

**PLANNING BOARD RESOLUTION
Number 2015-049**

A RESOLUTION OF THE CITY OF KEY WEST PLANNING BOARD PURSUANT TO SECTIONS 90-676 through 90-692 OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, RECOMMENDING APPROVAL OF A DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 541 WHITE STREET IN THE HISTORIC SPECIAL MEDIUM DENSITY RESIDENTIAL ZONING DISTRICT (HSMDR) (RE#00006730-000200) BETWEEN THE CITY OF KEY WEST AND PEARY COURT HOLDINGS LP; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Pursuant to section 122-611(e), Any development plan approval submitted for a property in the HSMDR zoning district shall be accompanied by a concurrent application for a development agreement; and

WHEREAS, the Development Review Committee reviewed the draft Development Agreement and related documentation on June 25, 2015 and August 27, 2015, and the agreement was revised to reflect staff comments; and

WHEREAS, after public notice pursuant to Section 90-683 of the Land Development Regulations of the Code of Ordinances, the request for a Development Agreement was heard by the Planning Board at the regularly scheduled Planning Board Meeting on October 15, 2015; and

WHEREAS, the Planning Board evaluated the request for a Development Agreement pursuant to criteria included in Section 90-682 of the Land Development Regulations of the Code of Ordinances;

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

Section 1. That the Planning Board recommends the City Commission grant **approval** of the draft Development Agreement (see attached)

Section 2. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the Chairman of the Planning Board and the Planning Director.

Passed at a meeting held October 15, 2015



Chairman

Planning Director

Authenticated by the Chair of the Planning Board and the Planning Director.



Richard Klitenick, Chairman
Key West Planning Board

SAM HOLLAND

12/3/15

Date

Attest:

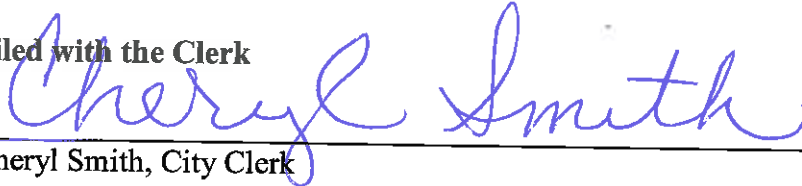


Thaddeus Cohen, Planning Director

11/3/15

Date

Filed with the Clerk



Cheryl Smith, City Clerk

12/2/15

Date



Chairman
Planning Director

Parcel ID Number 00006730-000000

**DEVELOPMENT AGREEMENT FOR
THE PEARY COURT HOUSING COMPLEX**

THIS DEVELOPMENT AGREEMENT is entered into by and between PEARY COURT HOLDINGS, LP, a Delaware limited partnership (herein referred to as the “Owner”) and the CITY OF KEY WEST, a Florida municipal corporation (herein the “City”) (collectively the “Parties”), pursuant to Chapter 90, Article IX of the City Code of Ordinances (the “Code”), and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, *Florida Statutes*, and is binding on the “Effective Date” set forth herein.

WITNESSETH:

WHEREAS, the Owner is the record title holder of the Peary Court Housing Complex (herein referred to as the “Property”, or “Peary Court”) located in the City of Key West, as more specifically described in Exhibit A hereto,; and

WHEREAS, Peary Court currently has 160 existing dwelling units (157 constructed units and 3 units involuntarily destroyed by fire) historically used for military housing, and has (pursuant to a duly-issued demolition permit and HARC approval) demolished a previously-existing 10,000 square foot commercial building; and

WHEREAS, The 160 existing dwelling units on Peary Court were constructed following the City’s adoption of Resolution No. 92-75 (Exhibit B hereto), which acknowledged the historic use of Peary Court for housing and resolved to support reconstruction of the Peary Court housing; and

WHEREAS, On April 6, 2011, the City was notified that the United States Navy, with its concessional housing partner, Southeast Housing, LLC, would be pursuing the sale of the property known as the Peary Court Housing Complex and all of the structures on it, to a private entity; and

WHEREAS, the City determined that sale to a private owner would require changing the Property's Military (M) Future Land Use designation, with corresponding amendments to the Future Land Use Element, the City's Land Development Regulations and the City's Official Zoning Map; and

WHEREAS, the City conducted duly-noticed public hearings on a proposed HSMDR Future Land Use Map amendment, including a transmittal hearing by the City Commission on May 29, 2012 and culminating in an adoption hearing on September 18, 2012, during which the City Commission considered the criteria identified in Code Section 90-555 together with the recommendations of City staff, DEO, and comments from the public; and

WHEREAS, on September 18, 2012, the City Commission adopted Ordinance No. 12-32 (Exhibit C), defining a new Future Land Use Map designation of "Historic Special Medium Density Residential" (HSMDR), and applying that designation to the Property, and

WHEREAS, duly-noticed public hearings on the HSMDR Zoning District amendment ordinance were held by the City Commission on September 5, 2012 and September 18, 2012, and in its deliberations the City Commission considered the criteria identified in Code Section 90-251 together with the recommendations of City staff and public comments; and

WHEREAS, on September 18, 2012, the City Commission adopted Ordinance No. 12-33 (Exhibit D) amending the zoning of the Property from Military (M) to Historic Special Medium Density Residential (HSMDR); and

WHEREAS, on October 24, 2012, the State of Florida Department of Economic Opportunity (DEO) found the Comprehensive Plan Future Land Use Map Historic Special Medium Density Residential (HSMDR FLUM) amendment to be consistent with the Principles for Guiding Development for the City of Key West Area of Critical State Concern as set forth in Section 380.0552(7), *Florida Statutes*, and accordingly issued its Notice of Intent to find Ordinance No. 12-32 compliant (Exhibit E); and

WHEREAS, on November 20, 2012 the State of Florida Department of Economic Opportunity (DEO) found the amendments to the Land Development Regulations, approved through Ordinance No. 12-33, for the Historic Medium Density Residential (HSMDR) Zoning District, to be compliant (Exhibit F), and the amendments became effective as of December 12, 2012 ; and

WHEREAS, City Code Section 122-611(e) requires submission and approval of a Development Agreement with any development plan submitted for approval on the a property within the HSMDR Zoning District, thereby superseding the requirement in Code Section 90-679 for the City Commission to make a preliminary determination of whether or not to enter into a Development Agreement and to pursue negotiations with the Owner; and

WHEREAS, pursuant to recommendation of the DEO, the City Commission, through Ordinance No. 12-33, authorized an exception within the HSMDR Zoning District to the affordable housing and workforce housing Ordinance criteria, so that the development of Peary Court requires the addition of 48 affordable work force housing units (calculated at 30% of the 160 existing residential units); and

WHEREAS, Owner has identified a portion of the Property, consisting of land previously occupied by the demolished commercial building and vacant land adjacent thereto (collectively,

“the Affordable Housing Site”), on which forty-eight (48) new affordable work force housing units shall be constructed, as depicted on the attached Affordable Housing Site Plan (Exhibit G, referred to herein as the “Site Plan”); and

WHEREAS, on August 28, 2013, the Owner executed a Declaration of Affordable Housing Restrictions (the “Declaration”), which was recorded at Monroe County Official Record Book 2648, Page 182, subsequently amended by Amendment to Affordable Housing Deed Restriction (the “Amendment”), which was recorded at Monroe County Official Record Book 2657, Page 648-650 (the Declaration, as amended by the Amendment, being referred to herein as the “Deed Restriction”), by which the Owner undertook to continue the use of 48 dwelling units on the Property as affordable housing pending construction of 48 new affordable housing units; and

WHEREAS, the Owner submitted for approval by the City of Key West an application for major development plan approval for the addition of 48 new affordable residential dwelling units on the Affordable Housing Site consistent with the attached Site Plan in Exhibit G; and

WHEREAS, on *date*, the City of Key West Planning Board approved Resolution No. 2015-__ for a Major Development Plan, a copy of the Resolution being attached hereto as Exhibit I; and

WHEREAS, the Site Plan has been reviewed and approved by the Historic Architectural Review Commission (referred to in this Agreement as “HARC”) to ensure that the mass, scale, size, proportion, and screening of the proposed new affordable housing structures are compatible with the existing community fabric; and

WHEREAS, on *date*, the City of Key West Planning Board approved Resolution No. 2015-__, recommending approval of the Development Agreement, a copy of the Resolution being attached hereto as Exhibit J; and

WHEREAS, on *date*, the City Commission considered the comments and recommendation of the City staff, the Planning Board, and comments of members of the public and approved Resolution No. 15-__ (Exhibit K) granting Major Development Plan approval, and approved Resolution No. 15-__ (Exhibit L) authorizing development of the Affordable Housing Site as provided in this Development Agreement; and

WHEREAS, the City has determined that the new development proposed in the Site 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 consistent with the Comprehensive Plan, the land development regulations, and the Principles Guiding Development for the City, and further finds that this Development Agreement is in the public interest, and will further the health, safety, welfare, and goals of the residents of the City.

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 Article V, Division 10 of Chapter 122, Sections 122-1465 through 122-1467 of the City Code.

2. “Baseline Green Building Certification” means the Florida Green Building Coalition (FGBC) Bronze level certification or Leadership in Energy and Environmental Design (LEED) certification.

3. “Building Permit Allocation” means a residential permit allocation under Article V, Division 10, of Chapter 122, Sections 108-986 through 108-998 of the City Code.

4. “City Code” means the Code of Ordinances of the City of Key West in effect on the Effective Date of this Development Agreement.

5. “Comprehensive Plan” means the City’s Comprehensive Plan in effect on the Effective Date of this Development Agreement.

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

7. “Site Plan” shall refer to the Affordable Housing Site Plan dated _____, approved by the City Commission in Resolution 15-____

8. “Effective Date” shall refer to the date this Development Agreement becomes effective, as set forth in herein.

9. “Prerequisite Standards” shall mean “prerequisites, major construction/renovation” as defined in City Code Section 86-9 and are the minimum standards for new development required

in order to be eligible to receive an allocation award from the City BPAS, including Baseline Green Building Certification, pursuant to City Code Section 108-995.

10. “Property” shall refer to the parcel described in Exhibit “A” that is the subject of this Development Agreement.

11. “Public facilities” means those facilities identified in Section 163.3221, *Florida Statutes*.

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 Exhibit “A” and incorporated herein by reference. As evidenced by the Special Warranty Deed conveying the Property (a copy of which is attached hereto as Exhibit “M”), the Owner of the Property is Peary Court Holdings, LP, a Delaware limited partnership formerly known as Peary Court Holdings, LLP, whose general partner is Peary Court Advisors, LLC. Peary Court Advisors, LLC (“Advisors”) is a Delaware limited liability company whose Manager is Wexford Capital LP (“Wexford”), a Delaware limited partnership authorized to do business in Florida, whose address is 411 W. Putnam Ave., Greenwich, CT 06830. The general partner of Wexford is Wex GP LLC, also known as Wexford GP LLC, whose address is 411 W. Putnam Ave., Greenwich, CT 06830, and whose executive officers are the same as Advisors. Peary Court Holdings, LP is registered with the Florida Secretary of State as a foreign limited partnership doing business in Florida. The limited partners of Peary Court Holdings, LP are as follows:

Peary Court Fund Holdings L.P. and 13th Floor Sponsor, LLC; the address of both is 4949 SW 7th Ave., Miami, FL 33155, and their manager is Arnaud Karsenti..

White St Partners, LLC, a Florida limited liability company whose address is 150 SE 2d Ave.,

Suite 800, Miami, FL 33131, and whose members are IVG1 LLC, a Florida limited liability company (Everett M. Atwell, Jr. and James Landers, Managers) and Integra Real Estate, LLC, a Florida limited liability company (Paulo de Melo and Nelson Stabile, Managers; Victor M. Ballestas is also a principal.

Wexford Spectrum Fund, L.P., whose address is Wexford Plaza, 422 W. Putnam Ave., Greenwich Conn. 06830, and whose executive officers are Joseph Jacobs, President, and Arthur Amron, Vice President.

White St. Partners, LLC, has been designated by Owner as the member responsible for negotiation of this Agreement and for development of the Property.

