	40.00	rm			1,000.00	40,000			
Trade Requirements	1.00	ls			13,008	13,008			
Site Improvements						-	-	-	-
Pool Bar Modifications	-	sf			115.00	-			
Trade Requirements	1.00	ls			-	-			
New Construction						-	-	-	-
Renovations						-	1,022,257	65.25	25,556
BOH Finishes	-	sf			30.00	-			
Finish Walls, Floor & Ceiling of Corridor (2W)	-	sf			20.00	-			
Guestroom Renovations (see detail breakdown)	40.00	rm			20,393	815,700			
Remove & Replace Balcony Rails	345.00	lf			15.00	5,175			
Replace Membrane Roofing	8,060.00	sf			6.00	48,360			
Extend Building 4 for Suites	-	each			2,700.00	-			
Elevated Walkway Improvements	1,726.00	sf			15.00	25,890			
On-Grade Walkway Improvements	1,726.00	sf			15.00	25,890			
Increased Fire Protection Work	15,667.00	sf			1.03	16,173			
Replace Domestic Water (40%)	1.00	ls			2,770.00	2,770			
Add Water Softener	1.00	ls			6,855.00	6,855			
BOH HVAC	-	sf			15.00	-			
BOH Plumbing	-	sf			10.00	-			
BOH Fire Protection	-	sf			5.00	-			
Electrical Upgrades (wiring, switchgear)	1.00	ls			54,999.00	54,999			
BOH Electrical	-	sf			15.00	-			
Trade Requirements	1.00	ls			20,445	20,445			
COST OF WORK						1,087,295	1,087,295	69.40	27,182
General Conditions-Months	1	ls			-	-	-		
General Conditions - Staff	1	ls			62,981	62,981	62,981		
General Conditions - General Requirements						-			
General Conditions - Trade Requirements						-			
CM Overhead					0.00%	-	-		
General Liability Insurance					0.95%	11,515	11,515		
Gross Receipts Tax					0.15%	1,818	1,818		
Builder's Risk Insurance					0.00%	-	-		
P&P Bonds					0.00%	-	-		
Project Escalation					0.00%	-	-		
CM Fee					4.00%	48,484	48,484		
CONSTRUCTION TOTAL						1,212,092	1,212,092	77.37	30,302



ENVIRONMENTAL and IT ESTIMATE
SITE: A - Building 2E

3/19/2013

<u>Discipline</u>	<u>Description/Location</u>	<u>Estimated Cost</u>
Environmental	Ceiling Asbestos Removal	\$56,000
	Sealants	\$6,500
	Environmental Consultant	\$3,750
	<i>Environmental Subtotal</i>	<i>\$66,250</i>
IT - Guestrooms	Data / Phone	\$3,658
	Wireless Systems	\$938
	TV Cabling	\$4,988
	<i>IT - Guestrooms Subtotal</i>	<i>\$9,583</i>



HARDIN CONSTRUCTION COMPANY, LLC
 KEY WEST HOTEL COLLECTION
 SCHEMATIC DESIGN BUDGET

Estimated Cost of Renovation
3852 North Roosevelt Blvd.
Guestroom Bldg. #3

SUMMARY OF WORK

DESCRIPTION	Site A Fairfield Inn Building 3						
	14,462 33 2	ac-sf key fl					
	QTY	U/M	U/P	AMOUNT	TOTAL	COST/SF	COST/KEY
Demolition					54,150	3.74	1,641
Roof	7,440.00	sf	0.50	3,720			
Exterior Guestroom Windows & Walls	33.00	rm	200.00	6,600			
Guestroom Interiors	33.00	rm	1,000.00	33,000			
Trade Requirements	1.00	ls	10,830	10,830			
Site Improvements							
Pool Bar Modifications	-	sf	115.00	-			
Trade Requirements	1.00	ls	-	-			
New Construction							
Renovations					862,036	59.61	26,122
BOH Finishes	-	sf	30.00	-			
Finish Walls, Floor & Ceiling of Corridor (2W)	-	sf	20.00	-			
Guestroom Renovations (see detail breakdown)	33.00	rm	20,393	672,969			
Remove & Replace Balcony Rails	319.00	lf	15.00	4,785			
Replace Membrane Roofing	7,440.00	sf	6.00	44,640			
Extend Building 4 for Suites	-	each	2,700.00	-			
Elevated Walkway Improvements	1,594.00	sf	15.00	23,910			
On-Grade Walkway Improvements	1,594.00	sf	15.00	23,910			
Increased Fire Protection Work	14,462.00	sf	1.03	14,929			
Replace Domestic Water (40%)	1.00	ls	2,557.00	2,557			
Add Water Softener	1.00	ls	6,327.00	6,327			
BOH HVAC	-	sf	15.00	-			
BOH Plumbing	-	sf	10.00	-			
BOH Fire Protection	-	sf	5.00	-			
Electrical Upgrades (wiring, switchgear)	1.00	ls	50,768.00	50,768			
BOH Electrical	-	sf	15.00	-			
Trade Requirements	1.00	ls	17,241	17,241			
COST of WORK					916,186		27,763
General Conditions-Months	1	ls	-	-			
General Conditions - Staff	1	ls	58,136	58,136	58,136		
General Conditions - General Requirements				-			
General Conditions - Trade Requirements				-			
CM Overhead			0.00%	-			
General Liability Insurance			0.95%	9,753	9,753		
Gross Receipts Tax			0.15%	1,540	1,540		
Builder's Risk Insurance			0.00%	-			
P&P Bonds			0.00%	-			
Project Escalation			0.00%	-			
CM Fee			4.00%	41,067	41,067		
CONSTRUCTION TOTAL					1,026,682	70.99	31,112

