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DEVELOPMENT AGREEMENT FOR HIGGS BEACH PARK

This AGREEMENT is made and entered as of this ___ day of _____, 2012, by and between the **CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA**, (“City”), a municipal corporation of the State of Florida, and the **BOARD OF COUNTY COMMISSIONERS FOR MONROE COUNTY, FLORIDA**, (“Developer” or “County”), a subdivision of the State of Florida.

WITNESSETH:

WHEREAS, the City Commission for the City of Key West and the Monroe County Board of County Commissioners recognize the following:

A. This Agreement is entered into in accordance with the Florida Local Government Development Agreement Act, 163.3220-163.3243, Florida Statutes; and

B. This Agreement is entered into in accordance with Florida Interlocal Cooperation Act, 163.01, Florida Statutes; and

C. The Key West Code of Ordinances Sections 90-676 to 90-677 authorizes Development Agreements and establishes the procedures and requirements to enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction; and

D. Monroe County is the owner and developer of the property located at Higgs Beach, which is being used as a park located within the jurisdictional boundaries of the City of Key West, Florida; and

E. Higgs Beach is recognized by both the County and City Comprehensive Plans; and

F. On March 10, 2010, the County authorized the development of a Master Plan for Higgs Beach comprised of two phases. The first phase, development of a Master Plan, included a planning and design process to gather community and stakeholder input, acquired a new boundary survey, conducted a ground penetrating radar survey to locate impacted archeological resources and coordinated with staff of the City of Key West; and

G. The Higgs Beach Master Plan was developed with significant community input over several months; the master planning process included multiple public meetings and several smaller neighborhood meetings with park stake holders conducted by the County. The local community group, known as the Friends of Higgs Beach, and the neighbors immediately adjacent to the park were active participants in the Master Planning process. Their concerns were considered and addressed to the greatest extent practicable.

H. On January 19, 2011, the County approved the Higgs Beach Master Plan, Option F, and directed county staff to secure Major Development Plan approval from the City; and

I. On July 1, 2011, Monroe County submitted an application for approval of a Major Development Plan which came before the City Planning Board, at a duly noticed public hearing, on October 20, 2011, whereupon the Planning Board granted Major Development Plan approval pursuant to Resolution #2011-059; and

J. On December 14, 2011, the County made a written request to enter into a Development Agreement with the City; and

K. On January 3, 2012, the City Commission authorized the County to proceed with the creation of a Development Agreement for Higgs Beach; and

L. On January 19, 2012, the County Commission agreed to submit to the City this Development Agreement; and

M. The Key West City Commission and the Monroe County Board of County Commissioners find that entering into this Development Agreement furthers the purposes, goal, objectives, and policies of their respective Comprehensive Plans;

N. The City and the County agree that realignment of Atlantic Boulevard through Higgs Beach, that also affects the intersections at White Street and Reynolds Street must be changed for safety reasons and to protect the natural, cultural and historic archeological resources of the area.

NOW THEREFORE, in consideration of the mutual covenants entered into between the parties, and in consideration of the benefits to accrue to each, it is agreed as follows:

A. RECITALS.

The above recitals set forth in the preceding “Whereas” clauses are true and correct and are incorporated herein and made a part hereof.

B. DEFINITIONS.

For the purposes of this Agreement, the following terms shall have the following meanings. Terms not defined in this Agreement shall be as defined in the City Code, in Chapter 163, Florida Statutes, or, if not defined in the Code or Statute, shall be understood by their usual and customary meaning.

1. **“Agreement”** shall refer to this Development Agreement, as the same may be subsequently amended, modified or supplemented pursuant to its terms and provisions and pursuant to the provisions of Sections 163.3220-163.3243, inclusive, Florida Statutes.

2. **“City”** shall refer to the City of Key West.

3. **“City Code”** shall refer to the Code of Ordinances of the City of Key West in existence on the Effective Date of this Agreement.

4. **“City Comprehensive Plan”** shall refer to the City of Key West Comprehensive Plan, in existence on the Effective Date of this Agreement.

5. **“County”** shall refer to the Monroe County government, a political subdivision of the State of Florida.

6. **“County Code”** shall refer to the Code of Ordinances of Monroe County, Florida, in existence on the Effective Date of this Agreement.

7. **“County Comprehensive Plan”** shall refer to the County’s Comprehensive Plan, in existence on the Effective Date of this Agreement.

