



Development Agreement Review

Annual Review 2011

Summary:

According to Section 90-688 of the Key West Code of Ordinances (see Attachment A), and Chapter 163.3235, F.S (see Attachment B) Development Agreements are subject to staff review at least once every twelve (12) months, followed by a status report to the City Commission. The purpose of the status report is to provide a review for good faith compliance with the terms of the development agreement. The City Commission is granted the authority to revoke or modify the Development Agreement based on a finding of substantial competent evidence that there has been a failure to comply with the terms of the development agreement. Additionally, language in each Development Agreement requires annual reporting.

A City Clerk records search shows that the City has approved three Development Agreements in the last ten years as follows:

- 1) Key West Resort and Conference Center (Attachment D)
- 2) AIDS Help of Monroe County, Inc. (A.H.M.C.), Poinciana Royale (Attachment F)
- 3) Banana Bay Resort/ Fairfield Inn (Attachment H)

The Key West Resort and Conference Center and the A.H.M.C. Development Agreements were Development Agreements approved in 2009, and were subject to previous Development Agreement review. The Development Agreement for Banana Bay, approved in 2010, is being reviewed for the first time under this review. This report will serve to provide a brief overview of the status of the development agreements. The key approval dates and resolution numbers are as follows:

Development Agreement Review Table of Key Dates and Approvals					
Properties Under Review	City Commission Approval Date	City Commission Resolution	DCA Determination (Effective Date)	Annual Report Submission	City Commission Review
Key West Resort	3/04/2009	09-059	7/17/2009	10/11/2011	TBD
AHMC	5/06/2009	09-112	7/17/2009	11/11/11	TBD
Banana Bay Resort	4/07/2010	10-135	7/13/2010	11/1/2011	TBD

Development Status and Achievements Pursuant to Terms of Agreement:

The Code requires this report summarize the status of all activities to and achievements pursuant to each Development Agreement and that within fourteen (14) days of the anniversary date of the Effective Date of the Agreement a progress report shall be submitted by the developer or property owner. The following determination is based on timely reports submitted by the property owner/lease holder as they pertain to compliance with the City Commission approved Development Agreements. Each development is addressed below.

Key West Resort and Conference Center

An annual update was filed on October 11, 2011. No development has occurred on the site since the date of the Development Agreement approval. The site has continued to operate under its current conditions. Development must be completed within ten years from the effective date (see Attachment D). As of the date of this report, the developer is in compliance with the conditions of the approval.

AIDS HELP of Monroe County, Inc. (A.H.M.C.)

On November 11, 2011, the Planning Department received annual report notification from the developers of the A.H.M.C. for the approved project in the Poinciana Special Needs Housing Section. The project has been completed and Certificates of Occupancy have been issued for fifty units at 1341 McCarthy Lane (see Attachment E). The development was completed within the specified timeframes and conditions of approval pursuant to the requirements of the agreement (see Attachment F).

Banana Bay

On November 1, 2011 the Planning Department received annual report notification from the developers of Banana Bay (See Attachment G). No development has occurred since the date of the Development Agreement approval. The site has continued to operate under its current conditions. Development must be completed within five years from the effective date (see Attachment H). Consequently, the developer remains to be in compliance with the conditions of the approval.

Summary of Findings:

In summary, this review finds that there has been demonstrated good faith compliance with the terms of the Development Agreements.

Attachments:

- Attachment A: Code of Ordinances Section 90-688, Development Agreements
- Attachment B: Florida Statute 163.3235, Development Agreements
- Attachment C: Annual Report, Key West Resort and Conference Center

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- Attachment D: Development Agreement, Key West Resort and Conference Center
- Attachment E: Annual Report, AIDS Help of Monroe County (A.H.M.C.)
- Attachment F: Development Agreement, AIDS Help of Monroe County (A.H.M.C.)
- Attachment G: Annual Report, Banana Bay/Fairfield Inn
- Attachment H: Development Agreement, Banana Bay/Fairfield Inn

Attachment A

City of Key West Code of Ordinances, 2010

Section 90-688. Periodic Review

- (a) Pursuant to F.S. § 163.3235, the city shall review land subject to a development agreement at least once every 12 months. Such review shall determine if there has been demonstrated good faith compliance with the terms of the development agreement. The city administrative official shall present the city commission with a report on the status of all activities and achievements pursuant to the development agreement.

- (b) Prior to the city's review of the status of a development agreement, the developer or property owner shall, within 14 days of the city commission's review of the development agreement, submit to the city a progress report indicating all activities and achievements since the execution of the development agreement and, if applicable, since the previous periodic report.

- (c) If the city no longer has a record of the present property owner and/or developer, any requests or notices required by this subpart B shall be made to the property owner of record as shown on the records of the county property appraiser.

(Ord. No. 97-10, § 1(1-3.13), 7-3-1997)

Attachment B

Florida State Statute

163.3235 - Periodic Review of a Development Agreement.

A local government shall review land subject to a development agreement at least once every 12 months to determine if there has been demonstrated good faith compliance with the terms of the development agreement. For each annual review conducted during years 6 through 10 of a development agreement, the review shall be incorporated into a written report which shall be submitted to the parties to the agreement and the state land planning agency. The state land planning agency shall adopt rules regarding the contents of the report, provided that the report shall be limited to the information sufficient to determine the extent to which the parties are proceeding in good faith to comply with the terms of the development agreement. If the local government finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of the development agreement, the agreement may be revoked or modified by the local government.

History — s. 27, ch. 86-191; s. 12, ch. 92-129.

Attachment C



Spottswood Management, Inc.

506 Fleming Street
Key West, FL 33040

(305) 294-6100

Fax (305) 294-6122

Via USPS and E-Mail: ccowart@keywestcity.com



October 11, 2011

Carlene Cowart
Development Review Administrator
Planning Department
City of Key West
3140 Flagler Ave
Key West, FL 33040

**Re: Development Agreement for Key West Resort and Conference Center
3800, 3820, 3840, 3850, and 3852 North Roosevelt Boulevard
and dwelling units at 1185 20th Street
Key West, Florida, 33040**

Carlene:

This letter serves as the second annual progress report for the referenced project. No reportable development activity has occurred under the agreement since the date of its execution on April 13, 2009.

Sincerely,

Robert A. Spottswood

cc: Kerri Barsh, Esq., Greenberg Traurig, P.A.
Thomas E. Pope, P.A.
Donald Craig, AICP, Planning Director
Nicole Malo, Planner

SPOTTSWOOD
COMMUNITY DEVELOPMENT

Spottswood Companies, Inc.
905 Fleming Street
Key West, FL 33040
305-291-6100
Fax: 305-291-6122
spottswood.com



Certified Mail

April 26, 2010

Amy Kimball-Murley, AICP
Planning Director
City of Key West
604 Simonton Street
Key West, FL 33040

**Re: Development Agreement for Key West Resort and Conference Center
3800, 3820, 3840, 3850, and 3852 North Roosevelt Boulevard
and dwelling units at 1185 20th Street
Key West, Florida, 33040**

Dear Amy:

This letter serves as the first annual progress report for the referenced project. No reportable development activity has occurred under the agreement since the date of its execution on April 13, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Spottswood".

Robert A. Spottswood

cc: Sherry Spiers, Esq., Greenberg Traurig, P.A.
Thomas A. Pope, P.A.

Attachment D

Carlene Cowart

From: Carlene Cowart
Sent: Wednesday, September 29, 2010 4:54 PM
To: Nicole Malo
Subject: FW: DCA Determinations

From: Katina.Jackson@dca.state.fl.us [mailto:Katina.Jackson@dca.state.fl.us]
Sent: Wednesday, September 29, 2010 4:30 PM
To: Carlene Cowart
Cc: Shane.Laakso@dca.state.fl.us
Subject: Re: FW: DCA Determinations

Resolutions 2009-059> wavier letter dated and sent 07/17/09
Resolutions 2009-112>wavier letter dated and sent 07/17/09

The Department did not appeal the above development orders as issued.

Thanks

Katina Jackson
Administrative Assistant I
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100
Phone (850) 922-1900
Fax (850) 488-3309

RESOLUTION NO. 09-059

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AUTHORIZING EXECUTION OF THE ATTACHED DEVELOPMENT AGREEMENT BETWEEN THE CITY AND JRC KEY WEST HOTEL, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY; RFA KEY WEST LLC, AN ILLINOIS LIMITED LIABILITY COMPANY; RFA KEY WEST II, LLC, A FLORIDA LIMITED LIABILITY COMPANY; AVA KEY WEST, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY; JL KEY WEST LLC, AN ILLINOIS LIMITED LIABILITY COMPANY; JL KEY WEST II, LLC, A FLORIDA LIMITED LIABILITY COMPANY; SH 6, INC., A FLORIDA CORPORATION; SH 8 LLC, A FLORIDA LIMITED LIABILITY COMPANY; JLW KEY WEST 1, LLC, A FLORIDA LIMITED LIABILITY COMPANY; AND JLW KEY WEST 2, LLC, A FLORIDA LIMITED LIABILITY COMPANY; PROVIDING FOR AN EFFECTIVE DATE

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached development agreement is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the

Doc# 1739689 04/27/2009 12:16PM
Filed & Recorded in Official Records of
MONROE COUNTY DANNY L. KOLHAGE

Doc# 1739689
Bk# 2418 Pg# 119

signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 3RD day of March, 2009.


Authenticated by the presiding officer and Clerk of the Commission on March 4, 2009.

Filed with the Clerk March 4, 2009.



MORGAN MCPHERSON, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK

Doc# 1739889
BKN 2410 Pg# 120

Prepared by and, after recording,
return to:

Sherry A. Spiers, Esq.
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301
Telephone: (850) 222-6891

Doc# 1739689
Bk# 2410 Pg# 121

Parcel ID Numbers 00064950-000000,
00065550-000000, 00065530-000000,
00065540-000000, 00065060-000000,
and 00064949-000000.

**DEVELOPMENT AGREEMENT FOR
THE KEY WEST RESORT AND CONFERENCE CENTER**

THIS DEVELOPMENT AGREEMENT is entered into by and between JRC Key West Hotel, LLC, an Illinois limited liability company; RFA Key West LLC, an Illinois limited liability company; RFA Key West II, LLC, a Florida limited liability company; AVA Key West, LLC, an Illinois limited liability company; JL Key West LLC, an Illinois limited liability company; JL Key West II, LLC, a Florida limited liability company; SH 6, Inc., a Florida corporation; SH 8 LLC, a Florida limited liability company; JLW Key West 1, LLC, a Florida limited liability company; and JLW Key West 2, LLC, a Florida limited liability company (herein collectively referred to as the "Owner"), and the CITY OF KEY WEST, a Florida municipal corporation (herein the "City") (collectively the "Parties"), pursuant to Sections 90-676 through 90-692 of the City Code, and the Florida Local Government Development

Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2007), and is binding on the "Effective Date" set forth herein.

Doc# 1739689
Bk# 2410 Pg# 122

WITNESSETH:

WHEREAS, the Owner is the owner of six (6) contiguous properties located at 3800, 3820, 3824, 3840, 3850 and 3852 North Roosevelt Boulevard, and dwelling units at 1185 20th Street in the City of Key West, comprising approximately 17 acres, more particularly described in the legal descriptions attached hereto as Composite Exhibit "A" and incorporated herein (the "Property"); and

WHEREAS, the Property is designated General Commercial under the City's Comprehensive Plan and land development regulations and is developed with the following uses: the Days Inn (134 transient units), the Holiday Inn Key Wester (147 transient units), the Comfort Inn (100 transient units), the Radisson Inn (145 transient units) (cumulative total 526 keys), and also includes the Conch Tour Train and Visitor Center, the Waffle House, In Kahoots Restaurant, the former El Maison de Pepe Restaurant, two (2) market rate residential units, and sixteen (16) studio rental dwelling units; and

WHEREAS, the Owner proposes to redevelop the Property with a 525-key facility which may include up to 33 two-bedroom two-bath fractional ownership units, and up to 21 three-bedroom three bath residential units with one-bedroom/one bath lockouts (each with two transient licenses, total of 42 keys), a spa, swimming pools, hotel restaurant and bar, a conference center with 20,500 square feet of meeting space, 21,000 square feet of retail space, a

themed restaurant and bar with 7,000 square feet of consumption space (250 seats), a transit center, and fifty (50) affordable work force housing units (the "Redevelopment Plan"); and

WHEREAS, on March 7, 2007, the City Commission, in its capacity as the Board of Adjustment, approved Resolution No. 07-083 granting a variance to the off-street parking regulations in the City Code for the redevelopment of the Property described in the Redevelopment Plan; and

WHEREAS, on March 15, 2007, the Planning Board adopted and approved Resolution No. 2007-006 approving a Major Development Plan and Conditional Use application for the redevelopment of the Property described in the Redevelopment Plan; and

WHEREAS, on May 1, 2007, the City Commission approved Resolution No. 07-164 granting Major Development Plan and Conditional Use approval for the redevelopment of the Property described in the Redevelopment Plan; and

WHEREAS, the Owner and the City have concluded that it is appropriate to enter into this Development Agreement for redevelopment of the Property instead of extending the Major Development Plan, Conditional Use and variance approvals for the Redevelopment Plan; and

WHEREAS, pursuant to Sections 90-678 and 90-679 of the City Code, and after consultation with the City Planning Department, the Owner requested that the City Commission grant preliminary approval to enter into this Development Agreement in lieu of extending the previously-approved Major Development Plan, Conditional Use and variance approvals for the Key West Resort project; and

WHEREAS, at its meeting on May 6, 2008, the City Commission adopted Resolution No. 08-132 authorizing the Owner to move forward with a development agreement for redevelopment of the Property; and

WHEREAS, the City has held public hearings to accept and encourage public input with respect to this Development Agreement, and has considered such public input; and

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

WHEREAS, the City Planning Board held an advertised public hearing on January 15, 2009, and issued a recommendation to the City Council; and

WHEREAS, the City Council held an advertised public hearing on March 3, 2009, to consider the Development Agreement, and received and considered the comments and recommendations of the City staff, the Planning Board, and members of the public; and

WHEREAS, the City has determined that the Redevelopment Plan is consistent with the City's Comprehensive Plan and land development regulations and is compatible with surrounding land uses; and

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

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

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

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

1. "Affordable work force housing" means housing as defined in Sections 122-1465 through 122-1467 of the City Code.

2. "Building permit allocation" means a residential permit allocation under Division 3 of Article X of the City Code.

3. "City Code" means the Code of Ordinances of the City of Key West in effect on the Effective Date of this Development Agreement.

4. "Comprehensive Plan" means the City's Comprehensive Plan in effect on the Effective Date of this Development Agreement.

5. "Development", "Redevelopment" or "Redevelopment Plan" shall refer to the redevelopment of the Property for the uses, densities and intensities permitted by this Development Agreement, subject to the conditions, obligations, restrictions and terms contained herein.

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

7. "ESFU" is an abbreviation for Equivalent Single Family Unit factor as defined in Future Land Use Element Policy 1-3.12.3 in the City's Comprehensive Plan and Section 108.1057 of the City Code.

8. "Fractional ownership unit" or "timeshare" means a transient unit which is an accommodation of a timeshare plan, as defined in Section 721.05, Florida Statutes, and is divided into use periods of less than one year.

9. "Lockout" means a bedroom/bath combination in a unit that can be separately locked and keyed from the exterior of the premises or from a common hallway, foyer, or other common area to form a separate transient unit that can be held out to the public as distinct sleeping quarters for overnight lodging or for lodging for a longer period of time.

10. "Property" shall refer to the six (6) adjacent parcels described in Composite Exhibit "A" that are the subjects of this Development Agreement.

11. "Public facilities" means those facilities identified in Section 163.3221, Florida Statutes (2007).

C. TERMS OF AGREEMENT.

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

The legal description of the Property subject to this Development Agreement is attached hereto as Composite Exhibit "A" and incorporated herein by reference. The Owners of the Property as of the date of execution of this Development Agreement are JLW Key West 1, LLC, a Florida

limited liability company; JLW Key West 2, LLC, a Florida limited liability company; SH 6, Inc., a Florida corporation; SH 8 LLC, a Florida limited liability company; JRC Key West Hotel, LLC, an Illinois limited liability company; AVA Key West, LLC, an Illinois limited liability company; JL Key West LLC, an Illinois limited liability company; J L Key West II, LLC, a Florida limited liability company; RFA Key West LLC, an Illinois limited liability company; and RFA Key West II, LLC, a Florida limited liability company. There are no other legal or equitable owners of the Property known to the parties to this Development Agreement.

2. **Unity of Title, Master Declaration.** A unity of title, master declaration, or other appropriate instrument for the six (6) parcels comprising the Property shall be executed upon issuance of building permits for the redevelopment authorized by this Development Agreement. The purpose of the unity of title, master declaration, or other appropriate instrument is to aggregate the parcels so they are considered to be one development parcel for purposes of the Redevelopment Plan and this Agreement. However, the unity of title, master declaration or other appropriate instrument shall not preclude the sale of components of the project, including timeshares and condominium sales, to other owners. The unity of title, master declaration or other appropriate instrument shall be in a form acceptable to the City Attorney and shall be recorded by the Owner in the public records of Monroe County, Florida. The Owner shall provide a copy of the unity of title or other appropriate instrument to the City Planning Department for review prior to recordation. The Owner shall provide a copy of the recorded unity of title, master declaration, or other appropriate instrument showing the book and page where recorded to the City Attorney and the City Planning Department upon recordation.

3. **Duration of Agreement; Renewal.** This Development Agreement shall remain in effect for a period of ten (10) years, commencing on the Effective Date set forth below. This Development Agreement may be renewed or extended as provided herein.

4. **Existing Development.** The Property consists of the following development located in the City of Key West at the following physical addresses:

Days Inn Property	3852 North Roosevelt Boulevard
Holiday Inn Key Wester Property	3850 North Roosevelt Boulevard
Conch Train Property	3840 North Roosevelt Boulevard
Comfort Inn Property	3824 North Roosevelt Boulevard
Radisson Property	3820 North Roosevelt Boulevard
Old Town Property	3800 North Roosevelt Boulevard
16 Studio Rental Units	1185 20 th Street (affordable)

The existing development consists of the Days Inn (134 transient units, each 0.58 ESFU), the Holiday Inn Key Wester (147 transient units, each 0.58 ESFU), the Comfort Inn (100 transient units, each 0.58 ESFU), the Radisson Inn (145 transient units, each 0.58 ESFU) (cumulative total 526 keys and 305 transient ESFU), and also includes the Conch Tour Train and Visitor Center, the Waffle House, In Kahoots Restaurant, the former El Maison de Pepe Restaurant, two (2) market rate residential units (total 2.0 ESFU), and sixteen (16) studio affordable rental dwelling units less than 600 s.f. in size (each 0.55 ESFU, total 8.85 ESFU).

