

AGREEMENT
Pursuant to Section 380.032(3), Florida Statutes

THIS SECTION 380.032 AGREEMENT is entered into between the **Department of Community Affairs**, an agency of the State of Florida (hereinafter referred to as "DCA" or "Department"), **Caroline Street Partners, LLC** (hereinafter referred to as "CSP"), and the **City of Key West**, a Florida municipality (hereinafter referred to as "City"), pursuant to the terms and conditions herein and § 380.032(3), *Florida Statutes*.

WHEREAS the City of Key West is located within the City of Key West Area of Critical State Concern, as designated under Sections 380.05, *Florida Statutes*, and Chapter 28-36, *F.A.C.*; and

WHEREAS, the DCA is the state land planning agency having the power and duty to exercise general supervision of the administration and enforcement of Chapter 380, *Florida Statutes*, the Environmental Land and Water Management Act (the "Act"), which includes provisions relating to areas of critical state concern; and

WHEREAS, DCA is authorized by § 380.032(3), *Florida Statutes*, to enter into an agreement with any landowner, developer or other governmental agency as may be necessary to effectuate the provisions and purposes of the Act, or any related rule; and

WHEREAS, in May, 2003, CSP entered into a contract to purchase from Robert S. Jabour and Richard J. Jabour ("Jabours") a parcel of real property located in Key West, Florida comprising approximately 1.57 acres, as is more fully described in Appendix "A", also known as Jabour's Trailer Court (the "Property"), pursuant to which contract CSP, as contract vendee, is entitled to seek and obtain government approvals for the development of the Property; and

WHEREAS, after acquiring the right to purchase the Property, CSP negotiated with the City, and submitted to the City Commission for public hearing and approval, the terms of a Settlement Agreement ("the Settlement Agreement") to resolve vested rights and other development issues that were the subject of prolonged litigation between Jabours and the City;

and

WHEREAS, on August 28, 2003, the City Commission of the City of Key West held a public hearing to consider adoption of the Settlement Agreement, with the announced intention to resolve all past and pending litigation concerning vested development rights to the Property and to govern the future development of the Property; and

WHEREAS, by Resolution 03-279, the City approved the Settlement Agreement, which was duly executed by CSP and the City, joined by Jabours for the limited purposes expressed therein; and

WHEREAS, Resolution 03-279 and the Settlement Agreement were rendered to DCA, which timely initiated an appeal thereof to the Florida Land and Water Adjudicatory Commission pursuant to *F.S. §380.07*; and

WHEREAS, DCA in its appeal acknowledged that 80 units exist on the Property as a permissible nonconforming density, and that those units may be replaced at their existing nonconforming density, but DCA disputed CSP's right to redevelop all 101 units for which Jabours Trailer Park holds transient lodging licenses issued by Monroe County and by the State of Florida Division of Hotels and Restaurants; and

WHEREAS, it is in the public interest, and in furtherance of the Principles for Guiding Development listed in Chapter 28-36, *F.A.C.*, that site density be reduced so as not to exceed the 33 units allowable under current land use regulations, and to require the balance of the existing units to be transferred to suitable receiver sites; and

WHEREAS, DCA and the City recognize that the relocation or replacement of transient units should take into consideration whether the unit being relocated or replaced is a residential dwelling unit (allocated, for ROGO purposes, one ERU) or a small transient unit (allocated .58 ERU), and accordingly have made provision therefore in the Revised Settlement Agreement and in this Section 380.032 Agreement;

NOW, THEREFORE, in consideration of the terms and conditions set forth hereafter, the City, CSP, and DCA agree as follows:

1. **Performances and Covenants.** Based upon lawful consideration, the receipt of which is hereby mutually acknowledged, City, CSP, and DCA stipulate as follows:

1.1. The parties agree that the Future Land Use Map classification of the Property on the City of Key West Comprehensive Plan is 'HRCC.'

1.2. The parties agree that the zoning currently in effect for the Property is 'HRCC-1', which allows up to 33 dwelling units to be developed on the Property, each of which may be developed and occupied as a full-sized residence licensed for transient occupancy (hereinafter, "Transient Residential Unit").

