

# **Attachment E**

**Carlene Cowart**

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**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

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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 CATES, MAYOR

ATTEST:

  
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 20<sup>th</sup> day of May, 2010

Deputy City Clerk  
By 

Doc# 1792681 06/08/2010 3:20PM  
Filed & Recorded in Official Records of  
MONROE COUNTY DANNY L. KOLHAGE

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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

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

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**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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**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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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:

<b>Site</b>	<b>Transient (.58 ESFU)</b>	<b>Residential (1.0 ESFU)</b>	<b>Total BPAS Equivalent Units</b>	<b>Transient Licenses</b>
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
<b>TOTALS</b>	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
<b>Existing</b>		<b>76</b>	<b>52.9</b>	<b>55</b>
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
<b>Subtotal (remaining)</b>		<b>46</b>	<b>22.9</b>	<b>45</b>
Licensed Transient Units Transferred Off Site	Transient units with transient licenses transferred offsite (0.58 ESFU)	39	22.9	39
<b>Total Used</b>		<b>69</b>	<b>52.9</b>	<b>49</b>
<b>Remaining Unused</b>		<b>0</b>	<b>0</b>	<b>6</b>

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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**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.

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**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:

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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.

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**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 McMurrain  
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, 2<sup>nd</sup> 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.

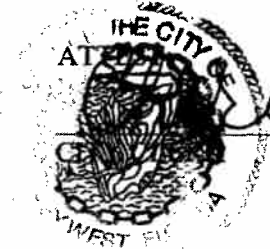
**32. Date of Agreement.** The date of this Development Agreement is the date the last party signs and acknowledges this Development Agreement and delivers an unaltered fully-executed counterpart hereof to the other party.

**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

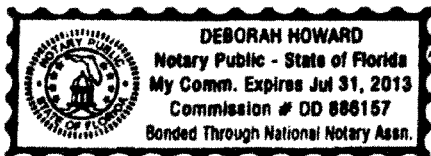
BANANA, LLC  
A Florida Limited Liability Company

By TTM  
Thomas T. McMurrain, Manager

STATE OF FLORIDA  
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 1<sup>st</sup> 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

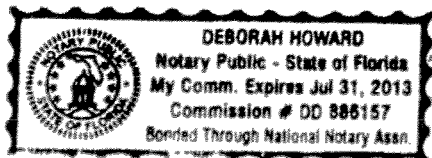


KW26, LLC  
A Florida Limited Liability Company

By TTM  
Thomas T. McMurrain, Manager

STATE OF FLORIDA  
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 1<sup>st</sup> 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 P# 480

- 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# 2469 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 Northeasterly 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 Pgm 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 Northeasterly 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 Northeasterly 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# 1792681  
Bk# 2469 Pg# 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 108, 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 Northerly property line of "HILTON HAVEN" Subdivision (Amended Plat, and recorded in Plat Book 2, Page 108, Public Records of Monroe County, Florida) intersects the Northwesterly 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 Northwesterly Right-of-Way line of Roosevelt Boulevard for a distance of 185.0 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 98.34 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 117.98 feet to a point; thence with a deflected angle to the right of 83 degrees, 54 minutes and 18 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 98.3 feet back to the Point of Beginning.

AND TOGETHER WITH

PARCEL A3

Begin at the intersection of the Northwesterly 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, 68.82 feet, to the Point of Beginning.

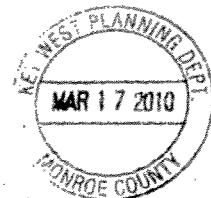
AND TOGETHER WITH

EXHIBIT "A" - Page 1 of 2

RECEIVED

MAY 03 2010

CITY OF KEY WEST  
PLANNING DEPT.



**EXHIBIT "A"**

Doc# 1548482  
Bk# 2181 P## 1678

**LEGAL DESCRIPTION**

**PARCEL A1**

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 315.25 feet; thence North 45 feet to the Point of Beginning; thence continue North 225 feet; thence in a Southeastery direction 350 feet to a point East of the Point of Beginning; thence West 263.26 feet to the Point of Beginning.