5. **Redevelopment Plan.**

a. **Uses, Densities and Intensities.** The Property may be redeveloped with the following uses at the densities and intensities identified below:

- 525 transient units that may include up to (and including) 33 two-bedroom two-bath fractional ownership units, and up to (and including) 21 three-bedroom three bath residential units with one-bedroom/one bath lockouts (each three-bedroom unit holding two transient licenses, total of 42 keys,

0.58 ESFU per key). With lockouts, each of the 21 residential units will consist of one two-bedroom two-bath unit, and one one-bedroom one-bath lockout unit, each with a transient license and each of which may be rented as one transient unit.

- The 21 residential units may be used as a single transient unit or as two transient units, or may be occupied by their owners as permanent residential dwelling units,
- spa,
- swimming pools,
- hotel restaurant and bar (8,615 square feet of consumption space),
- 50 affordable work force housing units (32 units 600 square feet or smaller, each 0.55 ESFU, and 18 units larger than 600 s.f., each 1.0 ESFU, total 35.6 ESFU), deed restricted as affordable work force housing as provided below,
- a conference center with 20,500 square feet of meeting space, together with all customary ancillary uses required for the operation of the redevelopment, including back of house, laundry, kitchens, and offices,
- 21,000 square feet of retail space,
- a themed restaurant and bar with 7,000 square feet of consumption space (250 seats),
- a transit center, and
- 889 parking spaces (816 existing spaces, 89 bicycle parking spaces, 25 scooter spaces, and valet parking as described in the parking variance granted for the Property under City Resolution No. 07-083, attached as Exhibit "C").

b. **Screening from Adjacent Residential Uses.** The redevelopment authorized by this Development Agreement shall be screened from adjacent residential areas. The Owner shall install a wall a minimum of six (6) feet in height between the Property and

adjacent residential areas, as depicted on the Conceptual Site Plan, and shall provide a heavily vegetated buffer adjacent to the fence, consistent with the buffer requirements in the City Code.

c. **Building Permit Allocations.** The Redevelopment Plan includes the redevelopment of 525 existing transient units, two market rate residential units, and 16 existing affordable work force housing units that are not subject to the requirement to obtain building permit allocations pursuant to City Comprehensive Plan Policy 1-3.12.1 and City Code Section 108-991. The City shall provide the Owner with the 19.6 affordable residential building permit allocations required for development of the additional affordable work force housing units included in the Redevelopment Plan at the time the City issues building permits for the affordable work force housing units.

6. **Conceptual Site Plan; Minor Revisions.**

a. The Redevelopment Plan approved by this Development Agreement is depicted on the Conceptual Site Plan for the Key West Resort dated April 1, 2007, prepared by Nichols, Brosch, Wurst, Wolfe & Associates, Inc., attached hereto as Exhibit "B" and incorporated herein. The Conceptual Site Plan is hereby approved by the City Commission, and all subsequent site plans, site plan approvals and building permits shall substantially comply with the Conceptual Site Plan; provided, however, that the final site plan may deviate from the Conceptual Site Plan (1) to accommodate refinements to the Redevelopment Plan made by the Owner, including minor shifts in the locations of structures, roadways, pathways, and swimming pool configuration; (2) to change the type and number of transient residential dwelling units, so long as the maximum density set forth in this Agreement is not exceeded; or (3) to accommodate

modifications that are necessary to meet regulatory requirements of the Florida Department of Transportation or other regulatory entity.

b. The Planning Director may approve minor modifications to the Conceptual Site Plan consisting of a reduction in building size, reduction in impervious area, expansion of landscaping, revisions to enhance storm water management, landscaping, handicapped accessibility or utilities, and similar modifications as authorized by City Code Section 108-91.C.1. and D. Other modifications to the approved Conceptual Site Plan, including modifications to ensure consistency with Florida Department of Transportation (FDOT) plans to improve the U.S. 1 / North Roosevelt Boulevard intersection as provided in Section 9 of this Agreement, shall be approved as either minor or major modifications pursuant to City Code Section 108-91.C.2-4, or during site plan review.

7. **Phasing.** The Redevelopment Plan may be developed in one or more phases within the timeframes established in this Agreement.

8. **Affordable Work Force Housing; Timing of Development; Deed Restriction.** As part of the Redevelopment Plan, the Owner shall develop fifty (50) affordable work force housing units, 32 of which will be 600 square feet or less in size and 18 of which may be greater than 600 square feet in size, subject to the following conditions:

a. Certificates of occupancy for the affordable work force housing units shall be issued prior to or concurrent with the issuance of a certificate of occupancy for any other part of the Redevelopment.

b. The Owner shall place a deed restriction on the affordable work force housing units, in a form acceptable to the City Attorney, which shall restrict the use of the units to affordable work force housing for a period of fifty (50) years. The City may extend the period of the deed restriction for an additional fifty (50) years pursuant to City Code Section 122.1467(d). The effective date of the restrictive covenant or covenants shall be the date the certificate of occupancy is issued for the affordable work force housing unit(s). The restrictive covenant(s) shall be recorded in the public records of Monroe County, Florida. The Owner shall provide a copy of each recorded restrictive covenant showing the book and page where recorded to the City Planning Department as soon after recordation as is reasonably practical. A restrictive covenant recorded pursuant to this Development Agreement shall supersede or replace any then-existing restrictive covenant for the 16 existing affordable work force housing units on the Property, so that those units or replacement units are subject to only one restriction to use as affordable work force housing.

c. Affordable work force housing may include low income, median income, moderate income and middle income housing. The number of affordable work force housing units devoted to each qualifying income level shall comply with City Code Section 122.1467 and shall be determined at the time of issuance of certificates of occupancy based on project employee needs at the time the affordable work force housing is available for occupancy.

d. The Owner shall provide the City a phasing schedule and plan for the displacement or relocation of residents of the 16 existing work force housing units on the Property. The phasing schedule and plan shall consist of or include reasonable notice to tenants

to vacate the units prior to redevelopment, the Owner's reasonable best efforts to assist tenants in locating other affordable housing, and providing the existing tenants with a first option to rent the new affordable work force housing units constructed as part of the Redevelopment Plan if their whereabouts are known or can be readily ascertained.

9. Traffic Flow; Coordination Regarding Transit Facility.

a. All entrances and exits to the Property from and to North Roosevelt Boulevard shall be completed prior to the issuance of certificates of occupancy for any structure. The service road access locations at both ends of the Property shall have curb cuts that permit both ingress and egress. The main driveway in front of the Conference Center shall allow right and left turning movements. All other curb cuts shall be one way with all exits to be right turn only onto North Roosevelt Boulevard.

b. The parties recognize that FDOT has plans to resurface the intersection of U.S. 1 and North Roosevelt Boulevard in the City. The Owner shall coordinate the traffic flow for the project with FDOT to ensure that, at the time the Owner seeks a permit for redevelopment of the Property, the proposed transit facility and main entrance into the Project are consistent with the FDOT U.S. 1 / North Roosevelt Boulevard intersection improvement plan.

c. The Owner shall coordinate with City Staff during the process of obtaining FDOT's approval of the traffic related improvements described above.

d. The Owner and the City shall enter into a collaborative dialog to explore the feasibility of a public-private partnership for use of all or part of the transit facility for public as well as private use. This provision is not a condition precedent to the Owner developing the

Property under the Redevelopment Plan but reflects the parties' intent to voluntarily explore options that are financially feasible to the Owner to maximize the public and private benefits of the Redevelopment Plan.

10. Form of Ownership of Property; Prohibition on Use of Hotel and Timeshare Units as Permanent Residences.

a. Condominium, cooperative, timeshare, or similar form of ownership of all or a portion of the Property, and the submission of the Property to the condominium, cooperative, timeshare or similar form of ownership (and recordation of a corresponding declaration of condominium or similar instrument), or the sale of individual transient residential dwelling units, shall not be prohibited and is consistent with terms and provisions of the City's Comprehensive Plan, City Code, and this Development Agreement.

b. The 21 residential units allowed on the Property may each be used as one or two transient units (each residential unit having a total 1.16 ESFU) or may be used by their owners for permanent occupancy. The hotel and timeshare transient units shall not be used as permanent residences. Timeshare contracts, declarations of condominium, or other similar documents related to the hotel and timeshare units shall include a provision prohibiting the use of such units as permanent residences unless a change of use is authorized by the City Commission. A copy of the timeshare contract, declaration of condominium, or other similar document shall be provided to the Planning Department for review of this use restriction prior to filing or recording.

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

a. **Fire Safety.** The Redevelopment Plan shall include a minimum of five (5) fire hydrants and five (5) fire wells. In addition, all units on the Property (transient and non-transient) shall include sprinklers.

b. **Timing of permit applications.** Prior to submitting a building permit application to the City, the Owner shall secure all necessary permits from state, regional and federal agencies, including but not limited to the South Florida Water Management District and the Florida Department of Transportation; and shall also secure any necessary permits or authorizations from the City of Key West Utilities.

c. **Fair Housing Requirements.** All units (non-transient and transient) shall comply with applicable state and federal fair housing act and ADA requirements for accessibility.

d. **Signage.** A Signage Plan will be submitted to the City Planning Department for approval prior to the issuance of building permits for the Redevelopment.

e. **Valet Parking.** Valet parking for the hotel shall be provided throughout the life of the Redevelopment.

f. **Building Heights.** Building heights shall not exceed 40 feet as allowed in the General Commercial zoning regulations applicable to the Property.

g. **Site Design.** The redevelopment of the Property shall be consistent with all bulk and site design requirements in the City Code, including but not limited to floor area ratios, open space, setbacks and buffering, lighting, landscaping, and stormwater management.

h. **Impact Fees.** The developer shall pay impact fees according to the City's impact fee ordinance applicable to all development in the City of Key West. However, the Owner shall not seek a reduction in impact fees under Ordinance No. 09-03 if it pulls permits within 18 months from the effective date of Ordinance No. 09-03.

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

j. **LEED Certification.** The Owner shall use its best efforts to seek the highest Leadership in Energy and Environmental Design ("LEED") certification possible for the Key West Resort Project.

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

13. **Public Facilities.** The public facilities that are required and that will service the Redevelopment authorized by this Development Agreement, who shall provide the facilities, the date new facilities, if any, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of development are as follows:

a. Domestic potable water is provided by Florida Keys Aqueduct Authority.

b. Electric service is provided by Keys Energy.

c. Solid waste service is provided by City of Key West Waste Management.

d. Wastewater treatment shall be provided by City of Key West.

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

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

g. Schools: Adequate school facilities are anticipated to serve any students who may reside in the 34 additional affordable work force housing units developed under the Redevelopment Plan.

h. Recreational facilities: the Redevelopment Plan provides for on-site amenities for owners and guests of the Resort; adequate City facilities exist to serve the residents of the 34 additional affordable work force housing units to be developed under the Redevelopment Plan.

14. All Permits Approved or Needed.

a. The City granted the Owner Major Development Plan and Conditional Use approval by City Commission Resolution No. 07-164 dated March 15, 2007, for the redevelopment approved by this Agreement, which said approval is attached hereto as Exhibit "D". The only City development approvals needed for the redevelopment authorized by this Agreement are building permits.

b. No further review or discretionary review will be required by the City, it being agreed that the redevelopment, as depicted on the approved Conceptual Site Plan attached hereto, requires only the above development approvals so long as the final site plan substantially complies with the Conceptual Site Plan approved under this Development Agreement.

c. The following regional, state and federal permits are needed for the development authorized by this Development Agreement.

1. Florida Department of Transportation permits for curb cuts on North Roosevelt Boulevard.

2. Storm water permit from the South Florida Water Management District.

3. Potentially an Army Corps of Engineers permit for the relocation of the City's storm water outflow facilities within the boundaries of the Property.

d. Nothing in this Development Agreement shall be deemed to obviate the Owner's compliance with terms and provisions of each required approval.

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

16. Redevelopment to Comply with Permits and City Comprehensive Plan and Code Provisions. The Redevelopment described in and authorized by this Development Agreement shall be developed in accordance with all required permits, and in accordance with

all applicable provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Agreement. No certificate of occupancy for an individual building shall be issued until all plans for that building are approved by the City and the Owner has complied with all conditions in permits issued by the City and other regulatory entities for that building.

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

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

19. Laws Governing.

a. For the duration of this Development Agreement, all approved redevelopment of the Property shall comply with and be controlled by this Development Agreement and provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Agreement. The parties do not anticipate that the City will apply subsequently-adopted laws and policies to the Property.

b. Pursuant to Section 163.3233, Florida Statutes (2007), the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that: (a) the new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent redevelopment of the land uses, intensities, or

densities set forth in this Development Agreement; (b) the new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they shall apply to the redevelopment that is subject to this Development Agreement; (c) the City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Development Agreement; or (d) the Development Agreement is based on substantially inaccurate information supplied by the Owner. However, nothing in this Development Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

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

20. Amendment, Renewal, and Termination. This Development Agreement may be amended, renewed, or terminated as follows:

a. As provided in Section 163.3237, Florida Statutes (2007), this Development Agreement may be amended by mutual consent of the parties or their successors in interest. Amendment under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.

b. As provided in Section 163.3229, Florida Statutes (2007), this Development Agreement may be renewed by the mutual consent of the parties, subject to the

public hearing requirements in Section 163.3225, Florida Statutes (2007): the City shall conduct at least two (2) public hearings, one of which may be held by the local planning agency at the option of the City. Notice of intent to consider renewal of the Development Agreement shall be advertised approximately seven (7) days before each public hearing in a newspaper of general circulation and readership in the City of Key West, Florida, and shall be mailed to all affected property owners before the first public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing. The notice shall specify the location of the land subject to the Development Agreement, the development uses on the Property, the population densities, and the building intensities and height and shall specify a place where a copy of the Development Agreement can be obtained.

c. This Development Agreement may be terminated by the Owner or its successor(s) in interest following a breach of this Development Agreement upon written notice to the City as provided in this Agreement.

d. Pursuant to Section 163.3235, Florida Statutes (2007), this Development Agreement may be revoked by the City if the City finds, on the basis of competent substantial evidence, that there has been a failure to comply with the terms of this Development Agreement.

e. This Development Agreement may be terminated by mutual consent of the parties.

21. Breach of Agreement and Cure Provisions.

a. If the City concludes that there has been a material breach in this Development Agreement, prior to revoking this Agreement, the City shall serve written notice on

the Owner identifying the term or condition the City contends has been materially breached and providing the Owner with sixty (60) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Development Agreement. Each of the following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the Owner, shall be considered a material breach of this Development Agreement: (1) failure to comply with the provisions of this Development Agreement; and (2) failure to comply with terms and conditions of permits issued by the City or other regulatory entity for the redevelopment authorized by this Development Agreement.

b. If the Owner concludes that there has been a material breach in the terms and conditions of this Development Agreement, the Owner shall serve written notice on the City identifying the term or condition the Owner contends has been materially breached and providing the City with thirty (30) days from the date of receipt of the notice to cure the breach. The following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the City, shall be considered a material breach of this Agreement: failure to comply with the provisions of this Development Agreement; failure to timely process any application for site plan approval or other development approval required to be issued by the City for the redevelopment authorized by this Development Agreement.

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

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

22. Notices. All notices, demands, requests, or replies provided for or permitted by this Development Agreement, including notification of a change of address, shall be in writing to the addressees identified below, and may be delivered by any one of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; or (c) by deposit with an overnight express delivery service with a signed receipt required. Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

TO THE OWNER:

Robert Spottswood
Spottswood Hotels, Inc.
50 Fleming Street
Key West, FL 33040
Telephone: (305) 294-4840

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

Sherry A. Spiers, Esq.
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301
Telephone: (850) 222-6891
Fax: (850) 681-0207

TO THE CITY:

City Planning Director
604 Simonton Street
Key West, FL 33040
Telephone: (305) 809-3720
Fax: (305) 809-3739

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

City Manager
525 Angela Street
Key West, FL 33041-1409
Telephone: (305) 809-3888
Fax: (305) 809-3886

23. **Enforcement.** In accordance with Section 163.3243, Florida Statutes (2007), any party to this Development Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes (2007), or the state land planning agency (currently the Department of Community Affairs) may file an action for injunctive relief in the circuit court of Monroe County, Florida, to enforce the terms of this Development Agreement or to challenge the compliance of this Development Agreement with the provisions of Sections 163.3220-163.3243, Florida Statutes (2007).

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

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

26. **Assignment.** This Agreement may be assigned without the written consent of the parties.

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

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

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

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

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

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

33. **Entirety of Agreement; Incorporation of Prior Development Approvals.** This Development Agreement incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, or understandings regarding the matters contained herein. The Parking Variance attached as Exhibit "C" and the Major Development Plan and Conditional Use Approval attached as Exhibit "D" are incorporated herein. The parties agree that there are no commitments, agreements, understandings, or development orders concerning the subjects

covered by this Development Agreement that are not contained in or incorporated into this document and, accordingly, no deviation from the terms hereof shall be predicated upon any prior representations, agreements or approvals, whether written or oral. This Development Agreement contains the entire and exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing signed by the parties.

34. Recording; Effective Date. The Owner shall record this Development Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the date of this Development Agreement. A copy of the recorded Development Agreement showing the date, page and book where recorded shall be submitted to the City and to the state land planning agency by hand delivery, registered or certified United States mail, or by a delivery service that provides a signed receipt showing the date of delivery, within fourteen (14) days after the Development Agreement is recorded. This Development Agreement shall become effective thirty (30) days after the date it is recorded in the public records of Monroe County, Florida, and received by the state land planning agency.

35. Date of Agreement. The date of this Development Agreement is the date the last party signs and acknowledges this Development Agreement.

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

[Remainder of page intentionally left blank]

JRC KEY WEST HOTEL LLC,
an Illinois limited liability company

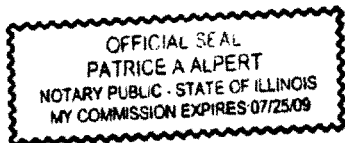
By: RFA Management Company LLC, a
Delaware limited liability company, its manager

March 12, 2009

By: [Signature]
Edward W. Ross, its Manager

STATE OF Illinois
COUNTY OF Cook

The foregoing instrument was acknowledged before me on this 12th day of
March, 2009, by Edward W. Ross who is personally known to me or who produced
as identification, and who did/did not take
an oath.



[Signature]
Notary Public
Name PATRICE A. ALPERT
(typed, printed or stamped)
My commission expires: 7-25-09

RFA KEY WEST LLC,
an Illinois limited liability company

By: RFA Investors, LP, a Delaware limited
partnership, its sole member

By: RFA Management Company LLC, a
Delaware limited liability company, its general
partner

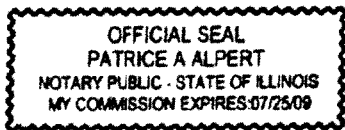
March 12, 2009

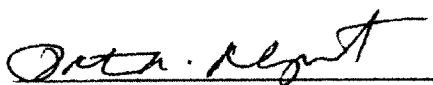
By:


Edward W. Ross, its Manager

STATE OF Illinois
COUNTY OF Cook

The foregoing instrument was acknowledged before me on this 12th day of
March, 2009, by Edward W. Ross who is personally known to me or who produced
_____ as identification, and who did/did not take
an oath.




Notary Public

Name PATRICE A. ALPERT

(typed, printed or stamped)

My commission expires 7-25-09

RFA KEY WEST II LLC,
a Florida limited liability company

By: RFA Key West II Manager LLC,
a Florida limited liability company, its Manager

By: RFA Investors, LP, a Delaware limited
partnership, Manager

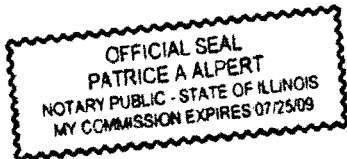
By: RFA Management Company LLC, a Delaware
limited liability company, its General Partner

March 12, 2009

By: [Signature]
Edward W. Ross, its Manager

STATE OF Illinois
COUNTY OF Cook

The foregoing instrument was acknowledged before me on this 12th day of
March, 2009, by Edward W. Ross who is personally known to me or who produced
_____ as identification, and who did/did not take
an oath.



[Signature]
Notary Public
Name PATRICE A. ALPERT
(typed, printed or stamped)
My commission expires: 7-25-09

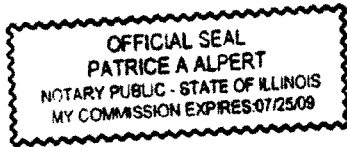
AVA KEY WEST LLC,
an Illinois limited liability company

March 12, 2009

By: *[Signature]*
Andrew V. Agostini, its Sole Member

STATE OF Illinois
COUNTY OF Cook

The foregoing instrument was acknowledged before me on this 12th day of March, 2009, by Andrew V. Agostini who is personally known to me or who produced as identification, and who did/did not take an oath.



Patrice Alpert
Notary Public
Name PATRICE A. ALPERT
(typed, printed or stamped)
My commission expires: 7-25-09

JL KEY WEST LLC,
an Illinois limited liability company

March 16, 2009

By: _____

J. Luzuriaga is Sole Member

STATE OF S. Carolina
COUNTY OF Charleston

The foregoing instrument was acknowledged before me on this 16th day of March, 2009, by J. Luzuriaga who is personally known to me or who produced _____ as identification, and who did/did not take an oath.

Brianne M. Halpin
Notary Public

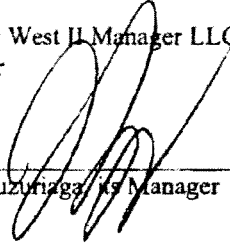
Name Brianne M. Halpin
(typed, printed or stamped)

My commission expires: 8/10/2016

JL Key West II, LLC,
a Florida limited liability company

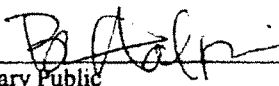
By: JL Key West II Manager LLC,
its Manager

March 16, 2009

By: 
J. Luzuriaga, its Manager

STATE OF South Carolina
COUNTY OF Charleston

The foregoing instrument was acknowledged before me on this 16th day of March, 2009, by J. Luzuriaga who is personally known to me or who produced _____ as identification, and who did/did not take an oath.


Notary Public
Name Bhianne M. Halpin
(typed, printed or stamped)
My commission expires: 8/10/2016

SH 6, INC.,
a Florida corporation

March 6, 8, 2009

By:

[Signature]
Robert A. Spottswood, its President

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me on this 6th day of March, 2009, by Robert A. Spottswood who is personally known to me or who produced as identification, and who did/did not take an oath.

[Signature]
Notary Public, State of Florida

Name: MARtha A. GALBRAITH

(typed, printed or stamped)

My commission expires:



MARtha A. GALBRAITH

SH 8, LLC,
a Florida limited liability company

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

By: SPOTTSWOOD HOTELS, INC., a Florida corporation, as its Sole Member and Managing Member

March 6, 2009

By: [Signature]
Robert A. Spottswood, President

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me on this 6th day of March, 2009, by Robert A. Spottswood who is personally known to me or who produced as identification, and who did/did not take an oath.

[Signature]

Notary Public, State of Florida Large
Name: MARTHA A GALBRAITH

(typed, printed or stamped)

My commission expires:



JLW Key West 1, LLC,
a Florida limited liability company

By: SH 7, Inc., a Florida corporation,
its Managing Member

March 6, 2009

By: [Signature]
Robert A. Spottswood
President

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me on this 6th day of March, 2009, by Robert A. Spottswood who is personally known to me or who produced as identification, and who did/did not take an oath.

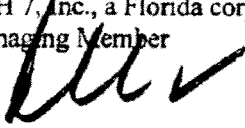


[Signature]
Notary Public, State of Florida At Large
Name: MARTHA A. GALBRAITH
(typed, printed or stamped)
My commission expires:

JLW Key West 2, LLC,
a Florida limited liability company

By: SH 7, Inc., a Florida corporation,
its Managing Member


March 6, 2009

By: 
Robert A. Spottswood
President

STATE OF FLORIDA
COUNTY OF MONROE

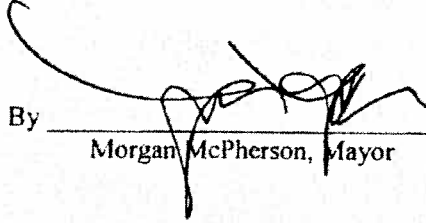
The foregoing instrument was acknowledged before me on this 6th day of March, 2009, by Robert A. Spottswood who is personally known to me or who produced _____ as identification, and who did/did not take an oath.



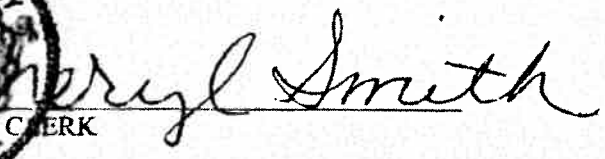

Notary Public, State of Florida At Large
Name: MARITHA A. GALBRAITH
(typed, printed or stamped)
My commission expires:

CITY OF KEY WEST

April 13, 2009

By 
Morgan McPherson, Mayor




Cheryl Smith
Clerk

Attachment E



November 10, 2011

City Manager
City Attorney
City Manager
521 Angela Street
Key West, FL 33040

**Development Agreement Annual Report
A.H. of Monroe County, Inc.
A Florida Nonprofit Corporation**

Pursuant to Section 15 of the Development Agreement between The City of Key West and A.H. of Monroe County, Inc., **A.H. of Monroe County, Inc.** provides to the City a report pursuant to City code Section 90-688 (a), (b) and (c) identifying:

- (a) the amount of development authorized by this Agreement that has been complete; Attached is a copy of the Certificates of Occupancy issued on 5/13/11 for fifty units at 1341 McCarthy Lane.
- (b) the amount of development authorized by this Agreement that remains to be completed; The project is complete with 0% remaining to be completed.
- (c) any changes to the plan of development that have occurred during the one (1) year period from the Effective Date of this Agreement or from the date of the last annual report; There have been no changes to the plan of development since the date of this agreement.

Submitted by,

Robert G. Walker
Executive Director

CITY OF KEY WEST
BUILDING DEPARTMENT
P.O. BOX 1409
KEY WEST FL 33041

Nº 4709

C E R T I F I C A T E O F O C C U P A N C Y

P E R M A N E N T

Issue Date 5/13/11

Parcel Number 006 -4740-000000- -
Property Address 1341 MCCARTHY LN 1STFL
KEY WEST FL 33040

Subdivision Name
Legal Description
Property Zoning MEDIUM DENSITY RES

Owner KEY WEST HOUSING AUTHORITY

Contractor COASTAL CONSTRUCTION OF MONROE
305 559-4900

Application number 10-00001217 000 000
Description of Work NEW FIVE OR MORE FAMILY
Construction type
Occupancy type RESIDENTIAL
Flood Zone AE ZONE
Special conditions
New construction: 16 units special needs housing
(restricted affordable) including electrical, plumbing,
mechanical, and roofing.

Approved John P. Wood
Building Official

VOID UNLESS SIGNED BY BUILDING OFFICIAL

[Signature]
City Fire Marshall Approval

CITY OF KEY WEST
BUILDING DEPARTMENT
P.O. BOX 1409
KEY WEST FL 33041

C E R T I F I C A T E O F O C C U P A N C Y

P E R M A N E N T

Issue Date 5/13/11

Parcel Number 0006-4740-000000- -

Property Address 1341 MCCARTHY LN 2NDFL
KEY WEST FL 33040

Subdivision Name

Legal Description KW PT LAND MARKED P G11-
147-148

Property Zoning MEDIUM DENSITY RES

Owner KEY WEST HOUSING AUTHORITY

Contractor COASTAL CONSTRUCTION OF MONROE
305 559-4900

Application number 10-00001218 000 000

Description of Work NEW FIVE OR MORE FAMILY

Construction type

Occupancy type RESIDENTIAL

Flood Zone AE ZONE

Special conditions
New construction: 17 units special needs housing
(restricted affordable) including electrical, plumbing,
mechanical, and roofing.

Approved John P. Wood
Building Official

VOID UNLESS SIGNED BY BUILDING OFFICIAL

M. DeV...
City Fire Marshall Approval

CITY OF KEY WEST
BUILDING DEPARTMENT
P.O. BOX 1409
KEY WEST FL 33041

C E R T I F I C A T E O F O C C U P A N C Y

P E R M A N E N T

Issue Date 5/13/11

Parcel Number 0006-4740-000000- -

Property Address 1341 MCCARTHY LN 3RDFL
KEY WEST FL 33040

Subdivision Name

Legal Description KW PT LAND MARKED P G11-
147-148

Property Zoning MEDIUM DENSITY RES

Owner KEY WEST HOUSING AUTHORITY

Contractor COASTAL CONSTRUCTION OF MONROE
305 559-4900

Application number 10-00001219 000 000

Description of Work NEW FIVE OR MORE FAMILY

Construction type

Occupancy type RESIDENTIAL

Flood Zone AE ZONE

Special conditions

New construction: 17 units special needs housing
(restricted affordable) including electrical, plumbing,
mechanical, and roofing.

Approved John P. Wood
Building Official

VOID UNLESS SIGNED BY BUILDING OFFICIAL

M. DeVil
City Fire Marshall Approval

TO:

City Planner, City Manager, City Attorney
City of Key West
521 Angela Street
Key West, Florida 33040

July 23, 2010

A.H. OF MONROE COUNTY, INC.

a Florida Nonprofit Corporation

Development Agreement Annual Report.

Pursuant to Section 15 of the Development Agreement between The City Of Key West and AIDS Help, Inc./ A.H Of Monroe County, Inc.: A.H. OF MONROE COUNTY, INC provides to the City a report pursuant to City Code Section 90-688 (a), (b) and (c) identifying:

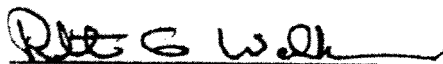
(a) the amount of development authorized by this Agreement that has been completed; Attached is a copy to the Application and Certificate for Payment that was approved by the architect and the developer on June 20, 2010. The draw schedule shows that eleven percent (11%) of the work is complete.

(b) the amount of development authorized by this Agreement that remains to be completed; Eighty nine percent (89%) of the work remains to be completed.

(c) any changes to the plan of development that have occurred during the one (1) year period from the Effective Date of this Agreement or from the date of the last annual report. There have been no changes to the plan of development since the date of this agreement.



Submitted by,



Executive Director

A.H. OF MONROE COUNTY, INC

PO Box 4374

Key West, Florida 33041-4374

Phone (305) 296-6196

July 23, 2010

ITEM NO	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED			TOTAL COMP AND STORED TO DATE	%	BALANCE TO FINISH	RETAINAGE
			PREVIOUS APPLICATION	THIS APPLICATION					
				WORK IN PLACE	STORED MAT				
1	Site Security	14,616	14,616	0	0	14,616	100%	0	1,462
2	Augercast Piling	63,945	57,500	3,400	0	60,900	95%	3,045	6,090
3	Earthwork	60,164	30,000	0	0	30,000	50%	30,164	3,000
4	Building & Site Fill	63,438	0	9,800	0	9,800	15%	53,638	980
5	Asphalt Paving	104,735	0	0	0	0	0%	104,735	0
6	Site Fencing	23,276	0	0	0	0	0%	23,276	0
7	Site Utilities	188,162	10,000	76,000	17,500	103,500	55%	84,662	10,350
8	Primary Electric Allowance	150,000	32,174	1,100	0	33,274	22%	116,726	3,327
9	Primary Fire & Equipment Allowance	75,000	3,000	15,000	17,500	35,500	47%	39,500	3,580
10	Power Line (Utility) Relocation Allowance	200,000	92,723	0	0	92,723	46%	107,277	9,272
11	Tree Relocation / Landscape / Irrigation	98,685	2,500	0	0	2,500	3%	96,185	250
12	Site Maintenance	102,196	8,000	8,000	0	16,000	16%	86,196	1,800
13	Layout	25,375	10,000	0	0	10,000	39%	15,375	1,000
14	Concrete & Masonry	1,702,399	100,000	147,000	50,700	297,700	17%	1,404,699	29,770
15	Concrete Safety & Equipment	107,717	5,000	6,900	0	11,900	10%	96,717	1,100
16	Misc Concrete	86,275	0	0	0	0	0%	86,275	0
17	Handrail / Railings	117,791	0	0	0	0	0%	117,791	0
18	Equipment Screens	14,007	0	0	0	0	0%	14,007	0
19	Metals - Misc	8,272	0	0	0	0	0%	8,272	0
20	Rough Carpentry	249,934	0	0	0	0	0%	249,934	0
21	Finish Carpentry	11,967	0	0	0	0	0%	11,967	0
22	Exterior Wood Ceilings	25,375	0	0	0	0	0%	25,375	0
23	Closet Interiors	4,344	0	0	0	0	0%	4,344	0
24	Cabinets / Vanities	234,800	0	0	0	0	0%	234,800	0
25	Carpentry Safety and Equipment	92,162	0	0	0	0	0%	92,162	0
26	Waterproofing	38,544	0	0	0	0	0%	38,544	0
27	Roofing	163,592	0	0	0	0	0%	163,592	0
28	H.M. Doors and Frames	54,962	0	1,000	0	1,000	2%	53,962	100
29	Wood Doors Interior	26,789	0	0	0	0	0%	26,789	0
30	SGD / Windows	276,445	0	2,000	0	2,000	1%	274,445	200
31	Finish Hardware Allowance	50,000	0	0	0	0	0%	50,000	0
32	Door / Hardware Labor	26,094	0	0	0	0	0%	26,094	0
33	Stucco	341,243	0	0	0	0	0%	341,243	0
34	Drywall / Insulation / Framing	382,516	0	0	0	0	0%	382,516	0
35	Ceramic Tile Allowance	150,000	0	0	0	0	0%	150,000	0
36	Wood Flooring Allowance	10,000	0	0	0	0	0%	10,000	0
37	Painting	99,607	0	0	0	0	0%	99,607	0
38	Housekeeping, Trash and Cleaning	118,725	0	0	0	0	0%	118,725	0
39	Bath Accessories Allowance	10,000	0	0	0	0	0%	10,000	0
40	Mirrors	3,910	0	0	0	0	0%	3,910	0
41	Signage Allowance	5,000	0	0	0	0	0%	5,000	0
42	Monument Signage Allowance	15,000	0	0	0	0	0%	15,000	0
43	Mail Boxes	2,588	0	0	0	0	0%	2,588	0
44	Fire Extinguishers Allowance	2,500	0	0	0	0	0%	2,500	0
45	Metal Louvers	15,022	0	0	0	0	0%	15,022	0
46	Appliances Allowance	110,000	0	0	0	0	0%	110,000	0
47	Trash Chute System	25,375	0	500	0	500	2%	24,875	50
48	Window Treatments Allowance	15,000	0	0	0	0	0%	15,000	0
49	Green Construction Allowance	400,000	0	0	0	0	0%	400,000	0
50	Elevators	112,452	0	1,000	0	1,000	1%	111,452	450
51	Plumbing	324,688	4,500	0	0	4,500	1%	320,188	300
52	Water / Sanitary Service	68,685	1,500	1,500	0	3,000	4%	65,685	0
53	Fire Protection Systems	117,436	0	0	0	0	0%	117,436	0
54	HVAC	233,698	0	0	0	0	0%	233,698	0
55	Electrical / Fire Alarm	713,038	7,000	25,000	0	32,000	4%	681,038	3,200
56	Electric Fixtures Allowance	85,000	0	0	0	0	0%	85,000	0
57	Site Lighting Allowance	25,000	0	0	0	0	0%	25,000	0
58	Security Systems Allowance	50,000	0	0	0	0	0%	50,000	0
59									
60									
SUB TOTAL		7,875,523	376,913	297,300	85,700	760,913	10%	7,115,010	76,051
61	General Conditions	293,112	24,426	24,426	0	48,852	17%	244,260	4,885
62	Overhead & Profit	900,000	66,667	66,667	0	133,334	17%	866,666	13,333
TOTAL PROJECT		8,968,635	469,606	388,393	85,700	942,699	11%	8,025,936	94,270
OWNER CHANGE ORDERS		0	0	0	0	0	0%	0	0
REVISED CONTRACT AMOUNT		8,968,635	469,606	388,393	85,700	942,699		8,025,936	94,270

Bob G. Walsh
 July 20/2010

Attachment F

Carlene Cowart

From: Carlene Cowart
Sent: Wednesday, September 29, 2010 4:54 PM
To: Nicole Malo
Subject: FW: DCA Determinations

From: Katina.Jackson@dca.state.fl.us [mailto:Katina.Jackson@dca.state.fl.us]
Sent: Wednesday, September 29, 2010 4:30 PM
To: Carlene Cowart
Cc: Shane.Laakso@dca.state.fl.us
Subject: Re: FW: DCA Determinations

Resolutions 2009-059> wavier letter dated and sent 07/17/09
Resolutions 2009-112>wavier letter dated and sent 07/17/09

The Department did not appeal the above development orders as issued.