<u>Discipline</u>	<u>Description/Location</u>	<u>Estimated Cost</u>
Environmental	Ceiling Asbestos Removal	\$56,000
	Sealants	\$6,500
	Environmental Consultant	\$3,750
	<i>Environmental Subtotal</i>	<i>\$66,250</i>
IT - Guestrooms	Data / Phone	\$3,658
	Wireless Systems	\$938
	TV Cabling	\$4,988
	<i>IT - Guestrooms Subtotal</i>	<i>\$9,583</i>



HARDIN CONSTRUCTION COMPANY, LLC
 KEY WEST HOTEL COLLECTION
 SCHEMATIC DESIGN BUDGET

Estimated Cost of Renovation
3852 North Roosevelt Blvd.
Guestroom Bldg. #4

SUMMARY OF WORK

DESCRIPTION	14,462 ac-sf		34 key		2 fl		Site A Fairfield Inn Building 4		
	QTY	U/M	U/P	AMOUNT	TOTAL	COST/SF	COST/KEY		
Demolition					55,650	3.85	1,637		
Roof	7,440.00	sf	0.50	3,720					
Exterior Guestroom Windows & Walls	34.00	rm	200.00	6,800					
Guestroom Interiors	34.00	rm	1,000.00	34,000					
Trade Requirements	1.00	ls	11,130	11,130					
Site Improvements									
Pool Bar Modifications	-	sf	115.00	-					
Trade Requirements	1.00	ls	-	-					
New Construction									
Renovations					929,681	64.28	27,344		
BOH Finishes	-	sf	30.00	-					
Finish Walls, Floor & Ceiling of Corridor (2W)	-	sf	20.00	-					
Guestroom Renovations (see detail breakdown)	34.00	rm	20,393	693,362					
Remove & Replace Balcony Rails	319.00	lf	15.00	4,785					
Replace Membrane Roofing	7,440.00	sf	6.00	44,640					
Extend Building 4 for Suites	17.00	each	2,700.00	45,900					
Elevated Walkway Improvements	1,594.00	sf	15.00	23,910					
On-Grade Walkway Improvements	1,594.00	sf	15.00	23,910					
Increased Fire Protection Work	14,462.00	sf	1.03	14,929					
Replace Domestic Water (40%)	1.00	ls	2,557.00	2,557					
Add Water Softener	1.00	ls	6,327.00	6,327					
BOH HVAC	-	sf	15.00	-					
BOH Plumbing	-	sf	10.00	-					
BOH Fire Protection	-	sf	5.00	-					
Electrical Upgrades (wiring, switchgear)	1.00	ls	50,768.00	50,768					
BOH Electrical	-	sf	15.00	-					
Trade Requirements	1.00	ls	18,594	18,594					
COST OF WORK				985,331	985,331	68.13	28,980		
General Conditions-Months	1	ls	-	-	-				
General Conditions - Staff	1	ls	58,136	58,136	58,136				
General Conditions - General Requirements				-	-				
General Conditions - Trade Requirements				-	-				
CM Overhead			0.00%	-	-				
General Liability Insurance			0.95%	10,446	10,446				
Gross Receipts Tax			0.15%	1,649	1,649				
Builder's Risk Insurance			0.00%	-	-				
P&P Bonds			0.00%	-	-				
Project Escalation			0.00%	-	-				
CM Fee			4.00%	43,982	43,982				
CONSTRUCTION TOTAL				1,099,544	1,099,544	76.03	32,340		



