

Attachment 2
Amended Settlement Agreement
City Commission Resolution
98-209

RESOLUTION NO. 98-209

RCD Jul 02 1998 04:16PM
DANNY L KOLHAGE, CLERK

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED AMENDED SETTLEMENT AGREEMENT AMONG THE CITY, THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS AND SUNSET VENTURES OF KEY WEST, INC.; PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Amended Settlement Agreement among the City, the Florida Department of Community Affairs and Sunset Ventures of Key West, Inc. is hereby approved.

Section 2: That this Resolution 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.

Passed and adopted by the City Commission at a meeting held this 19 day of May, 1998.

Authenticated by the presiding officer and Clerk of the Commission on May, 1998.

Filed with the Clerk May, 1998.

Sheila K. Mullins
SHEILA K. MULLINS, MAYOR

ATTEST:

Josephine Parker
JOSEPHINE PARKER, CITY CLERK

STATE OF FLORIDA
COUNTY OF MONROE
CITY OF KEY WEST

This is a true copy of the original as filed in the office.
Witness my hand and official seal
this 12 day of June, 1998.

JOSEPHINE PARKER, CMC
CITY CLERK
By *Josephine Parker*

AMENDED SETTLEMENT AGREEMENT

This Amended Settlement Agreement is entered into by the State of Florida Department of Community Affairs ("DCA"), the City of Key West ("City"), and Sunset Ventures of Key West, Inc., a Florida corporation ("Owner").

W I T N E S S E T H:

WHEREAS, Owner owns the property located at 5601 College Road, Key West, Florida, which is legally described in Exhibit "A" attached hereto and incorporated herein (hereinafter referred to as the "Property"); and

WHEREAS, the City in 1986 approved a site plan for the Property based on a Community Impact Assessment Statement submitted by previous owners of the Property; and

WHEREAS, the City's approval of the site plan submitted in 1986 was appealed by DCA to the Florida Land and Water Adjudicatory Commission (FLWAC Case No. 86-16; DOAH Case No. 86-1749); and

WHEREAS, a Settlement Agreement dated December 1, 1987 was entered into to resolve the appeal taken by DCA, and was thereafter amended on July 20, 1989 and July 23, 1990; and

WHEREAS, the July 23, 1990 Agreement superseded the Settlement Agreement of December 1, 1987 as modified July 20, 1989 and is the Agreement which now controls the development of the Property; and

WHEREAS, Owner, DCA, and the City wish to clarify the July 23, 1990 Agreement and to establish the framework for the development of the Property.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner, the City, and DCA agree as follows:

1. Incorporation by Reference. The foregoing recitations are true and correct and are incorporated herein by reference. Any exhibits to this agreement are hereby deemed a part hereof.

2. Controlling Agreement. This Agreement supersedes the December 1, 1987 Agreement, as modified on July 20, 1989 and the July 23, 1990 Amended Agreement.

3. Approved Uses. The parties agree that the following development uses shall be permitted on the Property in accordance with the site plan attached hereto and incorporated herein as Composite Exhibit "B":

- a. 60 condominium units in buildings no more than 47 feet 2 inches in height to be for residential dwelling use only, a condominium clubhouse, and 2 swimming pools.
- b. 182 boat slips which at Owner's discretion may consist of wet and dry storage slips provided the appropriate approvals are obtained from the Department of Environmental Protection.
- c. a dockmaster's building which may include a convenience store, offices, and a pay point for the fueling facilities; fueling facilities; a marina sales, maintenance and

services building which may include a marina store, boat maintenance, offices, storage, laundry facilities, and men and women's facilities.

- d. a 150 seat restaurant, lounge and deck.
- e. a boardwalk adjacent to the condominium units and the perimeter of Basin B of the marina.
- f. parking as required by the City's land development regulations.

4. Residential Dwelling Use. No condominium unit shall be rented for periods of less than thirty days or one calendar month, whichever is less, or advertised or held out to the public as a place regularly rented to transients.

5. Affordable Housing. As required by the July 23, 1990 Amended Agreement, the Owner has complied with the obligation to escrow \$40,000 upon issuance of a building permit for the marina. Owner hereby reaffirms Owner's obligation to escrow an additional \$60,000 upon issuance of any building permit for the condominium units. An executed copy of the "Escrow Agreement Between the Department of Community Affairs and the Owner, attached hereto as Exhibit "C", shall be used to establish the escrow account required upon issuance of any building permit for the condominium units.