Thanks

Katina Jackson
Administrative Assistant I
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100
Phone (850) 922-1900
Fax (850) 488-3309

RESOLUTION NO. 09-112

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AUTHORIZING THE ATTACHED DEVELOPMENT AGREEMENT PER CHAPTER 90 ARTICLE IV OF THE LAND DEVELOPMENT REGULATIONS WITH AIDS HELP, INC./A.H. OF MONROE COUNTY, INC.; PROVIDING FOR AN EFFECTIVE DATE

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

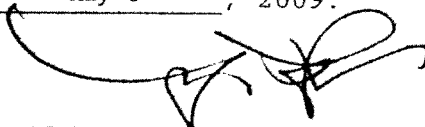
Section 1: That the attached development agreement between the City and Aids Help, Inc/A.H. of Monroe County, Inc. is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 5TH day of MAY, 2009.

Authenticated by the presiding officer and Clerk of the Commission on May 6, 2009.

Filed with the Clerk May 6, 2009.


MORGAN MCPHERSON, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

DEVELOPMENT AGREEMENT

**BETWEEN THE CITY OF KEY WEST AND AIDS HELP, INC./ A.H OF
MONROE COUNTY, INC.**

THIS AGREEMENT is entered into by and between, AIDS HELP, INC./ A.H. OF MONROE COUNTY, INC. a Florida Nonprofit Corporation, ("AIDS HELP"), and the CITY OF KEY WEST, a Florida municipal corporation ("City"), pursuant to Section 90-676 through 90-692 of the City Code, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2008), and is binding on the "Effective Date" set forth herein:

RECITALS:

WHEREAS, this project will serve low income disabled people and low income people with HIV disease who qualify for affordable housing; and

WHEREAS, AIDS HELP is a community-based nonprofit organization providing case-managed health care, housing, food, health education and counseling, HIV-risk reduction outreach programs, and referral and support services for low income disabled people and low income people with HIV disease who are residents of the Florida Keys; and

WHEREAS, AIDS HELP works closely with primary medical providers and provides comprehensive support services to help low income disabled people and low income people with HIV disease to live independently, with dignity, and reduce the need for hospitalization and nursing home admissions; and

WHEREAS, AIDS HELP conducts screening and verification of income-levels pursuant to City of Key West Comprehensive Plan Housing Element Policy 3-1.1.3 using the Housing Authority of City of Key West Affordability Policy; and

WHEREAS, AIDS HELP assists with screening and applications of eligibility for Medicaid, Medicare, Social Security, AIDS Insurance Continuation Program, Department of Children and Families, and Veterans Benefits; and

WHEREAS, the City of Key West Code Section 86-9 expressly includes and defines a “rest home” as a facility in which “three or more persons not of the immediate family can be received, kept or provided with food, shelter and care for compensation;” and

WHEREAS, the immediate desire of AIDS HELP is to provide a 50 unit rest home for low income people with HIV disease, if a cure for HIV becomes available, the 50 unit rest home can also be used for low income disabled people; and

WHEREAS, THE CITY OF KEY WEST has authorized AIDS HELP, to construct a 50 unit rest home for low income disabled people and low income people with HIV disease on vacant land owned by the Housing Authority of the City of Key West (“Housing Authority”). The City of Key West conveyed the land to the Housing Authority. The Housing Authority leases the subject property within the Special Needs Section of the Poinciana Affordable Housing site to AIDS HELP. The subject property is accurately described in Attachment A (herein referred to as “Property”). This Property is located entirely within the corporate limits of the City of Key West, Florida; and

WHEREAS, the City reviewed and authorized the development after public hearings on the Major Development Plan and Conditional Use were duly noticed and held by: the Planning Board on March 16, 2006, which recommended approval (Resolution 2006-008); and approved by the City Commission at a meeting held on May 2, 2006 (Resolution 06-153);

WHEREAS, on September 7, 2006 the State of Florida Department of Community Affairs (DCA) found the development to be consistent with the Principles for Guiding Development for the Florida Keys Area of Critical State Concern as set forth in Section 380.0552(7), Florida Statutes (2008); and

WHEREAS, the approval was then extended by the City Commission on August 15, 2007 (Resolution 07-275); and

WHEREAS, the City Commission approved a \$40,000 Grant for this project at a meeting held on February 20, 2008 (Resolution 08-057); and

WHEREAS, the original approval allowed 10 years for a phased project and required that development begin within one (1) year and the one (1) year commencement was extended once by the City Commission on August 15, 2007 (Resolution 07-275) and subsequently transmitted to the Department of Community Affairs; and

WHEREAS, on May 20, 2008 the City Commission expressed its preliminary interest pursuant to City of Key West Code Section 90-679 in entering into a Development Agreement with AIDS Help (Resolution 08-156); and

WHEREAS, the applicant proposed a Modification to the Major Development Plan to improve the project design and comply with two conditions of approval contained in the original Major Development Plan the first condition required ADA compliant sidewalk connections and the second condition required an emergency vehicle access; and

WHEREAS, the City Planning Board noticed and held a public hearing to consider the Modification to the Major Development Plan on February 19, 2009, and recommended approval with a single condition requiring a stormwater (ERP) permit from the South Florida Water Management District (Resolution 2009-005); and the City Commission noticed and held a public hearing to consider the Modification to the Major Development Plan on March 17, 2009, and it was approved with the condition recommended by the Planning Board; and

WHEREAS, the City Planning Board noticed a public hearing to consider this Development Agreement on March 19, 2009, and the City Commission noticed a public hearing to consider this Development Agreement on April 7, 2009, and these public hearings were held; and

WHEREAS, the City has determined that this Agreement is consistent with the local comprehensive plan, the land development regulations, and is in the public interest, and will further the health, safety, welfare, and goals of the residents of the City of Key West;

NOW, THEREFORE, the Development Agreement is approved as follows:

TERMS OF AGREEMENT

Recitals. The recitals explaining the intent and purpose of the project as set forth in the preceding “Whereas” clauses are incorporated herein and form a material part of this Agreement.

1. Ownership, Legal Description, and Unity of Title

a. **Ownership.** The Owner of the subject site (“Poinciana site”) is the Housing Authority of the City of Key West. The City of Key West conveyed the land to the Housing Authority. The Housing Authority leases the subject property within the Special Needs Section of the Poinciana Affordable Housing site to AIDS HELP.

b. **Legal Description.** The legal description of the Poinciana site is described and incorporated into this agreement as *Attachment A*.

2. Site Plan Approval, Modifications, Fire Safety, Wind Load, Energy Efficiency

a. **Approval of a Conceptual Site Plan.** This project will serve low income disabled people and low income people with HIV disease who qualify for affordable housing. The development shall be consistent with the “Conditional Use” Approval incorporated as *Attachment B-1* and the “Modification to the Major Development Plan” for AIDS HELP, hereby incorporated as *Attachment B-2*.

b. **Modifications.** Modifications to the Major Development Plan are governed by City Code Section 108-91(c) and (d) as the Code exists on the effective date of this approval (unless the Code is amended from time to time to allow additional administrative or minor modifications, which shall then also apply to this development).

c. **Fire Safety.** AIDS HELP shall provide all fire protection facilities as required by the City Fire Department and Life Safety Code administered by the City Fire Department.

d. **Wind Load.** AIDS HELP shall construct all structures on the Property, including doors, windows, and cladding, to withstand the mile per hour peak winds as specified in the Building Code.

e. **Energy Efficiency.** AIDS HELP shall construct all residential structures in conformance with the specifications of the State of Florida Energy Efficiency Code for Building Construction (State Energy Code).

3. **Public Utilities, Concurrency, Impact Fees.** Applicant and City staff have conducted a concurrency analysis for this project pursuant to City Code Chapter 94 Concurrency Management, and Section 90-682(5) as set forth in *Attachment C*. All public facilities are available as of the date of this Development Agreement, capacity for each is projected to be available concurrent with the impacts of development.

The following identifies the public facilities that are required and that will service the development authorized by this Agreement; who shall provide the facilities; what new

facilities, if any, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of development.

- a. **Potable Water.** Potable water is supplied by Florida Keys Aqueduct Authority (FKAA), and domestic potable water transmission and potable water source capacity exist for this project as set forth in *Attachment C*.
- b. **Electric Service.** Electric service is provided by Keys Energy Services, and capacity exists for this development as set forth in *Attachment C*.
- c. **Solid Waste.** Solid waste service is provided by the City of Key West Waste Management or its designate, as determined by the City Commission, and capacity exists for this development as set forth in *Attachment C*.
- d. **Transportation.** Transportation and road capacity exists for this development as set forth in *Attachment C*.
- e. **Wastewater.** Wastewater treatment shall be provided by the City of Key West Wastewater Treatment Plant, and capacity exists for this development as set forth in *Attachment C*.
- g. **Public Recreational Facilities.** Public recreational facilities shall be provided at the Poinciana site and capacity exists for this development as set forth in *Attachment C*.
- f. **Impact Fees.** The developer shall pay impact fees according to the City's impact fee ordinance applicable to development in the City of Key West.

3.22.09

4. List of All Local Permits Approved or Needed

Doc# 1746218
Bk# 2417 Pg# 858

a. **Development Approvals.** The following City development approvals have been granted or are needed for the development authorized by this Agreement:

1. **Site Plan.** Final site plan approval will be required by the City building official, fire marshal, and planning staff confirming compliance with this Agreement and applicable City Code requirements.

2. **Building Permits.** A building permit or permits will be required.

3. **South Florida Water Management District.** An Environmental Resource Permit (ERP) will be required from the South Florida Water Management District.

4. **Major Development and Conditional Use.** Applications for Major Development Plan and Conditional Use were duly noticed and held by: the Planning Board on March 16, 2006, which recommended approval (Resolution 2006-008); and approved by the City Commission at meeting held on May 2, 2006 (Resolution 06-153); and the approval was then extended by the City Commission on August 15, 2007 (Resolution 07-275). The City Planning Board noticed and held a public hearing to consider a Modification to the Major Development Plan on February 19, 2009 (Resolution 2009-005); and the City Commission noticed and held a public hearing to consider the Modification to the Major Development Plan on March 17, 2009; and the Modification to the Major Development Plan was approved (Resolution 09-066) as forth in *Attachment B-2*. The "Conditional Use" Approval per Resolution 2006-008 as

set for in *Attachment B-1* remains in effect, is still intact and is not impacted by the Modification to the Major Development Plan. The condition of approval in the Modification to the Major Development Plan (Resolution 09-066) requiring a stormwater (ERP) permit from the South Florida Water Management District is hereby incorporated into this Development Agreement.

5. Density, Intensity, Height and Dwelling Unit Allocation System.

a. This project is a 50 unit rest home 35 feet in height that will serve disabled people and people with HIV disease who qualify for affordable housing. Project intensity, including floor area ratio calculations, is set forth in the site data table contained in the Modification to the Major Development Plan as set forth in *Attachment B-2*.

b. *Nursing homes, rest homes and convalescent homes* are defined as “activities customarily performed by a home for the elderly or infirm in which three or more persons not of the immediate family are received, kept or provided with food, shelter and care for compensation.” Key West Code Section 86-9(2)h. This project will serve as a *rest home* for low income disabled people and low income people with HIV disease who qualify for affordable housing. Pursuant to the Key West Code Section 86-9(2)h¹, the floor area ratio shall govern, not units per acre, for purposes of permitted density and intensity for *rest homes*. Within rest homes, “*individual living units shall be treated as 0.1 equivalent units under the city's building permit allocation ordinance, Section*

¹ Definitions. 86-9. Land Use Classifications (2). Community facilities (h.) Nursing Homes, rest homes and convalescent homes.

108-1056..." Key West Code Section 86-9(2)h. Both the City of Key West Code Section 86-9 and the prior development order approvals for the major development plan contained in this development agreement were previously reviewed, adopted or approved by the Department of Community Affairs (DCA) acting as the state land planning agency. Approval of a similar rest home for AIDS HELP, was upheld by the Circuit Court as both in compliance with the City of Key West Code and consistent with the City of Key West Comprehensive Plan in *Catherine Street Alliance v. City of Key West and AIDS HELP, INC.* Circuit Court Case No. 2007-CA-1443 K, Final Order dated January 8, 2008 (Judge Audlin).

c. The project shall comply with, and only serve clients who meet, affordable housing standards set forth in the City of Key West Comprehensive Plan Housing Element Policy 3-1.1.3 using the Housing Authority of City of Key West Affordability Policy.

d. The City hereby allocates five (5) equivalent single family units (ESFU) of affordable housing unit allocations, as defined herein by Policy 3-1.1.3 of the City of Key West Comprehensive Plan, for this project under the Building Permit Allocation System Zoning in Progress Ordinance, Resolution 09-050.

6. **Mutual Cooperation on Community Facilities Project.** This rest home will serve low income disabled people and low income people with HIV disease who qualify for affordable housing. The City agrees to partner and cooperate with the AIDS HELP in a timely manner in providing expedited review of all permits, licenses, approvals,

consents, and provide information for any grant applications necessary or appropriate to fully implement this Agreement.

7. **Development to Comply with Permits and City Comprehensive Plan and Code Provisions.** The development described in and authorized by this Agreement shall be constructed in accordance with all specified permit conditions, and in accordance with all applicable provisions of the adopted Comprehensive Plan and City Code. No certificate of occupancy for an individual phase shall be issued until the City approves all plans for that phase and that AIDS HELP has complied with all conditions established in the conditional use and development plan approval and the building permit issued by the City and other regulatory entities for that phase.

8. **Finding of Consistency.** The City of Key West finds that the development authorized herein is consistent with the Comprehensive Plan and Land Development Regulations as adopted and approved.

9. **Compliance with Permits, Terms, Conditions, Restrictions not Identified.** The failure of this Agreement to address a particular permit requirement, condition, term, or restriction shall not relieve AIDS HELP of the necessity of complying with all applicable laws governing said permitting requirements, conditions, terms, or restrictions.

10. **Duration of Agreement and Renewal.**

a. **Duration of Agreement.** This Development Agreement shall remain in effect for a period of ten (10) years, commencing on the Effective Date set forth below

pursuant to City Code Section 90-684. This Development Agreement may be renewed or extended as provided herein.

b. Agreement Renewal. This Agreement may be renewed or extended upon an affirmative vote of the City Council (see 12. b of this document).

c. Phasing. The project in shall be completed in a maximum of three phases, together with the corresponding required site work, as set forth in the Modification to the Major Development Plan, *Attachment B-2*. The first phase shall commence within the first five (5) years of the date of this agreement and certificates of occupancy for all phases shall be completed within ten (10) years of the date of this agreement.

d. Extension of Deadlines. Deadlines contained herein shall commence on the Effective Date of this Development Agreement as set forth below, and this Development Agreement shall extend and replace all previous deadlines contained in prior approvals for this proposed development.

11. Governing Laws

a. Controlling Regulations. For the duration of this Agreement, all approved development on the Property shall comply with and be controlled by this Agreement and by the provisions of the Comprehensive Plan and City Code in existence on the effective date of this Agreement.

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

12. **Amendments, Renewal, Revocation, Termination.** This Agreement may be amended, renewed, or terminated as follows:

a. **Amendments.** As provided in Section 163.3237, Florida Statutes (2008) and City Code Section 90-689, this Agreement may be amended by mutual consent of the parties to this Agreement or by their successors in interest; an instrument in writing signed by the parties or their successors shall accomplish an amendment under this provision.

b. **Renewal.** As provided in Section 163.3229, Florida Statutes (2008) and City Code Section 90-682(a)(2), this Agreement may be extended or renewed by the mutual consent of the parties, subject to the following public hearing requirements in Section 163.3225, Florida Statutes. The City shall conduct at least two (2) public hearings, one of which may be held by the local planning agency at the option of the City. Notice of intent to consider renewal of the Agreement shall be advertised approximately seven (7) days before each public hearing in a newspaper of general circulation and readership in Monroe County, Florida, and shall be mailed to all property owners within 500 feet of the development before the first public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first

public hearing. The notice shall specify the location of the land subject to the Agreement, the development uses on the Property, the population densities, and the building intensities and height and shall specify a place where a copy of the Agreement can be obtained.

c. **Revocation by City.** Pursuant to Section 163.3235, Florida Statutes (2008) and City Code Section 90-689, this Agreement may be revoked by the City if the City finds, on the basis of competent substantial evidence, that there has been a material failure by AIDS HELP, to comply with the terms of this Agreement.

d. **Termination by Mutual Consent.** This Agreement may also be terminated by mutual consent of the parties.

13. Breach of Agreement and Cure Provisions.

a. **Written Notice to AIDS HELP.** If the City concludes there has been a material breach of this Agreement, prior to revoking this Agreement, the City shall serve written notice to AIDS HELP identifying the term or condition the City contends has been materially breached and providing AIDS HELP ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to the Agreement. Each of the following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of AIDS HELP shall be considered a material breach of this Agreement: (a) failure to comply with the provisions of this Agreement; or (b) failure to comply with terms and conditions of permits issued by the City of Key West or other regulatory entity for the development authorized by this Agreement.

b. **Written Notice to the City.** If AIDS HELP concludes that there has been a material breach in the terms and conditions of this Agreement, AIDS HELP shall serve written notice to the City, identifying the term or condition that it contends has been materially breached and providing the City ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to the agreement. The following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the City, shall be considered a material breach of this Agreement: (a) failure to comply with the provisions of this Agreement, or (b) failure to timely process any application for site plan approval or other development approval required to be issued by the City for the development authorized by this Agreement.

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

d. **Waiver of Breach.** If either party waives a material breach in this Agreement by the other party, such a waiver shall not be deemed a waiver of any subsequent breach.

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

express delivery service with a signed receipt required. Notice shall be effective upon receipt. The addresses of the parties for such notice are as follows:

TO AIDS HELP: Executive Director AIDS Help, Inc.
PO Box 4374
Key West, Florida 33041-4374
Phone (305) 296-6196

TO THE CITY: City Manager, City of Key West
521 Angela Street
Key West, Florida 33040

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

City Attorney, City of Key West
P.O. Box 1409
Key West, Florida 33041

15. Annual Report. Fourteen days prior to the anniversary date of the Effective Date of this Agreement and each year following until its termination, AIDS HELP shall provide to the City a report pursuant to City Code Section 90-688 (a), (b) and (c) identifying:

(a) the amount of development authorized by this Agreement that has been completed;

(b) the amount of development authorized by this Agreement that remains to be completed; and

(c) any changes to the plan of development that have occurred during the one (1) year period from the Effective Date of this Agreement or from the date of the last annual report.

