

Attachment C

Prepared by and, after recording,
return to:

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and 00064949-000000.

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

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

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

Doc# 1739689
Bk# 2410 Pg# 122

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. TERMS OF AGREEMENT.

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

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

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

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

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

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

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

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

5. **Redevelopment Plan.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Traffic Flow; Coordination Regarding Transit Facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. Domestic potable water is provided by Florida Keys Aqueduct Authority.
- b. Electric service is provided by Keys Energy.
- c. Solid waste service is provided by City of Key West Waste Management.
- d. Wastewater treatment shall be provided by City of Key West.
- e. Fire service will be provided by the City of Key West Fire Department.
- f. All public facilities identified above are available as of the date of this

Development Agreement and are projected to be available concurrent with the impacts of the Redevelopment.

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

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

14. All Permits Approved or Needed.

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

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

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

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

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

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

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

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

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

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

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

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

19. Laws Governing.

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

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

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

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

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

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

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

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

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

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

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

21. Breach of Agreement and Cure Provisions.

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

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

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

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

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

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

TO THE OWNER:

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

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

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

TO THE CITY:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Remainder of page intentionally left blank]

JRC KEY WEST HOTEL LLC,
an Illinois limited liability company

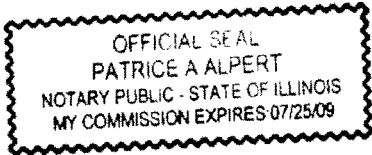
By: RFA Management Company LLC, a
Delaware limited liability company, its manager

March 12, 2009

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

STATE OF Illinois
COUNTY OF Cook

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



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

RFA KEY WEST LLC,
an Illinois limited liability company

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

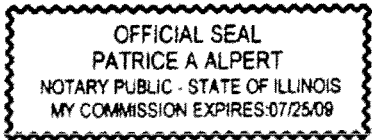
By: RFA Management Company LLC, a Delaware limited liability company, its general partner

March 12, 2009

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

STATE OF Illinois
COUNTY OF Cook

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



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

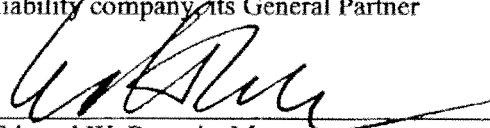
RFA KEY WEST II LLC,
a Florida limited liability company

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

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

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

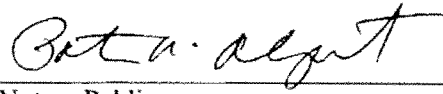
March 12, 2009

By: 
Edward W. Ross, its Manager

STATE OF Illinois
COUNTY OF Cook

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




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

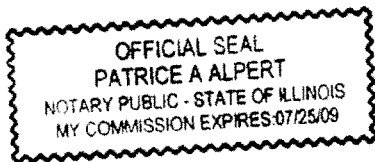
AVA KEY WEST LLC,
an Illinois limited liability company

March 12, 2009

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

STATE OF Illinois
COUNTY OF Cook

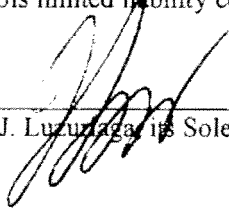
The foregoing instrument was acknowledged before me on this 12th day of March, 2009, by Andrew V. Agostini who is personally known to me or who produced as identification, and who did/did not take an oath.



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

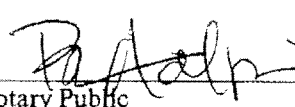
JL KEY WEST LLC,
an Illinois limited liability company

March 16, 2009

By: 
J. Luzuriaga, its Sole Member

STATE OF S. Carolina
COUNTY OF Charleston

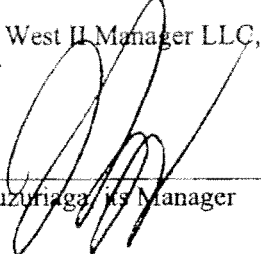
The foregoing instrument was acknowledged before me on this 16th day of March, 2009, by J. Luzuriaga who is personally known to me or who produced _____ as identification, and who did/did not take an oath.