2. Duration of Agreement; Renewal. This Development Agreement shall remain in effect for a period of five (5) years, commencing on the Effective Date set forth below. This Development Agreement may be renewed or extended pursuant to City Code Section 90-682(a)(2) and *Florida Statute* § 163.3229.

3. Existing Development. The Property consists of the following development located in the City of Key West on the historic Peary Court military housing site: 160 existing dwelling units (157 units and 3 units involuntarily destroyed by fire, entitled to be rebuilt as of right). The previously-existing 10,000 square foot commercial building, previously utilized as a drive-thru bank, has been demolished by Owner pursuant to a duly-issued demolition permit.

4. Site Plan.

a. Uses, Densities and Intensities. The residential uses, densities and intensities, existing and proposed, conform with HSMDR Zoning District standards. The Property is allowed a maximum density density of 8.6 units per acre. The Site Plan proposes an additional

48 units, for a total of 208 residential dwelling units on the Property. No commercial development is proposed.

b. Building Permit Allocations. The Site Plan encompasses construction on the Property of 48 new affordable housing units. The City has reserved to the Property 48 affordable residential dwelling unit allocations from the City of Key West Building Permit Allocation System required to construct the new affordable work force housing units depicted on the Site Plan. That allocation shall be awarded at the time the City issues building permits for the affordable work force housing units.

c. Conformity with Major Development Plan. The following development features shall conform to the Major Development Plan as approved by City Commission Resolution No. 15-__ (Exhibit K) and to the specifications set forth on the Site Data sheet attached as Exhibit N:

1. Open Space.
2. Recreation Areas, which shall conform to the access requirements of Paragraph 10(j), below.
3. Types and locations of units, which shall be subject to adjustment within the standard deviations range set forth in Paragraph 6.
4. Parking for vehicles and bicycles shall be provided at the locations depicted on the Site Plan, in the quantities specified in Exhibit N.
5. Landscaping, which shall also conform to requirements imposed by the Tree Commission. Buffers shall conform to the dimensions and quantities set forth on Exhibit N.

6. Solid waste and recycling container storage, which shall also conform to the requirements of Paragraph 10(c), below.

7. Fencing.

8. Utilities and Mechanical Equipment, installed as provided in Paragraph 10, below.

9. Streets. The existing internal streets providing access to the affordable housing units shall be retained, and internal streets shall be extended and improved, at Owner's expense, as depicted on the Site Plan subject to adjustment of location within the standard deviations range set forth in Paragraph 6(a).

5. Site Plan Modifications. Site Plan modifications shall require approval pursuant to City Code Section 108-91(c). Adjustment of affordable housing unit sizes and locations of improvements as depicted on the Site Plan may be authorized by the City Planner upon submission of building permit applications, within the following ranges of standard deviations:

(a) locations of buildings and other improvements: deviations not exceeding ten (10) feet, except for deviations for which the Land Development Regulations require a variance.

(b) unit size: deviations not exceeding twenty percent (20%) of the floor area of the unit or units, provided that minimum unit size shall comply with the provisions of Paragraph 7, below.

6. Affordable Work Force Housing; Timing of Development; Deed Restriction.

The Owner shall develop forty-eight (48) affordable work force housing units, all of which shall be at least 400 square feet in size pursuant to City Code Section 122-1467, subject to the following conditions:

a. Owner shall reserve, maintain and operate 48 existing dwelling units on the Property as interim affordable housing, subject to the provisions of the Deed Restriction. That obligation to maintain the 48 units of interim affordable housing shall expire upon issuance of a certificate of occupancy for the new affordable work force housing units.

b. Upon issuance of a Certificate of Occupancy for the 48 new affordable work force housing units, the Deed Restriction shall be amended by Owner so as to amend the description of the Property subject to the Declaration, by substituting the description of the new units for those units identified on Exhibit "A" to the Amendment. Owner shall provide a copy of the recorded amendment, showing the book and page where recorded, to the City Planning Department and the Key West Housing Authority within two weeks after recordation.

c. The affordable work force housing unit income categories and rental rates for the 48 new affordable work force housing units shall conform to the provisions of the Deed Restriction. The classification of the identified units may vary, provided that the total value of rental does not exceed ten percent (10%) of the rental of all the units at affordable housing (moderate income) pursuant to City Code Section 122-1467(c).

d. The new affordable housing units shall be available for persons who meet and continue to meet the eligibility requirements for affordable work force housing set forth in City Code Section 122-1469. Continuing compliance with those eligibility requirements shall be determined by the Key West Housing Authority, with an annual report to the City Manager verifying compliance with Code Section 122-1467(e).

7. **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 no fewer than the number of fire hydrants and/or fire wells required to conform to all applicable fire safety requirements, as determined by the Fire Marshal of the City of Key West. On-site fire protection shall be provided in accordance with the 2013 Fire Prevention code, Ch. 69A-60, F.A.C.

b. **Timing of permit applications.** Prior to submitting a building permit application to the City, the Owner shall secure all permits required for that work pursuant to applicable state, regional and federal regulations, including but not limited to the South Florida Water Management District, and shall also secure any necessary permits or authorizations from the City of Key West Utilities Dept.

c. **Fair Housing Requirements.** New units constructed on the Property shall comply with applicable requirements of the ADA and state and federal fair housing acts.

d. **Signage.** A Signage Plan shall be submitted to the City Planning Department for approval prior to the issuance of building permits for the new affordable housing units.

e. **Building Heights.** Building heights shall not exceed the maximum building height allowed in the HSMDR Zoning District applicable to the Property. For the purpose of measuring building heights of residential and accessory structures other than interior fences, the base elevation shall be 6.09 feet NGVD, which is the elevation of the crown of the road on White Street immediately in front of the main entrance to the Property at the intersection of White and Southard Streets (See site elevation determination by Donald Craig, attached hereto as Exhibit P).

f. **Site Design.** The development of the Property shall be consistent with all bulk and site design requirements in the City Code, including but not limited to open space, setbacks and buffering, lighting, landscaping, parking, utilities and stormwater management.

g. **Impact Fees.** Owner shall pay impact fees (i.e., sewer, solid waste, traffic and library impact fees) for the 48 new affordable housing units, in the amounts set forth in the impact fee schedule established by the City Code at the rates in effect on the date of building permit issuance.

h. **Wind Load.** Owner shall ensure that all new structures (including doors, windows, and cladding) meet all applicable codes, to withstand the peak wind loads specified in the 2013 Florida Building Code.

i. **Energy Efficiency / Green Building.** Owner shall sustainably construct the new residential structures in conformance with the Prerequisite Standards for BPAS, including Baseline Green Building Certification, pursuant to City Code Section 86-9 and 108-995.

j. **Flood damage avoidance.** The finished floor elevation of the first habitable floor of all new units shall be no less than 1.5 feet above base flood elevation.

8. **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.

9. **Public Facilities.** All required public facilities to serve the project are available as of the date of this Development Agreement, and capacity for each is projected to be available concurrent with the impacts of development. The following list identifies required public facilities that will service the development authorized by this Agreement, who shall provide the facilities,

what new facilities will be constructed; and a schedule to assure that public facilities are available concurrent with the impacts of additional development:

a. Potable Water. Domestic potable water is provided by Florida Keys Aqueduct Authority. Adequate domestic potable water transmission and potable water source capacity exist for this project. No need for new potable water facilities, other than relocation of internal distribution lines, water meters, valves, etc., is anticipated. Those distribution lines shall be installed by the Owner prior to substantial completion of new housing units that they will supply.

b. Electric Service. Electric service is provided by Keys Energy Services. No new electric service facilities, other than the relocation of internal distribution lines, are anticipated. Those underground distribution lines shall be installed by the Owner and/or KES prior to issuance of a certificate of occupancy for the new housing units that they will supply.

c. Solid Waste. Solid waste service is provided by the franchisee of the City of Key West, and adequate capacity exists for this development. All solid waste from units other than multi-family units shall be limited to individual containers per household, subject to City Ordinance requirements for removal from the streets as if the internal private streets were public.

d. Wastewater. Wastewater treatment shall be provided by City of Key West. Developer shall construct such additional or relocated wastewater collection facilities as may be required to deliver sewage generated on the Property to the City's wastewater collection facilities. Wastewater treatment shall be provided by the City of Key West Wastewater Treatment Plant, and adequate capacity exists for this development.

e. Protective Services. Protective services other than parking enforcement shall be provided by the City of Key West.

f. Transportation. According to the Traffic Impact statement provided by the Owner and attached as Exhibit O, no net additional traffic impacts are anticipated. All roadways within the Property shall remain private roads.

g. Schools. Adequate school facilities are anticipated to serve any students who may reside in the dwelling units developed under the Redevelopment Plan.

h. Existing Facilities. 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 Development compliant with the Redevelopment Plan.

i. Stormwater. Owner shall construct stormwater collection and retention facilities compliant with City Code as may be required pursuant to the Environmental Resource Permit (“ERP”) that Owner shall apply for and receive from the South Florida Water Management District. Those stormwater management facilities shall be installed by Owner prior to issuance of certificates of occupancy for the 48 new affordable housing units.

j. Recreational facilities. The Site Plan provides for on-site amenities for residents and guests of the 48 new affordable housing units. Private recreational facilities shall be provided on the Property to serve the needs of the residents of the 48 new affordable housing units. Additionally, public recreational facilities exist in the vicinity of Peary Court, adequate to serve the recreational needs of residents.

10. Required Permits and Approvals.

Nothing in this Development Agreement shall be deemed to obviate the necessity of the Owner’s compliance with terms and provisions of each of the required approvals listed below. Prior to City Commission approval, the Major Development Plan shall be reviewed and approved by HARC to ensure that the mass, scale, size, proportion, and screening of the proposed new

affordable housing structures are compatible with the existing community fabric. The following is a list of other development permits and approvals needed for the development of the Property as specified and required in this Agreement:

- a. Development Agreement;
- b. Major Development Plan approval;
- c. Tree Commission approval;
- d. Building and related construction permits, including but not limited to permits for paving, drainage, principal and accessory structures, land clearing and landscaping; and
- e. Federal, State, regional and local permits for stormwater improvements, driveway connections, utility connections and environmental (or endangered species takings), when and if required; and
- f. Certificates of Appropriateness.

11. Mutual Cooperation. The City agrees to cooperate with the Owner in timely reviewing and processing all applications for 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.

12. Development to Comply with Permits and City Comprehensive Plan and Code Provisions. The Development 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 or required herein.

13. Finding of Consistency. The City finds that the Development 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.

14. 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.

15. Laws Governing this Agreement.

a. For the duration of this Development Agreement, all approved Development of the Property shall comply with and be controlled by this Development Agreement and provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Agreement.

b. Pursuant to City Code Section 90-687 and Section 163.3233, *Florida Statutes*, the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that:

(1) 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;

(2) 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;

(3) the City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Development Agreement; or

(4) 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.

16. Amendment, Extension, and Termination. This Development Agreement may be amended, extended, or terminated as follows:

a. As provided in Section 163.3237, *Florida Statutes*, and City Code Section 90-689, this Development Agreement may be amended, extended or canceled by mutual consent of the parties or their successors in interest, which shall require a written document approved by the City Commission and shall require two (2) public hearings by the City.

b. As provided in Section 163.3229, *Florida Statutes*, and City Code Section 90-684, this Development Agreement may be extended by the mutual consent of the parties, subject to the public hearing requirements in Section 163.3225, *Florida Statutes*. 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 extension 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. Intentionally omitted

c. Pursuant to Section 163.3235, *Florida Statutes*, and City Code Section 90-689, this Development Agreement may be revoked or modified by the City if the City finds, on the basis of competent substantial evidence, that there has been a failure to comply with the ~~material~~ terms of this Development Agreement.