(d) Pursuant to F.S. § 163.3235 and City Code Section 90-688 (a), (b) and (c), the city shall review land subject to a development agreement at least once every 12 months. Such review shall determine if there has been demonstrated good faith compliance with the terms of the development agreement. The city administrative official shall present the city commission with a report on the status of all activities and achievements pursuant to the development agreement. Prior to the city's review of the status of a development agreement, the developer or property owner shall, within 14 days of the city commission's review of the development agreement, submit to the city a progress report indicating all activities and achievements since the execution of the development agreement and, if applicable, since the previous periodic report. If the city no longer has a record of the present property owner and/or developer, any requests or notices required by this Development Agreement shall be made to the property owner of record as shown on the records of the county property appraiser.

(e) Pursuant to City Code Section 90-687(b) For each annual review conducted during years six (6) through ten (10) of the development agreement, the review shall be incorporated into a written report which shall be submitted to the parties to the agreement and the state land planning agency.

(f) any other annual reporting requirements required by Florida Statutes, Florida Administrative Code or City Code Section 90-688 (a), (b) and (c) or Section 90-687(b) in existence on the effective date of this Development Agreement.

16. **Enforcement.** In accordance with Section 163.3243, Florida Statutes (2008) and City Code Section 90-692, any party to this Agreement, any aggrieved or adversely

affected person as defined in Section 163.3215(2), Florida Statutes (2008), or the state land planning agency may file an action for injunctive relief in the circuit court of Monroe County, Florida, to enforce the terms of this Agreement or to challenge the compliance of this Agreement with the provisions of Sections 163.3220-163.3243, Florida Statutes (2008).

17. **Binding Effect.** This Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns, and personal representatives.
18. **Assignment.** This Agreement may not be assigned without the written consent of the parties.
19. **Drafting of Agreement.** The parties acknowledge that they jointly participated in the drafting and review of this Agreement and that no term or provision of this Agreement shall be construed in favor of or against either party based solely on the drafting of the Agreement.
20. **Severability.** In the event any provision, paragraph or section of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the enforceability or the validity of the remaining provisions of this Agreement.
21. **Applicable Law.** This Agreement was drafted and delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida. Agreed venue for hearings held by the Division of Administrative Hearings shall

be in Key West, Monroe County, Florida or in the Circuit Court in and for Monroe County, as governed by applicable law.

22. **Use of Singular and Plural.** Where the context requires, the singular includes the plural, and the plural includes the singular.
23. **Duplicate Originals; Counterparts.** This Agreement may be executed in any number of originals and in counterparts, all of which evidence one agreement. Only one original is required to be produced for any purpose.
24. **Headings.** The headings contained in this Agreement are for identification purposes only and shall not be construed to amend, modify, or alter the terms of the Agreement.
25. **Entirety of Agreement.** This Agreement incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, or understandings regarding the matters contained herein. The parties agree that there are no commitments, agreements, or understandings concerning the subjects covered by this Agreement that are not contained in or incorporated into this document and, accordingly, no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether written or oral. This Agreement contains the entire and exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing signed by the parties.
26. **Recording and Transmittal.** Pursuant to City Code Section 90-690, not later than 14 days after the execution of a development agreement, the city clerk shall record

the agreement with the clerk of the circuit court in the county. A copy of the recorded development agreement shall be submitted to the state land planning agency within 14 days after the agreement is recorded as provided in F.S. § 163.3239. A development agreement shall not be effective until it is properly recorded in the public records of the county and until 30 days after having been received by the state land planning agency pursuant to F.S. § 163.3239.

27. **Date of Agreement.** The date of this Agreement is the date the last party signs and acknowledges this Agreement.

28. **Effective Date.** A development agreement shall not be effective until it is properly recorded in the public records of the county and until 30 days after having been received by the state land planning agency pursuant to F.S. § 163.3239. The agreement shall be effective on the date it is deemed approved by the state land planning agency (or on the date any objections by the state land planning agency are deemed waived) under Florida Statutes Chapter 380 and City Code Section 90-690.

29. **Successors.** The burdens of the development agreement shall be binding upon and the benefits of the agreement shall inure to all successors in interest to the parties to the agreement as provided in F.S. § 163.3239 and City Code Section 90-691.

3.22.09

Doc# 1746218
Bk# 2417 Pg# 871

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

AS APPROVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST ,
FLORIDA ON May 5, 2009

THE CITY OF KEY WEST

By  _____

Morgan McPherson, MAYOR

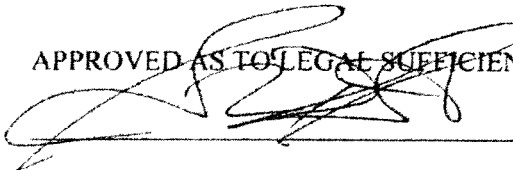
Date : May 8, 2009

ATTEST:



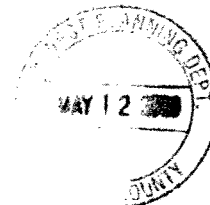
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



CITY ATTORNEY

3.12.09



AIDS HELP, INC.

A Florida Not For Profit Corporation

By: *Edmund R. Czaplicki*
Ed Czaplicki, Past President

By: *Sally Lewis*
Sally Lewis, President

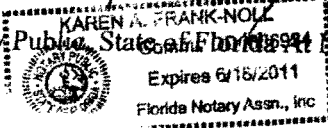
Date: May 9, 2009

Date: May 9, 09

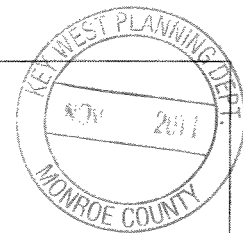
STATE OF FLORIDA

COUNTY OF MONROE

The foregoing instrument was acknowledged before me on this 9 day of May 2009, by *Sally Lewis* ~~Edmund Czaplicki~~ who is personally known to me or who produced _____ as identification, and who did/did not take an oath.

Karen A. Frank-Noll
Notary Public, State of Florida
[seal]  Expires 6/18/2011
Florida Notary Assn., Inc

Attachment G



STONES & CARDENAS
ATTORNEYS AT LAW

221 SIMONTON STREET, KEY WEST, FL 33040
TELEPHONE (305) 294-0252 FAX (305) 292-5442

ADELE VIRGINIA STONES, P.A.

SUSAN M. CARDENAS, P.A.

November 1, 2011

VIA E-MAIL

Ashley Monnier, Planner II
City of Key West
PO Box 1409
Key West, FL 33041-1409

Re: Banana Bay / Fairfield Inn Development Agreement

Dear Ms. Monnier:

Please accept this report filed on behalf of the developer Banana LLC and KW26 LLC, owners of the properties located at 2319-2401 N. Roosevelt Boulevard, that there is NO development activity to report for the preceding twelve (12) month period.

Please feel free to contact me if you have any questions regarding the status of the proposed development.

Sincerely,

Adele V. Stones
AVS/cms
c: client

Attachment H

Carlene Cowart

From: Rebecca.Jetton@dca.state.fl.us
Sent: Tuesday, October 05, 2010 5:35 PM
To: Carlene Cowart
Cc: Amy Kimball-Murley
Subject: Banana Bay

The Department did not appeal the rendering therefore it is in effect

We are committed to maintaining the highest level of service and we value your feedback. Please complete our [Customer Service Survey](#). If you require direct assistance or a response, please visit our [Contact Page](#).

Florida has a broad public records law and all correspondence, including email addresses, may be subject to disclosure.



Please consider the environment - print only if necessary.

RESOLUTION NO. 10-135

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AUTHORIZING THE ATTACHED DEVELOPMENT AGREEMENT PER CHAPTER 90 ARTICLE IX OF THE LAND DEVELOPMENT REGULATIONS WITH BANANA, LLC AND KW26, LLC; PROVIDING FOR AN EFFECTIVE DATE

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached development agreement between the City and Banana, LLC and KW26, LLC, as property owners is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 6th day of April, 2010.

Authenticated by the presiding officer and Clerk of the Commission on April 7, 2010.

Filed with the Clerk April 7, 2010.

Craig Gates
CRAIG GATES, MAYOR

ATTEST:

Cheryl Smith
CHERYL SMITH, CITY CLERK

STATE OF FLORIDA
COUNTY OF MONROE
CITY OF KEY WEST

This copy is a true copy of the original on file in this office. Witness my hand and official seal this 20th day of May, 2010

Deputy City Clerk

By Luzel Harrison

Doc# 1792881 06/08/2010 3:20PM
Filed & Recorded in Official Records of
MONROE COUNTY DANNY L. KOLHAGE

Doc# 1792881
Bk# 2469 Pg# 452

Prepared by and, after recording,
return to:

Sherry A. Spiers, Esq.
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301
Telephone: (850) 222-6891

Doc# 1792681
Bk# 2469 Pg# 453

Parcel ID Numbers 00001990-000000,
00002000-000000, 00002080-000100,
and 00002260-000000.

**DEVELOPMENT AGREEMENT FOR
2319-2401 NORTH ROOSEVELT BOULEVARD**

THIS DEVELOPMENT AGREEMENT is entered into by and between BANANA, LLC, and KW26, LLC, both Florida limited liability companies (collectively the "Owner"), and the CITY OF KEY WEST, a Florida municipal corporation ("City") (collectively the "Parties"), pursuant to Sections 90-676 through 90-692 of the City Code, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2009), and is binding on the "Effective Date" set forth herein.

WITNESSETH:

WHEREAS, the Owner owns four (4) parcels of land, including two roadway easements for a portion of Hilton Haven Drive, consisting of four (4) acres, more or less, located at 2319 - 2401 North Roosevelt Boulevard in the City of Key West, Florida, more particularly described in the legal descriptions attached hereto as Exhibit A ("Property"); and

WHEREAS, the Property is the location of the Banana Bay Resort and a portion of the Fairfield Inn with lawfully established development of seventy-six (76) units consisting of fifty-five (55) transient units with licenses, one (1) manager's unit at the Fairfield Inn, and twenty (20) market rate residential units; and

WHEREAS, the Property is in the General Commercial future land use classification and the General Commercial zoning district, which allow transient units as permitted uses and single-family and multi-family residential units as conditional uses; and

WHEREAS, after demolition of substantially all of the existing structures on the property (a portion of the Fairfield Inn structure will remain), the Owner proposes to redevelop the Property with fifty-six (56) units consisting of twenty (20) townhouse residential units, ten (10) townhouse transient units, and twenty-six (26) affordable work force housing units; and

WHEREAS, the Owner additionally proposes to transfer thirty-nine (39) licensed transient units off site; and

WHEREAS, the transfer of licensed transient units off site will reduce legal non-conforming density on the Property and facilitate development of new deed-restricted affordable work force housing on the Property; and

WHEREAS, by Resolution No. 06-272, the City granted with conditions Major Development Plan and Conditional Use approval for redevelopment of the Property, which said approval was extended with a condition by Resolution No. 07-197; and

WHEREAS, Resolution No. 06-272 incorrectly reflects approval of a project with thirty-four (34) affordable work force housing units when, based on the record of the public hearing at which the resolution was adopted, the City Commission approved a project with twenty-eight

(28) affordable work force housing units, the number of such units having been reduced because of a parking easement on the Property; and which said units have been established at twenty-six (26) units in this Development Agreement to accommodate design preferences and concerns of adjacent and nearby property owners; and

WHEREAS, due to existing economic conditions, the Owner wishes to enter into a development agreement with the City to provide an extended timeframe for the phasing of the development to ensure the most efficient use of resources while meeting the objectives of the City's Comprehensive Plan, including the provision of affordable work force housing; and

WHEREAS, by Resolution No. 08-229, as extended on November 17, 2009, by Resolution No. 09-303, the City Commission authorized the Owner to enter into a development agreement with the City, subject to the conditions stated in Resolution No. 08-229; and

WHEREAS, the City has held public hearings to accept and encourage public input with respect to this Development Agreement, and has considered such public input; and

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

WHEREAS, the City Planning Board held an advertised public hearing on March 11, 2010, and issued a recommendation to the City Commission to approve this Development Agreement; and

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Bk# 2469 Pg# 455

WHEREAS, the City Commission held an advertised public hearing on April 20, 2010, to consider this Development Agreement, and received and considered the comments and recommendations of the City staff, the Planning Board, the Owner, and members of the public; and

WHEREAS, the City has determined that the Owner's redevelopment plan described herein and this Development Agreement are consistent with the City's Comprehensive Plan and land development regulations and that the redevelopment plan is compatible with surrounding land uses; and

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

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

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

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

1. "Affordable work force housing" means housing as defined in Sections 122-1465 through 122-1473 of the City Code.

2. "BPAS" means the City's Building Permit Allocation System.

3. "Building permit allocation" means a residential permit allocation under Division 3 of Article X of the City Code.

4. "City Code" means the Code of Ordinances of the City of Key West in effect on the date of execution of this Development Agreement.

5. "Comprehensive Plan" means the City's Comprehensive Plan in effect on the date of execution of this Development Agreement.

6. "Site Plan" means the site plan for 2319-2401 North Roosevelt Boulevard a/k/a Banana Bay and Fairfield Inn (RE #s 00001990-000000, 00002000-000000, 00002080-000000, and 00002260-000000) dated May 2, 2006, and last revised on March 2, 2010, prepared by Thomas E. Pope, P.A., Architect, attached hereto as Exhibit B and incorporated herein. The site plan attached to this Development Agreement replaces the site plan for redevelopment of the Property previously approved by the City Commission on August 2, 2006.

7. "Development Plan", "Redevelopment" or "Redevelopment Plan" shall refer to the redevelopment of the Property for the uses, densities and intensities permitted by this Development Agreement, subject to the conditions, obligations, restrictions and terms contained herein.

8. "Effective Date" shall refer to the date this Development Agreement becomes effective, as provided in Section 163.3239, Florida Statutes (2009), and set forth herein.

9. "ESFU" is an acronym for Equivalent Single Family Unit factor as defined in Future Land Use Element Policy 1-3.12.3 in the City's Comprehensive Plan and City Code Section 108.994.

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BKN 2488 Pgn 457

10. "Property" shall refer to the four acres, more or less, described in Exhibit A, that are the subject of this Development Agreement.

11. "Public facilities" means those facilities identified in Section 163.3221, Florida Statutes (2009).

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C. TERMS OF AGREEMENT.

1. Legal Description; Ownership and Equitable Interests in the Property; Unity of Title.

a. Legal Description; Ownership and Equitable Interests. The legal description of the Property subject to this Development Agreement is attached hereto as Exhibit A and incorporated herein by reference. The Owners of the Property as of the date of execution of this Development Agreement are Banana, LLC, and KW26, LLC, Florida limited liability companies. The equitable owners of the Property are those persons who are owners of interests in the above two limited liability companies, the names and addresses of whom have been provided to the City Planning Department. There are no other legal or equitable owners of the Property known to the parties to this Development Agreement.

b. Unity of Title. The four parcels comprising the Property shall be deemed to be one parcel for purposes of the development authorized by this Development Agreement. Within fourteen (14) days after execution of this Development Agreement and expiration of any appeal periods, BANANA, LLC, and KW26, LLC, shall execute documents necessary to result in a unity of title for the parcels comprising the Property. The Owner shall promptly record the document(s) in the public records of Monroe County, Florida, and provide a copy of the recorded document(s) to the City Attorney's Office after recordation.

2. **Duration of Agreement; Renewal.** This Development Agreement shall remain in effect for a period of five (5) years, commencing on the Effective Date set forth below. The Owner shall apply for the first City building permit for on-site development for the final phase of the redevelopment plan during the term of this Development Agreement. Once a final phase building permit is issued, the Owner shall maintain development progress by complying with the requirements and timeframes in City Code Sections 90-356 through 90-365. This Development Agreement may be renewed or extended as provided herein. In the event that the owner does not comply with the timeframes contained in this paragraph, the 26 affordable work force unit allocations (14.3 ESFU) referred to in paragraph C.3.c.3. shall revert to the City.

3. **Redevelopment Plan; BPAS Equivalencies and Allocations.**

a. **Consistency with Density Restrictions In Comprehensive Plan and City Code.** The Comprehensive Plan and zoning regulations in the City Code allow a permanent and transient residential density of sixteen (16) dwelling units per gross acre in the General Commercial future land use category and zoning district. Under these provisions, the Property, consisting of 3.78 upland acres, has an allowed density of sixty-one (61) units. The redevelopment plan approved under this Development Agreement provides for fifty-six (56) permanent and transient residential units on the Property, which is a density of approximately fifteen (15) dwelling units per gross acre. The development authorized by this Development Agreement reduces on-site development to less than the density allowed under the Comprehensive Plan and zoning regulations, eliminates lawful nonconforming density on the Property, and is consistent with the densities allowed under the City's Comprehensive Plan and the City Code.

b. **Uses and Densities Allowed Under This Development Agreement.** The Owner is authorized to redevelop the Property with the following uses at the following densities, subject to the conditions set forth in this Development Agreement.

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- twenty (20) townhouse residential units,
- ten (10) townhouse transient units, each with a transient license (each unit may be used as a transient unit or as a permanent residential unit), and
- twenty-six (26) affordable work force housing units (ranging from 300 to 600 square feet).

c. **Building Permit Equivalencies.**

1. **Existing Development.** The Owner has established the following BPAS equivalencies and transient licenses for the existing seventy-six (76) units on the Property:

Site	Transient (.58 ESFU)	Residential (1.0 ESFU)	Total BPAS Equivalent Units	Transient Licenses
2319 North Roosevelt Blvd. (Banana Bay)	30 units x .58 = 17.4	20 units x 1.0 = 20	37.4	30
2401 North Roosevelt Blvd. (Fairfield Inn)	25 units x .58 = 14.5	1 unit x 1.0 = 1.0 (manager's unit)	15.5	25
TOTALS	55 units x .58 = 31.9	21 units x 1.0 = 21	52.9	55

2. **New Transient and Permanent Residential Units.** All of the Owner's 52.9 equivalent units will be used for the redevelopment of townhouse residential and townhouse transient units on the Property, and the transfer of licensed transient units off site, as follows:

Unit Type		No. of Units	Total BPAS Equivalent Units	Transient Licenses
Existing		76	52.9	55
Development On Site	Townhouses with Transient Licenses (1.0 ESFU allowing transient or residential use)	10	10.0	10
	Townhouse residential units (1.0 ESFU)	20	20.0	0
Subtotal (remaining)		46	22.9	45
Licensed Transient Units Transferred Off Site	Transient units with transient licenses transferred offsite (0.58 ESFU)	39	22.9	39
Total Used		69	52.9	49
Remaining Unused		0	0	6

3. **Affordable Work Force Housing.** The City shall provide BPAS allocations for the deed-restricted affordable work force housing to be established on the Property from the City's affordable housing allocation, as follows:

Unit Type	Existing	Proposed	ESFU per unit	Total BPAS Allocations Required
Affordable Work Force Housing less than 600 s.f.	0	26	0.55	14.3

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Bk# 2489 Pg# 481

d. **Transfer of Licensed Transient Units.** The Owner is authorized to transfer the thirty-nine (39) remaining unused BPAS-exempt transient units, together with their accompanying transient licenses, off site pursuant to the criteria and procedures in City Code Sections 122-1336 through 122-1346, copies of which are attached as Exhibit C.

