

## **PARKING AGREEMENT**

THIS PARKING AGREEMENT is executed as of the \_\_\_\_ day of \_\_\_\_\_, 2012, by and between Harborside, LLC, a Florida Limited Liability Company (“Harborside”), M & I Regional Properties, LLC, a Wisconsin Limited Liability Company (“M&I”), and the City of Key West, Florida, a municipal corporation (“City”).

WHEREAS, Harborside is the owner of certain rights to purchase certain real property acquired in foreclosure by M&I, which property was formerly known as Jabour’s Campground and Trailer Court, located at 223 Elizabeth Street, Key West, Florida (“Jabour’s Campground”) and two contiguous parcels, located at and consisting of approximately 1.9 acres of upland area, (collectively, the “Property”), all as more particularly described on Exhibit “A”, a survey completed by “Island Surveying, Inc.” and dated May 12, 2011, attached hereto; and

WHEREAS, in settlement of litigation regarding the permissible redevelopment of the Property, City, M&I, and Harborside entered into a Revised Settlement Agreement dated March 2, 2004, (the “Revised Settlement”), attached hereto as Exhibit “B”; and

WHEREAS, the Revised Settlement contains a provision directing the parties to enter into negotiations for a special long term contract in order to provide for Harborside’s use of 26 parking spaces at the City’s Caroline Street Key West Bight Parking Lot; and

WHEREAS, the parties have concluded the negotiations referred to in the preceding paragraph and desire to reduce their agreement to writing; and

WHEREAS, Harborside will acquire the Property from M&I and will redevelop the Property pursuant to the terms and conditions contained in the Revised Settlement, subject to the City’s approval of an amended 380 Agreement in conformity with all the terms, commitments and conditions of the Revised Settlement.

NOW, THEREFORE, in consideration of the mutual commitments, conditions and covenants herein contained in this document. Harborside and City hereby agree as follows:

1. All of the above recitals are true and are incorporated herein.
2. This Agreement is expressly contingent upon the City’s approval of Harborside’s Major Development Plan for the development of a resort hotel on the Property.
3. The initial term of this Agreement shall commence upon the effective date of the development order for the approval of Harborside’s Major Development Plan, if that event occurs. The initial term of this Agreement shall be forty (40) years and may be renewed thereafter by the City according to section 2-941(a) of the City Code of Ordinances applicable to lands within the boundaries of a Local Redevelopment Area.

4. For the five-year period commencing upon the execution of this agreement, City shall provide 26 parking spaces at the City's Caroline Street Key West Bight Parking Lot for the use of the guests at the resort hotel to be developed by Harborside on the Property. The parking spaces shall be reserved for Harborside's use in name only, and shall not be marked or delineated by the City or Harborside. Access to and use of the parking spaces by Harborside's guests shall be by special placard made available to the owners of automobiles of the hotel guests and such placards shall be placed in the automobiles of the hotel guests parked at the lot.

5. The number of spaces to be provided by City to Harborside shall be adjusted upward or downward on the fifth anniversary of the execution of this Agreement and every five years thereafter for the term of this Agreement and will be calculated by multiplying the hotel room average annual occupancy percentage rate of the preceding five year period as published by the Smith Travel Research Star Reports for the Key West Upper Tier by 33, the number of parking spaces required for Harborside's development which will not be provided on the Property. The Upper Tier Key West Annual Average Hotel Room Occupancy reported by Smith Travel Research for 2010 is 78.2%, resulting in the calculation of 26 parking spaces upon the execution of this Agreement.

6. Harborside shall compensate the City on an annual basis for the loss of revenue received by the City from the parking spaces reserved for Harborside. Payment shall commence at such time that Harborside's utilization of the parking spaces actually commences or upon the issuance of the certificate of occupancy for Harborside's development, whichever occurs earlier.

7. The compensation to be paid by Harborside shall be calculated by multiplying the number of parking spaces reserved for Harborside by \$4,129.00, the documented annual revenue per parking space at City's Caroline Street Key West Bight Parking Lot at the time of the execution of this Agreement. Accordingly, the annual compensation due from Harborside at the time of the execution of this Agreement is \$107,354.00. The first payment for the parking spaces provided will be made by Harborside prior to the issuance of a certificate of occupancy for the resort hotel.

8. The compensation paid by Harborside shall be reviewed on the fifth anniversary date of the signing of this Agreement, and every five years thereafter, and adjusted upward or downward based upon that review. The basis for the review and adjustment will be the average annual revenue for the preceding five year period reported by the City in its document entitled Key West Bight Parking Lot Total Revenue by Day and reference to the annual totals shall be made.

9. In the event additional improvement costs are required to provide access to the City's Caroline Street Key West Bight Parking Lot for hotel guests, such as a new curb cut to be constructed on William Street or other improvements to City property necessitated by this Agreement, as agreed to by the parties, all such additional costs shall be the sole and entire responsibility of Harborside.

10. To the extent that Harborside requests that City to provide the parking spaces referred to herein, Harborside agrees to protect, defend, indemnify, save and hold harmless The City of Key West, all its Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expense and liability arising out of injury or death to any person or the damage, loss of destruction of any property which may occur or in any way result from City's act of providing parking spaces to Harborside, or any and all costs, expense and/or attorney fees incurred by the City as a result of any claim, demands, and/or causes of action except of those claims, demands, and/or causes of action arising out of the negligence of The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees. Harborside agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent. Nothing in this indemnification is intended to act as a waiver of the City's sovereign immunity rights, including those provided under section 768.28, Florida Statutes. This indemnification shall survive the expiration or termination of this Agreement.

11. The laws of the state of Florida and Monroe County will govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. Venue for any proceedings between the Parties shall be in Key West, Monroe, Florida.

12. If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

13. In the event of litigation affecting the rights of any party under this Agreement, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder, including those pertaining to appeals.

14. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

15. This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments hereto shall be binding on either Party unless in writing and signed by both Parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the above date.

HARBORSIDE, LLC

CITY OF KEY WEST

By: \_\_\_\_\_

By: \_\_\_\_\_

NAME: \_\_\_\_\_

CRAIG CATES, Mayor

TITLE: \_\_\_\_\_

Witnesses:

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

CHERYL SMITH, City Clerk

M & I REGIONAL PROPERTIES, LLC, a  
Wisconsin Limited Liability Company

By: \_\_\_\_\_

Witnesses:

\_\_\_\_\_

\_\_\_\_\_