17. Breach of Agreement and Cure Provisions.

a. If the City concludes that there has been a 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 breached and providing the Owner with sixty (60) days from the date of receipt of the notice to cure the breach. 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 breach of this Development Agreement:

(1) Failure to comply with the provisions of this Development Agreement;

(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;

(3) Failure to comply with terms and conditions of the Deed Restrictions referred to in Paragraph 7(b), above; or

(4) Failure to comply with the requirements of the Major Development Plan.

b. If the Owner concludes that there has been a 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 breached and providing the City with sixty (60) days from the date of receipt of the notice to cure the breach. The following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the City, shall be considered a breach of this Agreement:

(1) Failure to comply with the provisions of this Development Agreement;

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

18. 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 of the parties are as follows:

PEARY COURT HOLDINGS, LP:

c/o White St. Partners, LLC
Registered Agent: Integra Real Estate LLC
2828 Coral Way Suite 303
Miami Fl 33145

TO THE CITY:

City Planning Director
P.O. Box 1409
Key West, FL 33041

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

City Attorney
P.O. Box 1409
Key West, FL 33041-1409

City Manager
P.O. Box 1409
Key West, FL 33041-1409

19. Enforcement. In accordance with Section 163.3243, *Florida Statutes*, any party to this Development Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), *Florida Statutes*, or the state land planning agency (currently the DEO) 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*.

20. **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.

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

22. **Assignment.** This Agreement may not be assigned by Owner without the written consent of the City, which consent shall not be unreasonably withheld.

23. **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.

24. **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.

25. **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.

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

27. **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.

28. 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.

29. 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 Major Development Plan approval for Peary Court is 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.

30. Rendition. After this Agreement is signed by the parties, a copy of the signed Agreement shall be timely rendered by the City to the Florida Department of Economic Opportunity (DEO) as required by Rule 73C-44.003, Florida Administrative Code.

31. Effective Date of Agreement. This Agreement shall only become effective after the Florida Department of Economic Opportunity (DEO) waives its right to appeal, the 45-day appeal period established by Section 380.07, *Florida Statutes*, expires, or any such appeal has been finally resolved, whichever first occurs. The effective date of this Agreement shall be the date that it is recorded as provided in Paragraph 33, below.

32. Recording. As required by Section 163.3239, *Florida Statutes*, the City shall record this Development Agreement in the public records of Monroe County, Florida, within

fourteen (14) days after the effective 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 Owner 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.

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

PEARY COURT HOLDINGS, LP, a Delaware limited partnership

By: PEARY COURT ADVISORS, LLC, a Delaware L.L.C, its general partner

By: _____

Arnaud Karsenti

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015 by Arnaud Karsenti, authorized person of Peary Court Advisors, LLC, on behalf of the company, who is () personally known to me or () who has produced a driver's license as identification.

SEAL

Notary Public

and by: WHITE ST. PARTNERS, LLC, a Florida limited liability company

By: IVG1, LLC, a Florida limited liability company, its managing member

By: Integra Real Estate LLC, a Florida limited liability company, its managing member

By: _____
Everett Atwell, Jr, Manager

By: _____
Paulo de Melo, Manager

By: _____
Nelson Stabile, Manager

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me on this _____ day of _____, 2015, by Everett Atwell, Jr., who is personally known to me or who produced _____ as identification, and who did/did not take an oath.

Notary Public
Name _____
(typed, printed or stamped)
My commission expires:

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me on this _____ day of _____, 2015, by Paulo deMelo and Nelson Stablie, who are personally known to me or who produced _____ as identification, and who did/did not take an oath.

Notary Public
Name _____
(typed, printed or stamped)
My commission expires:

CITY OF KEY WEST

_____, 2015
Date

By _____
Mayor

ATTEST:

CITY CLERK

LIST OF EXHIBITS

- Exhibit A: Legal description of property
- Exhibit B: Key West City Commission Resolution No. 92-75
- Exhibit C: Key West Ordinance No. 12-32 FLUM text and map amendment
- Exhibit D: Key West Ordinance No. 12-33 Zoning text and map amendment
- Exhibit E: DEO Notice dated October 24, 2012
- Exhibit F: DEO Notice dated November 20, 2012
- Exhibit G: Affordable Housing Site Plan, revised as of _____ (the "Site Plan")
- Exhibit H: (Intentionally deleted)
- Exhibit I: Key West Planning Board Resolution No. 2015-__ Major Development Plan recommendation
- Exhibit J: Key West Planning Board Resolution No. 2015-__ Development Agreement recommendation
- Exhibit K: Key West City Commission Resolution No. 15-__ Major Development Plan approval
- Exhibit L: Key West City Commission Resolution No. 15-__ Development Agreement approval
- Exhibit M: Copy of Special Warranty Deed
- Exhibit N: Site Data sheet (includes parking and landscaping)
- Exhibit O: Traffic Impact statement
- Exhibit P: Site elevation determination dated Jan. 2, 2014.

Legal Description; Peary Court:

Prepared by undersigner:

Note: Legal based on Physical properties:

A parcel of land situated in the City of Key West, Monroe County, Florida and being more particularly described as follows: COMMENCING at the intersection of the Northwesterly Right-of-Way Line of Newton Street and the Northeasterly Right-of-Way Line of White Street (Florida State Plane Coordinates East Zone NAD 83/90, Northing = 82591.01, Easting = 392639.41): thence N 34°08'30" W along the said Northeasterly Right-of-Way Line of White Street for 310.39 feet; thence N 55°51'30" W for a distance of 0.05 feet to the back edge (Northeast side) of a concrete sidewalk and the Point of Beginning; thence N.34°08'00"W., and along the Northeast edge of a concrete sidewalk a distance of 289.66 feet; thence S 55°51'30" W for a distance of 0.10 feet to the Northeasterly Right-of-Way Line of White Street; thence N 34°08'30" W along the said Northeasterly Right-of-Way Line of White Street for a distance of 31.83 feet; thence N 55°51'30" E for a distance of 0.10 feet to the said back of the sidewalk of White Street; thence N 34°08'00" W along the said Northeasterly edge of a sidewalk for a distance of 853.03 feet to an existing fence; thence N.55°36'56"E., and along the said fence, which lies on Eaton Street a distance of 194.19 feet to a point lying 0.5 feet (6 inches) Northeast of a fence corner; thence S.79°06'43"E., and along a line lying 0.5 feet (6 inches) Northeasterly of a existing fence and wall a distance of 1206.74 feet; thence N 10°44'48" E for a distance of 8.75 feet to the Southeasterly Right-of-Way Line of Palm Avenue; thence S 79°15'12" E along the said Southeasterly Right-of-Way Line of Palm Avenue for a distance of 55.00 feet; thence S 10°44'48" W for a distance of 8.88 feet to the extension of a line lying 0.5 feet (6 inches) Northeasterly of the existing fence and wall; thence S 79°06'43" E and along a line lying 0.5 feet (6 inches) Northeasterly of the existing fence and wall for a distance of 325.66 feet to a point lying 0.5 feet (6") from the corner of the fence on Eisenhower Drive; thence S 40°23'08" E along the fence on Eisenhower for a distance of 20.90 feet; thence S 14°07'44" E and being partially along a fence line for 167.37 feet to Angela Street; thence S.56°24'46"W., and along a line lying 0.5 feet (6 inches) Southeasterly of the fence line of Angela Street a distance of 1080.22 feet; thence N.19°36'43"W., and along the edge of an existing fence a distance of 72.01 feet; thence S.68°44'44"W., and along the edge of an existing fence a distance of 204.28 feet to the Northeast side of a concrete sidewalk and the Point of Beginning.

Parcel contains 1053433.77 square feet or 24.1835 acres, more or less.

Exhibit A

RESOLUTION NO. 92-75

A RESOLUTION OF THE CITY OF KEY WEST
ASSERTING THE CITY OF KEY WEST'S
SUPPORT OF AFFORDABLE MILITARY
HOUSING AT PEARY COURT; PROVIDING
FOR ADOPTION OF OFFICIAL SUPPORT;
PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Key West has supported a strong military presence since the early 19th Century; and

WHEREAS, the relationship between the civilian and military communities within the City of Key West has historically been one of the closest of its kind in the United States; and

WHEREAS, the Peary Court area has been in constant military use since 1833 and was used for Navy housing from the Second World War until the mid-1970s; and

WHEREAS, the City of Key West was given the opportunity to lease a portion of Peary Court as a recreational area during the time political consideration was being given to close the Naval Air Station in Key West; and

WHEREAS, the Navy and Coast Guard now have funding to reconstruct much needed military housing on Peary Court to resume the prior use of Peary Court; and

WHEREAS, the City of Key West has the second highest cost of living in the continental United States and has very little affordable housing for its civilian population; and

WHEREAS, the military employment in Key West accounts for nearly thirty-five hundred military employees and accounts for approximately thirty-five hundred military dependents and over 1,200 civilian employees; and

WHEREAS, the military payroll for 1991 and additional local military expenditures provided a local economic impact of over One Half Billion Dollars; and

WHEREAS, the City of Key West is vitally interested in maintaining the close military/civilian relationship and in helping provide affordable housing for the military families; and

WHEREAS, the City wishes to aid and support the military's redevelopment of affordable housing at Peary Court which will reduce the economic pressure on presently existing affordable

housing in the Lower Florida Keys; and

WHEREAS, there is presently pending in Federal Court an action challenging the Department of Defense' compliance with federal law and seeking to enjoin the planned reconstruction of the Peary Court military housing; and

WHEREAS, the citizens of the City of Key West, through their elected legislative leaders, wish to support the efforts of the Navy and Coast Guard to provide affordable housing to the military families in the Key West area; and

NOW, THEREFORE, BE IT RESOLVED that the City of Key West wishes to protect and assert its vital interests by supporting the plans of the military to redevelop and rebuild the military housing at Peary Court; and

BE IT FURTHER RESOLVED that the City of Key West by and through its elected officials hereby adopts this Resolution in support of the United States Navy and Coast Guard, and asserts the interests of the City of Key West in having the reconstruction of the Peary Court military housing go forward upon resolution of all pending legal issues.

The City Clerk is directed to distribute copies of this Resolution to the Department of Defense, Department of Transportation, Senator Robert Graham, Representative Ron Saunders, Senator Larry Plummer, Commanding Officer Michael Currie, Judge Lawrence King, Magistrate Stephen Brown, State Historic Preservation Office, Congressman Dante Fascell and Senator Connie Mack and other officials as directed by the Mayor and Commission.

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.

Passed and adopted by the City Commission at a meeting held this 19 day of February, 1992.


DENNIS J. WARDLOW, MAYOR

ATTEST:


JOSEPHINE PARKER, CITY CLERK

ORDINANCE NO. 12-32

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, PROPOSING AMENDMENTS TO THE FUTURE LAND USE ELEMENT AND FUTURE LAND USE MAP SERIES OF THE CITY OF KEY WEST COMPREHENSIVE PLAN FOR PROPERTY KNOWN AS THE PEARY COURT HOUSING COMPLEX (RE# 00006730-000000, ALTERNATE KEY # 1006963); AMENDING THE FUTURE LAND USE MAP LEGEND AND DENSITY AND INTENSITY OF DEVELOPMENT, AMENDING MAP 1-1, MAP 1-4, AND MAP 1-6 OF THE FUTURE LAND USE MAP SERIES; PROVIDING FOR A RESIDENTIAL DENSITY OF 8.6 UNITS PER ACRE, CREATING POLICY 1-1.6.4; AND POLICY 1-2.3.11 TO PROVIDE FOR THE INTEGRATION OF THE MILITARY SITE INTO THE COMMUNITY; AND TO DEFINE A NEW FUTURE LAND USE MAP DESIGNATION OF "HISTORIC SPECIAL MEDIUM DENSITY RESIDENTIAL" (HSMDR) AND APPLYING SUCH DESIGNATION TO SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF INCONSISTENT PROVISIONS ~~PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY; PROVIDING FOR THE FILING WITH THE SECRETARY OF STATE AND FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE INCLUSION IN THE CITY OF KEY WEST COMPREHENSIVE PLAN.~~

WHEREAS, the City of Key West was informed on or around April 6, 2011 that the United States Navy, with its concessional housing partner, Southeast Housing, LLC, would be pursuing the sale of the property known as Peary Court (RE# 00006730-000000), and all of the structures on it, to a private entity; and

WHEREAS, the Peary Court property is located within the City's Military (M) Future Land Use designation and zoning district; and

1

*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

WHEREAS, Policy 1-2.6.2 of the Comprehensive Plan does not specify regulatory land use controls for lands that fall under the Military (M) Future Land Use designation but simply recognizes federal preemption of local land use controls; and

