

RESOLUTION No. _____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, GRANTING A MAJOR DEVELOPMENT PLAN FOR REDEVELOPMENT OF A RESTAURANT AND ADJACENT PROPERTY LOCATED AT MALLORY SQUARE (RE#00072082-001100, 00072082-001400 and 00072082-003700), KEY WEST FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 108-91 of the Code of Ordinances provides that within the HPS District the addition or reconstruction of equal or greater than 2,500 square feet of gross floor area requires a Major Development Plan approval; and

WHEREAS, the applicant requested a Major Development Plan approval to redevelop four city-owned areas on Mallory Square to include a new structure with a restaurant (using established legally non-conforming consumption area), public plazas and open space, and use of an existing historic structure; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing, resulting in Planning Board Resolution No. 2011-02; and

WHEREAS, Resolution 2011-02 was challenged at the Circuit Court, and the appeal was denied on February 12, 2012, and then Resolution 2011-02 was appealed to the District Court of Appeals, and the appeal was denied on December 6, 2012; and

WHEREAS, pursuant to Section 108-198, the City Commission shall review and act upon Major Development Plan proposals; and

WHEREAS, the granting of the Major Development Plan will be in harmony with the general purpose and intent of the Land Development Regulations, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare; and

NOW THEREFORE BE IT RESOLVED by the City Commission of the City of Key West, Florida:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. That the City Commission grants approval of the application for Major Development Plan, per Section 108-91 of the Code of Ordinances of the City of Key West, Florida, to redevelop a restaurant and adjacent property located in Mallory Square in the HPS zoning district (RE#00072082-001100, 00072082-001400 and 00072082-003700), see attached plans dated November 11, 2010 and amended June 3, 2011 (date stamped June 6, 2011), with the nine conditions provided in Planning Board Resolution No. 2011-002 and as specified as follows: (1) A total of 2,344 square feet of restaurant consumption area which equates to 156 seats is allowed within the area known as Area 2, shown as Parcel 2 on the January 28, 2010 site survey. The location of the consumption area within the restaurant may be modified relative to final determinations regarding the cable hut located within the parcel. Alcohol sales are permitted as accessory to

the principal restaurant business. The sale of food, dessert, and non-alcoholic beverages must constitute 51% or more of business and the sale of food must occur during the time in which service is being provided to the public; (2) That variance requests required to construct the building are approved by the Planning Board or the need for such variances eliminated through design modifications; (3) That a variance request to height requirements for non-habitable space is approved by the Board of Adjustment; (4) The project will comply with green building standards established by Chapter 255.2575(2), F.S., and will also provide for recycling of solid waste and meet "dark sky" lighting standards; (5) Stormwater plans must be approved by the General Services Department prior to Building Permit issuance; (6) The proposed structures will be included in the final leasehold area determined by the City at the City's discretion; (7) Public access to plazas and public access ways along Mallory Dock and the bridge to the Westin Marina shall remain unimpeded in perpetuity by the applicant. The City reserves the right to address access for public safety purposes; (8) The applicant will abide by Port Security requirements as required by the Port Facility Security Officer, including requirements deriving from the United States Navy when military vessels are berthed at this location. (9) Hours of operation are limited to the hours of 11 a.m. until 11 p.m., except in the case that a special event

permit is issued.

Section 3. Full, complete, and final application for all permits required for which this resolution is wholly or partly necessary, shall be submitted in its entirety within 12 months after the date hereof.

Section 4. This Major Development Plan does not constitute a finding as to ownership or right to possession of the property, and assumes, without finding, the correctness of applicant's assertion of legal authority respecting the property.

Section 5. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Section 6. This Resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this permit will be rendered to the Florida Department of Community Affairs. Pursuant to Chapter 9J-1, F.A.C., this permit is not effective for forty five (45) days after it has been properly rendered to the DCA with all exhibits and applications attached to or incorporated by reference in this approval; that within the forty five (45) day review period the DCA can appeal the permit to the Florida Land

and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the permit until the appeal is resolved by agreement or order.

Passed and adopted by the City Commission at a meeting held this _____ day of _____, 2013.

Authenticated by the presiding officer and Clerk of the Commission on _____, 2013.

Filed with the Clerk _____, 2013.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK