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3 **SETTLEMENT AGREEMENT (REVISED)**

4 THIS SETTLEMENT AGREEMENT is hereby revised as of the 2d day of March, 2004
5 by and between Caroline Street Partners, LLC, a Florida Limited Liability Company ("CSP")
6 and the government of the City of Key West, Florida ("CITY").

7 WHEREAS, CSP is the owner of certain rights to purchase the real property known as
8 Jabour's Campground and Trailer Court, located at 223 Elizabeth Street, Key West, Florida, and
9 more particularly described on Exhibit "A" attached hereto (the "Property"); and

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11 WHEREAS, CITY and CSP and its predecessors in interest in the Property have been in
12 litigation regarding the permissible development on the Property; and

13
14 WHEREAS, there exists on the property a mix of residential and transient units
15 consisting of mobile homes, apartments, guest house units, RV/trailer sites, and campsites,
16 including no fewer than 20 mobile homes and apartments entitled (for ROGO purposes) to an
17 allocation of 1 ERU per unit; and

18
19 WHEREAS, CITY and CSP have reached agreement on the substantial issues of
20 contention regarding the development of the Property, including CSP's establishment of a thirty-
21 two (32) Transient Residential Unit condominium, associated amenity facilities for the exclusive
22 use of the occupants of the condominium, and the off-site transfer of 48 Transient Residential
23 Units (collectively referred to hereafter as the "Development"); and

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25 WHEREAS, it is in the best interests of both the CITY and CSP that the above referenced
26 litigation be settled and that CSP be permitted to establish the Development on the Property
27 pursuant to the terms and conditions contained herein.

28
29 NOW, THEREFORE, in consideration of the mutual promises and covenants herein
30 contained, CSP and CITY hereby say and agree as follows:

- 31
32 1. All of the above recitals are true and are incorporated herein.
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34 2. There shall be space for parking no fewer than fifty (50) vehicles for the
35 Development. There shall be bicycle racks designed to accommodate 25 bicycles. Such
36 parking spaces and bicycle racks shall be located on the Property.
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38 3. CSP waives, releases and surrenders to CITY any and all claim or demand it has with
39 respect to the Lazy Way Alley. CITY shall have the right to restrict vehicular access to
40 said alley and establish the same as a pedestrian mall. CSP agrees to build a pedestrian
41 sidewalk on William Street along CSP's property.
42
43 4. CSP agrees to pay an amount not to exceed \$5,000 for the installation of additional
44 bicycle racks sufficient for one hundred (100) spaces in the Caroline Street Corridor and
45 Bahama Village Redevelopment District.
46
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48 5. CITY recognizes that CSP has agreed not to build the two (2), one hundred fifty (150) seat
49 restaurants and associated commercial floor area for a general store vested by Court Order and
50 vested rights determination by CITY. There shall be no restaurant within the Development.
51