ENVIRONMENTAL and IT ESTIMATE
SITE: A - Building 4

3/19/2013

<u>Discipline</u>	<u>Description/Location</u>	<u>Estimated Cost</u>
Environmental	Ceiling Asbestos Removal	\$56,000
	Sealants	\$6,500
	Environmental Consultant	\$3,750
	<i>Environmental Subtotal</i>	<i>\$66,250</i>
IT - Guestrooms	Data / Phone	\$3,658
	Wireless Systems	\$938
	TV Cabling	\$4,988
	<i>IT - Guestrooms Subtotal</i>	<i>\$9,583</i>



**Typical Guestroom Renovation Breakdown
3852 North Roosevelt Blvd.**

HARDIN CONSTRUCTION COMPANY, LLC
KEY WEST HOTEL COLLECTION
ADVENTpds

SUMMARY OF WORK

DESCRIPTION	FAIRFIELD INN (Days Inn)						
	60,257 133 2	ac-sf key fl	K/Q				
	QTY	U/M	U/P	AMOUNT	TOTAL	COST/SF	COST/KEY
				0			
				0			
Guestroom Renovations							
King/Queen Room	36,841	sf	0		2,712,204	73.62	20,393
Tile Flooring	260	sf	7.87	272,145			
Tile Base	82	lf	7.63	83,213			
Mincey Marble Shower Walls	0.75	ea	706	70,424			
Mincey Marble Shower Base	0.75	ea	555	55,361			
Glass Shower Door/Panel	0.75	ea	1000	99,750			
Toilet Accessories	1	set	300	39,900			
Tub/Mincey Marble/Curtain	0.25	ea	1000	33,250			
Vanity Table/Top	1	set	500	66,500			
Mirror	-	Others	0	-			
New Sliding Bath Door	1	set	750	99,750			
Closet Rod & Shelf	-	lf	7.00	-			
New Closet Door	-	set	500	-			
New Interior Sound Partition	96	sf	8.00	102,144			
New VTAC Closet Partition (not required)	-	sf	-	-			
New Dropped/Framed Ceiling over Bathroom	61	sf	4.00	32,452			
Replace Drywall Chase One Side for Plumbing	113	sf	2.00	29,925			
Abate Existing Popcorn Texture	-	Others	-	-			
Resurface Existing Partitions	471	sf	0.95	59,511			
Resurface Existing Ceiling	216	sf	0.95	27,292			
Paint Walls and Ceilings	1,035	sf	0.75	103,241			
Vinyl Wall Covering	-	sf	-	-			
Re-plumb Bath	3	fixt	1150	458,850			
New Heads on Fire Sprinklers	1	rm	200	26,600			
New PTAC Unit w/impact screen	1	ea	1530	203,490			
Bath Exhaust Fan	1	ea	250	33,250			
Re-wire and Fixtures	1	rm	1000	133,000			
Re-Work Fire Alarms	1	rm	400	53,200			
Faux Ceiling Beams	-	ea	200	-			
New Exterior Wall	96	sf	26.50	338,352			
New Glass in Exterior Wall	1	ea	1200	159,600			
New Entry Door, Frame, Hardware	1	set	850	113,050			
Exterior Paint	45	sf	3	17,955			

Scott P. Russell, CFA
Property Appraiser
Monroe County, Florida

Key West (305) 292-3420
 Marathon (305) 289-2550
 Plantation Key (305) 852-7130

Property Record Card -
Map portion under construction.

Website tested on IE8,
 IE9, & Firefox.
 Requires Adobe Flash
 10.3 or higher

Alternate Key: 1065587 Parcel ID: 00065060-000000

Ownership Details

Mailing Address:

JLW KEY WEST 1 LLC
 506 FLEMING ST
 KEY WEST, FL 33040

Property Details

PC Code: 39 - HOTELS,MOTELS

Millage Group: 10KW

Affordable No

Housing:

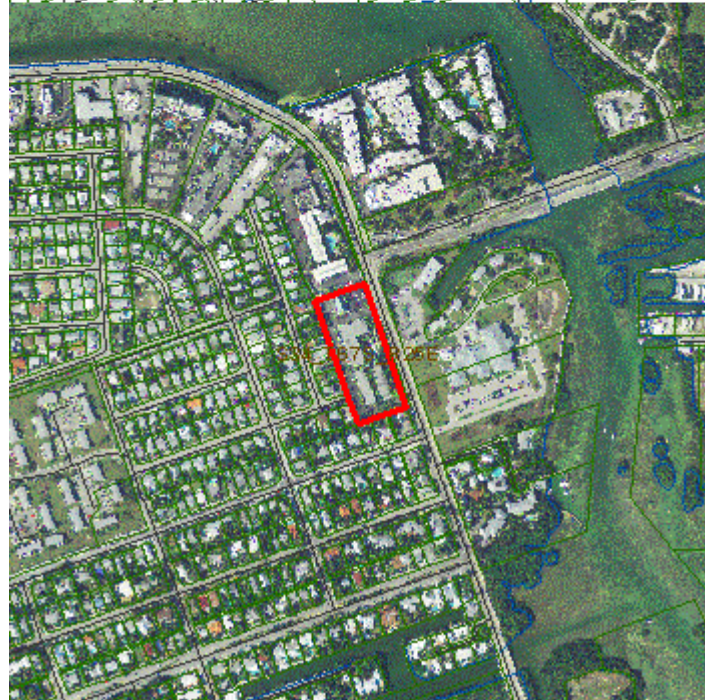
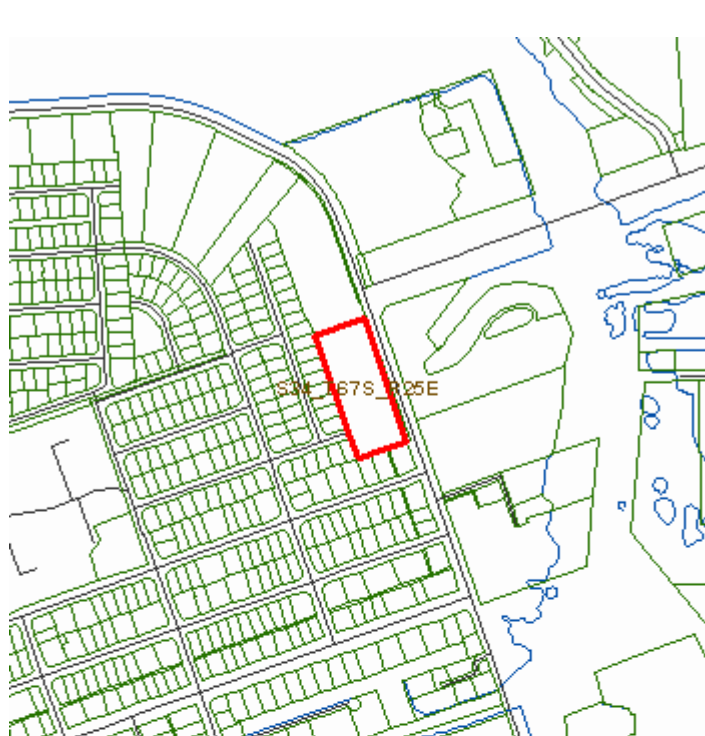
Section-

Township- 34-67-25

Range:

Property Location: 3852 N ROOSEVELT BLVD KEY WEST

Legal Description: PT KW NO 22 A PARCEL OF LAND LYING W OF N ROOSEVELT BOULEVARD 600FT X 240FT OR17-405/406 OR595-884 OR598-2523 OR601-547/E OR640-519/520 OR647-641/656 OR687-822 OR711-689/690 OR861-1856/1857 OR943-11 15Q/C OR950-1278/1280 OR998-960/967 OR1192-342/344Q/C OR1592-951/955 OR1592-956/960 OR1592-961/965 OR1592-966/970 OR2250-1887/89 OR2250-1892/95 OR2250-2288/96



Show Parcel Map that can launch map - Must have Adobe Flash Player 10.3 or higher

Land Details

Land Use Code	Frontage	Depth	Land Area
100H - COMMERCIAL HIGHWAY	600	240	144,183.60 SF

Building Summary

Number of Buildings: 5

Number of Commercial Buildings: 5
 Total Living Area: 42125
 Year Built: 1975

Building 1 Details

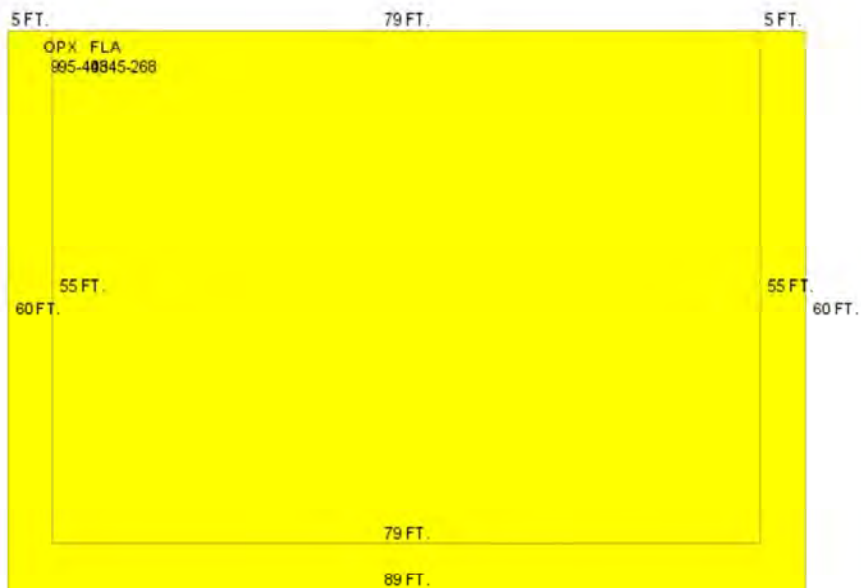
Building Type	Condition E	Quality Grade 400
Effective Age 17	Perimeter 268	Depreciation % 23
Year Built 1975	Special Arch 0	Grnd Floor Area 4,345
Functional Obs 0	Economic Obs 0	

