

1 **SETTLEMENT AGREEMENT (REVISED)**  
2

3 THIS SETTLEMENT AGREEMENT as hereby revised is executed as of the \_\_\_\_ day of  
4 \_\_\_\_\_, 2011 by and between Harborside, LLC, a Florida Limited Liability Company  
5 (“Harborside”), M & I Regional Properties, LLC, a Wisconsin Limited Liability Company, and  
6 the government of the City of Key West, Florida (“City”).  
7

8 WHEREAS, Harborside is the owner of certain rights to purchase certain real property  
9 acquired in foreclosure by M&I Regional Properties, LLC (“M&I”), which is the property  
10 formerly known as Jabour’s Campground and Trailer Court, located at 223 Elizabeth Street, Key  
11 West, Florida (“Jabour’s Campground”) and two contiguous parcels, located at and consisting of  
12 approximately 1.9 acres of upland area, all as more particularly described on Exhibit “A” a  
13 survey completed by “Island Surveying, Inc.” and dated “May 12, 2011”, attached hereto  
14 (collectively, the “Property”); and  
15

16 WHEREAS, in settlement of litigation regarding the permissible redevelopment of  
17 Jabour’s Campground, City and M&I’s predecessors-in-interest in the Property entered into a  
18 March 2, 2004 Settlement Agreement (the Caroline Street Partners, LLC “Settlement”),, the  
19 terms of which Settlement, were incorporated in an “Agreement Pursuant To Section 380.032(3),  
20 Florida Statutes” (the “380 Agreement”) entered into among Caroline Street Partners, City and  
21 the State of Florida Department of Community Affairs (“DCA”), collectively attached hereto as  
22 Exhibit “B”; and  
23

24 WHEREAS, the Settlement recognized the existence on Jabour’s Campground of a mix  
25 of 101 residential and transient units consisting of mobile homes, apartments, guest house units,  
26 RV/trailer sites, and campsites; and  
27

28 WHEREAS, the 380 Agreement recognized the existence of 80 units, each having a  
29 Building Permit Allocation System (BPAS) Factor equivalency of 1.0 Equivalent Single Family  
30 Unit Factor (ESFU), and authorized off-site transfer 48 of the units and redevelopment of 32  
31 units on the Jabour’s Campground site, each unit having and being entitled to receive a  
32 motel/hotel transient license; and  
33

34 WHEREAS, subsequent to execution of the 380 Agreement, additional land contiguous  
35 to Jabour’s Campground was acquired by M&I’s predecessor in title and was included in an  
36 amended Major Development Plan application that was approved on March 21, 2007 for  
37 development of the Property as a residential condominium project by Development Order No.  
38 2007-004; and  
39

40 WHEREAS, the development approved by Development Order No. 2007-004 is no  
41 longer economically viable due to changed market conditions, and  
42

43 WHEREAS, it is in the mutual best interests of City, Harborside, and the property owners  
44 and businesses in and adjacent to the Caroline Street Corridor which abuts the property, that the  
45 Property not remain as vacant land, but be redeveloped pursuant to a Major Development Plan  
46 providing for reestablishment of an Historic-District streetscape on the Property’s Caroline St.  
47 and Elizabeth St. frontage and for creation of a viable resort hotel use complementary to the  
48 historic seaport at Key West Bight; and

49  
50 WHEREAS, Harborside will acquire the Property from M&I and will redevelop the  
51 Property pursuant to the terms and conditions contained herein, subject to the City’s approval of  
52 an amended 380 Agreement in conformity with all the terms, commitments and conditions of  
53 this Agreement;

54  
55 NOW, THEREFORE, in consideration of the mutual commitments, conditions and  
56 covenants herein contained in this document. Harborside and City hereby agree as follows:

- 57  
58 1. All of the above recitals are true and are incorporated herein.
- 59  
60 2. Harborside shall provide on the Property 63 off-street parking spaces for parking 63  
61 motor vehicles, and shall provide bicycle racks to accommodate 70 bicycles on the  
62 Property in addition to the 100 bicycle spaces referenced in Paragraph 4 below, as  
63 required by section 108-572(7) of the City Code of Ordinances. The Major Development  
64 Plan for the Property shall include provision for employee vehicle parking by providing  
65 one employee vehicle parking space on site, and additional parking spaces in an off-site  
66 commercial parking facility.
- 67  
68 3. Harborside waives, releases and surrenders to City any and all claim or demand it may  
69 have with respect to the Lazy Way alley. City shall have the right to restrict vehicular  
70 access to said alley and establish the same as a pedestrian mall. Harborside will, at its  
71 sole expense, (a) create a pedestrian entrance from Lazy Way to the Property and (b)  
72 build, manage and maintain a private park in the open space between Lazy Way and that  
73 entrance as illustrated on the attached conceptual site massing diagram, which is “Exhibit  
74 C” to this agreement. The park will be open to the public during daylight hours, and will  
75 be subject to reasonable rules and regulations, agreed to in writing by Harborside and the  
76 City. Such rules shall provide that no parking of vehicles of any kind, inclusive of  
77 scooters, motorcycle or bicycles shall occur on the designated park.
- 78  
79 4. Harborside shall demonstrate that it has met the payment obligation to the City under  
80 the Settlement for the installation of additional bicycle racks sufficient for one hundred  
81 (100) spaces in the Caroline Street Corridor and Bahama Village Redevelopment District.
- 82  
83 5. City recognizes that Harborside has agreed not to build the two (2), one hundred fifty  
84 (150) seat restaurants and associated commercial floor area for a general store vested by  
85 Court Order which was recognized by the settlement approved by Resolution 03-279.  
86 Harborside shall provide food and beverage service on the Property limited to hotel  
87 guests registered at the hotel. The food preparation and food service areas for such  
88 registered guests only shall not exceed 7,000 square feet of enclosed structures, as  
89 illustrated and listed on “Exhibit C”, conceptual massing diagram data sheet, attached to  
90 this revised settlement agreement, together with outdoor accessory areas (pools, gardens  
91 and rooftop). .
- 92  
93 6. The Property shall be developed as a resort hotel described and limited to the  
94 maximum floor area listed in Exhibit C, consisting of 96 hotel rooms, each receiving an  
95 ESFU allocation of 0.58 units, and customary resort amenities. Harborside and City have  
96 calculated that, after deducting 55.68 ESFUs (96 units x 0.58= 55.68) from the 80 ESFUs

97 attributable to the Property, and transferring 1 ESFUs to existing structures at Parrot Key  
98 Resort at 2801 North Roosevelt Boulevard in the City of Key West, there will remain  
99 unutilized 23.32 ESFUs, which Harborside shall surrender to City. Each hotel room shall  
100 receive a motel/hotel transient license pursuant to Section 66-109(10)(d) of the Code of  
101 Ordinances, shall be considered redevelopment pursuant to the Code of Ordinances, and  
102 shall remain exempt from exactions and fees imposed on new units (with such  
103 exemptions limited to affordable housing impositions under *Code* Section 122-1467, and  
104 impact fees required by Sections 54-80 through 54-162 inclusive of the Key West City  
105 Code). Each of the hotel rooms built on the Property shall be designed, constructed and  
106 occupied only as a single hotel room dwelling unit without lockout capacity (*i.e.*, there  
107 will be only one key for each hotel unit) and without a kitchen. The total enclosed area  
108 (excluding porches, garages, and loading areas) of all buildings constructed on the  
109 Property shall not exceed 63,950 sq. ft.  
110

111 7. In connection with the development described in paragraph 6 above, Harborside shall  
112 be permitted to build and provide the following customary resort hotel accessory facilities  
113 for the use and benefit of hotel guests: conference room, lobby, offices, spa/exercise  
114 rooms, and outdoor and indoor food and beverage, facilities. The combined enclosed  
115 area for these facilities shall not exceed the total square footage shown on the attached  
116 Exhibit D. In addition, the hotel shall be able to provide the following support services  
117 housed in areas defined in and limited to those named in Exhibit "D", specifically, food  
118 and beverage, offices, maintenance, housekeeping and laundry.  
119

120 8. As authorized under the Settlement, the portion of Jabour's Campground located at  
121 717 Caroline Street was divided from the Property and is not subject to this Agreement.  
122

123 9. Except as otherwise provided herein, the Development permitted on the property  
124 subject to the Major Development Plan approved shall be compliant with all the  
125 standards and all applicable requirements of the Codes of Ordinances of City, the Land  
126 Development Regulations and the zoning regulations of City. The Development shall  
127 obtain Major Development Plan Review approval and all components of the development  
128 approved in the Major Development Plan shall be completed within seven (7) years after  
129 the later of (a) conclusion of any appeals from City's development approvals and (b) final  
130 decision of any litigation challenging such development approvals.  
131

Comment [cc1]: ?