52 6. CSP and CITY agree that currently existing on the Property are 101 units of varying
53 sizes. The on-Property portion of the Development shall consist of thirty-two (32)
54 Transient Residential units developed as full-sized, luxury condominium units. Each
55 such unit shall receive a motel/hotel transient license pursuant to Section 66-109(10)(d)
56 of the Code of Ordinances. CSP and CITY have calculated that, after deducting thirty-
57 three (33) units [*i.e.*, 32 units plus the single-family unit referenced in Paragraph 8,
58 below], there will remain 68 units, compressed to 48 ERUs, calculated as follows: 20
59 ERUs allocable to mobile homes and apartments, and 28 ERUs allocable to the
60 compression of 48 small transient facilities (RV sites, campsites and guest rooms; each
61 allocated .58 ERU). "Compression" as referenced herein is the reduction of unit count
62 resulting from multiplying 48 small transient units by .58 (producing 28 ERUs) and
63 adding thereto 20 ERUs attributable to 20 full-size units existing on the Property, for a
64 total of 48 full-size units transferable hereunder. Accordingly, CSP shall have the right
65 during the effective term of this Agreement to transfer the remaining forty-eight (48)
66 Transient Residential Units (inclusive of the ROGO exemption and transient licensure
67 applicable to each) to a receiver site or sites. Each of the 48 Transient Residential Units
68 required hereunder to be transferred off the Property is deemed to meet the transfer
69 criteria of Section 122-1338 (1), *City Code*, and shall be transferable as of right to a
70 receiver site that conforms to the following requirements: Transient use must be an
71 allowed zoning use on the receiver site, unless the unit is to be used solely on a
72 nontransient basis. Receiver-site density may not be increased above maximum allowed
73 density. If the unit so transferred is dedicated to non-transient use, the transient license
74 associated with that unit shall be surrendered. To the extent not inconsistent with the
75 provisions of this Agreement, the transfer will conform to the existing requirements of
76 *Code* Section 122-1338 (7), (8) and (9), and will follow the procedure now set forth in
77 *Code* Sections 122-1340 and 1344. Units so transferred will retain their status as vested
78 existing units, exempt from exactions and fees imposed on new units (*e.g.*, rental rate/
79 sale price restrictions imposed under *Code* Section 122-1467, impact fees, and the like).
80 This Agreement does not authorize transfer of units outside Key West; such transfer
81 would require a separate agreement among DCA, Monroe County and CSP. Each of the
82 units built on the property shall be designed and occupied only as a single family
83 dwelling unit without lockout capacity (*i.e.*, there will be only one key for each unit).
84

85 7. In connection with the Development described in paragraph 6 above, CSP shall be
86 permitted to build up to 4,000 square feet of amenity floor area as accessory space for the
87 use and benefit of the occupants of the units, including but not limited to accessory uses
88 such as a lobby, offices, and spa/exercise rooms. There shall be no bar, restaurant,
89 catering kitchen, or room service on the Property.
90

91 8. In addition to the foregoing on-site development, a portion of the Property currently
92 being operated as a guest house (717 Caroline Street) may be divided from the Property
93 and sold separately as a single-family residence (non-transient). The single-family home
94 parcel will comply with all applicable building standards or require separate variances as
95 the case may be.

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9. Except as otherwise provided herein, the Development shall be subject to all applicable requirements of the Codes of Ordinances of CITY, the Land Development Regulations and the zoning regulations of CITY. The Development shall be subject to Major Development Plan Review. The on-Property portion of the Development must be substantially completed within five (5) years, and the transfer of units off-site shall be completed within eight (8) years, after the later of (a) conclusion of any appeals from CITY's development approvals and (b) final decision of any litigation challenging such development approvals

10. CSP's development will, when complete, conform to current density requirements and will eliminate existing nonconforming setbacks.

11. This Settlement Agreement is contingent upon CITY's Historic Architectural Review Commission agreeing that the two (2) existing white, concrete buildings on the Property are not contributing historical structures, and, therefore, may be demolished as part of the Development. The design characteristics of the structures to be constructed on the Property shall be approved by the City's Historical Architectural Review Committee ("HARC"), and shall conform to the following requirements so as to harmonize to the maximum extent practical the appearance of these new structures with existing multi-story structures in or adjoining the historic Key West Bight, while conforming with flood-plain elevation requirements: building height shall conform to the maximum height requirement of HRCC-1 District (35 feet plus 5 feet for pitched roof); additionally, air handling equipment and other mechanical devices (e.g., HVAC) that are allowed by City regulations to occupy nonhabitable space at or above maximum building height shall be shielded from street view by extension of a pitched roof or similar screening device.

12. CSP acknowledges that neighboring City property consists of outdoor bars where amplified music is played.

13. CSP shall make best efforts to meet with residents of Key West Bight Neighborhood and to acknowledge their concerns within the Major Development Plan.