Doc# 1792681  
Bk# 2469 P## 485

**RECEIVED**  
MAY 03 2006  
CITY OF KEY WEST  
PLANNING DEPT.

MONROE COUNTY  
OFFICIAL RECORDS

EXHIBIT "A" - Page 2 of 7

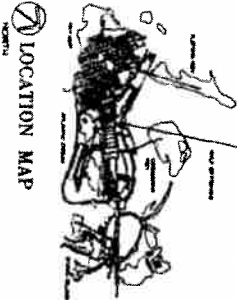


Doc# 1792681  
Bk# 2469 Pg# 486

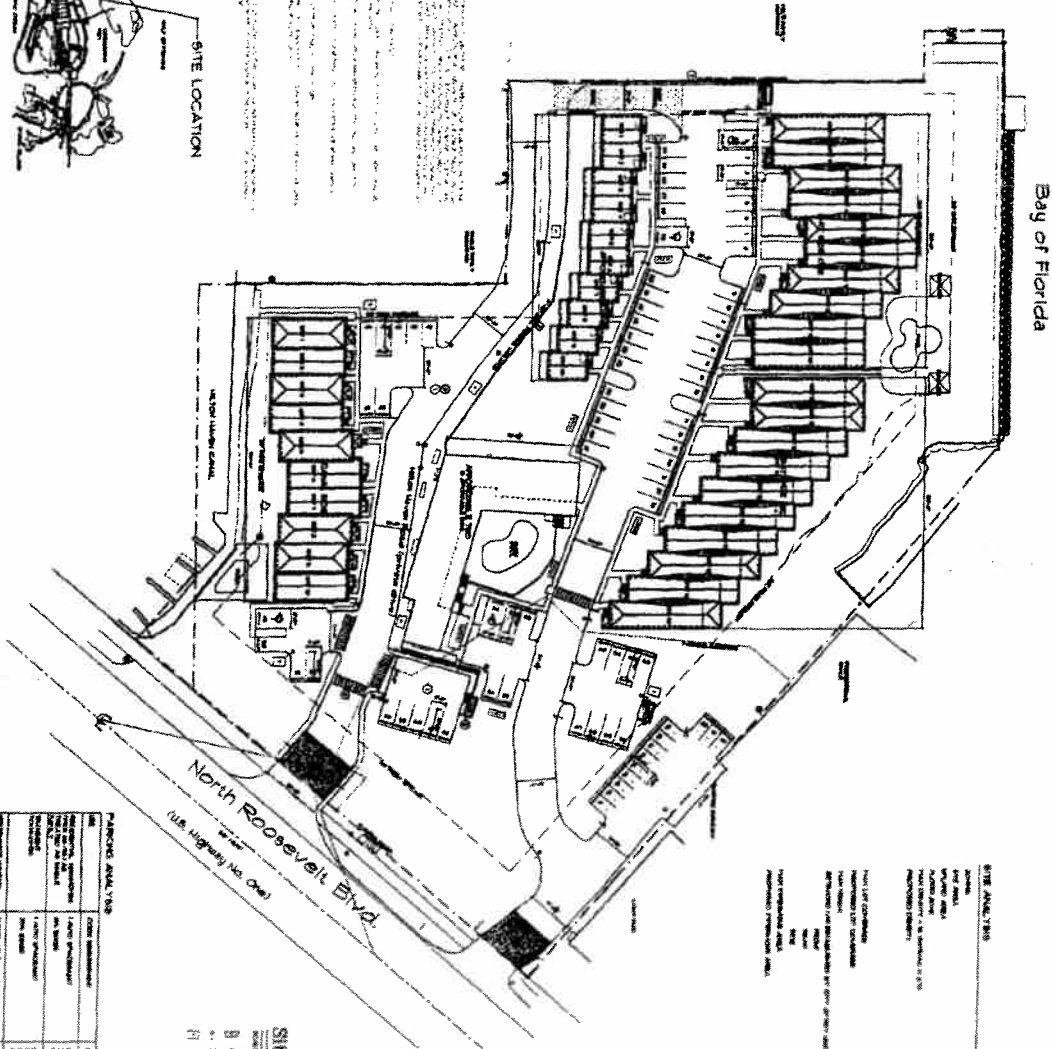
## **Exhibit B**

# BANANA BAY

Doc# 1792681  
BKM 2469 Pgm 487



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**ANALYSIS ANALYSIS**

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**SITE ANALYSIS**

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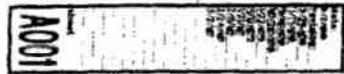
BY: ...