WHEREAS, should the ownership change from a military entity to civilian entity, the federal preemption from land use controls no longer provides sufficient and necessary guidance and regulations to accommodate the existing housing and mixed use development on the property; and

WHEREAS, in order to allow staff to develop and analyze necessary and appropriate Future Land Use and zoning amendments, the City Commission approved Resolution 11-325 on November 15, 2011, invoking the Zoning in Progress Doctrine for the Peary Court property; and

WHEREAS, City Commission Resolution 11-325 provided an interim Future Land Use and zoning designation of Planned Redevelopment District (PRD), as well as direction to City staff to consider the following Future Land Use designation changes: Planned Redevelopment District (PRD), Historic Planned Redevelopment District (HPRD), Medium Density Residential (MDR), Historic Medium Density Residential (HMDR), or a hybrid of these designations, as the most appropriate and consistent with the unique site characteristics of the property; and

WHEREAS, staff has analyzed the existing site characteristics and the relationship of the

property to immediately surrounding development and neighborhoods, and the potential function of the existing housing with the community as a whole in order to determine a Future Land Use Designation consistent with the criteria for approving amendments to the Comprehensive Plan Future Land Use Map, pursuant to Section 90-555 of the Land Development Regulations; and

WHEREAS, based on staff analysis, a hybrid Future Land Use designation of Historic Medium Density Residential (HMDR) and Planned Redevelopment District (PRD) to be called the Historic Special Medium Density Residential (HSMDR) district will be the most compatible designation with the existing site characteristics at Peary Court, protects surrounding adjacent established land uses, and promotes consistency with the Comprehensive Plan, conformance with applicable ordinances, changed conditions, land use compatibility, adequate public facilities, the natural environment, economic effects, orderly development, the public interest, and other matters applicable; and

WHEREAS, the proposed amendment is internally consistent with the City of Key West Comprehensive Plan; and by supporting the goals, objectives, and policies of the plan; and

WHEREAS, the proposed amendment is consistent with the Principles of Guiding Development for the City of Key West, Rule 28-36.003, Florida Administrative Code (F.A.C.).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA:

Section 1: The City of Key West Comprehensive Plan Goals, Objectives, and Policies shall be amended as follows: (Deletions are ~~stricken through~~ and additions are underlined.)

Add to Goal 1-1 Land Use, Objective 1-1.6, Integrate Former Military Sites, the following new policy:

Policy 1-1.6.4: Peary Court Housing Complex Organizing Element. All new development and redevelopment within the Peary Court Housing Complex shall be consistent with the following key organizing elements:

1. Preserve the existing housing stock of 160 units for permanent multifamily residential purposes.
2. Maintain land use compatibility and sensitivity with the adjacent historic district.
3. Maintain land use compatibility and sensitivity with the adjacent military installation at Naval Air Station Key West Trumbo Point Annex.
4. Affordable housing shall be required for all existing residential, redeveloped residential and new residential development at a ratio of 30% of the total aggregate of the existing or redeveloped, and/or new units on the property.

Amend Goal 1-2 Future Land Use Map, by changing:

Map 1-1, Future Land Use Map Series: The City's Future Land Use Map (pg. 1-10). Remove the Military (M) Future Land Use designation applied to the property, and substitute the new Historic Special Medium Density (HSMDR) Future Land Use designation (Exhibit 1).

The Future Land Use Map Legend and Density and Intensity of Development (pg. 1-11) shall be amended to include the Historic Medium Density (HSMDR) Future Land Use designation, and shall have a maximum nonresidential Floor Area Ratio of 1.0, and maximum residential density of 8.6 dwelling units per gross acre (Exhibit 2).

Map 1-4 of the Future Land Use Map Series (pg. 15) shall be amended to remove the "NAVY" designation on the parcel of property known as the Peary Court Housing Complex (RE# 00006730-000000) (Exhibit 3).

Map 1-6 of the Future Land Use Map Series (pg. 1-17) shall be amended to remove the "NAVY" designation on the parcel of property known as the Peary Court Housing Complex (RE# 00006730-000000) (Exhibit 4).

Amend Objective 1-2.3 Managing Old Town Redevelopment and Preservation of Historic Resources by adding the following policy:

Policy 1-2.3.11: Historic Special Medium Density Residential (HSMDR). The area delineated on the Future Land Use Map as Historic Special Medium Density Residential (HSMDR) is designed to accommodate the existing multifamily military housing complex at Peary Court at that time when the land and improvements are transferred to civilian ownership and City jurisdiction. The designation is intended to maintain land use compatibility with the adjacent historic district and military installation at Trumbo Point Annex. This designation is not intended to accommodate transient or commercial residential land use activities. The allowable residential density shall be a maximum of 8.6 units per acre. The maximum intensity of development shall not exceed a floor area ratio of 1.0 for all uses.

Upon Plan adoption, the land development regulations shall be amended to identify standards and processes to implement new Policy 1-1.6.4, to provide bulk and performance standards to implement the HSMDR designation, and to assure compliance with all other goals, objectives, and policies of the Comprehensive Plan.

Upon plan adoption, the Historic Preservation Planner shall have the discretion to review redevelopment and new development impacts for mass, scale, size, proportion, and screening to ensure compatibility with the existing community fabric. Upon plan adoption, the land development regulations shall be amended to include applicable review criteria for such historic architectural review standards.

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable there from and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4: This Ordinance shall be transmitted by the Director of the Planning Department to the State Land Planning Agency pursuant to Chapter 163 and 380, (F.S.).

Section 5: This ordinance shall be filed in the Office of the Secretary of the State of Florida but shall not become effective until a notice is issued by the State Land Planning Agency or Administration Commission finding the amendment is in compliance with Chapter 163, (F.S.), and after any applicable appeal periods have expired.

Section 6: The numbering of the forgoing amendment may be renumbered to conform to the numbering of the City of Key West Comprehensive Plan and shall be incorporated in the City of Key West Comprehensive Plan.

Read and passed on first reading at a regular meeting held this 29 day of May, 2012.

Read and passed on final reading at a regular meeting held this 18 day of September, 2012.

Authenticated by the presiding officer and Clerk of the Commission on 19 day of September, 2012.

Filed with the Clerk September 19, 2012.


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

ORDINANCE NO. 12-33

AN ORDINANCE OF THE CITY OF KEY WEST AMENDING THE LAND DEVELOPMENT REGULATIONS, AND THE OFFICIAL ZONING MAP FOR PROPERTY KNOWN AS THE PEARY COURT HOUSING COMPLEX (RE# 00006730-000000, Alternate Key# 1006963) AMENDING THE OFFICIAL ZONING MAP LEGEND; AMENDING CHAPTER 122, ARTICLE IV, TO CREATE A NEW HISTORIC SPECIAL MEDIUM DENSITY RESIDENTIAL DISTRICT (HSMDR), PROVIDING FOR PERMITTED USES, CONDITIONAL USES, PROHIBITED USES AND DIMENSIONAL REQUIREMENTS; PROVIDING FOR A RESIDENTIAL DENSITY OF 8.6 UNITS PER ACRE; AMENDING CHAPTER 122, ARTICLE V, PROVIDING AMENDMENTS TO THE TABLES OF USES AND DIMENSIONAL REQUIREMENTS FOR HISTORIC SPECIAL MEDIUM DENSITY RESIDENTIAL DISTRICT (HSMDR); PROVIDING FOR CONCURRENT AND CONDITIONAL ADOPTION UPON APPROVAL OF COMPREHENSIVE PLAN AMENDMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 90-517 of the Code of Ordinances allows the City Commission to amend the text of the Land Development Regulations and the boundaries of the Official Zoning Map in accordance with Sections 90-486 through 90-524: and

WHEREAS, on November 15, 2011 the City Commission initiated a zoning in progress ordinance to contend with the forecasted sale of the US Navy property known as Peary Court Housing to a non-governmental entity, thus making said property and its existing 160 units subject to local zoning control; and

WHEREAS, at the request of Southeast Housing, LLC and the US Navy, owners of the Peary Court property and the existing residential units on the property, the City Planning staff created a proposed Historic Special Medium Density Residential Future Land Use Map (FLUM) designation, and accompanying Land Use policies which on May 29, 2012, the City Commission adopted on first reading as applicable to the Peary Court property, and transmitted the proposed FLUM designation and policy to the Florida Department of Economic Opportunity (DEO) for review, analysis and comment; and

WHEREAS, on May 14, 2012 DEO in response to a request from City staff for clarification of whether the City Comprehensive Plan Policy 3-1.1.3 requiring 30% of units new to the City's BPAS system be affordable applies to the existing units at Peary Court, concluded that it did not; and

WHEREAS, on June 18, 2012, City Planning and Legal staff responded to the May 14th DEO letter, contesting that Policy 3-1.1.3 did apply to the existing and any redeveloped units at Peary Court; and

WHEREAS, in response to the City's June 18, 2012 letter, DEO on July 25, 2012 reaffirmed its opinion that Policy 3-1.1.3 did not apply, but stated rather than allowing the issue to be decided by costly litigation between the City, Southeast Housing, LLC, the property's prospective buyer, White Street Partners, and possibly DEO and the US Navy, instead requested the City accept 48 BPAS unit allocations provided by the state for affordable housing to be used at Peary Court; and

WHEREAS, on August 3, 2012, DEO issued its Objections, Recommendations and Comments Report (ORC) on the HSMDR FLUM, which in part, determined that the 48 BPAS units offered in its July 25, 2012, letter met the 30% affordable housing requirements of City Comprehensive Plan Policy 3-1.1.3 for Peary Court; and

WHEREAS, the City must contemplate that additional military properties may be released from US Navy ownership to private ownership, for which the HSMDR zoning designation may be appropriate; and

WHEREAS, the Peary Court Housing Complex is the first of such possible surplus properties for which HSMDR zoning may be appropriate, and each property so considered has unique characteristics; and

WHEREAS, pursuant to Section 90-522, the Planning Board held a noticed public hearing on July 19, 2012 to consider a new zoning designation and regulations for the Peary Court Housing Complex; where based on the consideration of recommendations of the City Planner, City Attorney, Building Official, and public testimony and input, and recommendation of the Planning Department, recommended approval of the proposed amendments; and

WHEREAS, based on the DEO Objections, Recommendations and Comments (ORC) Report to the Future Land Use Amendment for the HSMDR designation the Planning Department recommended postponement of the HSMDR zoning district amendment ordinance scheduled to be heard by the City Commission of August 7, 2012 in order to revise the ordinance to reflect the ORC Report comments, and the amendments were made; and

WHEREAS, the City Commission held a noticed public hearing on September 6, 2012 and a second public hearing on September 18, 2012 and in its deliberations considered the criteria identified in Section 90-521 of the Code of Ordinances together with the recommendations of City staff and comments of the public; and

WHEREAS, the City has considered all the comments and opinions from DEO with regard to the HSMDR FLUM, and its interpretation of the City's Comprehensive Plan and Land Development Regulations; and

WHEREAS, in response to the comments from the DEO regarding the unique circumstances of the Peary Court Housing Complex the City Commission determined that as a special exception only 30% of the existing units be required as affordable, instead of 30% of the aggregate total of units; and

WHEREAS, the City Commission determined that the proposed amendments are: consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the existing regulation; will promote land use compatibility; will not result in additional demand on public facilities; will have no impact on the natural environment; will not negatively impact property values or the general welfare; will result in more orderly and compatible land use patterns; and are in the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Chapter 122, Article IV, of the Code of Ordinances is hereby amended as follows:

SUBPART B - LAND DEVELOPMENT REGULATIONS

CHAPTER 122

ZONING

ARTICLE IV. DISTRICTS

DIVISION 1. GENERALLY

Sec. 122-92. - Future land use map designations and zoning districts.

The following table references adopted future land use map designations contained in the land use element of the city comprehensive plan and identifies corresponding zoning districts which are established in order to implement the future land use map designations, respectively:

FUTURE LAND USE MAP DESIGNATIONS AND ZONING DISTRICTS

| | |
|--------------------------------|---|
| Old Town Historic Preservation | |
| *** | |
| HSMDR | Historic Special Medium Density Residential |
| *** | |

Section 2: That Chapter 122, Article IV, Division 6 of the Code of Ordinances is hereby amended as follows:

[new] SUBDIVISION III. HISTORIC SPECIAL MEDIUM DENSITY RESIDENTIAL DISTRICT

Sec. 122-611. - Intent.