8. **“Developer”** shall mean Monroe County, a governmental agency.

9. **“Development”** shall refer to the redevelopment of the Property for the uses permitted by the Land Use Plan and Land Development Regulations, subject to the conditions, obligations, restrictions and terms contained in this Agreement.

10. **“Development Plan”** is referred to as the Development Plan and as the Master Plan.

11. **“Effective Date”** shall refer to the date this Agreement becomes effective, as set forth in Section J. of this Agreement.

12. **“Florida Department of Transportation”** (FDOT) refers to the agency of the State of Florida, as defined in Florida Statutes Chapter 20.23.

13. **“Land Use Plan”** shall mean the Future Land Use Element and Future Land Use Map of the City’s Comprehensive Plan in existence on the Effective Date of this Agreement.

14. **“Land Development Regulations”** shall mean Subpart B Chapter 86 through Chapter 122 of the City Code in existence on the Effective Date of this Agreement.

15. **“Owner”** shall refer to the County, the Owner of the Property subject to this Agreement.

16. **“Property”** shall refer to the parcel of real property located in the City that is the subject of this Agreement as set forth in Section D.1. of this Agreement.

17. **“Public Facilities”** means those facilities identified in Section 163.3221, Florida Statutes (2010), and as set forth in this Agreement.

C. PURPOSE OF AGREEMENT.

The purpose of the Agreement is to:

1. Extend the timeframe for Development Plan implementation pursuant to City Code Section 90-684; and
2. Partner as necessary when seeking grants or other funding sources for the implementation of the Development Plan; and
3. Allow Administrative Modifications to the Master Plan that may exceed the scope of a minor deviation as described in City Code Section 108-91, in order to permit changes that improve the safety and public health of the park users, which may be required due to technical or engineering considerations; and
4. Insure that the approved Master Plan is exempt from future changes to the City Code or Comprehensive Plan that would require redesign of approved elements during the term of this Agreement; and
5. Exempt the County from fees for this Development Agreement during the entire term of this Agreement which shall include, but not be limited to, application fees, permit fees, and impact fees; and
6. Establish the responsibility of financing the completion of the roadway realignment plan, as shown on the approved Master Plan, through grant funding. The County is responsible for securing funding and the City shall provide as needed assistance. If the funding does not materialize the County staff and the City staff shall meet and make recommendations to their respective Boards to determine how to facilitate the completion of the roadway realignment plan.

D. TERMS OF AGREEMENT.

1. Legal Description and Owner

The owner of the property is Monroe County. The legal description for the property subject to this Agreement is set forth in Exhibit "A".

2. Duration/ Renewal

This Development Agreement, also referred to as the Master Plan, shall remain in effect for a period of ten (10) years, commencing on the Effective Date set forth below. The parties recognize that it may be necessary to extend the Development Agreement beyond the ten (10) years permitted to complete the project—that the County may seek an extension pursuant to Code Section 90-684.

3. Existing Development

The property contains the following existing development which will remain on the property:

- a. The historic African Memorial Cemetery;
- b. The historic West Martello Tower and gardens;
- c. The Salute Restaurant;
- d. Two historic band stands, aka gun turrets;
- e. The existing toilets;
- f. Four shade pavilions in the dog park;
- g. Beach concessions.

4. New Development Plan (Master Plan)

The Development Plan, also known as the Master Plan, was approved by the City Commission pursuant to Resolution 2012-____, attached hereto as Exhibit "B". Administrative Modifications to the Master Plan may exceed the scope of a minor deviation as described in City Code Section 108-91, in order to implement elements that improve the safety and public health of the park users, which may be required due to technical concerns, engineering considerations, to meet environmental goals, or to meet regulatory requirements and shall be promptly reviewed, and considered by the City Planner according to Chapter 108.

In addition to the existing development, the plan includes:

- a. Visitor and Nature Center;
- b. Relocation of internal road and White Street enhancements;
- c. Relocation parking lots;
- d. Add bicycle lanes;
- e. Expand Beach area;
- f. Relocate and expand Astro City Playground;
- g. Add or expand sidewalks for pedestrian use;
- h. Add two maintenance buildings;
- i. Add two volleyball courts and two pickle ball courts;
- j. Remove two tennis courts;

- k. Add PAR fitness course;
- l. Expand open space;
- m. Relocate small dog park, revise large dog park;
- n. Revise outdoor lighting fixtures;
- o. Renovate and add landscaping;
- p. Revise storm water systems;
- q. Relocate utilities as required;
- r. Add sculpture garden;
- s. Renovate Whistling Duck Pond.