1.3. All references in the Revised Settlement Agreement (as hereby modified) to the "Property" shall be solely to the real property described in Appendix A hereto. The provisions of Paragraphs 6-9 of the original Settlement Agreement are modified as provided in the attached copy of the Revised Settlement Agreement. Because the number of units to be developed on the Property will conform to density requirements, Paragraph 10 of the original Settlement Agreement is deleted. The provisions of the Revised Settlement Agreement are hereby incorporated into this 380.032 Agreement in full and may be enforced by any party.

1.4 Construction of the Agreement. The parties hereto have entered into this Section 380.032 agreement in recognition of the unique circumstances applicable to the Property, and in consideration of the public benefits to be obtained by eliminating existing excess density and by finally resolving long-pending litigation. Accordingly, this Section 380.032 Agreement should not be construed as establishing precedent or procedure for any other development application.

1.5 Amendment to clarify LDRs governing transient units. The City acknowledges that, consistent with its Comprehensive Plan and ROGO, the size of transient units must be limited in order to avoid potential adverse impacts (e.g., traffic, hurricane evacuation). Accordingly, the City will initiate and diligently schedule for public hearing an LDR amendment, intended to clarify, and to provide specific criteria for, size limitations of transient units.

2. **Authorized Signatures.** The Mayor of Key West, or his authorized designee, shall execute this Section 380.032 Agreement on behalf of the City following approval of this Agreement by the City Commission. The Director of the Division of Community Planning, or

his authorized designee, shall execute this Agreement on behalf of DCA. CSP shall execute this Agreement by its duly-authorized officer.

3. **Entirety of Agreement.** The City, DCA and CSP further agree that this Section 380.032 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 and duly signed by the City, DCA and CSP.

4. **Duplicate Originals.** This Section 380.032 Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.

5. **Enforcement.** In the event of a breach of this Section 380.032 Agreement, or failure to comply with any condition of it, the City, DCA and CSP may enforce this Agreement pursuant to §§ 380.05 and 380.11, *Florida Statutes*, or as otherwise provided by law.

6. **Scope of Authority.** This Section 380.032 Agreement affects the rights and obligations of the City, DCA and CSP as provided under the terms herein and Chapter 380, *Florida Statutes*. This Section 380.032 Agreement is not intended to influence or determine the authority or decisions of any other state or local government or agency in issuance of any other permits or approvals that might be required by state law or local ordinance for any development authorized by this Agreement except as otherwise provided herein.

7. **Effective Date.** This Agreement shall take effect upon signature of the last of the parties to sign this Agreement.

IN WITNESS THEREOF, the parties by and through their respective undersigned duly authorized representatives have executed this Agreement on the dates and year below written.

CITY OF KEY WEST

CAROLINE STREET PARTNERS, LLC

DCA

James D. Kelley
As Mayor of the City of Key West

Everett Atwell
by: Everett Atwell, its Manager

Katherine Hubbard
Director
Division of Community Planning, DCA

5-4-04

4/30/04

5/12/04
Date signed

Date signed

Date signed

Attest:
Cheryl Smith
City Clerk

PARCEL A

On the Island of Key West, Monroe County, State of Florida, being known as Part of Square Eleven (11), more particularly described as follows:

Commencing at the Southerly corner of Square Eleven (11) where Caroline and Elizabeth Streets intersect and proceed along the Northeasterly side of Elizabeth Street in a Northwesterly direction a distance of One Hundred Seventy-three (173) feet to a point; proceed thence at right angles in a Northeasterly direction Fifty (50) feet; thence at right angles in a Southeasterly direction One (1) foot to the POINT OF BEGINNING; from the Point of Beginning proceed at right angles in a Northeasterly direction One Hundred Ninety-five and Six tenths (195.6) feet; thence at right angles in a Southeasterly direction One Hundred Eleven (111) feet; thence at right angles in a Southwesterly direction Thirty-eight (38) feet; thence at right angles in a Northwesterly direction Fifty-seven and Two-tenths (57.2) feet; thence at right angles in a Southwesterly direction One Hundred Fifty-seven and Six tenths (157.6) feet; thence at right angles in a Northwesterly direction Fifty-three and Seven tenths (53.7) feet to the Point of Beginning.