6. Transportation. Owner agrees to pay to the City traffic impact fees in accordance with the City's impact fee ordinance in effect at the time of issuance of building permits.

7. Additional Mitigation of Impacts. Owner agrees to provide the following as additional mitigation of impacts:

- a. allow utilization of the marina facilities by the Florida Marine Patrol.
- b. provide regulatory information and educational material regarding the site and local environment, including but not limited to, the island and nearshore waters, wildlife habitat and coral reef formations, and an educational signage program at dock entrances.
- c. prohibit dumping of fish carcasses and other remains into the waterbody of the marina.
- d. prohibit the use, rental, docking, and launching of personal watercraft and other water dependent activities which are determined to have a demonstrative negative impact on the marine environment. For purposes of this provision, "personal watercraft" is defined as a shallow draft, jet drive watercraft in which the operator sits, kneels or stands on the craft as opposed to inside the craft.
- e. provide a minimum 20 foot building setback measured from mean high water, except for the dockmaster's building.
- f. use pervious materials where feasible for parking areas.
- g. prohibit liveaboards. For purposes of this provision, "liveaboards" is defined as a vessel docked at the facility and inhabited by one or more persons for seven consecutive days or a total of seven days within a thirty day period.
- h. place all utilities underground.
- i. operate the marina consistent with the Clean Marina Best Management Practices adopted by the Department of Environmental Protection to reduce, eliminate or control sources of pollution.

8. Hurricane Evacuation. Prior to issuance of any certificate of occupancy for the condominiums, Owner agrees to develop instructions and information, approved by the Monroe County Civil Defense Department and the City, regarding hurricane evacuation response, to be distributed to each condominium owner. Each condominium owner, as a condition of sale, will be required to sign an agreement stating that he or she understands and will comply with all regulations regarding hurricane evacuation. The information developed for owners of the condominiums may be modified with the consent of the Monroe County Civil Defense Department, the City, and the Owner.

9. Landscaping. Owner agrees that the Property will be free of invasive exotics and that non-invasive exotics will constitute no more than 30% of the landscape vegetation. Owner further agrees to landscape in the 20 foot building setback with native plant species, density and diversity typical of a Lower Keys hardwood hammock and salt marsh transitional wetland zone.

10. Natural Vegetation. The parties agree that the removal, alteration, or trimming of mangroves shall be in accordance with U.S. Army Corps of Engineers and the Department of Environmental Protection wetlands permits issued for the Property.

11. Threatened or Endangered Species. Owner agrees that the Property provides habitat for threatened or endangered species. The bay-cedar Suriana maritima occurs on the Property, as does the

white-crowned pigeon, Columbia lucocephala. The Owner agrees that the bay-cedar will be preserved on the Property, either by leaving in place or by transplanting and incorporating into the landscape. The landscape plan will include tropical hardwood hammock species which is the preferred habitat for white-crowned pigeons, as well as the endangered Stock Island Tree Snail.

12. Hold-Harmless Agreement with City. Owner will indemnify, defend, and hold harmless the City, its officers, employees, and agents from actions, claims, penalties, and judgments for damages at law or equity relating to the Property from the operation of the City's landfill so long as the City operates the landfill in compliance with the applicable local, state, and federal laws and so long as the landfill is not operated in a negligent manner.

13. Compliance with Agreement. To the extent it has jurisdiction, DCA shall abide by and comply with the terms of this Agreement in fulfilling its responsibilities under Chapter 380, Florida Statutes.

14. Duration of Agreement. The duration of this agreement shall be five years; provided, however, the five year period shall be tolled during the pendency of administrative or judicial proceedings relating to any development permit, including but not limited to permits issued by the Department of Environmental Protection and by the South Florida Water Management District; and

CITY OF KEY WEST

ATTEST:

By: *Josephine Kerk*
City Clerk

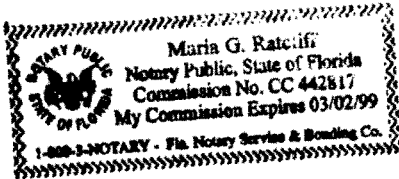
By: *Sheila K. Mullins*

STATE OF FLORIDA)

ss.