132 Applications for Development Plan Approval shall be submitted no later than March 31,  
133 2012.  
134

135 In the event the approved project is not completed within the seven years outlined herein,  
136 then any unused development rights shall lapse and become void, absent an extension  
137 approval from the City Commission. In the absence of such extension approval, all  
138 unused development rights shall revert to the City of Key West.  
139

140 10. Harborside's Major Development Plan approval, when implemented, and not later  
141 than the termination of this settlement shall eliminate any existing nonconformities, and  
142 will include the following improvements constructed at Harborside's expense: (a)  
143 landscaped buffers within the Property on its Lazy Way and William Street boundaries,  
144 (b) a pedestrian sidewalk and 4-foot wide landscaped buffer on William Street adjacent to

145 the Property, and (c) an Historic-District streetscape on the Property’s Caroline St. and  
146 Elizabeth St. frontage.  
147

148 11. The design characteristics of the structures to be constructed on the Property shall be  
149 approved by the City’s Historical Architectural Review Committee (“HARC”), be  
150 compliant with the City’s Historic Architectural designs guidelines, and shall conform to  
151 the following additional requirements so as to harmonize to the maximum extent practical  
152 the appearance of these new structures with existing structures in or adjoining the historic  
153 Key West Bight, while conforming with flood-plain elevation requirements: building  
154 height shall conform to the maximum height requirement of HRCC-1 District (35 feet  
155 plus 5 feet for pitched roof). Additionally, air handling equipment and other mechanical  
156 devices (*e.g.*, HVAC) that are allowed by City regulations to occupy nonhabitable space  
157 at or above maximum building height shall be shielded from street view by screening  
158 device approved by HARC. Such screening device shall not be an extension of any roof  
159 beyond the maximum approved by HARC. The parking garage constructed beneath the  
160 first finished floor of the hotel building shall be concealed from view from public rights  
161 of way by using fill to minimize the gap between the first finished floor and the crown of  
162 the nearest road. (City of Key West, Ord. 10-03, amending HARC Design Guidelines  
163 Chapter VI, articles [o] and [p])  
164

165 12. Harborside acknowledges that neighboring City property consists of outdoor bars  
166 where amplified music is played, and Harborside, on behalf of itself, its guests, its  
167 licensees, its tenants, and its successors and assigns, expressly waives any private  
168 nuisance action against the City relating to such amplified music. Harborside shall  
169 require any successor-in-interest to the Property to execute a written document  
170 acknowledging any successor’s agreement to be bound by this provision. Nothing in this  
171 provision shall prevent Harborside, its guests, its licensees, its tenants, or its successors  
172 and assigns, from bringing any action seeking to enforce the City’s noise ordinance.  
173

174 13. Harborside shall continue to meet with residents and business owners in the Key  
175 West Bight neighborhood and to acknowledge their concerns within the Major  
176 Development Plan that it submits to the City for approval and shall meet the requirements  
177 of the “Good Neighbor Policy” as contained in the City Code of Ordinances.  
178

179 14. Upon execution of this Agreement by City and Harborside, it will be rendered to  
180 DCA for review, approval, and inclusion in a revised 380 Agreement incorporating each  
181 and every provisions, term, requirement, schedule and attachment of the Settlement  
182 Agreement hereof.  
183

184 15. The laws of Florida shall govern this Agreement.  
185

186 16. If any part of this Agreement shall be deemed invalid or unenforceable by a court of  
187 competent jurisdiction, the remaining parts of this Agreement that have not been deemed  
188 invalid or unenforceable shall remain in full force and effect.  
189

190 IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the above  
191 date.  
192

HARBORSIDE, LLC

CITY OF KEY WEST

By: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

By: \_\_\_\_\_  
CRAIG CATES, Mayor

Witnesses:  
\_\_\_\_\_  
\_\_\_\_\_

ATTEST:  
  
By: \_\_\_\_\_  
CHERYL SMITH, City Clerk

M & I REGIONAL PROPERTIES, LLC, a  
Wisconsin Limited Liability Company

By: \_\_\_\_\_

Witnesses:  
\_\_\_\_\_  
\_\_\_\_\_