14. The parties acknowledge that it is CSP's intention to complete the purchase of the Property subject to approval of the contemplated Development. In the event of the approval of the Development and CSP's closing on the purchase of the Property, CSP shall obtain from Robert S. Jabour and Richard J. Jabour, the current owners of the Property ("Jabours", herein), and deliver to CITY dismissals with prejudice of the following lawsuits, and all other lawsuits brought by Jabours against CITY pending in the Circuit Court for Monroe County, Florida. Similarly, if CSP does not close on the property, then this Agreement shall not be binding on the City. When CSP closes on the purchase of the property, the parties will submit this Agreement to the Circuit Court, Sixteenth Judicial Circuit, together with (1) a Joint Motion substituting CSP for Jabours as party to each pending action, and (2) Stipulation for entry of judgement requiring the parties to comply with the terms of this Agreement and reserving jurisdiction for enforcement.

a. 87-743-CA-18

- 144 b. 92-215-CA-18
- 145 c. 93-499-CA-18
- 146 c. 94-555-CA-18
- 147 d. 96-326-CA-09
- 148 e. 96-350-CA-18
- 149 f. 96-547-CA-18
- 150 g. 96-1087-CA-18
- 151 h. 97-005-CA-18

153 CITY acknowledges and agrees that Robert S. Jabour and Richard J. Jabour are
 154 accommodation signatories to this Agreement, but they will not be bound by any of its
 155 terms, nor shall this Agreement be enforceable with respect to Jabours, except in the
 156 event the Development is ultimately approved and CSP closes on the purchase of the
 157 Property.
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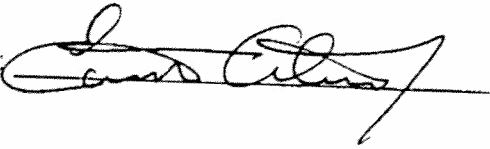
159 15. The laws of Florida shall govern this Agreement.
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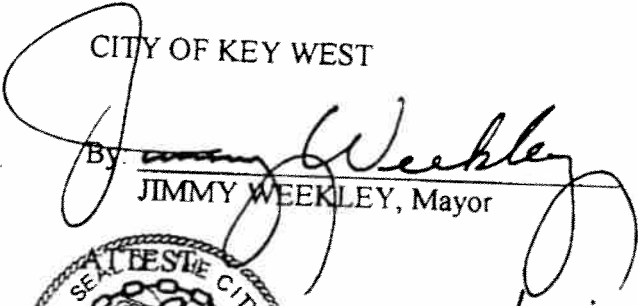
161 16. If any part of this Agreement shall be deemed invalid or unenforceable by a court of
 162 competent jurisdiction, the remaining parts of this Agreement that have not been deemed
 163 invalid or unenforceable shall remain in full force and effect.
 164

165 IN WITNESS WHEREOF, the parties hereto have set their hand and seal the day and
 166 year written above.
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 168

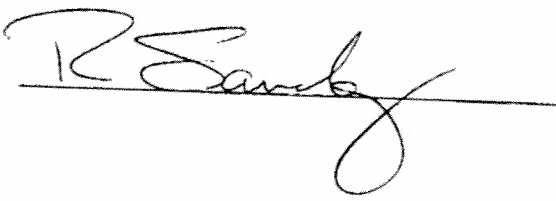
CAROLINE STREET PARTNERS, LLC

CITY OF KEY WEST

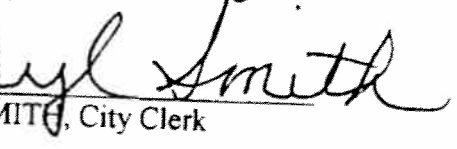
By: 

By: 
 JIMMY WEEKLEY, Mayor

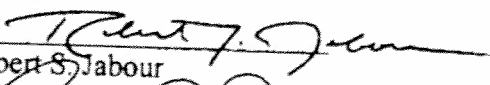
Witness:

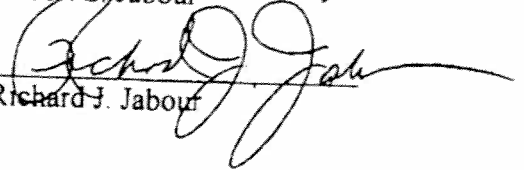





 CHERYL SMITH, City Clerk

169 Additional signatories:

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 173 Robert S. Jabour

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 175 
 176 Richard J. Jabour