COUNTY OF MONROE)

SWORN TO AND SUBSCRIBED before me this 11th day of June, 1998 by Sheila K. Mullins as Mayor on behalf of the City of Key West and who is personally known to me or who produced identification. as



Maria G. Ratcliff
Notary Public

Maria G. Ratcliff
Typed, printed or stamped name

My Commission Expires:

EXHIBIT "A"

PARCEL A: A tract of submerged land in Section 27, Township 67 South, Range 25 East, off-shore from the Northwesterly shoreline of Stock Island in Monroe County, Florida, more particularly described as follows: Commence at the intersection of the centerline of U.S. Highway No. 1 and "Old Country Club Road"; thence Northwesterly along the centerline of said "Old Country Club Road" for a distance of 1400 feet; thence North 60° West, 200 feet to the P.O.B., from said P.O.B.; thence North 60° West, 1584 feet; thence at right angles to the last named course North 30° East, 1100 feet; thence at right angles to the last named course South 60° East, 1584 feet; thence at right angles to the last named course South 30° West, 1100 feet to the P.O.B. first above described. Lying and being in Section 27, Township 67 South, Range 25 East, Monroe County, Florida.

AND

PARCEL B: A tract of submerged land in Section 27, Township 67 South, Range 25 East, off-shore from the Northwesterly shoreline of Stock Island in Monroe County, Florida, more particularly described as follows: Commence at the intersection of the centerline of U.S. Highway No. 1 and "Old Country Club Road"; thence Northwesterly along the center of said "Old Country Club Road" for a distance of 1400 feet; thence North 60° West, 200 feet; thence at right angles to the last named course North 30° East, 1100 feet to the Point of Beginning of the property hereinafter described; from said Point of Beginning; thence at right angles to the last named course North 60° West, 1548 feet; thence North 76° East, 900 feet; thence South 34° East, 1040 feet; thence South 30° West, 160 feet, more or less, back to the Point of Beginning. Lying and being in Section 27, Township 67 South, Range 25 East, Monroe County, Florida.

AND

PARCEL C: A tract of submerged land in the Bay of Florida in Section 27, Township 67 South, Range 25 East, Stock Island, Monroe County, Florida, being more particularly described as follows: Commence at the point of intersection of the centerline of U.S. Highway No. 1 with the centerline of "Old Country Club Road"; thence Northwesterly along said centerline of "Old Country Club Road", a distance of 1400 feet; thence North 60°00' West, a distance of 1758 feet to the NW Corner of a tract of submerged land conveyed by Trustees of the Internal Improvement Fund Deed No.

19725, said NW Corner being the P.O.B. of the tract hereinafter described; thence North 30°00' East along the Northwesterly boundary of said tract conveyed by Trustees Deed No. 19725, a distance of 1100 feet to the NE Corner thereof; thence North 60°00' West, a distance of 888.25 feet; thence South 62°23' West, a distance of 1302.57 feet; thence South 60°00' East, a distance of 1585.88 feet to the Point of Beginning.

AND

PARCEL D: A tract of submerged land in the Bay of Florida in Section 27, Township 67 South, Range 25 East, Stock Island, Monroe County, Florida, being more particularly described as follows: Commence at the point of intersection of the centerline of U.S. Highway No. 1 with the centerline of "Old Country Club Road"; thence Northwesterly along said centerline of "Old Country Club Road", a distance of 1400 feet; thence North 60°00' West, a distance of 1758 feet to the NW Corner of a tract of submerged land conveyed by Trustees of the Internal Improvement Fund Deed No. 19725; thence North 30°00' East along the Northwesterly boundary of said tract conveyed by Trustees Deed No. 19725, a distance of 1100 feet to the NE Corner thereof, said Northeast corner also being the NW Corner of a tract of submerged land conveyed by Trustees of the Internal Improvement Fund Deed No. 20174 and also being the P.O.B. of the tract hereinafter described; thence North 76°00' East along the Northwesterly boundary of said tract conveyed by Trustees Deed No. 20174, a distance of 900 feet to the NE Corner thereof; thence North 34°00' West, a distance of 930 feet; thence South 62°23' West, a distance of 1242.81 feet; thence South 60°00' East, a distance of 888.25 feet to the Point of Beginning.