- (a) The historic special medium density residential district (HSMDR) is established to implement comprehensive plan policies for areas designated "HSMDR" on the comprehensive plan future land use map. The HSMDR district shall accommodate historic special Old Town medium density residential development for permanent residents, including single-family, duplex, and multiple-family residential structures.
- (b) Accessory uses and structures, including approved home occupations conducted within the residential structure, and customary community facilities can be located in the HSMDR designated area. This district shall not accommodate transient residential lodging uses, including guest homes, motels or hotels, time-shares, transient apartment, vacation rental, and gated transient communities.

(c) Freestanding commercial offices, retail or other commercial or industrial uses of any kind shall not be permitted.

(d) The Historic Preservation Planner shall have the discretion to review redevelopment and new development impacts for mass, scale, size, proportion and screening to ensure compatibility with the existing commercial fabric.

(e) Any Development Plan Approval submitted for a property in the HSMDR zoning District shall be accompanied by a concurrent application for a Development Agreement.

Sec. 122-612. - Permitted uses.

Uses permitted in the historic medium density residential district (HSMDR) are as follows:

- (1) Single-family and two-family residential dwellings.
- (2) Multiple-family residential dwellings.
- (3) Accessory uses and structures.
- (4) Approved home occupations.

Sec. 122-613. - Conditional uses.

Conditional uses in the historic medium density residential district (HSMDR) are as follows:

- (1) Community centers, clubs and lodges accessory to residential uses.
- (2) Cultural and civic activities.
- (3) Parks and recreation active and passive.
- (4) Public and private utilities.
- (5) Parking lots and facilities.
- (6) Educational institutions and day care facilities.

Sec. 122-614. - Prohibited uses.

In the historic special medium density residential district (HSMDR), all uses not specifically or provisionally provided for in this subdivision are prohibited.

Sec. 122-615. - Dimensional requirements.

The dimensional requirements in the historic special medium density residential district (HSMDR) are as follows; however, construction may be limited by proportion, scale and mass considerations as expressed through the Historic Architectural Review Commission Design Guidelines, for additions and alterations and new construction, dated and effective January 5, 2010 and administered by the Historic Preservation Planner, and/or the HARC Commission, who shall have the responsibility to review and

approve or deny all applications for improvements, redevelopment and new development.

(1) Maximum density: 8.6 dwelling units per acre (8.6 du/acre).

(2) Maximum floor area ratio for all development including residential: 1.0.

(3) Maximum height: 30 feet.

(4) Maximum lot coverage:

a. Maximum building coverage: 40 percent.

b. Maximum impervious surface ratio: 60 percent.

(5) Minimum lot size: 5,000 square feet.

a. Minimum lot width: 50 feet.

b. Minimum lot depth: 100 feet.

(6) Minimum setbacks:

a. Front: 10 feet.

b. Side: 5 feet.

c. Rear: 15 feet.

d. Street side: 7.5 feet.

Sec. 122-616. - Affordable housing requirements.

Affordable housing shall be required for all existing residential, redeveloped residential and new residential development at a ratio of 30% of the total units existent,

redeveloped and/or created on properties located within the HSMDR zoning district per Chapter 122, Article V, Division 10, Sections 122-1465 through 122-1472. Except that applications for rezoning of the property to HSMDR zoning received before September 6, 2012, shall have the 30% ratio adjusted such that the requirement shall be not less, but not more than 30% of the units existent on site at the time of application.

Section 3: That Chapter 122, Article V, Division 2, Uses, Section 122-1111 of the Code of Ordinances is hereby amended as follows:

ARTICLE V. SUPPLEMENTARY DISTRICT REGULATIONS
DIVISION 2. USES

Sec. 122-1111. - Table of land use by districts

TABLE OF LAND USE BY DISTRICT

| | LDR- C | SF | MDR- C | HDR | CL | CG | CT | RO | PRD | HMDR | HSMDR | EHDR | HRCC-1 | HRCC-2 | HRCC-3 | HEPD | HNC-1 | HNC-2 | HNC-3 | HCT | HRO | HPS | HPS- 1 | PS | C | AS | |
|---|-----------|----|-----------|-----|----|----|----|----|-----|------|-------|------|--------|--------|--------|------|-------|-------|-------|-----|-----|-----|-----------|----|---|----|---|
| Residential Uses | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Accessory residential units (reference section 122-171) | P | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Single-family dwellings | P | P | P | P | C | C | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | | | | 4 | |
| Duplexes/two-family dwellings | | C1 | P | P | C | C | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | | | | 4 | |
| Multiple-family dwellings | | | P | P | C | C | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | | | | 4 | |
| Foster homes/group homes with 5 to 6 residents ² | P | P | P | P | P | P | P | P | P | P | | P | P | P | P | P | P | P | P | P | P | P | | | | | |
| Group homes with 7-14 residents | | | C | C | C | C | C | C | C | C | | C | C | C | C | C | C | C | C | C | C | C | | | | | |
| Approved home occupations | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | | | | | |
| Accessory uses and structures | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | | | | 4 | |
| Community Facilities | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Airport facilities | | | | | | | | | | | | | | | | | | | | | | | | | | | P |
| Cemeteries | | | | | | | | | | | | | | | | | | | | | | | | | | | C |
| Community centers, clubs and lodges | | | | | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | P | | | P | |
| Cultural and civic activities | | | | | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | | | | C | |
| Educational institutions and day care facilities | | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | C | P | | | P | |
| Golf course facilities ⁶ | | | | | | | | | C | | | | | | | | | | | | | | | | | P | |
| Hospitals and extensive | | | | | | P | | | | | | | | | | | | | | | | P | | | | P | |

Section 4 - That Chapter 122, Article V, Division 3, Area Requirements, Section 122-1157, Size and Dimension Regulations, of the Code of Ordinances is hereby amended follows:

DIVISION 3. AREA REQUIREMENTS

Sec. 122-1151. - Size and dimension.

Size and dimension regulations for zoning districts shall be as follows:

TABLE OF SIZE AND DIMENSION REGULATIONS

| District | Minimum Setback Requirements | | | | | | | | | | | |
|--|------------------------------|-------------------------|-------------------------|----------------------------------|---------------------------|------------------|------------------------|----------------------|-----------------------|--------------------------|---------------------------|-----|
| | Minimum Area (sq. ft.) | Minimum Width (sq. ft.) | Minimum Depth (sq. ft.) | Minimum Impervious Surface Ratio | Maximum Building Coverage | Front Set (feet) | Street Side Set (feet) | Rear Side Set (feet) | Maximum Height (feet) | Maximum Floor Area Ratio | Maximum Density (du/acre) | |
| HSMR historic special medium density residential | 5,000 | 50 | 100 | 60 | 40 | 10 | 7.5 | 5 | 15 | 30 | 1.0 | 8.6 |

22. Maximum Floor Area Ratio applies to all development and redevelopment including residential: 1.0.

Section 5: The official zoning map of the City of Key West is hereby amended as follows:

Remove the Military (M) zoning map description applied to the property known as the Peary Court Housing Complex (RE# 00006730-000000, Alternate Key# 1006963), and substitute the new Historic Special Medium Density (HSMDR) zoning designation (Exhibit 1); and

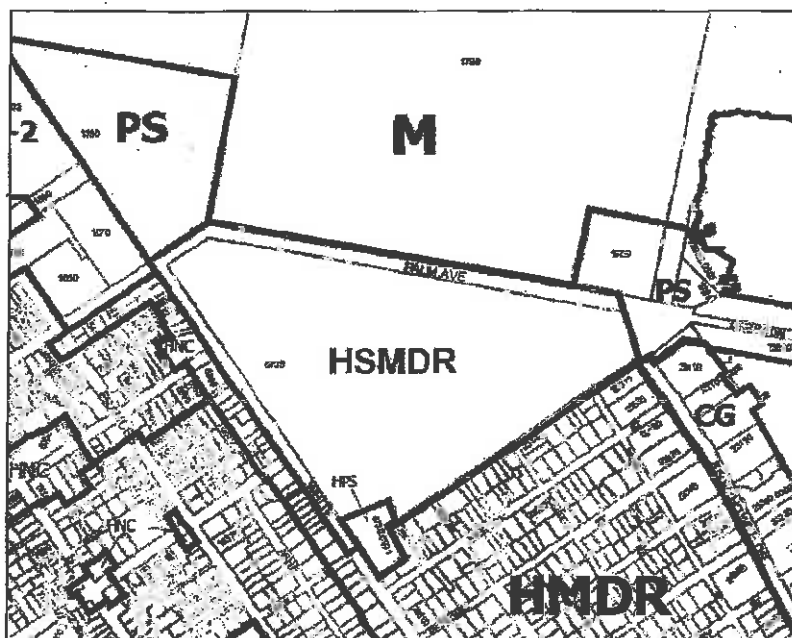


Exhibit 1

The Official Zoning Map Legend shall be amended to include the Historic Medium Density (HSMDR) Zoning designation (Exhibit 2); and

Section 8: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 9: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission and approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held
this 5 day of September, 2012.

Read and passed on final reading at a regular meeting held
this 18th day of September, 2012.

Authenticated by the presiding officer and Clerk of the
Commission on 19th day of September, 2012.

Filed with the Clerk September 19, 2012.



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK

*(Coding: Added language is underlined; deleted language is struck through.)

POSTED ON THE DEPARTMENT INTERNET WEBSITE ON

October 24, 2012

STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY, THE STATE LAND PLANNING
AGENCY
NOTICE OF INTENT TO FIND THE
CITY OF KEY WEST
COMPREHENSIVE PLAN AMENDMENT
IN COMPLIANCE
DOCKET NO. 12-1ACSC-NOI-4403-(A)-(I)
DOCKET NO. 12-2ACSC-NOI-4403-(A)-(I)

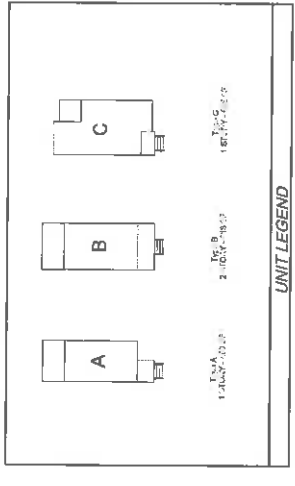
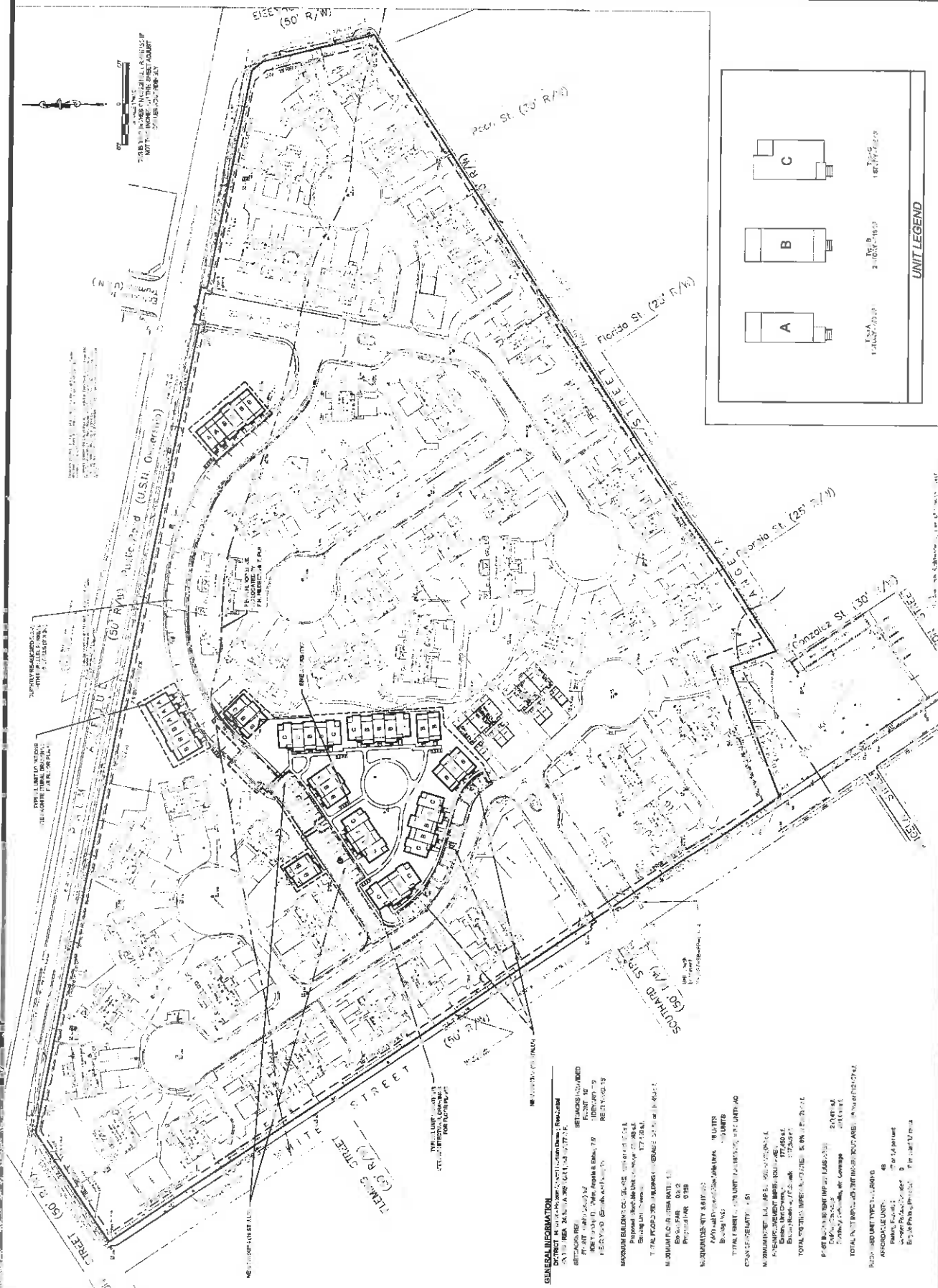
The Department gives notice of its intent to find the Amendments to the Comprehensive Plan for the City of Key West, adopted by Ordinance Nos. 12-31 and 12-32 on September 18, 2012, IN COMPLIANCE, pursuant to Section 163.3184(4), F.S.