Inclusions:

Roof Type	Roof Cover	Foundation
Heat 1	Heat 2	Bedrooms 0
Heat Src 1	Heat Src 2	

Extra Features:

2 Fix Bath	0	Vacuum	0
3 Fix Bath	4	Garbage Disposal	0
4 Fix Bath	0	Compactor	0
5 Fix Bath	0	Security	0
6 Fix Bath	0	Intercom	0
7 Fix Bath	0	Fireplaces	0
Extra Fix	10	Dishwasher	0



Sections:

Nbr	Type	Ext Wall	# Stories	Year Built	Attic	A/C	Basement %	Finished Basement %	Area
1	FLA		1	1974					4,345
2	OPX		1	1974					995

Interior Finish:

Section Nbr	Interior Finish Nbr	Type	Area %	Sprinkler	A/C

5660	OFF BLDG-1 STY-B	50	Y	Y
5661	RESTRNT/CAFETR-B-	50	Y	Y

Exterior Wall:

Interior Finish Nbr	Type	Area %
1553	C.B.S.	100

Building 2 Details

Building Type
Effective Age 17
Year Built 1975
Functional Obs 0

Condition E
Perimeter 728
Special Arch 0
Economic Obs 0

Quality Grade 400
Depreciation % 23
Grnd Floor Area 13,200

Inclusions:

Roof Type
Heat 1
Heat Src 1

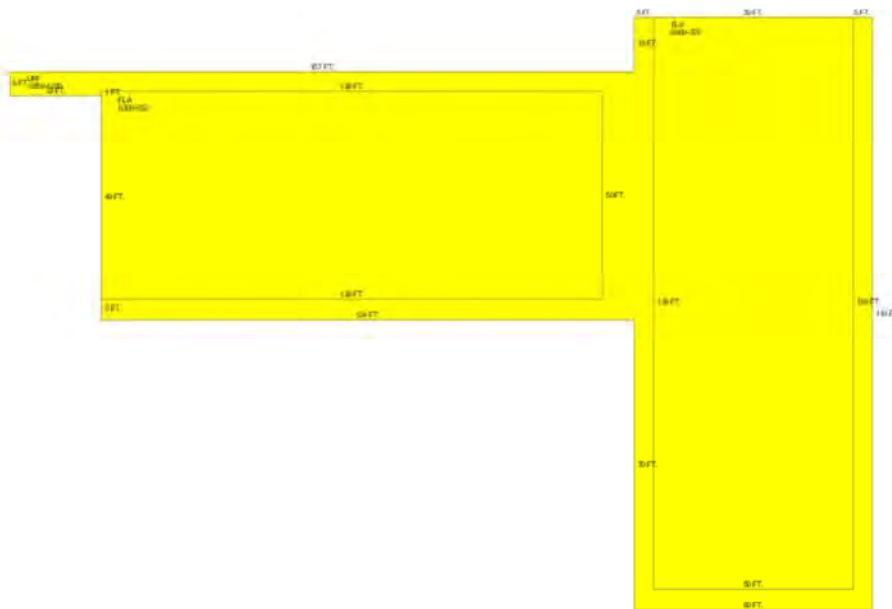
Roof Cover
Heat 2
Heat Src 2

Foundation
Bedrooms 0

Extra Features:

2 Fix Bath 0
3 Fix Bath 78
4 Fix Bath 0
5 Fix Bath 0
6 Fix Bath 0
7 Fix Bath 0
Extra Fix 0

Vacuum 0
Garbage Disposal 0
Compactor 0
Security 0
Intercom 0
Fireplaces 0
Dishwasher 0



Sections:

Nbr	Type	Ext Wall	# Stories	Year Built	Attic	A/C	Basement %	Finished Basement %	Area
1	FLA		2	1974					6,900

2	OPF	2	1974	3,558
3	FLA	2	1974	6,300

Interior Finish:

Section Nbr	Interior Finish Nbr	Type	Area %	Sprinkler	A/C
	5662	HOTEL/MOTEL B	100	Y	Y
	5663	HOTEL/MOTEL B	100	Y	Y

Exterior Wall:

Interior Finish Nbr	Type	Area %
1554	C.B.S.	100

Building 3 Details

Building Type
Effective Age 17
Year Built 1975
Functional Obs 0

Condition E
Perimeter 776
Special Arch 0
Economic Obs 0

Quality Grade 400
Depreciation % 23
Grnd Floor Area 11,376

Inclusions:

Roof Type
Heat 1
Heat Src 1

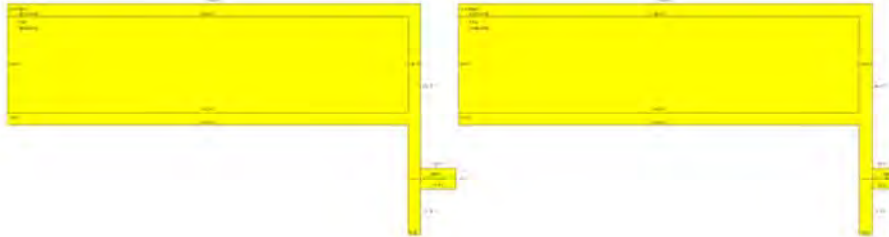
Roof Cover
Heat 2
Heat Src 2

Foundation
Bedrooms 0

Extra Features:

2 Fix Bath 0
3 Fix Bath 0
4 Fix Bath 0
5 Fix Bath 0
6 Fix Bath 0
7 Fix Bath 0
Extra Fix 90

Vacuum 0
Garbage Disposal 0
Compactor 0
Security 0
Intercom 0
Fireplaces 0
Dishwasher 0



Sections:

Nbr	Type	Ext Wall	# Stories	Year Built	Attic	A/C	Basement %	Finished Basement %	Area
1	FLA		1	1974					5,688
2	OPF		1	1974					2,015
3	SBF		1	2000					112
4	FLA		1	1974					5,688
5	OUF		1	1974					2,015
6	SBF		1	2000					64

Interior Finish:

Section Nbr	Interior Finish Nbr	Type	Area %	Sprinkler	A/C
	5664	HOTEL/MOTEL B	100	Y	Y
	5665	HOTEL/MOTEL B	100	Y	Y

Exterior Wall:

Interior Finish Nbr	Type	Area %
1555	C.B.S.	100

Building 4 Details

Building Type
Effective Age 17
Year Built 1975
Functional Obs 0

Condition E
Perimeter 788
Special Arch 0
Economic Obs 0

Quality Grade 400
Depreciation % 23
Grnd Floor Area 12,324

Inclusions:

	Roof Type		Roof Cover		Foundation
	Heat 1		Heat 2		Bedrooms 0
	Heat Src 1		Heat Src 2		
Extra Features:					
	2 Fix Bath	0			Vacuum 0
	3 Fix Bath	0			Garbage Disposal 0
	4 Fix Bath	0			Compactor 0
	5 Fix Bath	0			Security 0
	6 Fix Bath	0			Intercom 0
	7 Fix Bath	0			Fireplaces 0
	Extra Fix	108			Dishwasher 0



Sections:

Nbr	Type	Ext Wall	# Stories	Year Built	Attic	A/C	Basement %	Finished Basement %	Area
1	FLA		1	1974					5,688
2	DUF		1	2000					300
3	OPF		1	2000					280
4	FLA		1	1974					6,636
5	OUF		1	1974					948
6	OUF		1	1974					790
7	OPF		1	1974					1,973

Interior Finish:

Section Nbr	Interior Finish Nbr	Type	Area %	Sprinkler	A/C
	5666	HOTEL/MOTEL B	100	Y	Y
	5667	HOTEL/MOTEL B	100	Y	Y

Exterior Wall:

Interior Finish Nbr	Type	Area %
1556	C.B.S.	100

Building 5 Details

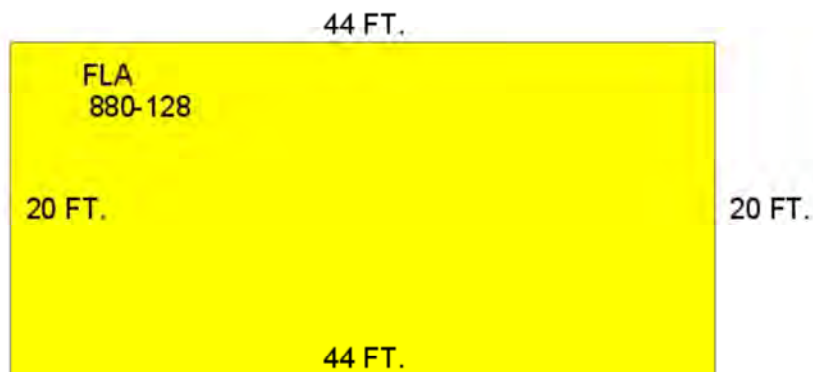
Building Type	Condition P	Quality Grade 300
Effective Age 24	Perimeter 128	Depreciation % 30
Year Built 1978	Special Arch 0	Grnd Floor Area 880
Functional Obs 0	Economic Obs 0	