AND LESS THE FOLLOWING:

PARCEL E:

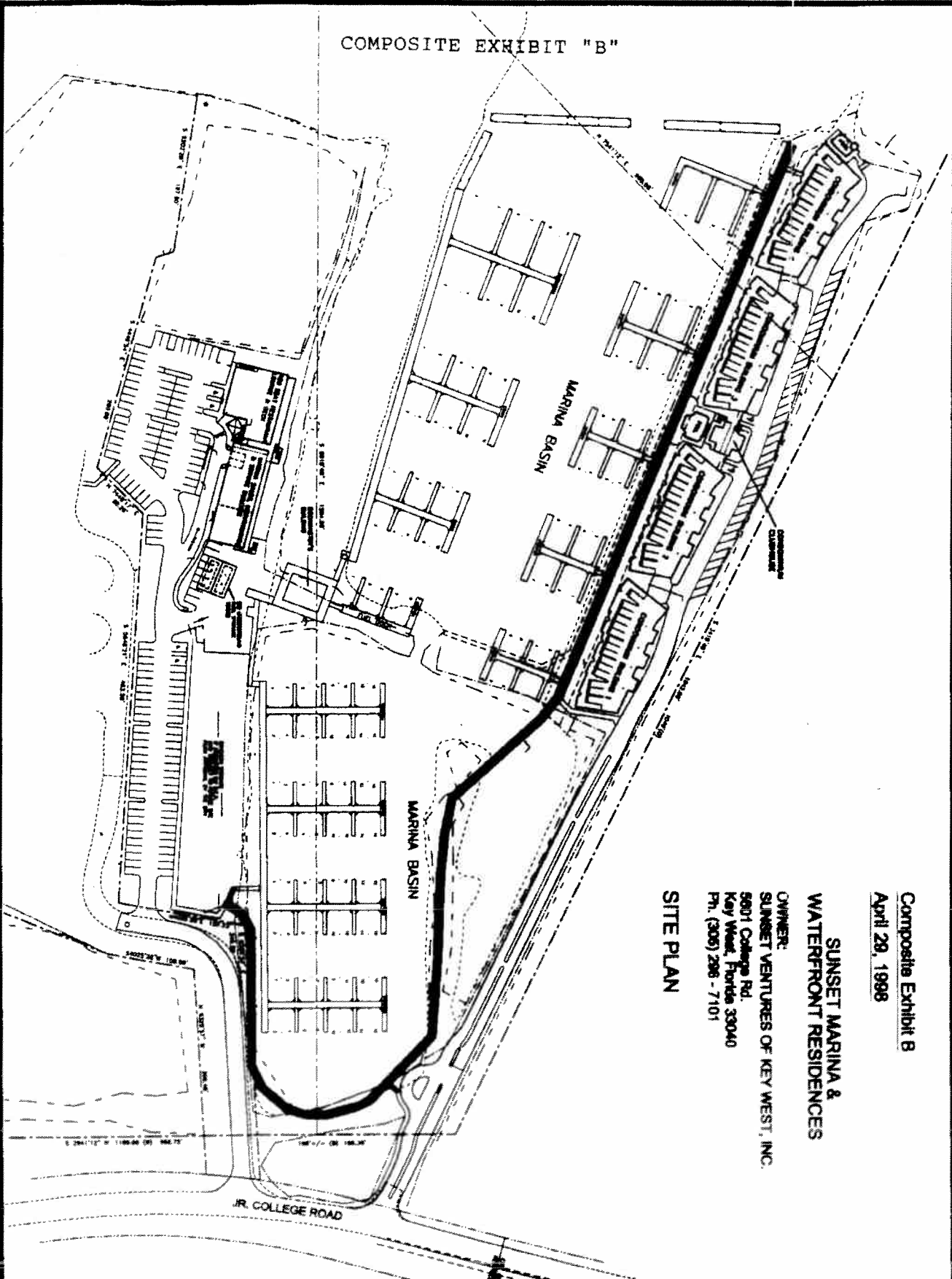
A parcel of land, formerly submerged in the Bay of Florida, and being a part of Trustees of the Internal Improvement Trust Fund of the State of Florida (TIIF) Deed Number 19725, and said parcel being in Section 27, Township 67 South, Range 25 East and in Monroe County, Florida; and said parcel being more particularly described by metes and bounds as follows: COMMENCE at the intersection of the center line of the right of way of U.S. Highway No. 1, also known as the center line of the Florida East Coast Railroad; and the center line of the right of way of "Old Country Club Road" (OCCR), also known as Junior College Road (JCR) as these two center lines exist as of May 16, 1990, said intersection being known as Point #1 and having coordinates of N=86989.70' & E=251292.83' based on the Mercator Projection for the East Zone of Florida; and run thence N 20°11' 57" W (all bearings in this legal description are also based on the said Mercator Projection) along the center line of the OCCR for a distance of 230.44 feet to Point #2 (N=87205.96' & E=251213.26'); thence N 52°51' 57" W along the center line of the