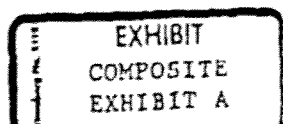
PARCEL A

On the Island of Key West, Monroe County, State of Florida, being known as Part of Square Eleven (11), more particularly described as follows:

Commencing at the Southerly corner of Square Eleven (11) where Caroline and Elizabeth Streets intersect and proceed along the Northeasterly side of Elizabeth Street in a Northwesterly direction a distance of One Hundred Seventy-three (173) feet to a point; proceed thence at right angles in a Northeasterly direction Fifty (50) feet; thence at right angles in a Southeasterly direction One (1) foot to the POINT OF BEGINNING; from the Point of Beginning proceed at right angles in a Northeasterly direction One Hundred Ninety-five and Six tenths (195.6) feet; thence at right angles in a Southeasterly direction One Hundred Eleven (111) feet; thence at right angles in a Southwesterly direction Thirty-eight (38) feet; thence at right angles in a Northwesterly direction Fifty-seven and Two-tenths (57.2) feet; thence at right angles in a Southwesterly direction One Hundred Fifty-seven and Six tenths (157.6) feet; thence at right angles in a Northwesterly direction Fifty-three and Seven tenths (53.7) feet to the Point of Beginning.

PARCEL B

On the Island of Key West and known on William A. Whitehead's Map delineated in February, A.D. 1829, as a parcel of land in Square Eleven (11) more particularly described as follows: Commencing at the Northwesterly corner of the intersection of Caroline and William Streets move Northwesterly a distance of 118.15 feet to the point or place of beginning. Thence at right angles in a Southwesterly direction a distance of 156.44 feet; thence at right angles in a Northwesterly direction a distance of 53.85 feet; thence at right angles in a Northeasterly direction a distance of 156.44 feet; thence at right angles in a Southeasterly direction along William Street a distance of 53.85 feet to the point or place of beginning on William Street.



PARCEL C

On the Island of Key West and known on William A. Whitehead's Map delineated in February, A.D. 1829, as a parcel of land in Square Eleven (11) more particularly described as follows: Commencing at the Northwesterly corner of the intersection of Caroline and Elizabeth Streets move Northwesterly along Elizabeth Street a distance of 173 feet to the point of beginning. Thence continue in a Northwesterly direction along Elizabeth Street a distance of 27 feet to a point; thence at right angles in a Northeasterly direction parallel to Caroline Street a distance of 200 feet to a point; thence at right angles in a Southeasterly direction a distance of 9 feet to a point; thence at right angles in a Northeasterly direction a distance of 200 feet to a point on the Westerly right-of-Way of William Street; thence at right angles in a Southeasterly direction along the Westerly boundary line of William Street a distance of 20 feet to a point; thence at right angles in a Southwesterly direction parallel to Caroline Street a distance of 352.04 feet to a point on the property line owned by the Veterans of Foreign Wars; thence at right angles in a Northwesterly direction a distance of 2 feet to a point; thence at right angles in a Southwesterly direction a distance of 50 feet to the point of beginning.

PARCEL D

On the Island of Key West and is part of Square 11 according to William A. Whitehead's map of said Island delineated in 1829 and is more particularly described as follows: From the intersection of the southeasterly line of Greene Street and the northeasterly line of Elizabeth Street go southeasterly along the northeasterly line of Elizabeth Street a distance of 95.50 feet to a point; thence at right angles and northeasterly a distance of 100 feet to a point; which point is the point of beginning; thence continue northeasterly along the previously described course a distance of 79.04 feet to a point; thence at right angles and northwesterly a distance of 47.10 feet to a point; thence at right angles and northeasterly a distance of 52.44 feet to a point; thence at right angles and southeasterly a distance of 62.20 feet to a point; thence at right angles and southwesterly a distance of 6.00 feet to a point; thence at right angles and southeasterly a distance of 89.40 feet to a point; thence at right angles and southwesterly a distance of 125.48 feet to a point; thence at right angles and northeasterly a distance of 104.50 feet back to the point of beginning.

PARCEL E

Parcel E-1:

A parcel of land in the Island of Key West, Monroe County, Florida, said parcel being a Part of Lot 1 of Square 11 of Whitehead's Map of the said Island as delineated in February 1829 and the said parcel being more particularly described by metes and bounds as follows: COMMENCE at the intersection of the NW'ly right-of-way-line (ROWL) of Caroline Street with the SW'ly ROWL of William Street and run thence in a SW'ly direction along the NW'ly ROWL of the said Caroline Street for a distance of 201.00 feet; thence NW'ly and at right angles for a distance of 191.00 feet to the POINT OF BEGINNING of the parcel of land being described herein; thence continue NW'ly along a prolongation of the preceding course for a distance of 9.00 feet; thence NE'ly and at right angles for a distance of 24.48 feet; thence SE'ly and at right angles for a distance of 9.00 feet; thence SW'ly and at right angles for a distance of 24.48 feet back to the POINT OF BEGINNING, said parcel containing 220 square feet.

Parcel E-2:

A parcel of land on the Island of Key West, Monroe County, Florida, said parcel being a Part of Lot 1 of Square 11 of Whitehead's Map of the said island as delineated in February 1829 and the said parcel being more particularly described by metes and bounds as follows: COMMENCE at the intersection of the NW'ly right-of-way-line (ROWL) of Caroline Street with the SW'ly ROWL of William Street and run thence in a SW'ly direction along the NW'ly ROWL of the said Caroline Street for a distance of 201.00 feet; thence NW'ly and at right angles for a distance of 60.00 feet to the POINT OF BEGINNING of the parcel of land being described herein; thence continue NW'ly along a prolongation of the preceding course for a distance of 57.20 feet; thence NE'ly and at right angles for a distance of 6.50 feet; thence SE'ly and at right angles for a distance of 57.20 feet; thence SW'ly and at right angles for a distance of 6.50 feet to the POINT OF BEGINNING, said parcel containing 372 square feet.

Parcel E-3:

A parcel of land on the Island of Key West, Monroe County, Florida, said parcel being a Part of Lot 1 of Square 11 of Whitehead's Map of the said island as delineated in February 1829 and the said parcel being more particularly described by metes and bounds as follows: COMMENCE at the intersection of the NW'ly right-of-way-line (ROWL) of Caroline Street with the SW'ly ROWL of William Street and run thence in a SW'ly direction along the NW'ly ROWL of the said Caroline Street for a distance of 156.50 feet to the POINT OF BEGINNING of the parcel of land being described herein; thence continue SW'ly along the NW'ly ROWL of the said Caroline Street for a distance of 4.50 feet; thence NW'ly and at right angles for a distance of 60.00 feet; thence NE'ly and at right angles for a distance of 4.50 feet; thence SE'ly and at right angles for a distance of 60.00 feet back to the POINT OF BEGINNING, the said parcel containing 270 square feet.

PARCEL F

On the Island of Key West and is part of Square 11 according to William A. Whitehead's map of said Island delineated in 1829 and is more particularly described as follows:

From the intersection of the northwesterly line of Caroline Street and the southwesterly line of William Street go northwesterly along the said southwesterly line of William Street a distance of 191 feet to a point; which point is the Point of Beginning; thence continue northwesterly along said southwesterly line of William Street a distance of 105 feet to a point; thence southwesterly and at right angles a distance of 176.52 feet to a point; thence southeasterly and at right angles a distance of 105 feet to a point; thence northeasterly and at right angles a distance of 176.52 feet back to the point of beginning.

PARCEL G

In the City of Key West known on Wm. A. Whitehead's map or plan of the Island of Key West, delineated February, 1829, as part of Lot 1 in Square 11; Commencing 161 feet from the corner of Caroline and William Streets, and running along Caroline Street in a Southwesterly direction 40 feet; thence at right angles in a Northwesterly direction 60 feet; thence at right angles in a Northeasterly direction 40 feet; thence at right angles in a Southeasterly direction 60 feet to the place of beginning.