Inclusions:

Roof Type	Roof Cover	Foundation
Heat 1	Heat 2	Bedrooms 0
Heat Src 1	Heat Src 2	

Extra Features:

2 Fix Bath 0	Vacuum 0
3 Fix Bath 0	Garbage Disposal 0
4 Fix Bath 0	Compactor 0
5 Fix Bath 0	Security 0
6 Fix Bath 0	Intercom 0
7 Fix Bath 0	Fireplaces 0
Extra Fix 0	Dishwasher 0



Sections:

Nbr	Type	Ext Wall	# Stories	Year Built	Attic	A/C	Basement %	Finished Basement %	Area
1	FLA		1	1977					880

Interior Finish:

Section Nbr	Interior Finish Nbr	Type	Area %	Sprinkler	A/C

5668

WAREHOUSE/MARINA C

100

N

N

Exterior Wall:

Interior Finish Nbr	Type	Area %
1557	METAL SIDING	100

Misc Improvement Details

Nbr	Type	# Units	Length	Width	Year Built	Roll Year	Grade	Life
1	AP2:ASPHALT PAVING	66,531 SF	0	0	1970	1971	1	25
2	PO5:COMM POOL	1,152 SF	48	24	1999	2000	1	50
3	PT3:PATIO	1,680 SF	0	0	1978	1979	2	50
4	CL2:CH LINK FENCE	2,168 SF	0	0	1978	1979	2	30
5	UB2:UTILITY BLDG	253 SF	0	0	1978	1979	2	50
6	PT2:BRICK PATIO	2,300 SF	0	0	1984	1985	2	50
7	FN2:FENCES	1,440 SF	6	240	1988	1989	2	30
8	PT3:PATIO	3,348 SF	75	60	1999	2000	2	50

Appraiser Notes

DEVELOPMENT AGREEMENT ENTERED INTO WITH THE CITY OF KEY WEST RECORDED IN OR2410-119/183 (CITY RES NO 09-059).

2007-01-12 - DAYS INN & WAFFLE HOUSE. - JEN

14-1 ORIGINAL OVERRIDE VALUE WAS \$ 6,181,645

6/14/01 2001 AUDIT PARCEL.

BUILDING 1 = WAFFLE HOUSE AND LOBBY, 2 = LEFT OF LOBBY, 3 = LEFT OF 2, 4 = LEFT AND PARALLEL OF 3 WITH POOL, 5 = MAINTENANCE BUILDING/BEHIND LOBBY

ADJ LAND FROM 3.36 TO 3.31 PER OR2250-2288

2003-01-30 (SKI) 134 MOTEL ROOMS

Building Permits

Bldg	Number	Date Issued	Date Completed	Amount	Description	Notes
	08-4092	11/04/2008		15,000	Commercial	REPAIR APROX. 30 DAMAGED SUPPORT CANTILEVERS, 10 LF OF SUPPORT COLUMN
	09-00003735	11/19/2009		2,000	Commercial	CHANGE SIGNS
	B931202	05/01/1993	12/01/1994	1,000	Commercial	5X5 CLOSET FOR W/HEATER
	M932656	09/01/1994	12/01/1994	6,000	Commercial	REPLACE 10 TON AC
	9800891	03/19/1998	11/29/2000	100,000	Commercial	REPAIR SPALLING CORROSION
	9800854	03/19/1998	11/29/2000	2,000	Commercial	DEMO RAILS 2ND FLOOR
	9800236	04/08/1998	11/29/2000	21,474	Commercial	DEMO INTERIOR RESTUARANT
	9801048	04/08/1998	11/29/2000	219,049	Commercial	REMODEL RESTUARANT
	9800891	04/27/1998	11/29/2000	1	Commercial	ALTERATIONS TO PERMIT

9801048	05/26/1998	11/29/2000	219,049	Commercial	REVISION OF PLANS
9802185	07/14/1998	11/29/2000	8,500	Commercial	ELECTRICAL
9802432	08/04/1998	11/29/2000	1,900	Commercial	FIRE SUPPRESSION SYSTEM
9802426	08/05/1998	11/29/2000	1,000	Commercial	SIGN
9804006	12/21/1998	11/29/2000	28,855	Commercial	ROOFING
9902791	09/03/1999	11/29/2000	22,500	Commercial	REMODEL 133 ROOMS
0000460	02/28/2000	11/29/2000	95,000	Commercial	ROOFING
9902791	03/30/2000	11/29/2000	235,000	Commercial	ELECTRICAL
0000283	02/07/2000	11/29/2000	10,250	Commercial	RESURFACE POOL
0102846	08/14/2001	11/15/2001	1,500	Commercial	REPAIR MANHOLE
03-1144	04/03/2003	12/31/2003	13,000	Commercial	NEW SIGN
05-2827	07/07/2005	08/07/2006	6,000	Commercial	CHANGE OUT 7.5TON A/C

Parcel Value History

Certified Roll Values.