If a timely petition challenging the Amendment was not filed within thirty (30) days after the local government adopted the Amendments, the Amendments become effective upon the posting of this Notice of Intent on the Department's Internet Website. If a timely petition was filed, the Amendments do not become effective until the Department or the Administration Commission enters a final order determining that the Amendments are in compliance.

-s-Mike McDaniel, Chief
Bureau of Community Planning
Division of Community Development
Department of Economic Opportunity
107 East Madison Street
Tallahassee, Florida 32399

Exhibit F

Unable to Locate DEO approval



GENERAL INFORMATION
 DISTRICT: M-1 (MID-HEIGHT RESIDENTIAL)
 ZONING: R-1 (RESIDENTIAL SINGLE-FAMILY)
 SETBACKS: 5 FT FRONT, 5 FT SIDE, 10 FT REAR
 HEIGHT: 35 FT MAX
 FLOOR AREA: 177,600 SF
 TOTAL FLOOR AREA: 177,600 SF
 TOTAL GROUND COVER: 100%
 TOTAL TREES: 100
 TOTAL LAWNS: 100,000 SF
 TOTAL PLANTING: 100,000 SF
 TOTAL HARDSCAPE: 100,000 SF
 TOTAL SOFTSCAPE: 100,000 SF
 TOTAL SITE AREA: 177,600 SF
 TOTAL BUILDING AREA: 177,600 SF
 TOTAL PARKING: 100 SPACES
 TOTAL TRAVELWAY: 100 FT
 TOTAL SIDEWALK: 100 FT
 TOTAL BIKEWAY: 100 FT
 TOTAL UTILITY: 100 FT
 TOTAL FENCE: 100 FT
 TOTAL SIGNAGE: 100 FT
 TOTAL LIGHTING: 100 FT
 TOTAL SECURITY: 100 FT
 TOTAL LANDSCAPE: 100 FT
 TOTAL HARDWARE: 100 FT
 TOTAL FINISHES: 100 FT
 TOTAL MECHANICAL: 100 FT
 TOTAL ELECTRICAL: 100 FT
 TOTAL PLUMBING: 100 FT
 TOTAL HVAC: 100 FT
 TOTAL FIRE: 100 FT
 TOTAL ELEVATOR: 100 FT
 TOTAL STAIRS: 100 FT
 TOTAL RAMP: 100 FT
 TOTAL CURB CUT: 100 FT
 TOTAL DRIVEWAY: 100 FT
 TOTAL GARAGE: 100 FT
 TOTAL PORCH: 100 FT
 TOTAL PATIO: 100 FT
 TOTAL DECK: 100 FT
 TOTAL BALCONY: 100 FT
 TOTAL TERRACE: 100 FT
 TOTAL ROOF: 100 FT
 TOTAL FOUNDATION: 100 FT
 TOTAL STRUCTURE: 100 FT
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 TOTAL INTERIOR: 100 FT
 TOTAL FINISH: 100 FT
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 TOTAL FURNITURE: 100 FT
 TOTAL FIXTURES: 100 FT
 TOTAL ACCESSORIES: 100 FT
 TOTAL UTILITIES: 100 FT
 TOTAL SERVICES: 100 FT
 TOTAL MAINTENANCE: 100 FT
 TOTAL OPERATIONS: 100 FT
 TOTAL MANAGEMENT: 100 FT
 TOTAL SECURITY: 100 FT
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 TOTAL SPIRITUAL: 100 FT
 TOTAL PSYCHOLOGICAL: 100 FT
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 TOTAL ANATOMICAL: 100 FT

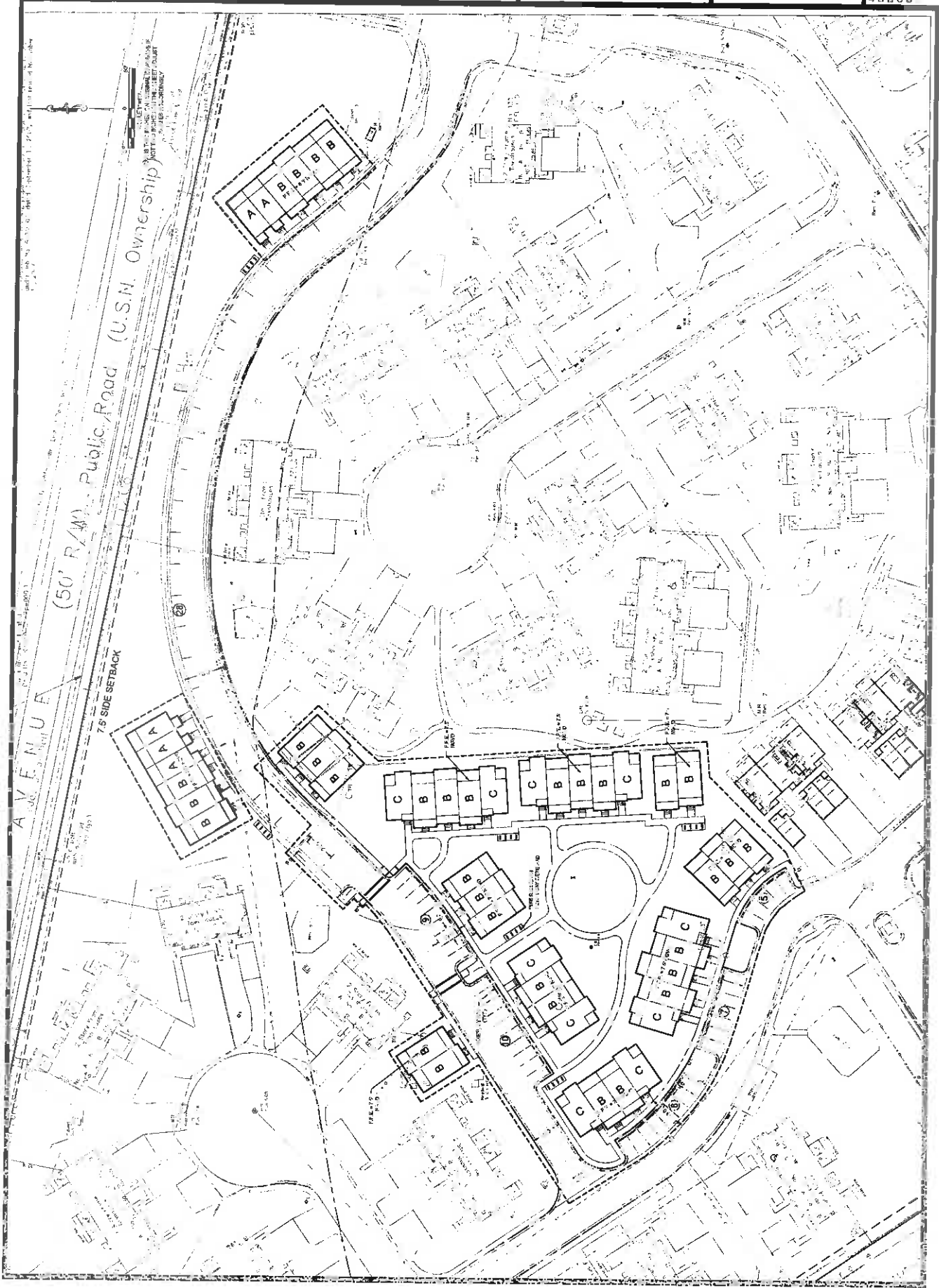
F. R. ENGINEERING
 8 DEVELOPMENT, L.P.C.
 1910 N.W. 10TH AVENUE, SUITE 201
 MIAMI, FL 33136
 TEL: 781-233-8888 FAX: 781-233-8889
 WWW: WWW.FRENG.COM

ALLEN PEREZ, P.E.
 REG. NO. 10,545
 JUN 28, 2012

| | |
|--------------|--------------------|
| DATE: | 06/28/12 |
| SCALE: | AS SHOWN |
| PROJECT: | SOUTHARD PARK |
| DESCRIPTION: | ENLARGED SITE PLAN |

PEARY COURT HOLDING, LP
 150 SE 2ND AVENUE, SUITE 800
 MIAMI, FL 33131

| | |
|--------------|--------------------|
| DATE: | 06/28/12 |
| SCALE: | AS SHOWN |
| PROJECT: | SOUTHARD PARK |
| DESCRIPTION: | ENLARGED SITE PLAN |



Return To:

Commonwealth Land Title
2400 Maitland Center Parkway STE-200
Maitland, FL 32751
Attention: Myrna H. Small
File No. 411300230TS

Doc# 1948646 09/04/2013 1:03PM
Filed & Recorded in Official Records of
MONROE COUNTY ANY HEVILIN

09/04/2013 1:03PM
DEED DOC STAMP CL: Krya \$245,000.00

PREPARED BY AND RETURN TO:

McKenna Long & Aldridge LLP
303 Peachtree Street, N.E., Suite 5300
Atlanta, Georgia 30308
Attention: Peter M. Yoxall, Esq.
Phone: (404) 527-4971

Doc# 1948646
Bkn 2648 Pg# 155

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, made the 30TH day of AUGUST, 2013, between SOUTHEAST HOUSING LLC, a Delaware limited liability company ("Grantor"), with an address at c/o BBC Military Housing - Navy Southeast LLC, 10 Campus Boulevard, Newton Square, PA 19073, and PEARY COURT HOLDINGS, LP, a Delaware limited partnership ("Grantee"), with an address of 2828 Coral Way, Suite 303, Miami, Florida 33145.

WITNESSETH:

That Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration, receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, alien, remise, release, convey, and confirm unto the Grantee, all that certain land, together with the buildings and improvements thereon erected, situate, lying and being in the City of Key West, County of Monroe, State of Florida, and more particularly described on Exhibit A attached hereto (the "Property").

TOGETHER with all the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

AND, Grantor hereby covenants with Grantee that Grantor is lawfully seized of the Property in fee simple, and except for those matters described in Exhibit B attached hereto and made a part hereof (the "Permitted Exceptions"), the Property is free and clear of all encumbrances, and that, subject to and except for the Permitted Exceptions, Grantor hereby warrants and will defend the title

to the Property against the lawful claims of all persons claiming by, through or under Grantor, but against none other.