5. Population Densities, Building Intensities and Height

- a. The property will remain a recreational park, no residential uses are proposed.
- b. The proposed floor area ratio is 4%, well below the 20% maximum floor area ratio allowed for recreation and open space pursuant to Section 122-1020 of the City Code.
- c. All proposed structures are designed to be within the twenty-five (25) foot height limitation pursuant to Section 122-1020 of the City Code.

6. Set Backs and Floor Elevations

- a. All proposed new buildings are designed with finished floor elevations at or above the City’s floodplain management requirements.
- b. All the setbacks fall within or exceed the requirements of the City Code, except for the setback for the existing West Martello Tower that exceeds the Coastal Construction Control Line and will not be changed. Setbacks are illustrated on the chart below which includes the required setbacks and the existing setbacks:

Type	Required	Existing	Proposed
Front (White Street)	20’	25’4”	25’4”
Side (Casa Marina Court)	15’	123’9”	24’0”
Rear (Reynolds Street)	20’	237’8”	55’4”
Coastal Construction	50’	11’5”	11’5”

7. Phasing

The Development Plan may be developed in two or more phases. The County will submit development phasing schedules to the City Planner before construction for each phase begins. If in any case all development contemplated in the phasing plan and associated with an active development phase is not completed within the timeframe established by this Agreement, construction shall continue pursuant to the Development Plan for which a building permit is issued and any appurtenant uses and structures necessary to serve the development phase.

8. Public Facilities and Utilities Serving Redevelopment

a. Traffic Flow and Roads. A traffic impact report is attached hereto as Exhibit “D”. According to the report the proposed enhancements to Higgs Beach will not negatively affect level of service standards and will improve traffic safety along Atlantic Boulevard and ingress/egress to the various parking areas within the park.

Although coordination has begun through the City’s development approval process, further coordination is required with the City’s Utilities Department and with Keys Energy and the Florida Keys Aqueduct Authority at the time the road is relocated.

b. Solid Waste. The County is responsible for all solid waste and recycling removal from the site. Waste disposal is provided to the Property by a vendor under contract with the County.

c. Potable Water. Potable water is provided to the park by the Florida Keys Aqueduct Authority. The approved plan includes cisterns to capture rainwater and grey water reuse is planned.

d. Sewer. The property is connected to a central sewer system operated by the City.

e. Electric Service. Electric Service is provided by Keys Energy.

f. Fire Service. Fire service is provided by the City Fire Department.

9. Storm Water Runoff

A conceptual Storm Water Drainage Plan has been developed to maintain the storm water on site as required by City Code, see attached plan as Exhibit “B”.

10. Parking

The proposed plan maintains the same number of existing parking spaces (145) on site of the 145 spaces, 123 are standard parking spaces, 16 are compact spaces, and 6 are handicapped accessible. There are 45 bicycles and/or scooter spaces proposed. Perimeter landscaping around the parking areas is proposed to shield automobile lights from adjacent uses. Proposed new lighting shall meet “Dark Sky” lighting requirements, and stormwater drainage requirements have been met for all parking areas. The proposed parking plan is in compliance with the City Code and ADA standards have been met.

11. Additional Redevelopment Terms

a. Energy Conservation. Construction on the site including the development of the Nature Visitors Center is required to be consistent with Chapter 255.2575(2). Florida Statutes which requires compliance with an accepted third party environmental standard. Therefore, the Nature Center has

been designed to reduce energy needs. Design components of the building include solar hot water, collection of grey water for reuse, green walls and green roof, cross ventilation, white reflective roof material, solar electric panels, ultra low flow plumbing fixtures, and low Volatile Organic Compound (VOC) interior materials.

Lighting shall be designed to “Dark Sky” lighting standards and shall meet energy efficiency standards established by an accepted third party environmental standard consistent with F.S Chapter 255.2575(2).