[View Taxes for this Parcel.](#)

Roll Year	Total Bldg Value	Total Misc Improvement Value	Total Land Value	Total Just (Market) Value	Total Assessed Value	School Exempt Value	School Taxable Value
2012	7,337,543	125,298	1,023,819	9,244,369	9,244,369	0	9,244,369
2011	7,339,449	127,330	2,778,937	10,118,241	10,118,241	0	10,118,241
2010	7,699,601	129,361	3,806,500	10,703,258	10,703,258	0	10,703,258
2009	7,702,143	131,393	4,541,783	10,607,762	10,017,256	0	10,607,762
2008	7,702,143	133,772	4,541,783	9,106,597	9,106,597	0	9,106,597
2007	6,413,320	123,260	6,055,711	8,432,550	8,432,550	0	8,432,550
2006	6,340,552	99,121	3,659,040	5,594,012	5,594,012	0	5,594,012
2005	5,944,770	100,804	2,927,232	7,602,633	7,602,633	0	7,602,633
2004	6,080,572	102,437	2,378,376	7,229,155	7,229,155	0	7,229,155
2003	6,080,572	104,068	2,378,376	6,085,568	6,085,568	0	6,085,568
2002	6,080,572	105,752	2,378,376	5,795,779	5,795,779	0	5,795,779
2001	6,080,572	107,383	2,049,062	5,795,779	5,795,779	0	5,795,779
2000	4,835,391	56,541	1,612,800	5,730,000	5,730,000	0	5,730,000
1999	5,905,347	57,429	1,612,800	5,730,000	5,730,000	0	5,730,000
1998	3,946,097	58,298	1,612,800	5,730,000	5,730,000	0	5,730,000
1997	3,946,097	59,166	1,612,800	5,730,000	5,730,000	0	5,730,000
1996	3,587,362	60,127	1,612,800	5,730,000	5,730,000	0	5,730,000
1995	3,587,362	61,094	1,612,800	6,000,676	6,000,676	0	6,000,676
1994	3,587,362	62,035	1,612,800	5,939,546	5,939,546	0	5,939,546
1993	3,587,362	62,996	1,612,800	6,028,311	6,028,311	0	6,028,311
1992	3,587,362	61,854	1,612,800	6,028,311	6,028,311	0	6,028,311
1991	2,988,294	62,844	1,872,000	8,087,429	8,087,429	0	8,087,429
1990	2,988,427	63,852	1,998,000	8,087,429	8,087,429	0	8,087,429
1989	2,988,427	62,994	1,944,000	8,194,645	8,194,645	0	8,194,645

1988	2,246,632	47,027	1,152,000	5,979,484	5,979,484	0	5,979,484
1987	2,216,435	47,752	777,600	5,585,677	5,585,677	0	5,585,677
1986	2,214,287	48,498	777,600	4,793,573	4,793,573	0	4,793,573
1985	2,179,271	48,288	633,600	4,185,805	4,185,805	0	4,185,805
1984	1,966,992	50,559	633,600	3,850,918	3,850,918	0	3,850,918
1983	1,966,992	52,852	633,600	3,227,917	3,227,917	0	3,227,917
1982	1,916,005	55,122	633,600	2,604,727	2,604,727	0	2,604,727

Parcel Sales History

NOTE: Sales do not generally show up in our computer system until about two to three months after the date of sale. If a recent sale does not show up in this list, please allow more time for the sale record to be processed. Thank you for your patience and understanding.

Sale Date	Official Records Book/Page	Price	Instrument	Qualification
11/8/2006	2250 / 2288	25,000,000	WD	K
11/7/2006	2250 / 1892	6,670,600	WD	H
11/6/2006	2250 / 1887	6,670,600	WD	H
8/13/1999	1592 / 0961	6,250,100	WD	Q
1/15/1999	1592 / 0956	2,425,500	WD	P
1/1/1999	1592 / 0951	7,649,000	WD	Q
11/1/1991	1192 / 342	6,997,800	WD	C
12/1/1986	998 / 960	1	WD	M
8/1/1985	950 / 1278	5,500,000	WD	Q
8/1/1982	861 / 1856	4,400,000	WD	U
2/1/1974	711 / 689	225,000	00	Q

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Monroe County Monroe County Property Appraiser
 Scott P. Russell, CFA
 P.O. Box 1176 Key West, FL 33041-1176