Notwithstanding the foregoing, Grantor does not warrant either expressly or impliedly the conditions or fitness of the Property and Grantee hereby acknowledges that the Property conveyed hereunder is conveyed by Grantor **AS IS, WHERE IS, AND WITH ALL FAULTS** as set forth in Section 4.1 of that certain Sales Contract, effective as of April 18, 2012, by and between Grantor and White St Partners, LLC, a Florida limited liability company ("WSP"), as amended by that certain First Amendment to Sales Contract, effective as of August 15, 2012, that certain Second Amendment to Sales Contract, effective as of December 27, 2012, that certain Third Amendment to Sales Contract, effective as of January 30, 2013, that certain Fourth Amendment to Sales Contract, effective as of May 15, 2013, that certain Fifth Amendment to Sales Contract, dated June 27, 2013, that certain Sixth Amendment to Sales Contract, dated as of July 19, 2013, that certain Seventh Amendment to Sales Contract, dated effective as of August 1, 2013, and that certain Eighth Amendment to Sales Contract, dated as of August 8, 2013, and as assigned by WSP and assumed by Grantee pursuant to that certain Assignment of Contract, Acceptance of Assignment and Consent to Assignment, dated on June 22, 2013, by and among WSP, Grantee and Grantor.

The Property is not now nor ever has been the homestead property of the Grantor.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

**Doc# 1948646
Bk# 2648 P# 156**

IN WITNESS WHEREOF, Grantor and Grantee have caused this Special Warranty Deed to be executed and delivered under seal effective as of the date and year first stated above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GRANTOR:

SOUTHEAST HOUSING LLC, a Delaware limited liability company

By: BBC Military Housing – Navy Southeast LLC, a Delaware limited liability company, its managing member

By: Balfour Beatty Military Housing Investments LLC, a Delaware limited liability company, its manager

By: 
Name: Leslie Cohn
Title: Executive Vice President

WITNESS


Print Name: David Yoon

WITNESS


Print Name: Sharon Marcone

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF DELAWARE

THE FOREGOING INSTRUMENT was acknowledged before me this 22nd day of August, 2013, by Leslie S. Cohn, as the Executive Vice President of Balfour Beatty Military Housing Investments LLC, a Delaware limited liability company, the manager of BBC Military Housing - Navy Southeast LLC, a Delaware limited liability company, the managing member of Southeast Housing LLC, a Delaware limited liability company, who is personally known to me.


NOTARY PUBLIC [Signature Above]
State of Pennsylvania
Print Name: Jessica Chambers

My Commission Expires: 5/20/14

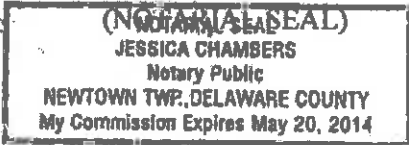


Exhibit "A"

Legal Description of Property

(see attached survey legal description)

**Doc# 1948646
Bk# 2646 Pg# 159**

Legal Description; Peary Court:

Prepared by undersigner:

Note: Legal based on Physical properties:

A parcel of land situated in the City of Key West, Monroe County, Florida and being more particularly described as follows: COMMENCING at the intersection of the Northwesterly Right-of-Way Line of Newton Street and the Northeasterly Right-of-Way Line of White Street (Florida State Plane Coordinates East Zone NAD 83/90, Northing = 82591.01, Easting = 392639.41): thence N 34°08'30" W along the said Northeasterly Right-of-Way Line of White Street for 310.39 feet; thence N 55°51'30" W for a distance of 0.05 feet to the back edge (Northeast side) of a concrete sidewalk and the Point of Beginning; thence N.34°08'00"W., and along the Northeast edge of a concrete sidewalk a distance of 289.66 feet; thence S 55°51'30" W for a distance of 0.10 feet to the Northeasterly Right-of-Way Line of White Street; thence N 34°08'30" W along the said Northeasterly Right-of-Way Line of White Street for a distance of 31.83 feet; thence N 55°51'30" E for a distance of 0.10 feet to the said back of the sidewalk of White Street; thence N 34°08'00" W along the said Northeasterly edge of a sidewalk for a distance of 853.03 feet to an existing fence; thence N.55°36'56"E., and along the said fence, which lies on Eaton Street a distance of 194.19 feet to a point lying 0.5 feet (6 inches) Northeast of a fence corner; thence S.79°06'43"E., and along a line lying 0.5 feet (6 inches) Northeasterly of a existing fence and wall a distance of 1206.74 feet; thence N 10°44'48" E for a distance of 8.75 feet to the Southeasterly Right-of-Way Line of Palm Avenue; thence S 79°15'12" E along the said Southeasterly Right-of-Way Line of Palm Avenue for a distance of 55.00 feet; thence S 10°44'48" W for a distance of 8.88 feet to the extension of a line lying 0.5 feet (6 inches) Northeasterly of the existing fence and wall; thence S 79°06'43" E and along a line lying 0.5 feet (6 inches) Northeasterly of the existing fence and wall for a distance of 325.66 feet to a point lying 0.5 feet (6") from the corner of the fence on Eisenhower Drive; thence S 40°23'08" E along the fence on Eisenhower for a distance of 20.90 feet; thence S 14°07'44" E and being partially along a fence line for 167.37 feet to Angela Street; thence S.56°24'46"W., and along a line lying 0.5 feet (6 inches) Southeasterly of the fence line of Angela Street a distance of 1080.22 feet; thence N.19°36'43"W., and along the edge of an existing fence a distance of 72.01 feet; thence S.68°44'44"W., and along the edge of an existing fence a distance of 204.28 feet to the Northeast side of a concrete sidewalk and the Point of Beginning.

Parcel contains 1053433.77 square feet or 24.1835 acres, more or less.

Permitted Exceptions

1. Rights of tenants or persons in possession.
2. Taxes and assessments for the year 2013 and subsequent years, which are not yet due and payable.
3. Any claim that any portion of the Property is sovereign lands of the State of Florida, including submerged, filled or artificially exposed lands accreted to such land.
4. Easement granted the City of Key West, Florida, recorded in Deed Book G-56, Page 449, of the Monroe County, Florida records (the "Records"), and shown on the Survey (hereinafter defined).
5. Grant of Easement to BellSouth Telecommunications, Inc., dated July 2, 1998, N 62467-98-RP-00114, and shown on the Survey.
6. Grant of Easement for overhead power lines to the City of Key West, Florida 9/3/1963, NOy(R) 66502.
7. Matters shown on that certain ALTA/ACSM Land Title Survey prepared by Island Surveying Inc., January 31, 2012, updated July 18, 2013, and last revised August 1, 2013, Drawing No. 13-278 (the "Survey"), including:
 - a. Encroachments, if any, lying in the 20' wide Easement to the Florida Keys Aqueduct Authority by unrecorded no. N69450-08-Rp-00011, in Deed Book 2368, Page 2062 of the Records; and
 - b. Fences lying along and across the Property lines.
8. Terms, covenants, conditions and other matters contained in any unrecorded leases and all rights thereunder of the lessee and any person claiming by, through or under the lessees.
9. 20' wide Easement from the United States of America, acting by and through the Department of the Navy, Naval Facilities Engineering Command Southeast to the Florida Keys Aqueduct Authority, Deed no. N69450-08-Rp-00011, recorded June 27, 2008 in Official Records Book 2368, Page 2062, of the Records.
10. All easements, notices, covenants, restrictions, reservations and conditions set forth in that certain Quitclaim Deed, dated as of the date hereof, by and between Grantor and the United States of America, by and through the Department of the Navy, and recorded in the Records, a copy of which is attached hereto as Schedule "1" and incorporated herein by this reference.

Exhibit N

Site data sheet

DISTRICT: HSMDR - Historic Special Medium Density Residential

GROSS AREA: 24.1835 ACRES OR 1,053,433.77 S.F.

SETBACKS REQ.

FRONT: (White Street) 10'

SIDE YARD (ST): (Palm, Angela & Eaton) 7.5'

REAR YARD: (Eisenhower Drive) 15'

SETBACKS PROVIDED

FRONT: 10'

SIDEYARD: 7.5'

REAR YARD: 15'

MAXIMUM BUILDING COVERAGE: 40% or 421,374 s.f.

Proposed Affordable Unit Coverage: 32,963 s.f.

Existing Unit Coverage: 177,450 s.f.

TOTAL PROPOSED BUILDING COVERAGE: 20.0% or 210,413 s.f.

MAXIMUM FLOOR AREA RATIO: 1.0

Existing FAR: 0.202

Proposed FAR: 0.239

MAXIMUM DENSITY: 8.6 DU/AC

Additional Proposed Affordable Units: 48 UNITS

Existing Units: 160 UNITS

TOTAL DENSITY: (208 UNITS / 24.1835 AC) = 8.6 UNITS/Acre

OPEN SPACE RATIO: 0.51

MAXIMUM IMPERVIOUS AREA: 60% or 632,060 s.f.
PRE-IMPROVEMENT IMPERVIOUS AREA:
Existing Unit Coverage: 177,450 s.f.
Roadway, sidewalk, paved parking: 357,345 s.f.
TOTAL EXISTING IMPERVIOUS AREA: 50.8% or 534,795 s.f.

POST IMPROVEMENT IMPERVIOUS AREA:
Building Covera 210,413 s.f.
Roadway, Sidewalks 301,644 s.f.
TOTAL POST IMPROVEMENT IMPERVIOUS AREA: 48.6% or 512,057 s.f

:
PROPOSED UNIT TYPES - PARKING AFFORDABLE UNITS 48

Parking Provided: 67 or 1.4 per unit

Bicycle Parking Provided: 30 inverted 'U' racks

LANDSCAPING: see landscaping plan for details

July 15, 2015

Mr. James Hendricks
Critical Concern Consultants
Key West, Florida 33040

Re: Southard Park - Traffic Impact Statement

Dear Mr. Hendricks:

Per your request, Traf Tech Engineering, Inc. conducted a traffic impact evaluation associated with a Major Conditional Use application for redevelopment of the former US Navy housing compound at Peary Court in the City of Key West in Monroe County, Florida. Figure 1 on the following page depicts the location of the subject parcel and the adjacent transportation network near the site. This traffic evaluation addresses the following two tasks:

1. Trip Generation Comparison Analysis
2. Driveway Impacts

Trip Generation Comparison Analysis

The trip generation comparison analysis was performed using the trip generation equations/rates published in the Institute of Transportation Engineer's (ITE) *Trip Generation* manual (9th Edition). The trip generation comparison analysis was undertaken for daily, AM peak hour, and PM peak hour conditions. The analysis was based on the following assumptions:

EXISTING LAND USES

- o 160 multi-family residential units
- o 10,000 square-foot drive-through bank

PROPOSED LAND USES

- o 208 multi-family residential units

According to ITE's *Trip Generation* manual (9th Edition), the trip generation equations/rates used for the existing and proposed land uses are:

APARTMENT (ITE Land Use 220)

Daily Trip Generation

$$T = 6.06 (X) + 123.56$$

Where T = number of daily trips

X = number of dwelling units



LEGEND

Project Site

FIGURE 1
 Southard Park
 Monroe County, Florida

PROJECT LOCATION MAP

TrafTech
 ENGINEERING, INC.

AM Peak Hour

$$T = 0.49 (X) + 3.73 \text{ (20\% inbound and 80\% outbound)}$$

Where T = number of AM peak hour trips

X = number of dwelling units

PM Peak Hour

$$T = 0.55 (X) + 17.65 \text{ (65\% inbound and 35\% outbound)}$$

Where T = number of PM peak hour trips

X = number of dwelling units

DRIVE-IN BANK (ITE Land Use 912)

Daily Trip Generation

$$T = 148.15 (X)$$

Where T = number of daily trips

X = gross floor area

AM Peak Hour

$$T = 12.08 (X) \text{ (57\% inbound and 43\% outbound)}$$

Where T = number of AM peak hour trips

X = gross floor area

PM Peak Hour

$$T = 24.30 (X) \text{ (50\% inbound and 50\% outbound)}$$

Where T = number of PM peak hour trips

X = gross floor area

Using the above-listed equations from the ITE document, a trip generation comparison analysis was undertaken between the existing and proposed land uses. The results of this effort are documented in Table 1. As indicated in Table 1, the elimination of the existing drive-through bank and the addition of 48 multi-family residential units will result in an overall decrease in daily trips (119 less trips), 11 less AM peak hour trips, and approximately 56 less trips during the typical afternoon peak hour. Therefore, the proposed land use will benefit the transportation network located in the vicinity of the project site.