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

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

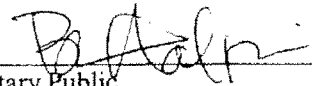
By: JL Key West II Manager LLC,
its Manager

March 16, 2009

By: 
J. Luzuriaga, its Manager

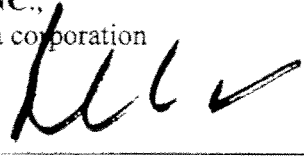
STATE OF S. Carolina
COUNTY OF Charleston

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


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

SH 6, INC.,
a Florida corporation

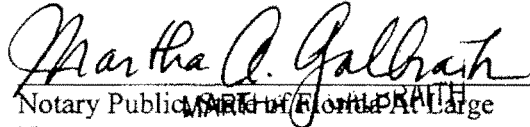
March 6, 2009

By: 

Robert A. Spottswood, its President

STATE OF FLORIDA
COUNTY OF MONROE

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

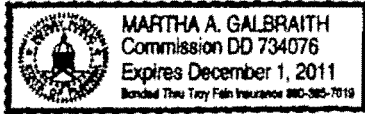
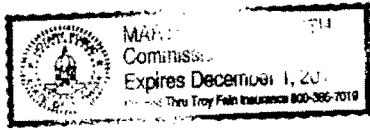


Notary Public, State of Florida

Name: _____

(typed, printed or stamped)

My commission expires:



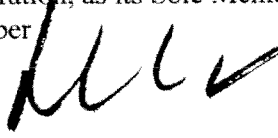
MARTHA A. GALBRAITH

SH 8, LLC,
a Florida limited liability company

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

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

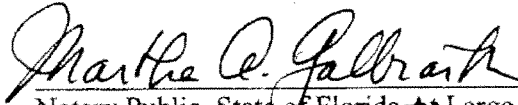
March 6, 2009

By: 

Robert A. Spottswood, President

STATE OF FLORIDA
COUNTY OF MONROE

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




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



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

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

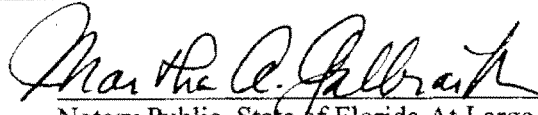
March 6, 2009

By: 
Robert A. Spottswood
President

STATE OF FLORIDA
COUNTY OF MONROE

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

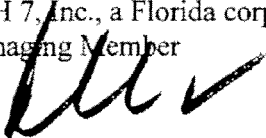



Notary Public, State of Florida At Large
Name: MARTHA A. GALBRAITH
(typed, printed or stamped)
My commission expires:

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

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

March 6, 2009

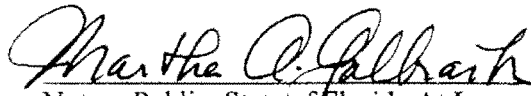
By: 

Robert A. Spottswood
President

STATE OF FLORIDA
COUNTY OF MONROE

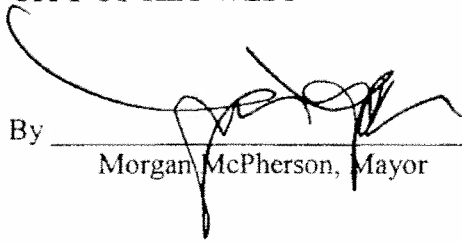
The foregoing instrument was acknowledged before me on this 6th day of March, 2009, by Robert A. Spottswood who is personally known to me or who produced _____ as identification, and who did/did not take an oath.



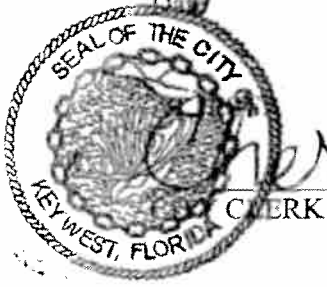


Notary Public, State of Florida At Large
Name: MARTHA A. GALBRAITH
(typed, printed or stamped)
My commission expires:

CITY OF KEY WEST

By  _____
Morgan McPherson, Mayor

April 13, 2009



 _____
Cheryl Smith
Clerk