PROJECT: ...

LOCATION: ...

SCALE: ...

...



**THOMAS E. POPE, P.A. ARCHITECT**

1000 ...

...

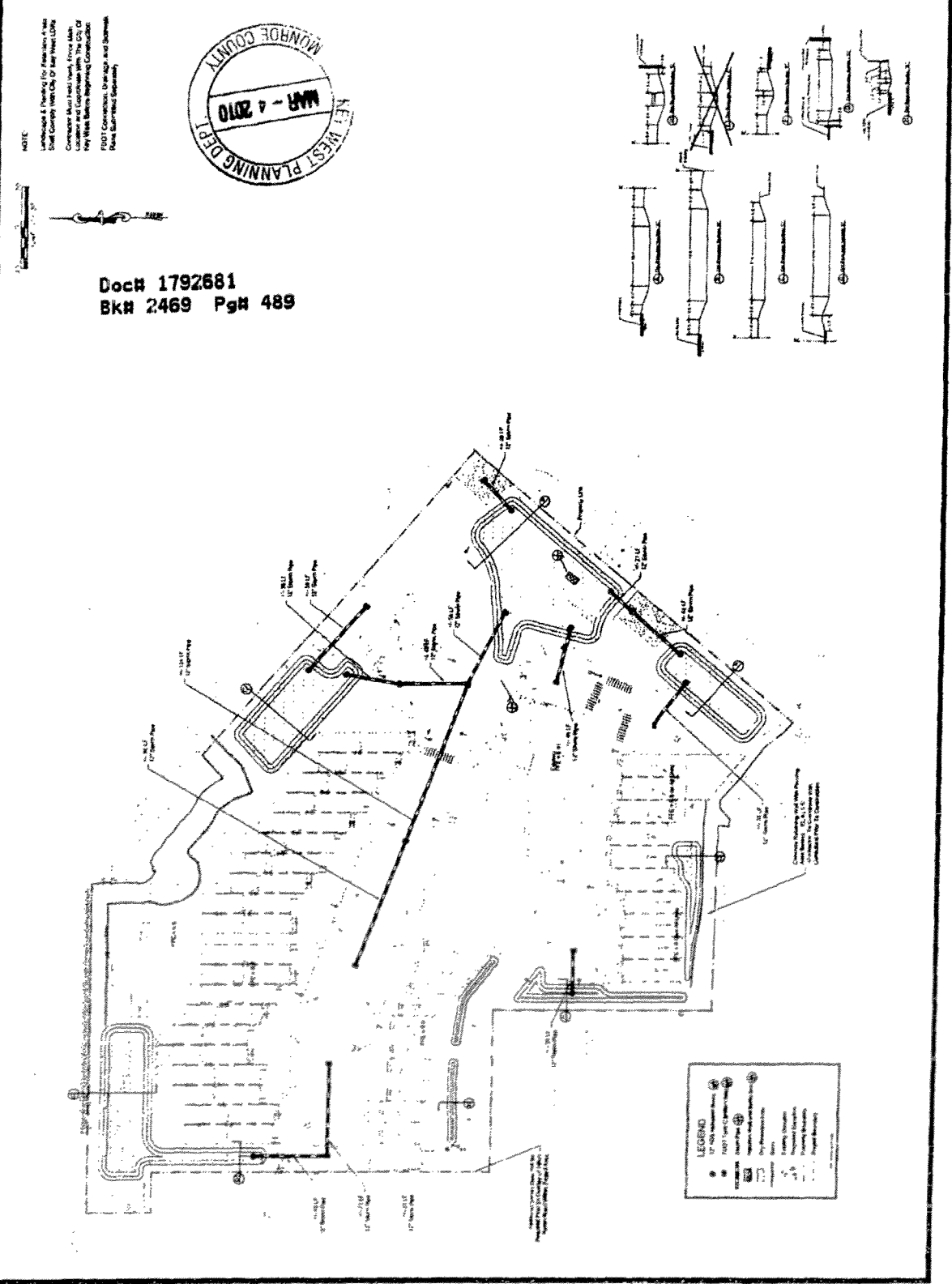
**Banana Bay**

...