4. **Site Plan; Modifications.**

a. **Site Plan.** The on-site redevelopment approved by this Development Agreement is depicted on the Site Plan prepared by Thomas E. Pope, P.A., Architect, dated May 2, 2006, as last revised on March 2, 2010, attached hereto as Exhibit B. The Site Plan is hereby approved by the City Commission, and all subsequent development approvals, including building permits, shall comply with the Site Plan or any amendment thereto approved by the City. The Site Plan attached to and incorporated into this Development Agreement replaces the site plan for the Property approved by the City Commission on August 2, 2006.

b. **Modifications.** The Planning Director may approve minor modifications to the Site Plan as authorized by City Code Sections 108-91.C.1. and D. Other modifications to the approved Site Plan shall be approved pursuant to City Code Section 108-91.C.2-4.

5. **Phasing; Provision of Work Force Housing During Redevelopment.** The Redevelopment Plan shall be developed in four (4) phases consisting of new affordable work force housing units, renovation of the remaining Fairfield Inn structure for affordable work force housing units, townhouse transient units, and townhouse permanent residential units. The phasing may proceed in any order the Owner deems appropriate, so long as the issuance of certificates of occupancy for the affordable work force housing units satisfies the timing requirement in Section C.6 below. Prior to and during demolition and redevelopment, the Owner

will make no less than twenty-six (26) transient or residential units on the Property available for use as temporary affordable work force housing; provided, however, that some of the affordable work force housing may be provided off site temporarily if necessary to ensure the safety of the residents of such units during demolition and construction.

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

As part of the Redevelopment Plan, the Owner will develop twenty-six (26) affordable work force housing units on the Property, which will range in size from 300 square feet to 600 square feet. Development of the affordable work force housing units is subject to the following conditions:

a. Certificates of occupancy for all of the twenty-six (26) affordable work force housing units shall be issued prior to or concurrent with the issuance of a certificate of occupancy for any other part of the redevelopment.

b. Upon issuance of certificates of occupancy for the affordable work force housing units, the Owner shall place a deed restriction on the units, in a form acceptable to the City Attorney, restricting the use of the units to affordable work force housing for a period of fifty (50) years. The deed restriction must be accompanied by a subordination approved by the City Attorney and obtained by the Owner from any lender for the units acknowledging and agreeing that the units are restricted to use as affordable work force housing. The City may extend the period of the deed restriction for an additional fifty (50) years beyond its original term pursuant to City Code Section 122.1467(d). The effective date of the restrictive covenant or covenants shall be the date the certificate of occupancy is issued for the affordable work force housing unit(s). The Owner shall record the restrictive covenant(s) and the lender subordination

in the public records of Monroe County, Florida, and shall provide a copy of each recorded restrictive covenant and subordination showing the book and page where recorded to the City Planning Director as soon after recordation as is reasonably practical.

c. Affordable work force housing may include median income and moderate income housing. The number of affordable work force housing units devoted to each qualifying income level shall be determined at the time of issuance of certificates of occupancy.

7. **Form of Ownership of Property.** Condominium, cooperative, timeshare, or similar form of ownership of all or a portion of the Property, and the submission of the Property to the condominium, cooperative, timeshare or similar form of ownership (and recordation of a corresponding declaration of condominium or similar instrument), or the fee simple sale of individual units, shall not be prohibited and is consistent with terms and provisions of the City's Comprehensive Plan, City Code, and this Development Agreement.

8. **Additional Development Conditions.** Pursuant to City Commission Resolutions No. 06-272, 07-197, 08-229, and 09-303, the City granted with conditions, and extended with a condition, Major Development Plan and Conditional Use approval for redevelopment of the Property; and subsequently authorized the Owner to enter into a development agreement with the City subject to conditions set forth in the authorization. The following conditions, terms, and restrictions are derived from the City Commission resolutions and have been determined by the City of Key West to be necessary for the public health, safety, and welfare of its citizens:

a. **Construction Management.** Prior to any demolition and construction, a solid opaque wall six (6) feet in height shall be built to secure the site and to screen the site from public view and adjacent properties. This wall shall be set back a minimum of ten (10) feet from

Hilton Haven Drive (except for the existing building) and North Roosevelt Boulevard and preliminary landscaping shall be installed in front of the wall.

b. **Permanent Continuous Wall.** As part of the redevelopment, the Owner shall construct and maintain a continuous wall on the west property line (adjacent to the Flagler's Landing development) and the north side of Hilton Haven Drive, as shown on the Site Plan; provided, however, that the wall is not required to be constructed in front of the existing building that will be retained on the Property since the building acts as its own barrier; and provided further that the wall may be interrupted for pedestrian access linking the transient development on the Property to the overflow parking area on the north side of Hilton Haven Drive. The wall will be heavily landscaped along Hilton Haven Drive. The wall shall be a minimum of six (6) feet in height and may be up to ten (10) feet in height if allowed by a variance to the City Code. The location of the wall is subject to approval by the Fire Marshall to ensure that fire and safety access issues, including required line-of-sight for turns to and from North Roosevelt Boulevard, are appropriately addressed.

c. **Hilton Haven Drive.** The portion of Hilton Haven Drive on the Property shall be rebuilt to the structural standards of the City. Speed limit signs shall be installed at one or more locations to be determined by the City Engineer.

d. **Building Height.** Building height shall not exceed thirty (30) feet.

e. **Energy Efficiency.** The buildings on the Property will be constructed using energy efficient design principles that include energy-efficient appliances (energy star rated), energy-efficient windows and doors, enhanced ceiling and wall insulation, reduced-leak duct systems, programmable thermostats, and energy-efficient lighting.

f. **Outdoor Lighting.** Outdoor lighting fixtures shall be no more than twenty (20) feet in height and shall direct lighting towards the ground.

g. **Addresses of Units.** The Owner shall coordinate with the United States Postal Service and the City Engineer to develop an address plan for the units on the Property. The address plan must include mail box locations and small direction signs indicating the locations of the units to facilitate emergency response. The address plan shall be approved by the City Engineer prior to the issuance of building permits for the redevelopment plan.

h. **Garbage Collection.** The existing trash area along Hilton Haven Drive shall be relocated to another, less visible location and where garbage collection will not interfere with traffic. The Site Plan attached as Exhibit B demonstrates compliance with this condition.

i. **Speed Humps.** The cross walks across Hilton Haven Drive shall be designed as speed humps. In addition, speed bumps will be installed immediately forward of the North Roosevelt Boulevard sidewalks in order to reduce the speed of automobiles exiting Hilton Haven Drive and the auxiliary drive.

j. **Use of Docks.** Use of the commercial docks shall be limited to prohibit jet skis. Along the canal, the maximum commercial use shall be limited to vessels capable of accommodating no more than six (6) passengers.

k. **Drainage Plan.** The Drainage Plan attached as Exhibit C has been designed so that landscaping is not adversely impacted, has been approved by the City Engineer, and is approved by the City Commission as part of this Development Agreement. Any modifications to the approved Drainage Plan shall be made pursuant to the requirements and procedures in the City Code.

l. Landscape Plan. Under the prior Major Development Plan and Conditional Use Approval for the Property, the Owner was required to develop a landscape plan that exceeded minimum requirements, was approved by the City Tree Commission as a Superior landscape design, and highlighted a great number and diversity of native plants. The Owner's landscape plan prepared by Clint Oster, General Landscaping Corporation, Licensed Landscape Architect, dated February 25, 2010 ("Landscape Plan"), attached hereto as Exhibit D and incorporated herein, satisfies these requirements and was approved by the City Tree Commission on March 8, 2010. Landscaping of the Property shall substantially comply with the attached Landscape Plan.

m. Timing of Permit Applications. Prior to submitting a building permit application to the City, the Owner shall secure all necessary permits from state, regional and federal agencies, including but not limited to the South Florida Water Management District and the Florida Department of Transportation; and shall also secure any necessary permits or authorizations from the City of Key West Utilities.

n. Fair Housing Requirements. All units (non-transient and transient) shall comply with applicable state and federal fair housing act and ADA requirements for accessibility.

o. Site Design. The redevelopment of the Property shall be consistent with all bulk and site design requirements in the City Code unless a variance to such requirements is approved by the City.

p. Impact Fees. The Owner shall pay impact fees according to the City's impact fee ordinance applicable to all development in the City of Key.

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

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

10. **Public Facilities.** The Owner has provided the City satisfactory evidence that the redevelopment of the Property will not generate additional PM peak hour vehicle trips and satisfies the City's concurrency requirements. No new public facilities are necessary or will be constructed to assure that public facilities are available concurrent with the impacts of development on the Property. The public facilities that are required and will service the redevelopment authorized by this Development Agreement, and the provider of the facilities, are as follows:

- a. Domestic potable water is provided by Florida Keys Aqueduct Authority.
- b. Electric service is provided by Keys Energy.
- c. Solid waste service is provided by City of Key West Waste Management.
- d. Wastewater treatment shall be provided by City of Key West.
- e. Fire service will be provided by the City of Key West Fire Department.
- f. Schools: Adequate school facilities are anticipated to be available to serve any students who may reside in the 20 townhouse residential units, the 10 townhouse transient/residential units, and 26 affordable work force housing units developed on the Property.

g. Recreational facilities: Adequate City recreational facilities exist to serve the residents of the market rate units and affordable work force housing units to be developed on the Property.

Doc# 1792581
Bkn 2458 Pgn 468

11. All Permits Approved or Needed.

a. The only City development approvals needed for the development authorized by this Agreement are building permits for on site redevelopment and approval of the transfer of thirty-nine (39) licensed transient units off site pursuant to City Code Sections 122-1336 through 122-1346, a copy of which is attached as Exhibit E. No further review or discretionary review (except for full compliance with all elements of the Transient Unit Ordinance) will be required by the City, it being agreed that the redevelopment, as depicted on the approved Site Plan attached hereto as Exhibit B, requires only the above development approvals, unless the Site Plan is modified as provided in this Development Agreement.

b. The following regional, state and federal permits are needed for the development authorized by this Development Agreement: (1) Florida Department of Transportation permits for curb cuts on North Roosevelt Boulevard, and (2) a storm water permit from the South Florida Water Management District.

c. Nothing in this Development Agreement shall be deemed to obviate the Owner's compliance with terms and provisions of each required development approval.

12. Mutual Cooperation. The City agrees to cooperate with the Owner in timely processing for approval all permits, licenses, consents, or other approvals necessary or appropriate to fully implement this Development Agreement. The City and the Owner agree to

cooperate fully with and assist each other in the performance of the provisions of this Development Agreement.

13. Redevelopment to Comply with Permits and City Comprehensive Plan and Code Provisions. The redevelopment described in and authorized by this Development Agreement shall be undertaken in accordance with all required permits, and in accordance with all applicable provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Development Agreement. No certificate of occupancy for an individual building shall be issued until all plans for that building are approved by the City and the Owner has complied with all conditions in permits issued by the City and other regulatory entities for that building.

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

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

16. Laws Governing.

a. For the duration of this Development Agreement, all approved development of the Property shall comply with and be controlled by this Development Agreement and provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Development Agreement. The parties do not anticipate that the City will

apply subsequently-adopted laws and policies to the redevelopment of the Property unless specifically so stated in this Development Agreement.

b. Pursuant to Section 163.3233, Florida Statutes, the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that: (a) the new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent redevelopment of the land uses, intensities, or densities set forth in this Development Agreement; (b) the new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they shall apply to the redevelopment that is subject to this Development Agreement; (c) the City demonstrates that substantial changes have occurred in pertinent conditions existing on the date of execution of this Development Agreement; or (d) the Development Agreement is based on substantially inaccurate information supplied by the Owner. However, nothing in this Development Agreement shall prohibit the parties from mutually agreeing, in writing, to apply subsequently adopted laws to the Property.

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

17. **Amendment, Renewal, and Termination.** This Development Agreement may be amended, renewed, or terminated as follows:

Doc# 1792681
Bk# 2469 Pg# 471

a. As provided in Section 163.3237, Florida Statutes, this Development Agreement may be amended by mutual consent of the parties or their successors in interest. Amendment under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.

b. As provided in Section 163.3229, Florida Statutes, this Development Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirements in Section 163.3225, Florida Statutes.

c. This Development Agreement may be terminated by the Owner or its successor(s) in interest following a breach of this Development Agreement by the City upon written notice to the City as provided in this Development Agreement.

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

e. This Development Agreement may be terminated at any time by mutual consent of the parties.

Doc# 1792681
BK# 2469 Pg# 472

18. Breach of Agreement and Cure Provisions.

a. If the City finds, based on competent substantial evidence, that there has been a material failure by the Owner to comply with the terms of this Development Agreement, prior to revoking this Development Agreement, the City shall serve written notice on the Owner identifying the specific failure by the Owner to comply with the terms of this Development Agreement and providing the Owner with sixty (60) days from the date of receipt of the notice to

cure such failure or negotiate an amendment to this Development Agreement; provided, however, that if the failure is, by its nature, not susceptible to curing during said sixty-day period, the cure period shall be extended as necessary to accommodate the efforts of the Owner to effectuate a cure, provided that the Owner continuously and diligently (subject to fire, storm, flood, other Act of God, or events beyond the control of the Owner) prosecutes its efforts to cure the failure.

b. If the Owner concludes that there has been a material breach in the terms and conditions of this Development Agreement, the Owner shall serve written notice on the City identifying the term or condition the Owner contends has been materially breached and providing the City with sixty (60) days from the date of receipt of the notice to cure the breach. The following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the City, shall be considered a material breach of this Agreement: (1) failure to comply with the provisions of this Development Agreement; and (2) failure to timely process any application for site plan approval or other development approval required to be issued by the City for the redevelopment authorized by this Development Agreement.

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

d. If either party waives a material failure or breach in the performance of this Development Agreement by the other party, such a waiver shall not be deemed a waiver of any subsequent failure or breach.

19. **Notices.** All notices, demands, requests, or replies provided for or permitted by this Development Agreement, including notification of a change of address, shall be in writing to the addressees identified below, and may be delivered by any one of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; or (c) by deposit with an overnight express delivery service with a signed receipt or delivery confirmation required. Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

TO THE OWNER:

Doc# 1792681
Bk# 2469 Pg# 474

Banana, LLC
KW26, LLC
1001 East Atlantic Avenue, Suite 202
Delray Beach, FL 33483
Attention: Tom McMurray
Telephone: 561-279-9900

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

Adele V. Stones, Esq.
Stones & Cardenas
221 Simonton Street
Key West, FL 33040

And

Sherry A. Spiers, Esq.
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301

And

Richard H. Critchfield, Esq.
1001 East Atlantic Avenue, Suite 201
Delray Beach, FL 33483

TO THE CITY:

City Planning Director
604 Simonton, 2nd Floor
Key West, FL 33040
or
P. O. Box 1409
Key West, FL 33041-1409
Telephone: (305) 809-3720
Fax: (305) 809-3739

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

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

20. Enforcement. The parties acknowledge that, in accordance with Section 163.3243, Florida Statutes, any party to this Development Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes, or the state land planning agency (currently the Department of Community Affairs) may file an action for injunctive relief in the circuit court of Monroe County, Florida, to enforce the terms of this Development Agreement or to challenge the compliance of this Development Agreement with the provisions of Sections 163.3220-163.3243, Florida Statutes.

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

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

23. **Assignment.** This Agreement may be assigned without the written consent of the parties.

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

25. **Severability.** If any term, covenant, or condition of this Development Agreement, or the application thereof to any person or circumstance, shall be determined to be unenforceable by a court of competent jurisdiction (the "Offending Provision"), then the remainder of this Development Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this Development Agreement shall be valid and enforced to the fullest extent permitted by law; provided, however, that the parties shall endeavor in good faith, within sixty (60) days after the date such determination is made, to agree upon alternative provisions that shall have the same practical effect as the Offending Provision and upon any such agreement being reached, the new provision shall be incorporated into and form a part of this Development Agreement.

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

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

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

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

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

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

Section 163.3236, Florida Statutes, this Development Agreement shall become effective after it is recorded in the public records of Monroe County, Florida, and thirty (30) days after a copy of the recorded Development Agreement is received by the state land planning agency.

32. **Date of Agreement.** The date of this Development Agreement is the date the last party signs and acknowledges this Development Agreement and delivers an unaltered fully-executed counterpart hereof to the other party.

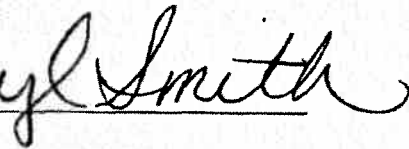
IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have set their hands and seals on the dates below written.

CITY OF KEY WEST

MAY 19, 2010
Date

By 
Craig Cates, Mayor





Doc# 1792681
Bk# 2469 Pg# 478

Doc# 1792681
Bk# 2469 Pg# 479

BANANA, LLC
A Florida Limited Liability Company

By TTM
Thomas T. McMurrain, Manager

STATE OF FLORIDA
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 1st day of June 2010, by Thomas T. McMurrain, as Manager for Banana, LLC, who is personally known to me or who produced _____ as identification.

Deborah Howard
Notary Public
Name: Deborah Howard
(typed, printed or stamped)
My commission expires: 7/31/2013

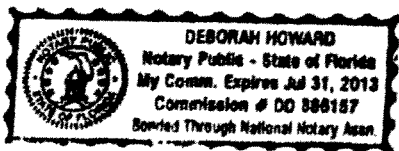


KW26, LLC
A Florida Limited Liability Company

By TTM
Thomas T. McMurrain, Manager

STATE OF FLORIDA
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 1st day of June 2010, by Thomas T. McMurrain, as Manager for KW26, LLC, who is personally known to me or who produced _____ as identification.



Deborah Howard
Notary Public
Name: Deborah Howard
(typed, printed or stamped)
My commission expires: 7/31/2010

LIST OF EXHIBITS

**Doc# 1792681
Bk# 2469 Pg# 458**

- Exhibit A: Legal description.
- Exhibit B: Site Plan prepared by Thomas E. Pope, P.A., Architect, dated May 2, 2006, last revised March 2, 2010.
- Exhibit C: Drainage Plan.
- Exhibit D: Landscape Plan prepared by Clint Oster, General Landscaping Corporation, Licensed Landscape Architect, dated February 25, 2010.
- Exhibit E: Ordinance No. 05-09 establishing City of Key West Code §§ 1336 through 122-1346 and Department of Community Affairs' Final Order approving same.