OCCR for a distance of 330.00 feet to Point #3 (N=87405.18' & E=250950.18'); thence N 39°38' 57" W along the center line of the OCCR for a distance of 300.00 feet to Point #4 (N=87636.17' & E=250758.75'); thence N 30°49' 57" W along the center line of the OCCR for a distance of 265.00 feet to Point #5 (N=87863.72' & E=250622.93'); thence N 03°33' 57" W along the center line of the OCCR for a distance of 152.00 feet to Point #6 (N=88015.42' & E=250613.48'); thence N 19°47'03" E along the center line of the OCCR for a distance of 122.56 feet to Point #7 (N=88130.75' & E=250654.96'); thence N 60°20'57" W for a distance of 200.00 feet to Point #8 (N=88229.69' & E=250481.15') and the SE'ly corner of the lands described in the said TIF Deed No. 19725; thence N 29°39' 03" E along the SE'ly boundary line of the lands described in the said TIF Deed No. 19725 for a distance of 962.72 feet to Point #9 (N=89066.35' & E=250957.42') and the POINT OF BEGINNING of the parcel of land being described herein said Point of Beginning being marked by an iron pipe; thence N 63°32'06" W for a distance of 206.48 feet to Point #10 (N=89158.37' & E=250772.57'); thence S 40°23' 19.5" W for a distance of 108.08 feet to Point #11 (N=89076.04' & E=250702.54'); thence S 56°13'32" W for a distance of 241.24 feet to Point #12 (N=88941.93' & E=250502.01') and the Approximate Mean High Tide Line of Florida Bay (MHTL); thence S 27°02' 03" W and along the said MHTL for a distance of 179.70 feet to Point #13 (N=88781.87' & E=250420.33'); thence S 31°02'03" W and along the said MHTL for a distance of 137.17 feet to Point #14 (N=88664.33' & E=250349.62'); thence S 41°02'02" W and along the said MHTL for a distance of 103.25 feet to Point #15 (N=88586.44' & E=250281.83'); thence S 51°32'03" W and along the said MHTL for a distance of 146.23 feet to Point #16 (N=88495.48' & E=250167.33'); thence N 52°27'57" W and along the said MHTL for a distance of 193.38 feet to Point #17 (N=88613.29' & E=250013.99'); thence N 30°27'57" W and along the said MHTL for a distance of 315.40 feet to Point #18 (N=88885.14' & E=249854.07'); thence N 20°27'57" W and along the said MHTL for a distance of 280.40 feet to Point #19 (N=89147.84' & E=249756.03'); thence N 01°32'03" E along the said MHTL for a distance of 165.00 feet to Point #20 (N=89312.78' & E=249760.45'); thence N 16°27'56" E and along the said MHTL for a distance of 77.62 feet to Point #21 (N=89387.22' & E=249782.45'); thence N 18°45'52" W and along the said MHTL for a distance of 57.65 feet to Point #22 (N=89441.81' & E=249763.91'); thence N 14°57' 57.5" W and along the said MHTL for a distance of 128.46 feet to Point #23 (N=89565.90' & E=249730.73'); thence N 38°26' 33" E and along the said MHTL for a distance of 165.00 feet to Point #24 (N=89695.14' & E=249833.32'); thence S 52°04'36" E for a distance of 195.00 feet to Point #25 (N=89575.29' & E=249987.14') and a concrete monument; thence S 13°16'39" W for a distance of 22.30 feet to Point #26 (N=89553.59' & E=249982.02') and a concrete monument; thence S 44°52'02" E for a distance of 269.09 feet to Point #27 (N=89362.88' & E=250171.86') and a concrete monument; thence N 74°46'08" E for a distance of 80.26 feet to Point #28 (N=89383.96' & E=250249.30') and a concrete monument; thence S 56°50'29" E for a distance of 483.59 feet to Point #29 (N=89119.46' & E=250654.14') and a concrete monument; thence N 40°23'19" E for a distance of 157.23 feet to Point #30 (N=89239.22' & E=250756.02')

and a concrete monument; thence S 63°32'06" E for a distance of 316.58 feet to Point #31 (N=89098.13' & E=251039.42') to the Westerly and curved right of way line of the said Junior College Road and a concrete monument, said curve being concave to the Southeast and having a radius of 984.84 feet; thence SW'ly along the said curved right of way line for an arc distance of 66.04 feet to Point #32 (N=89045.11' & E=251000.08') and a concrete monument; thence N 63°32'06" W for a distance of 47.66 feet back to Point #9 and the POINT OF BEGINNING, said parcel containing 13,943 acres (607.363 square feet) more or less.