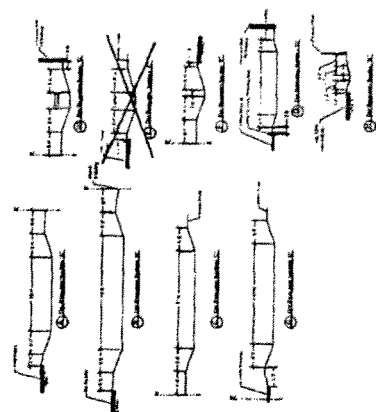
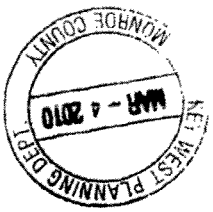
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Doc# 1792681  
Ek# 2469 Pg# 488

## Exhibit C



Doc# 1792681  
 Bk# 2469 P# 489





Doc# 1792681  
BKN 2469 Pgn 490

## Exhibit D

**GENERAL LANDSCAPING**  
 ANNUAL MAINTENANCE SCHEDULE  
 ANNUAL MAINTENANCE SCHEDULE

DATE: 10/26/08  
 PROJECT: BANANA BAY  
 DRAWN BY: [Name]

2301 John A. Roosevelt Blvd  
 NE, SUITE 110  
 ATLANTA, GA 30329  
 404/262-0888  
 1/21/10

SCALE: 1" = 10'-0"  
 DATE: 3/15/08  
 PROJECT: LANDSCAPE PLAN

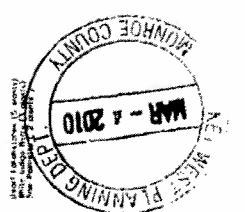
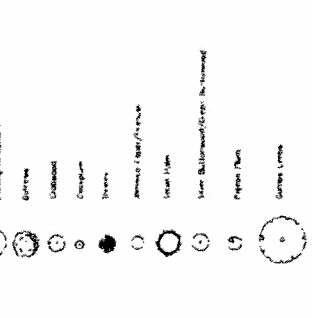
DATE: 10/26/08  
 PROJECT: BANANA BAY  
 DRAWN BY: [Name]

**QUALITY SPECIFICATION**

1. All plants shall be grown in containers.
2. All plants shall be delivered to the site in containers.
3. All plants shall be delivered to the site in containers.
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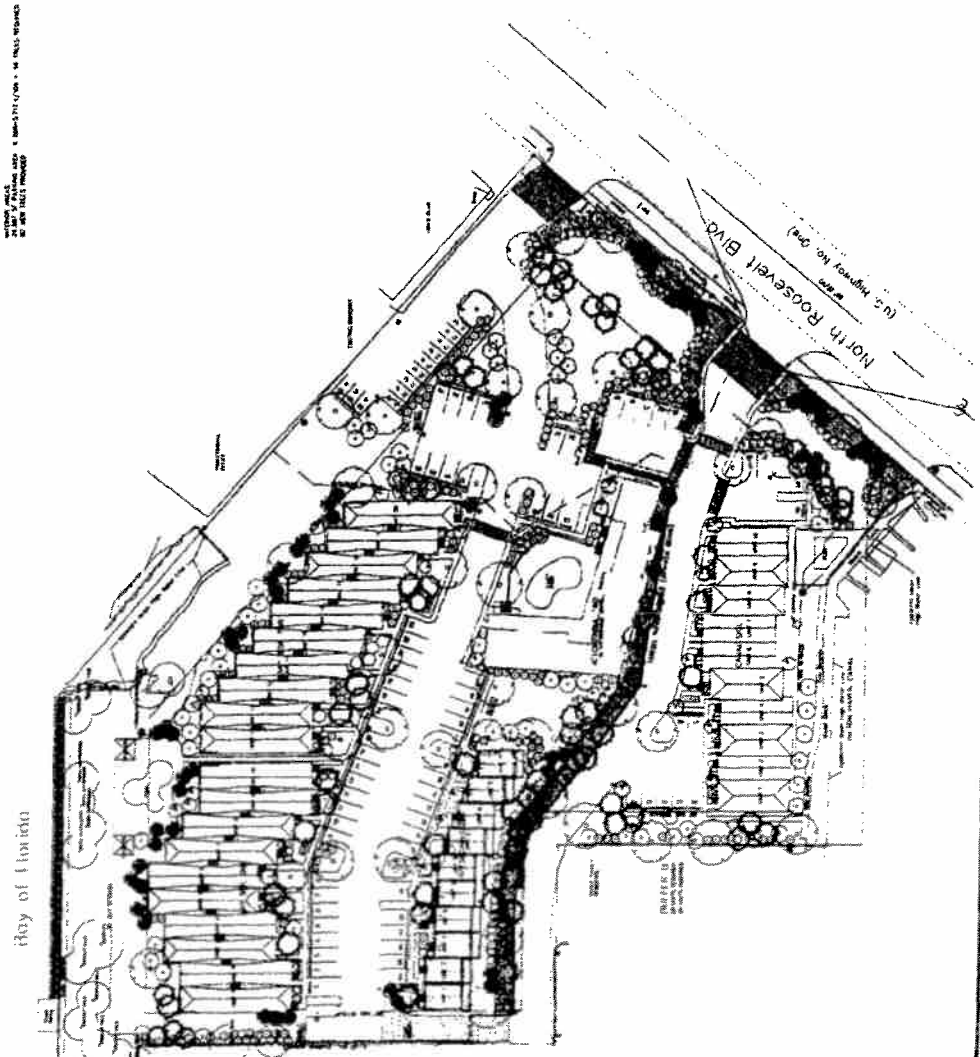
**NOTES**