Doc# 1792681
Bk# 2488 Pg# 481

Exhibit A

EXHIBIT A

BANANA BAY

Doc# 1792681
Bk# 2469 Pg# 482

PARCEL 1

Tracts 2, 3, and 4 of the Amended Plat of Hilton Haven, Section No. 1, subdivision on the Island of Key West, Monroe County, Florida, according to plat recorded in Plat Book 2, page 108, according to the Public Records of Monroe County, Florida.

AND ALSO

A second parcel of land beginning at the Northeast Corner of Tract 4 of the aforesaid Amended Plat of Hilton Haven, Section No. 1 and proceeding in a Northerly direction on the East line of Tract 4 extended Northerly a distance of 272.25 feet to a point; thence proceed at right angles in a Westerly direction 220 feet to a point; thence proceed at right angles in a Southerly direction 272.25 feet; thence at right angles in an Easterly direction 220 feet back to the Point of Beginning.

AND ALSO

PARCEL 2

A parcel of land lying Northerly of the AMENDED PLAT OF HILTON HAVEN, SECTION 1, as recorded in the Public Records of Monroe County, Florida, being more particularly described as follows: COMMENCING at the Northeastly corner of Lot 4 of said Amended Plat of Hilton Haven Section No. 1; thence run in a Northerly direction along the East line of said Lot 4, extended Northerly 272.25 feet; thence run Westerly at right angles 220.00 feet to the Point of Beginning; thence continue Westerly along the previously described course 30.0 feet; thence run Southerly at right angles 47.0 feet; thence run Easterly at right angles 30.0 feet; thence run Northerly at right angles 47.0 feet back to said Point of Beginning.

Parcel Identification Number: 00002000-000000

and



EXHIBIT A

BANANA BAY

Doc# 1792681
BKN 2469 Pg# 483

PARCEL 3

A parcel of land being part of the AMENDED PLAT OF HILTON HAVEN SECTION 1, as recorded in the Public Records of Monroe County, Florida, being more particularly described as follows: COMMENCING at the Northeastly corner of Lot 4 of said Amended Plat of Hilton Haven Section No. 1; thence run North 83 degrees 03'59" West along the Northerly line of said Lot 4, for 100.00 feet to the Point of Beginning; thence continue North 83 degrees 03'59" West, 120.00 feet; thence run South 6 degrees 56'01" West, 20.00 feet; thence run South 83 degrees 03'59" East, 120.00 feet; thence run North 6 degrees 56'01" East 20.00 feet back to said Point of Beginning.

PARCEL 4

A parcel of land being a part of the AMENDED PLAT OF HILTON HAVEN, SECTION NO. 1, a subdivision on the Island of Key West, Monroe County, Florida; said parcel being described as follows: COMMENCE at the Northeast corner of Tract 4 of the aforesaid subdivision and run thence in a Southerly direction and along the East boundary line of the aforesaid Tract 4 for a distance of 73.25 feet to the POINT OF BEGINNING of the parcel of land being described herein; thence continue in a Southerly direction and along the East boundary line of the aforesaid Tract 4 for a distance of 14.14 feet; thence South 76 degrees 59'03" East for a distance of 108.60 feet; thence South 55 degrees 27'00" East for a distance of 95.00 feet to the Northeastly right of way line (ROWL) of North Roosevelt Boulevard; thence North 47 degrees 46' 00" East and along the aforesaid ROWL for a distance of 24.34 feet; thence North 59 degrees 39' 53" West for a distance of 98.34 feet; thence North 76 degrees 54' 15" West for a distance of 117.96 feet back to the POINT OF BEGINNING.

Parcel Identification Number: 00002080-000100



EXHIBIT A

FAIRFIELD INN

Doc# 1792661
SKN 2488 Pgm 484

PARCEL A1

Tract One (1) of the Amended Plat of HILTON HAVEN, section No. 1, a subdivision on the island of Key West, Monroe County, Florida, according to Plat recorded in Plat Book 2, Page 106, Monroe County, Florida.

AND TOGETHER WITH

PARCEL A2

On the island of Key West, Florida, and more particularly described as follows: Commencing at a point where the Northern property line of "HILTON HAVEN" Subdivision (Amended Plat, and recorded in Plat Book 2, Page 106, Public Records of Monroe County, Florida) intersects the Northwestern Right-of-Way line of Roosevelt Boulevard, said point also being a permanent reference monument of aforesaid "HILTON HAVEN" Subdivision from said point, run Southwesterly along the Northwestern Right-of-Way line of Roosevelt Boulevard for a distance of 165.0 feet to the point of beginning of the strip of land hereinafter described; thence with a deflected angle to the right of 72 degrees, 34 minutes and 06 seconds and in a Northwesterly direction for a distance of 86.34 feet to a point; thence with a deflected angle to the left of 17 degrees, 18 minutes and 22 seconds and in a Northwesterly direction for a distance of 117.96 feet to a point; thence with a deflected angle to the right of 83 degrees, 54 minutes and 16 seconds in a Northerly direction for a distance of 4.0 feet to a point; thence with a deflected angle to the right of 96 degrees, 38 minutes and 00 seconds and in a Southeasterly direction for a distance of 119.3 feet to a point; thence with a deflected angle to the right of 18 degrees, 31 minutes and 00 seconds and in a Southeasterly direction for a distance of 88.3 feet back to the Point of Beginning.

AND TOGETHER WITH

PARCEL A3

Begin at the intersection of the Northwestern Right-of-Way line of Roosevelt Boulevard and the North Boundary of Tract 1 of HILTON HAVEN, the Point of Beginning; thence westerly along the North line of HILTON HAVEN 315.35 feet; which said line makes an angle with the center line of Roosevelt Boulevard of 49 degrees 10 minutes; thence Northerly at right angles to the North boundary of said Tract 1, 45 feet; thence Easterly at right angles to the last named course and parallel with the North boundary of said Tract 1 of HILTON HAVEN, a distance of 283.28 feet; thence in a Southeasterly direction, making an angle of 90 degrees with the center line of Roosevelt Boulevard, 88.62 feet, to the Point of Beginning.

AND TOGETHER WITH

EXHIBIT A - Page 1 of 2

RECEIVED

MAY 03 2010

CITY OF KEY WEST
PLANNING DEPT.



EXHIBIT "A"

Doc# 1548462
Bk# 2185 Pgn 1878

LEGAL DESCRIPTION

PARCEL A4

A parcel of land North of HILTON HAVEN SUBDIVISION, as recorded in Plat Book 2, Page 108, Public Records of Monroe County, Florida, more particularly described as follows:

Commence at the intersection of the Northerly Right-of-Way line of Roosevelt Boulevard and the Northerly boundary of said HILTON HAVEN SUBDIVISION; thence West along said Northerly boundary 318.28 feet; thence North 46 feet to the Point of Beginning; thence continue North 228 feet; thence in a Southeastery direction 350 feet to a point East of the Point of Beginning; thence West 283.28 feet to the Point of Beginning.

Doc# 1792681
Bk# 2489 Pgn 485

RECEIVED
MAY 03 2008
CITY OF KEY WEST
PLANNING DEPT.

EXHIBIT "A" - Page 2 of 2

MONROE COUNTY
OFFICIAL RECORDS



Doc# 1792681
Bk# 2489 Pg# 486

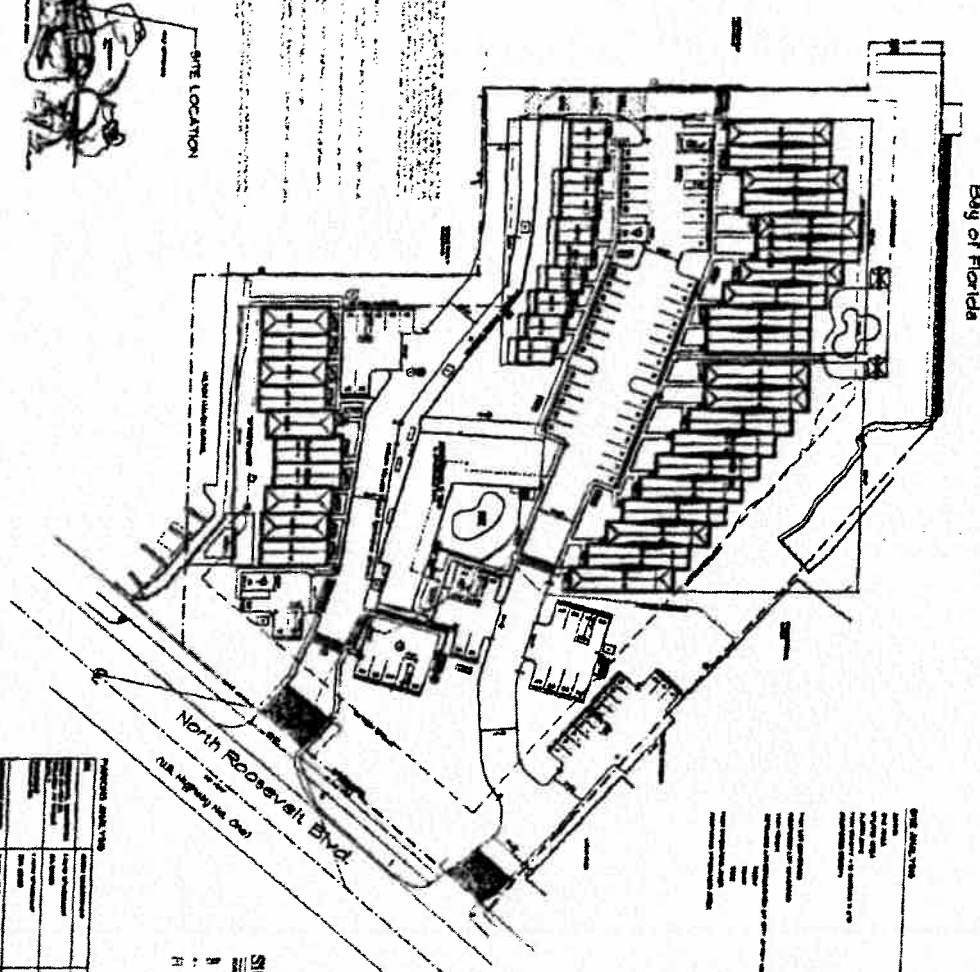
Exhibit B

BANANA BAY

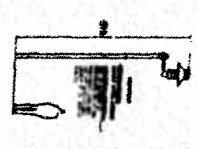
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NO.	DESCRIPTION	DATE	BY
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AD01

THOMAS E. POPE, P.A. ARCHITECT

Banana Bay

Doc# 1792681
Sk# 2469 Pg# 488

Exhibit C

Doc# 1792681
BKN 2469 Pgn 490

Exhibit D

HANRAH
LANDSCAPING
LANDSCAPE ARCHITECTS
1000 W. 10TH ST. SUITE 100
DENVER, CO 80202

DATE: 03/15/10
PROJECT: BANANA BAY

BANANA BAY

1000 W. 10TH ST. SUITE 100
DENVER, CO 80202
PHONE: 303.733.1111
FAX: 303.733.1112

CITY: DENVER
COUNTY: DENVER
STATE: CO
PROJECT: BANANA BAY

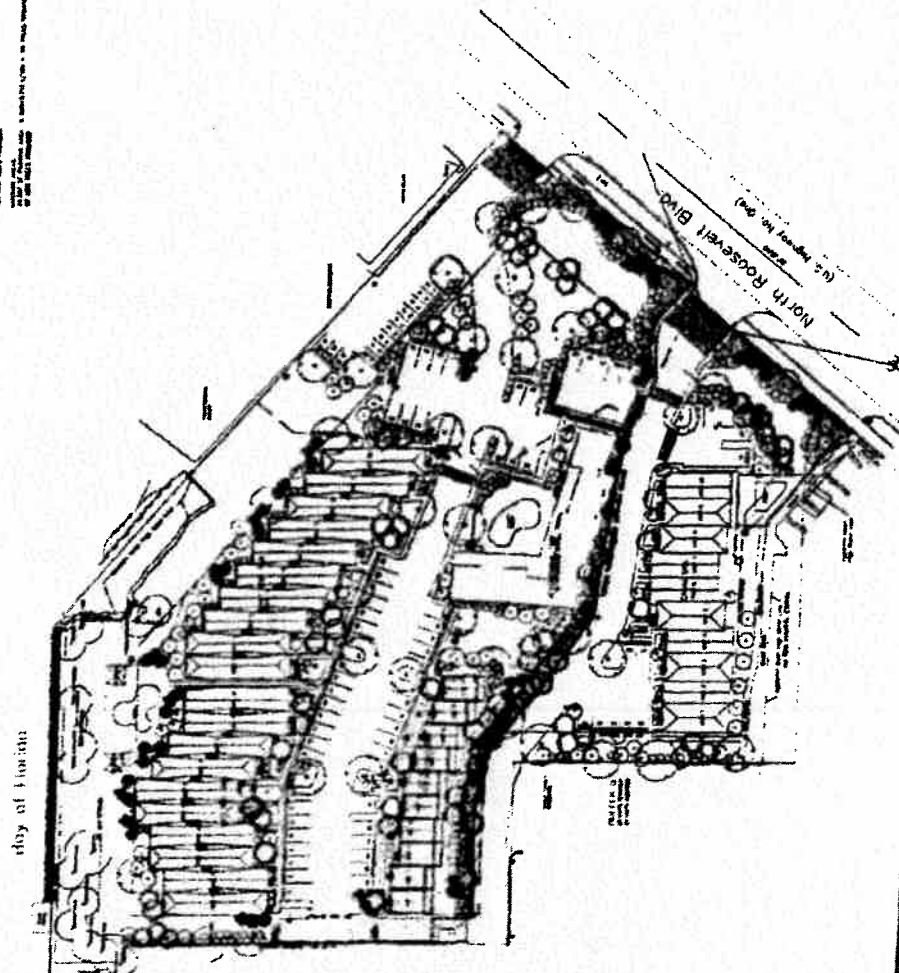
DATE: 03/15/10

GENERAL NOTES:
1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF DENVER AND COLORADO STATE REGULATIONS.
2. THE LANDSCAPE ARCHITECT HAS CONDUCTED VISUAL ANALYSIS AND HAS IDENTIFIED AREAS WHERE VISUAL IMPACTS MAY OCCUR.
3. VISUAL IMPACTS ARE THE RESULT OF CHANGES IN THE VISUAL ENVIRONMENT CAUSED BY THE PROPOSED DEVELOPMENT.
4. VISUAL IMPACTS ARE EVALUATED BASED ON THE VISUAL QUALITY OF THE SURROUNDING ENVIRONMENT.
5. VISUAL IMPACTS ARE EVALUATED BASED ON THE VISUAL QUALITY OF THE SURROUNDING ENVIRONMENT.
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10. VISUAL IMPACTS ARE EVALUATED BASED ON THE VISUAL QUALITY OF THE SURROUNDING ENVIRONMENT.

DESIGN NOTES:
1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF DENVER AND COLORADO STATE REGULATIONS.
2. THE LANDSCAPE ARCHITECT HAS CONDUCTED VISUAL ANALYSIS AND HAS IDENTIFIED AREAS WHERE VISUAL IMPACTS MAY OCCUR.
3. VISUAL IMPACTS ARE THE RESULT OF CHANGES IN THE VISUAL ENVIRONMENT CAUSED BY THE PROPOSED DEVELOPMENT.
4. VISUAL IMPACTS ARE EVALUATED BASED ON THE VISUAL QUALITY OF THE SURROUNDING ENVIRONMENT.
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LEGEND:
1. EXISTING LANDSCAPE
2. PROPOSED LANDSCAPE
3. EXISTING BUILDINGS
4. PROPOSED BUILDINGS
5. EXISTING ROADS
6. PROPOSED ROADS
7. EXISTING UTILITIES
8. PROPOSED UTILITIES
9. EXISTING TREES
10. PROPOSED TREES
11. EXISTING PLANTS
12. PROPOSED PLANTS
13. EXISTING FENCES
14. PROPOSED FENCES
15. EXISTING SIGNAGE
16. PROPOSED SIGNAGE
17. EXISTING LIGHTING
18. PROPOSED LIGHTING
19. EXISTING PAVING
20. PROPOSED PAVING
21. EXISTING CURBS
22. PROPOSED CURBS
23. EXISTING DRIVEWAYS
24. PROPOSED DRIVEWAYS
25. EXISTING SIDEWALKS
26. PROPOSED SIDEWALKS
27. EXISTING STAIRS
28. PROPOSED STAIRS
29. EXISTING RAMPWAYS
30. PROPOSED RAMPWAYS
31. EXISTING ELEVATORS
32. PROPOSED ELEVATORS
33. EXISTING ESCALATORS
34. PROPOSED ESCALATORS
35. EXISTING MECHANICAL ROOMS
36. PROPOSED MECHANICAL ROOMS
37. EXISTING ELECTRICAL ROOMS
38. PROPOSED ELECTRICAL ROOMS
39. EXISTING TELEPHONE ROOMS
40. PROPOSED TELEPHONE ROOMS
41. EXISTING JANETRIES
42. PROPOSED JANETRIES
43. EXISTING STORAGE ROOMS
44. PROPOSED STORAGE ROOMS
45. EXISTING OFFICES
46. PROPOSED OFFICES
47. EXISTING CONFERENCE ROOMS
48. PROPOSED CONFERENCE ROOMS
49. EXISTING BREAK ROOMS
50. PROPOSED BREAK ROOMS
51. EXISTING RECEPTION AREAS
52. PROPOSED RECEPTION AREAS
53. EXISTING LOBBIES
54. PROPOSED LOBBIES
55. EXISTING CORRIDORS
56. PROPOSED CORRIDORS
57. EXISTING STAIRWELLS
58. PROPOSED STAIRWELLS
59. EXISTING ELEVATOR SHAFTS
60. PROPOSED ELEVATOR SHAFTS
61. EXISTING ESCALATOR SHAFTS
62. PROPOSED ESCALATOR SHAFTS
63. EXISTING MECHANICAL SHAFTS
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80. PROPOSED RECEPTION SHAFTS
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82. PROPOSED LOBBY SHAFTS
83. EXISTING CORRIDOR SHAFTS
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96. PROPOSED TELEPHONE SHAFTS
97. EXISTING JANETRY SHAFTS
98. PROPOSED JANETRY SHAFTS
99. EXISTING STORAGE SHAFTS
100. PROPOSED STORAGE SHAFTS