FILE #1072663
BK#1524 PG#2069

COMPOSITE EXHIBIT "B"



Composite Exhibit B
 April 29, 1998

**SUNSET MARINA &
 WATERFRONT RESIDENCES**

OWNER:
 SUNSET VENTURES OF KEY WEST, INC.
 9001 College Rd.
 Key West, Florida 33040
 Ph. (305) 298-7101

SITE PLAN

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

1) See attached exhibit
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FILE # 1072663
BK# 1524 PG# 2071

Composite Exhibit B

April 29, 1998

Sunset Marina and Waterfront Residences

Owner: Sunset Ventures of Key West Inc.

5601 College Rd. Key West, Florida 33040
Phone 1-305-296-7101

Use	Density/Intensity	Parking Provided
Residential	60 Condominiums	94 Spaces
Condominium Clubhouse	1,175 Approximately Sq. Ft.	N/A
Marina Sales, Maintenance and Services Building	7,869 Approximately Sq. Ft.	9 Spaces
150 Seat Restaurant Lounge & Deck	4,942 Approximately Sq. Ft.	96 Spaces
Dockmaster's Building	1,575 Approximately Sq. Ft.	N/A
Maintenance	2,000 Approximately Sq. Ft.	N/A
Wet Slips	139 Slips	35 Spaces
Dry Storage Slips if permitted by DEP	43 Slips	11 Spaces
Total Parking Provided		235 Spaces

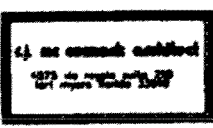
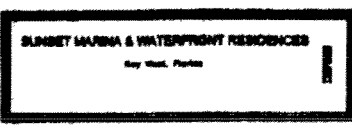
Note 1 - The Building setback is 20'-0" measured from M.H.W.

The Dockmaster's Building is permitted in the Marina Basin pursuant pursuant to DEP permit no. 440132551-001 and COE permit no. 199801062((P-EJ)

Note 2 - Landscape, in the 20' setback, shall consist of native plant species, density and diversity typical of a Lower Keys hardwood hammock and salt marsh transitional wetland zone.

Note 3 - Pervious materials will be utilized where feasible for parking areas.

Note 4 - All utilities shall be underground.



BEFORE THE STATE OF FLORIDA
LAND AND WATER ADJUDICATORY COMMISSION

UN RE: THE APPROVAL OF A SITE PLAN
FOR THE COMMUNITY IMPACT ASSESSMENT
STATEMENT BY THE CITY COMMISSION OF
THE CITY OF KEY WEST, FLORIDA, FOR
THE DEVELOPMENT KNOWN AS THE VILLAGE
AT KEY WEST RESORT, IN AN AREA OF
CRITICAL STATE CONCERN.

FLWAC CASE NO: 86-16
DOAH CASE NO: 86-1749

FILE #1072663
BK#1524 PG#2072

ESCROW AGREEMENT BETWEEN THE FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS AND NORMAN B. WOOD,
SHIRLEY WOOD, BERNIE PAPY, JR., MARILYN PAPY,
AND THE VILLAGE AT KEY WEST RESORT

The Florida Department of Community Affairs ("DEPARTMENT") hereby enters into the following escrow agreement with the above named parties, NORMAN B. WOOD, SHIRLEY WOOD, BERNIE PAPY, JR., MARILYN PAPY, AND THE VILLAGE AT KEY WEST RESORT, ("Owners"). An escrow account shall be created through the Barnett Bank of Key West. A total of \$100,000.00 shall be deposited by the Owners into this account to be held by Barnett Bank in escrow for payment to the Department of Community Affairs for affordable housing projects in Key West, Florida.

The monies shall be disbursed by the escrow agent, to any parties specified by the Department of Community Affairs upon request by the Department.

Owners hereby relinquish all rights to the money held in escrow and shall give the Department of Community Affairs the authority to payout the money to the City of Key West or whomever the Department deems appropriate, in a manner in which the Department deems appropriate for use in the City of Key West.

Secretary, Department of
Community Affairs


Representative of Owners

MONROE COUNTY
OFFICIAL RECORDS