1. ALL PLANTS TO BE DELIVERED TO THE SITE IN CONTAINERS.
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**LANDSCAPING REQUIREMENTS**

1. All plants shall be delivered to the site in containers.
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19. All plants shall be delivered to the site in containers.
20. All plants shall be delivered to the site in containers.



Doc# 1792681  
 Bk# 2469 Pg# 491

GENERAL  
LANDSCAPING  
LANDSCAPE ARCHITECTURAL  
LANDSCAPE CONSTRUCTION

1770-14th St. West  
4th Floor  
San Francisco, CA 94115  
Tel: 415.774.3100

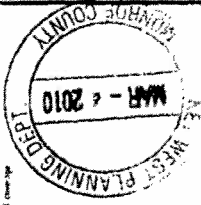
BANANA  
RAY

1770-14th St. West  
4th Floor  
San Francisco, CA 94115  
Tel: 415.774.3100

DATE: 3/7/10  
BY: [Signature]  
PROJECT: [Signature]

PLANTING  
DETAILS

DATE: 3/7/10  
BY: [Signature]  
PROJECT: [Signature]



**PLANTING NOTICES:**

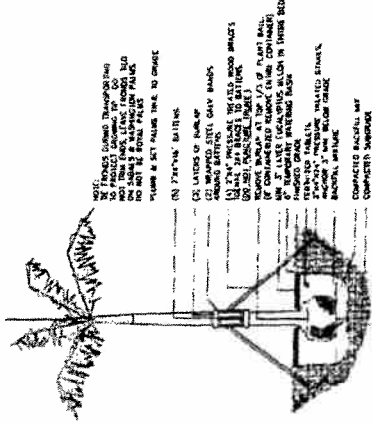
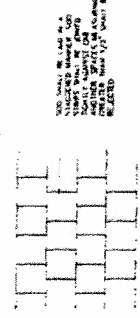
1. All plants shall be installed in accordance with the specifications in Section 05 11 00, Part 1, of the Standard Specifications for Public Works Construction, Edition 2008, published by the Department of Public Works, San Francisco, California. The Department of Public Works reserves the right to amend these specifications at any time without notice.

2. All plants shall be installed in accordance with the specifications in Section 05 11 00, Part 1, of the Standard Specifications for Public Works Construction, Edition 2008, published by the Department of Public Works, San Francisco, California. The Department of Public Works reserves the right to amend these specifications at any time without notice.

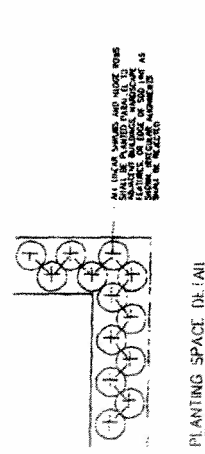
3. All plants shall be installed in accordance with the specifications in Section 05 11 00, Part 1, of the Standard Specifications for Public Works Construction, Edition 2008, published by the Department of Public Works, San Francisco, California. The Department of Public Works reserves the right to amend these specifications at any time without notice.

Doc# 1792681  
Bk# 2469 Pg# 492

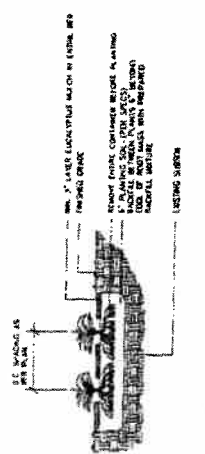
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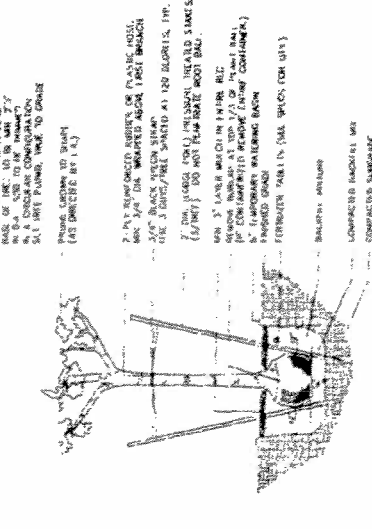
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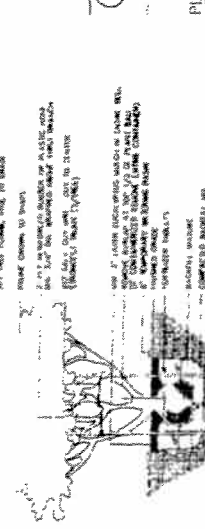
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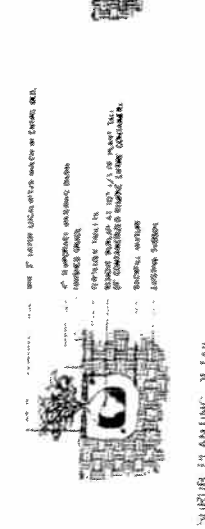
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SHRUB PLANTING DETAIL  
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MULCH/TRUNK PLANTING DETAIL  
No. Scale



GROUNDCOVER / ANNUALS PLANTING DETAIL  
No. Scale

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## Exhibit E

ORDINANCE NO. 05-09



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.

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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:

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**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:

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Bk# 2469 Pg# 499

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Bk# 2469 Pgm 496

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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).

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(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.

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(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.

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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.

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(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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Bk# 2469 Pg# 502

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.

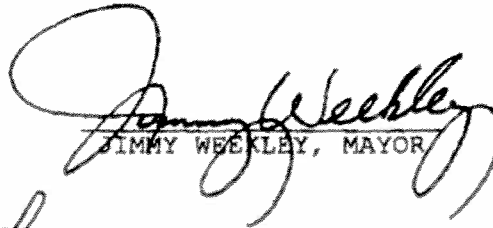
Read and passed on first reading at a regular meeting held this 5th day of April, 2005.

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.

Doc# 1792681  
Bk# 2469 Pg# 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 8:14  
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):

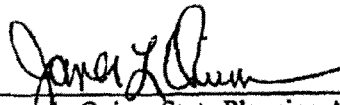
- (a) To strengthen local government capabilities for managing land use and development.
- (e) Protection of the historical heritage of Key West and the Key West Historical Preservation District.
- (f) Protection of the value, efficiency, cost-effectiveness and amortized life of existing and proposed 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.

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.

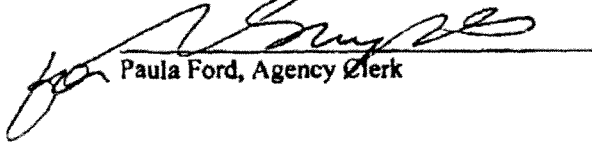
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 19<sup>th</sup> 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