PLANTING SCHEDULE:
1. EXISTING TREES
2. PROPOSED TREES
3. EXISTING PLANTS
4. PROPOSED PLANTS
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39. EXISTING CONFERENCE ROOMS
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100. PROPOSED RECEPTION SHAFTS



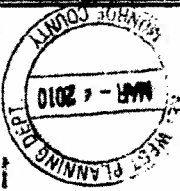
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GENERAL
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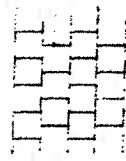
PLANTING
DETAILS

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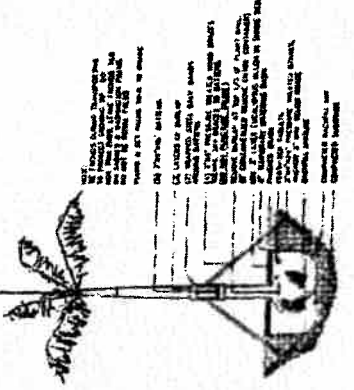
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PLANTING NOTES:
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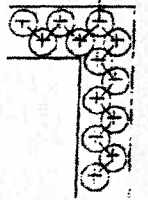
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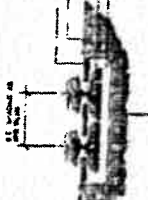
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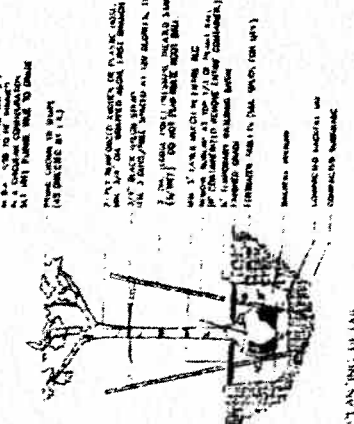
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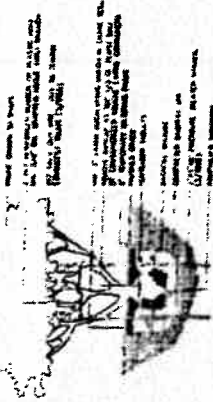
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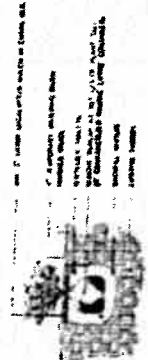
GROUNDCOVER / ANNUALS PLANTING DETAIL



TREE PLANTING DETAIL



MULCH PLANTING DETAIL



SHRUB PLANTING DETAIL

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1/27/2010

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Exhibit E

Doc# 1792661
BKN 2489 Pgn 494

ORDINANCE NO. 03-09



AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 122 OF THE KEY WEST CODE OF ORDINANCES ENTITLED "ZONING" BY RE-ESTABLISHING SECTIONS 122-1336 THROUGH 122-1345 IN ORDER TO ALLOW AND REGULATE THE TRANSFER OF TRANSIENT UNITS OR LICENSES; ADDING SECTION 122-1346 TO PROVIDE A SUNSET DATE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission enacted Ordinance No. 99-26, an amendment to the LDRs, on December 7, 1999, to allow the transfer of transient licenses and units; and

WHEREAS, the City Commission enacted Ordinance No. 02-05, an amendment to the LDRs, on February 6, 2002, providing revised regulations for the transfer of transient licenses and units; and

WHEREAS, after five years, the Planning Board of the City of Key West has had numerous opportunities to consider applications for these transfers; and

WHEREAS, the Transfer Ordinance contained a sunset provision of March 15, 2005; and

WHEREAS, City staff has recommended re-establishment of the ordinance; and

WHEREAS, at its regular meeting of February 17, 2005, the Key West Planning Board, consistent with its obligations under section 90-55(3) of the Code of Ordinances, found this proposed ordinance

amendment consistent with the Key West Comprehensive Plan, citing objectives 1-3.3, 1-3.6 and 1-3.12 and Policies 1-2.3.9 and 1-3.2.2; and

WHEREAS, the City Commission finds that re-establishment of the Transfer Ordinance would promote the health, safety and welfare of the citizens of Key West.

Doc# 1792681
BKN 2469 Pgn 495

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 122-1336 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1336. Purpose.

A. Purpose

The purpose of this ordinance is to provide for the transfer of existing transient units and transient licenses in order to reduce noncomplying density, structures and uses; remove legal non-conforming transient uses from zoning districts that now prohibit them; encourage permanent residential housing by relocating transient licenses; provide for the conversion of transient units to single-family dwellings by the transfer of units; allow for redevelopment without increasing the population requiring evacuation during emergencies or increasing other public services; protect environmentally sensitive lands; and encourage

redevelopment under the existing rate of growth ordinance ("ROGO") that limits the allowable number of residential and transient units. This division is only for the purpose of the transfer of transient units and shall not be construed to create new residential or transient units.

Section 2: That Section 122-1337 is hereby added to the Key West Code of Ordinances as follows: Dec# 1752681
Bkn 2469 Pgn 496

Sec. 122-1337. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Affordable housing" shall mean housing as defined in Section 122-1466 of the land development regulations ("LDRs") and amendments thereto.

"Receiver site" shall mean the property where the unit or license is desired to be transferred and relocated pursuant to this division.

"Residence or residential unit" shall mean a single family, multi-family, accessory, or affordable housing unit.

"Sender site" shall mean the property where the transient unit or license is currently located and recorded prior to application for transfer.

"Transient unit" shall mean a transient living accommodation as defined in section 86-9 of the LDRs.

Section 3: That Section 122-1338 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1338. Transfer of Transient Units.

(1) The unit being transferred must currently be counted as a unit for purposes of calculating evacuation time under the hurricane model set forth in the comprehensive plan, and must have been obtained in accordance with all applicable regulations, including building permits, at the time of approval or have been otherwise validly obtained if unbuilt at the time of transfer. A transfer pursuant to this ordinance shall not cause a net increase of units in the city.

(2) Transient use must be an allowed zoning use on the receiver site, unless the units are to be converted into non-transient units as contemplated by subsection (3) of this section. Further, no transient unit shall be recognized for transfer purposes unless accompanied by an occupational license duly issued pursuant to section 66-109(10).

(3) Transient units may be converted to residential units at the appropriate exchange rate as determined by the comprehensive plan so as not to increase hurricane evacuation time. Where a residential unit is created by the transfer of a transient unit and the new residential unit is 600 square feet or less, the transient unit may be transferred at its .58 ROGO unit equivalency into a residential unit with transient use prohibited.

(4) The transferred units shall not operate to increase density of the receiver site above the maximum allowed density.

(5) Unless the planning board determines that special conditions exist at the receiver site that warrant otherwise, the transient unit may not include more than two rooms, excluding bathrooms, and excluding porches and decks that are clearly not enclosed or habitable.

(6) At the sender site, any remaining transient units that are remodeled or combined may not increase the existing number of rooms, excluding bathrooms. All such units shall not have "lockout" capacity.

(7) There shall be no transfer of units into a "V" zone as depicted on the most current flood insurance rate map, if the transfer would produce new construction.

(8) Existing non-conforming buildings may receive units providing their non-conforming aspects are not increased.

(9) Development plans for both sites shall be processed as provided in the LDRs, according to the magnitude and type of development.

(10) No building permit shall be granted for the receiver site until the city has verified that the transient use at the sender site unit(s) has been extinguished. A person or entity who has lawfully terminated or extinguished legal transient units existing as of January 1, 1999, may preserve the right to transfer

the units and then transfer such units pursuant to this section, provided the transient licenses have been maintained. Furthermore, the city shall conduct on-site inspections at both the sender site and receiver site to verify that the terms of this ordinance are being met in the proposed transfer application.

Section 4: That Section 122-1339 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1339. Transfer of transient occupational license.

(a) An occupational license for transient use of a unit may itself be transferred from an area where transient uses are prohibited to a receiver site without the accompanying transfer of the unit. In addition, licenses may be transferred from the HNC-1 and HNC-3 zoning districts. A transfer of a license under this section shall not result in a loss of affordable housing at the receiver site.

(b) Where a license alone is transferred, the planning board shall consider whether the receiver site is suitable for transient use in the zoning district, shall consider the relative size of the unit from which the license is transferred, and shall consider the room configuration of both sites to maintain approximately the same or less net number of occupants.

Section 5: That Section 122-1340 is hereby added to the Key West Code of Ordinances as follows:

Doc# 1792881
Bk# 2488 Pg# 488

redevelopment under the existing rate of growth ordinance ("ROGO") that limits the allowable number of residential and transient units. This division is only for the purpose of the transfer of transient units and shall not be construed to create new residential or transient units.

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Doc# 1792681
BKN 2469 Pgm 496

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The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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"Receiver site" shall mean the property where the unit or license is desired to be transferred and relocated pursuant to this division.

"Residence or residential unit" shall mean a single family, multi-family, accessory, or affordable housing unit.

"Sender site" shall mean the property where the transient unit or license is currently located and recorded prior to application for transfer.

"Transient unit" shall mean a transient living accommodation as defined in section 86-9 of the LDRs.

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(2) Transient use must be an allowed zoning use on the receiver site, unless the units are to be converted into non-transient units as contemplated by subsection (3) of this section. Further, no transient unit shall be recognized for transfer purposes unless accompanied by an occupational license duly issued pursuant to section 66-109(10).

(3) Transient units may be converted to residential units at the appropriate exchange rate as determined by the comprehensive plan so as not to increase hurricane evacuation time. Where a residential unit is created by the transfer of a transient unit and the new residential unit is 600 square feet or less, the transient unit may be transferred at its .58 ROGO unit equivalency into a residential unit with transient use prohibited.

(4) The transferred units shall not operate to increase density of the receiver site above the maximum allowed density.

(5) Unless the planning board determines that special conditions exist at the receiver site that warrant otherwise, the transient unit may not include more than two rooms, excluding bathrooms, and excluding porches and decks that are clearly not enclosed or habitable.

(6) At the sender site, any remaining transient units that are remodeled or combined may not increase the existing number of rooms, excluding bathrooms. All such units shall not have "lockout" capacity.

(7) There shall be no transfer of units into a "V" zone as depicted on the most current flood insurance rate map, if the transfer would produce new construction.

(8) Existing non-conforming buildings may receive units providing their non-conforming aspects are not increased.

(9) Development plans for both sites shall be processed as provided in the LDRs, according to the magnitude and type of development.

(10) No building permit shall be granted for the receiver site until the city has verified that the transient use at the sender site unit(s) has been extinguished. A person or entity who has lawfully terminated or extinguished legal transient units existing as of January 1, 1999, may preserve the right to transfer

the units and then transfer such units pursuant to this section, provided the transient licenses have been maintained. Furthermore, the city shall conduct on-site inspections at both the sender site and receiver site to verify that the terms of this ordinance are being met in the proposed transfer application.

Section 4: That Section 122-1339 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1339. Transfer of transient occupational license.

(a) An occupational license for transient use of a unit may itself be transferred from an area where transient uses are prohibited to a receiver site without the accompanying transfer of the unit. In addition, licenses may be transferred from the HNC-1 and HNC-3 zoning districts. A transfer of a license under this section shall not result in a loss of affordable housing at the receiver site.

(b) Where a license alone is transferred, the planning board shall consider whether the receiver site is suitable for transient use in the zoning district, shall consider the relative size of the unit from which the license is transferred, and shall consider the room configuration of both sites to maintain approximately the same or less net number of occupants.

Section 5: That Section 122-1340 is hereby added to the Key West Code of Ordinances as follows:

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**Sec. 122-1340. Development review committee and
planning board review.**

The development review committee (DRC) shall review each application for transfer. The planning board will receive comments from the DRC and the recommendation of the planning department and may deny an application on the grounds of inconsistency with the purpose of the ordinance or a violation of the specific provisions of the ordinance. When approving an application, the planning board may impose conditions, including but not limited to: physical modifications and the filing of deed restrictions, in order to assure the continuation of permanent residential housing, the preservation of community character and that the transfer advances the purposes of this division. The decision of the planning board shall be final.

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Section 6: That Section 122-1341 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1341. Compliance with codes.

All structures proposed to be used on a transient basis must comply with codes and requirements of the building department, fire department, and all other regulatory agencies.

Section 7: That Section 122-1342 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1342. Historic structures.

Proposals to change the interior of contributing or altered historic structures located within the historic district shall be subject to the review of the historic architectural review commission (HARC) for the proposed interior renovations. If the receiver site is an historic structure, the planning board may consider retaining the room layout (notwithstanding sections 122-1338(5) and 122-1339(b) hereof), and may further consider all guidelines adopted by the historic architectural review commission.

Section 8: That Section 122-1343 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1343. Tracking system; enforcement.

The city manager shall establish a tracking system for all sender sites and receiver sites. On an annual basis, the building department shall certify that each such site is being put to the use(s) represented in the transfer application.

Section 9: That Section 122-1344 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1344. Application, notice and fees.

Applications for transient unit transfer and transient license transfer may be obtained from the planning department and must be completed in the form and manner required by the department. Notice of any such transfer shall be given for the planning board meeting

at which the transfer will be considered, pursuant to section 90-60 of the LDRs. Notices shall be sent to the property owners at both the sender and receiver sites. An appropriate fee schedule shall be established by resolution. The amount of the fee shall take into consideration, among other things, the cost of the tracking system and the cost of enforcement of this ordinance. The transfer must occur within 18 months of planning board approval, although the applicant may apply to the planning board for an extension(s).

Section 10: That Section 122-1345 is hereby added to the Key West Code of Ordinances as follows:

**Sec. 122-1345. Consent by mortgagee and
condominium/homeowner's association.**

When a sender site is subject to a mortgage that references the transient license or use, the application must be accompanied by a consent executed by the mortgagee. If the receiver site is governed either by a condominium association or a homeowners' association, such association must approve the transfer by a majority vote as defined by the governing documents of the association. Proof of approval shall accompany the application for transfer.

Section 11: That Section 122-1346 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1346. Sunset.

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This Ordinance shall expire on May 15, 2010.

Section 12: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 13: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 14: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

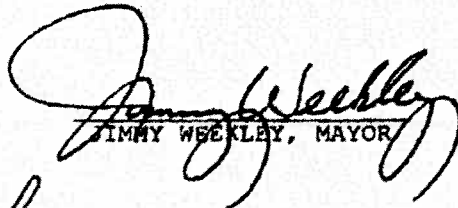
Read and passed on first reading at a regular meeting held this 5th day of April, 2005.

Read and passed on final reading at a regular meeting held this 19th day of April, 2005.

Authenticated by the presiding officer and Clerk of the Commission on 20th day of April, 2005.

Filed with the Clerk April 20, 2005.

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Bkm 2489 Pgm 503


JIMMY WEEKLEY, MAYOR


ATTEST:


CHERYL SMITH, CITY CLERK



STATE OF FLORIDA, COUNTY OF MONROE,
CITY OF KEY WEST

This copy is a true copy of the public record on file in this office. Witness my hand and official seal this 16 day of March 2010

By 
Cheryl Smith, City Clerk

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: LAND DEVELOPMENT
REGULATIONS ADOPTED BY
CITY OF KEY WEST ORDINANCE
NO. 05-09

RECEIVED
CITY CLERK'S OFFICE
2005 MAY 23 AM 9:14
CITY OF KEY WEST
KEY WEST, FLORIDA

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), *Fla. Stat.*, (2004), approving a land development regulation adopted by a local government within the City of Key West Area of Critical State Concern as set forth below.

FINDINGS OF FACT

1. The City of Key West is a designated area of critical state concern.
2. On April 20, 2005, the Department received for review City of Key West Ordinance No. 05-09, which was adopted by the City of Key West City Commission on April 20, 2005 ("Ord. 05-09"). Ord. 05-09 amends Chapter 122 of the Key West Code of Ordinances entitled "Zoning" by re-establishing Sections 122-1336 through 122-1345 in order to allow and regulate the transfer of transient units or licenses; adding Section 122-1346 to provide a sunset date; providing for severability; providing for repeal of inconsistent provisions; and providing for an effective date.
3. Ord. 05-09 is consistent with the City's Comprehensive Plan.

CONCLUSIONS OF LAW

4. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern based upon consistency with the Principles for Guiding Development applicable to that area of critical state concern. §§ 380.05(6) and 380.05(11), *Fla. Stat.*, (2004).

5. The City of Key West is an Area of Critical State Concern. § 380.05, *Fla. Stat.* (2004) and Rule 28-36.001, *Fla. Admin. Code*.

6. "Land development regulations" include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2004). The regulations adopted by Ord. 05-09 are land development regulations.

7. All land development regulations enacted, amended or rescinded within an area of critical state concern must be consistent with the principles for guiding development for the particular area (the "Principles"). § 380.05(6), *Fla. Stat.*; see *Rathkamp v. Department of Community Affairs*, 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff'd*, 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles for the City of Key West Area of Critical State Concern are set forth in Rule 28-36.003(1), *Fla. Admin. Code*.

8. Ord. 05-09 promotes and furthers the following Principles in Rule 28-36.003(1):

- (a) To strengthen local government capabilities for managing land use and development.
- (e) Protection of the historical heritage of Key West and the Key West Historical Preservation District.
- (f) Protection of the value, efficiency, cost-effectiveness and amortized life of existing and proposed major public investments, including . . . (5) The maintenance and expansion of transportation facilities because the units to be transferred under this ordinance must have been counted as a unit for the purposes of calculating hurricane evacuation time under the hurricane evacuation model.
- (h) Protection of the public health, safety, welfare and economy of the City of Key West, and the maintenance of Key West as a unique Florida resource.

9. Ord. 05-09 is not inconsistent with the remaining Principles. Ord. 05-09 is consistent with the Principles for Guiding Development as a whole.


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DCA Final Order No.: DCA05-OR-086

WHEREFORE, IT IS ORDERED that Ord. 05-09 is found to be consistent with the Principles for Guiding Development of the City of Key West Area of Critical State Concern, and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED in Tallahassee, Florida.


James L. Quinn, State Planning Administrator
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this 19th day of May, 2005.


Paula Ford, Agency Clerk

By U.S. Mail:

The Honorable Jimmy Weekley
Mayor, City of Key West
P.O. Box 1409
Key West, Florida 33041

Cheryl Smith
Clerk to the City Commission
P.O. Box 1409
Key West, Florida 33041

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

By Hand Delivery or Interagency Mail:

Rebecca Jetton, ACSC Administrator, DCA Tallahassee
Richard E. Shine, Assistant General Counsel, DCA Tallahassee