The proposed landscape plan incorporates native plant material, clustering of plant material for water conservation, use of salt tolerant grasses, and installation of canopy trees for surface heat reduction.

b. Landscaping. The Landscape Plan was approved as part of the Development Plan approval through Resolution 2012-___ and was approved by the Tree Commission on October 19, 2011. The Landscape Plan is attached hereto as a portion of Exhibit “B”. As part of the approval a Landscape Waiver Letter was issued by the Planning Department on October 11, 2011, pursuant to City Code Section 108-226 that specifically waives requirements to provisions 108-413(b), 108-415(a) and 108-481(a).

c. Schools and Affordable Housing. School population is not affected, nor does the park create a need for housing.

d. Access to Historic Sites. The Master Plan provides improved access to the West Martello Tower, and the African Memorial and Grave yard by relocating Atlantic Boulevard away from the tower and grave sites and adding a multi-purpose gathering area. The additional graves discovered during ground penetrating radar studies are protected through the design that was approved for open space and passive recreational uses only. If additional gravesites are discovered when the present roadbed is moved, the gravesites will be protected and incorporated into the Memorial.

12. Agreement Between City and County Regarding Grant Funding

The City and the County agree to partner when seeking grants or other funding sources for the implementation of the Development Plan. The County is responsible for securing funding and the City shall provide as needed assistance. If the funding does not materialize the County staff and the City staff shall meet and make recommendations to their respective Boards to determine how to facilitate the completion of the roadway realignment plan. Nothing herein shall be construed to impart financial responsibility to the City to complete the Master Plan.

13. Approval of Minor Modifications

The City Planning Director shall have the responsibility to review and approve any phasing schedule and may approve Administrative Modifications to the Master Plan that exceed the scope of a Minor Deviation pursuant to Code Section 108-91, in order to allow changes that improve the safety and public health of the park users, that may be required due to technical concerns, engineering considerations, to meet environmental goals, or to meet regulatory requirements and shall be promptly reviewed, and considered by the City Planner according to Chapter 108.

14. Fees Related to Development Agreement

The City agrees that during the entire term of the Agreement fees associated with this Development Agreement shall be waived due to the benefit received by the City and its residents as a result of the development of the Higgs Beach property and shall include, but not be limited to, application fees, permit fees, and impact fees.

15. Required Permits and Approvals

The following is a list of all development permits and approvals needed to be approved for the development of the property as specified and requested in this Agreement:

- a. Development Agreement; and
- b. Major Development Plan; and
- c. Building and related construction permits, including but not limited to paving, drainage, accessory structures, land clearing, and landscaping; and
- d. Federal, State, regional and local permits for storm water runoff, driveway connections, utility connections, and environmental (or endangered species) takings, when necessary and if required.
- e. FAA for relocation of the tower;
- f. Phasing Schedule for the implementation of the Development Plan approved by the City Planner.

16. Dedication of Property for Public Purpose

The dedicated purpose for use of the Property shall be as a public park, it is in the best interest of the City for the property to remain as a public park.

17. Finding of Consistency

By entering into this Agreement the City finds that the Development Plan Resolution 2012- ___ proposed for the Property as provided in this Agreement is consistent with City's Comprehensive Plan, Land Development Regulations as presently written.

- 18. Compliance with Permits, Terms, Conditions and Restrictions Not Identified**
Failure of the Development Agreement to address a particular permit, condition, term or restriction shall not relieve the developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions.

E. LOCAL LAWS AND POLICIES GOVERNING AGREEMENT.

This Agreement shall govern the development of the Property for the duration of the Agreement. During the term of the Agreement the City and County agree to abide by the respective Comprehensive Plans and Land Development Regulations in effect on the effective date of the Agreement.

City and County laws and policies adopted after the Effective Date may be applied to the Property only if the determinations required by Section 163.3233, Florida Statutes, have been made after written notice to County, the developer, and at a public hearing. This Development Agreement was drafted and delivered in the State of Florida and shall be construed by and enforced under the laws of the State of Florida.

F. BREACH OF AGREEMENT AND CURE PROVISIONS.

If development requirements are not satisfied, action in reliance on the development agreement or expenditures in pursuance of its terms shall not vest any development rights to the applicant/property owner. Failure to perform as specified in the development agreement shall not constitute partial performance and shall not entitle the applicant or property owner to a continuation of the development agreement.

G. AMENDMENT BY MUTUAL CONSENT.

The Development Agreement may be amended by mutual consent which shall require a written document approved by the City Commission and the Board of County Commissioners, and shall require two (2) public hearings by the City.