Driveway Impacts

As indicated in Table 1, during the critical PM peak hour the total driveway trips associated with the existing land uses include approximately 279 vehicles per hour. However, the proposed redevelopment and new 48 affordable housing units will only generate approximately 132 driveway trips. Based on the existing and proposed layout of the site, the impacts at the existing and future access driveways are described below:

Existing Conditions

- Palm Avenue Driveway: = 210 PM peak hour trips

- White Street Driveway: = 69 PM peak hour trips

Future (Proposed) Conditions (Refer to Attached Site Plan)

- Palm Avenue Driveway: = 100 PM peak hour trips
- Existing White Street Driveway: = 32 PM peak hour trips

| TABLE 1 Trip Generation Comparison Analysis Southard Park | | | | |
|--|-------------|------------------------|----------------|----------------|
| Land Use | Size | Number of Trips | | |
| | | Daily | AM Peak | PM Peak |
| EXISTING LAND USE | | | | |
| Multi-Family | 160 units | 1,093 | 82 | 106 |
| Drive-in Bank | 10,000 sf | 1,480 | 120 | 243 |
| Subtotal | - | 2,573 | 202 | 349 |
| Internal Trips ¹ | - | -514 | -40 | -70 |
| Driveway Trips | | 2,059 | 162 | 279 |
| Passer-by (Bank) ² | | -556 | -45 | -91 |
| External Trips | | 1,503 | 117 | 188 |
| PROPOSED LAND USE | | | | |
| Multi-Family | 208 units | 1,384 | 106 | 132 |
| External Trips | | 1,384 | 106 | 132 |

| | | | |
|---------------------------------|-------------|------------|-------------|
| Driveway Trip Difference | -675 | -56 | -147 |
| External Trip Difference | -119 | -11 | -56 |

Source: ITE Trip Generation Manual (9th Edition)

Based on the existing and projected PM peak hour driveway volumes documented above, the two existing access driveways are projected to function adequately for the following reasons:

- The existing signalized access driveway located on Palm Avenue will benefit from the subject redevelopment project since the PM peak hour trips will be reduced from 210 vehicles to 100 vehicles (approximately 50% less traffic).
- The White Street/Southard Street signalized driveway is projected to process 32 vehicles, which is approximately 50% less traffic that are currently using this driveway). Moreover, according to FDOT (traffic count station 8110), White Street is currently carrying approximately 5,500 vehicles per day. Therefore, the 32 driveway trips will have to enter/exit to and from a roadway that carries 5,500 vehicles. In contrast, Palm Avenue currently processes approximately 16,200

¹ Assumed to be approximately 20 percent

² Per ITE, assumed to be approximately 47%

vehicles per day and the current Palm Avenue signalized driveway currently allows 210 vehicles to enter/exit to and from Palm Avenue. Based on this comparison, the White Street/Southard Street signalized access driveway is projected to function adequately.

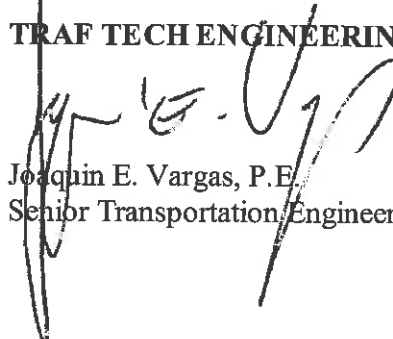
Additionally, the proposed Peary Court redevelopment project will not have any traffic impacts to the section of Angela Street located immediately south of the proposed redevelopment project since the existing access driveways to and from the site will remain unchanged.

In summary, the proposed redevelopment of the former US Navy housing compound will benefit the area street system and the two existing access driveways are projected to function adequately. No traffic impacts are anticipated on the Angela Street between Eisenhower Drive and Gonzalez Street as a result of the proposed project.

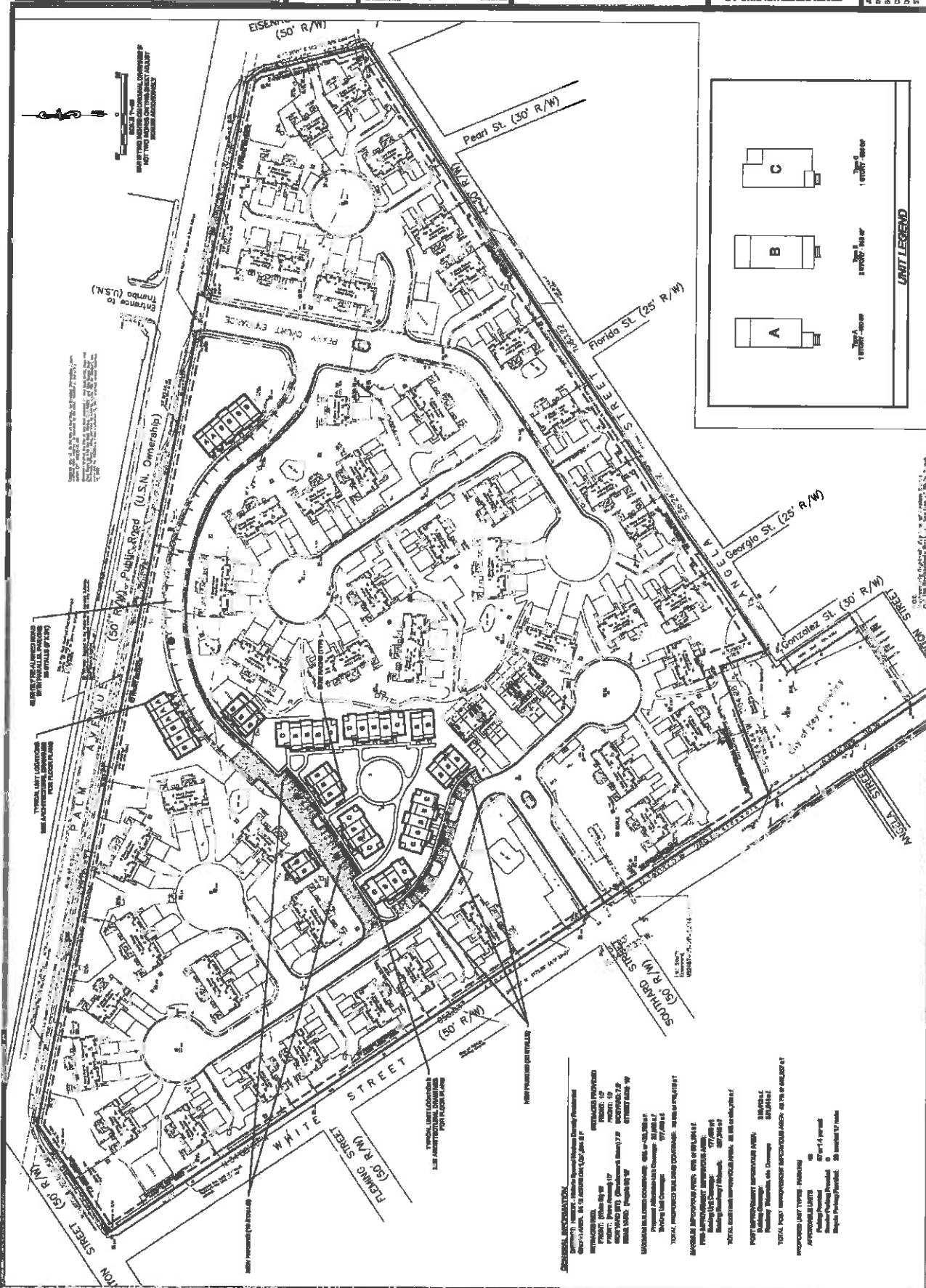
Please give me a call if you have any questions.

Sincerely,

TRAF TECH ENGINEERING, INC.



Joaquin E. Vargas, P.E.
Senior Transportation Engineer



GENERAL NOTES:
 1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 2. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF DENVER ZONING ORDINANCES.
 3. ALL UTILITIES SHALL BE DEPTH MARKED AND PROTECTED.
 4. ALL EXISTING UTILITIES SHALL BE MAINTAINED AND PROTECTED.
 5. ALL NEW UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE CITY OF DENVER ZONING ORDINANCES.
 6. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF DENVER ZONING ORDINANCES.
 7. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF DENVER ZONING ORDINANCES.
 8. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF DENVER ZONING ORDINANCES.
 9. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF DENVER ZONING ORDINANCES.
 10. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF DENVER ZONING ORDINANCES.

From: Bernard Zyscovich <bernard@zyscovich.com>
Subject: RE: Peary Court
Date: January 2, 2014 5:21:49 PM EST
To: Don Craig <dcraig@keywestcity.com>
Cc: Ron Wampler <rwampler@keywestcity.com>, Nicole Malo <nmalo@keywestcity.com>
▶ 1 Attachment, 28.9 KB

Don

Thanks so much for the careful consideration. We will work with the 6.09' as you have directed.

Have a great New Year and we can now get seriously started on figuring out the design of our structures.

From: Don Craig [mailto:dcraig@keywestcity.com]
Sent: Thursday, January 02, 2014 4:16 PM
To: Bernard Zyscovich
Cc: Ron Wampler; Nicole Malo
Subject: Re: Peary Court

Bernard I have carefully reviewed the surveys and the sections of City Code that apply to the measurement of height for structures. I have come to the following conclusions:

1. The site is large by relative Key West development standards and history at 23 acres.
2. The existing grade levels vary across the site by up to 3.5 feet.
3. The site is bound by three major streets with variation of average grade height of up to 2.5 feet.
4. Given the triangular shape of the parcel there is no practical way to assign easy thirds of the site to each of the three roadways, when one considers that the design direction provided by the City to you and your client is to replicate parts of the rectangular "grid" street pattern surrounding historic district on the site.
5. The site has two flood zones AE-6 and AE-7.
6. The City Building Code and BPAS Code require that the first habitable floor be 1.5 feet above base Flood Elevation(BFE).
7. The main entrance to the site from the surrounding historic district is the that from White Street.

Therefore I am directing that the elevation to be used for the measurement for the residential and accessory structures, with the exception of interior fences which shall be from grade next to the structure to which it is accessory, shall be 6.09 ft which is the elevation of the crown of the road immediately in front of the entrance at White street. The basis of this datum is the survey by Island Surveying, Inc. undated with last update of 3/7/12 which illustrates site and street CL elevations.
If you have any questions, please contact me.

On Mon, Dec 16, 2013 at 3:37 PM, Bernard Zyscovich <bernard@zyscovich.com<mailto:bernard@zyscovich.com>> wrote:
Hi Don

It was great speaking with you late last week. Attached you will find the survey that has the road elevations identified on each road surrounding the Peary Court property. The survey also has spot elevations identifying other locations on the property, as well as the corner of Southard and White that we have been discussing. You will note as you zoom in, the 6.17' elevation mark that you and I have been discussing.

For convenience I also have attached an excel spreadsheet, that tabulates all of the spot road elevations per roadway and then defines an average for each. There is also a row that takes all the averages and divides by the number of roadway averages, to give you the average of the averages. I did this only to facilitate the effort, in that there is nothing involved in the spreadsheet other than the data taken directly from the survey. I send you the native excel format so that you can see how the averages were derived. I hope this is what you have been looking for. Please take a careful look at what has been provided and let me know if this meets your needs. I hope to call you tomorrow to further discuss.

I appreciate your thoughtful review. Thanks so much for your assistance.

Best

Bernard Zyscovich, FAIA
CEO

[Description: New Z Logo w Address_CMYK (small)]

Miami

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[Description: please consider]

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--
Donald Leland Craig , AICP

Qui sine peccato est primus lapis sint eiecti

Not a blot on my copybook



[winmail.dat \(28.9 KB\)](#)