H. MODIFICATION OR INVOLUNTARY REVOCATION OF DEVELOPMENT AGREEMENT TO COMPLY WITH SUBSEQUENT STATE AND FEDERAL LAW.

In the event that any state or federal law is enacted after the execution of this Agreement that is applicable to and precludes the parties from complying with the terms of this Agreement, then this Agreement shall be modified or revoked as is necessary to comply with the relevant state or federal law. Prior to modifying or revoking this Agreement under this provision, the City shall hold two public hearings.

I. RECORDING.

Within 14 days of approval by the City the Agreement shall be recorded with the Clerk of the Circuit Court in the Public Records of Monroe County, at the expense of the County.

J. EFFECTIVE DATE AND DATE OF AGREEMENT.

This Agreement shall be effective when the Department of Economic Opportunity (DEO) waives their right to appeal or after the 45 day DOE appeal period, whichever comes first, as required pursuant to Section 380.05 Florida Statute. The date of this Development Agreement is the date the last party signs this Development Agreement.

K. ANNUAL REVIEW.

The City shall review the Development Agreement annually pursuant to Section 163.3235, Florida Statutes, and Section 90-688 of the City Code to determine if there has been demonstrated good faith compliance with the terms of the Development Agreement.

L. TERMINATION OF THE AGREEMENT BY THE PARTIES.

The Agreement may be terminated at any time by mutual consent or if the City finds, subsequent to an annual review, that there has been a failure to comply with the terms of the Development Agreement, the Agreement may be revoked or modified by the City. Such revocation shall be determined by the City Commission at a noticed public hearing and based on substantial competent evidence.

M. ASSIGNMENT OF AGREEMENT.

This Agreement, or portions thereof, shall not be assigned by County, without the express written approval of City, which consent may be withheld in the sole discretion of the City.

N. ENFORCEMENT.

Any party aggrieved or adversely affected person as defined in Section 163.3215(2) may file an action for injunctive relief in the circuit court in Key West, Florida to enforce the terms of this Agreement or to challenge compliance of the agreement with Sections 163.3220 – 163.3243, Florida Statutes.

O. SUCCESSORS.

This Agreement shall be binding upon all the parties and their successors in interest, heirs, assigns and personal representatives.

P. NOTICES.

The parties designate the following persons as representatives to be contacted and to receive all notices regarding this Agreement:

For the City of Key West:

City Planning Director
Post Office Box 1409
Key West, FL 33040
Telephone: 305-809-3728

With a copy to:

City Manager
Post Office Box 1409
Key West, FL 33040
Telephone: 305-809-3888

City Attorney
Post Office Box 1409
Key West, FL 33040
Telephone: 305-809-3770

For the County:

County Administrator
1100 Simonton Street
Room 2-205
Key West, FL 33040
Telephone:

With a copy to:

County Attorney
PO Box 1026
Key West, FL 33040
Telephone:

Project Management
1100 Simonton Street
Room 2-216
Key West, FL 33040
Telephone:

All parties are responsible to notify the other in writing of a change of address for proper notice.

R. 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.

S. SEVERABILITY.

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

T. SINGULAR AND PLURAL.

When the context requires, the singular includes the plural, and the plural includes the singular.

U. DUPLICATE ORIGINALS; COUNTERPARTS.

This Development Agreement may be executed in any number of originals and in counterparts.

V. HEADINGS.

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

W. ENTIRETY OF AGREEMENT; INCORPORATION OF PRIOR DEVELOPMENT APPROVALS.

This Development Agreement incorporates or supersedes all prior negotiations, correspondence, conversations, agreements or understandings regarding the matters herein. The parties agree that there are no commitments, agreements, or understandings concerning the subjects covered by this Development Agreement that are not contained in or incorporated by reference. This Development Agreement contains the entire and exclusive understanding among the parties and may not be modified in any manner except by instrument in writing signed by the parties.

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

(SEAL)
Attest: **DANNY L. KOLHAGE, Clerk**

**BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA**

By: _____
Deputy Clerk

By: _____
Mayor/Chairman

Date: _____

Date: _____

(SEAL)

Attest:

CITY OF KEY WEST

By: _____
City Clerk

By: _____
Mayor

Date: _____

Date: _____

Approved as to Form and Legal Sufficiency:

City Attorney