PARCEL B

On the Island of Key West and known on William A. Whitehead's Map delineated in February, A.D. 1829, as a parcel of land in Square Eleven (11) more particularly described as follows: Commencing at the Northwesterly corner of the intersection of Caroline and William Streets move Northwesterly a distance of 118.15 feet to the point or place of beginning. Thence at right angles in a Southwesterly direction a distance of 156.44 feet; thence at right angles in a Northwesterly direction a distance of 53.85 feet; thence at right angles in a Northeasterly direction a distance of 156.44 feet; thence at right angles in a Southeasterly direction along William Street a distance of 53.85 feet to the point or place of beginning on William Street.

EXHIBIT
COMPOSITE
EXHIBIT A

PARCEL C

On the Island of Key West and known on William A. Whitehead's Map delineated in February, A.D. 1829, as a parcel of land in Square Eleven (11) more particularly described as follows: Commencing at the Northwesterly corner of the intersection of Caroline and Elizabeth Streets move Northwesterly along Elizabeth Street a distance of 173 feet to the point of beginning. Thence continue in a Northwesterly direction along Elizabeth Street a distance of 27 feet to a point; thence at right angles in a Northeasterly direction parallel to Caroline Street a distance of 200 feet to a point; thence at right angles in a Southeasterly direction a distance of 9 feet to a point; thence at right angles in a Northeasterly direction a distance of 200 feet to a point on the Westerly right-of-Way of William Street; thence at right angles in a Southeasterly direction along the Westerly boundary line of William Street a distance of 20 feet to a point; thence at right angles in a Southwesterly direction parallel to Caroline Street a distance of 352.04 feet to a point on the property line owned by the Veterans of Foreign Wars; thence at right angles in a Northwesterly direction a distance of 2 feet to a point; thence at right angles in a Southwesterly direction a distance of 50 feet to the point of beginning.

PARCEL D

On the Island of Key West and is part of Square 11 according to William A. Whitehead's map of said Island delineated in 1829 and is more particularly described as follows: From the intersection of the southeasterly line of Greene Street and the northeasterly line of Elizabeth Street go southeasterly along the northeasterly line of Elizabeth Street a distance of 95.50 feet to a point; thence at right angles and northeasterly a distance of 100 feet to a point; which point is the point of beginning; thence continue northeasterly along the previously described course a distance of 79.04 feet to a point; thence at right angles and northwesterly a distance of 47.10 feet to a point; thence at right angles and northeasterly a distance of 52.44 feet to a point; thence at right angles and southeasterly a distance of 62.20 feet to a point; thence at right angles and southwesterly a distance of 6.00 feet to a point; thence at right angles and southeasterly a distance of 89.40 feet to a point; thence at right angles and southwesterly a distance of 125.48 feet to a point; thence at right angles and northeasterly a distance of 104.50 feet back to the point of beginning.

PARCEL E

Parcel E-1:

A parcel of land in the Island of Key West, Monroe County, Florida, said parcel being a Part of Lot 1 of Square 11 of Whitehead's Map of the said Island as delineated in February 1829 and the said parcel being more particularly described by metes and bounds as follows: COMMENCE at the intersection of the NW'y right-of-way-line (ROWL) of Caroline Street with the SW'y ROWL of William Street and run thence in a SW'y direction along the NW'y ROWL of the said Caroline Street for a distance of 201.00 feet; thence NW'y and at right angles for a distance of 191.00 feet to the POINT OF BEGINNING of the parcel of land being described herein; thence continue NW'y along a prolongation of the preceding course for a distance of 9.00 feet; thence NE'y and at right angles for a distance of 24.48 feet; thence SE'y and at right angles for a distance of 9.00 feet; thence SW'y and at right angles for a distance of 24.48 feet back to the POINT OF BEGINNING, said parcel containing 220 square feet.

Parcel E-2:

A parcel of land on the Island of Key West, Monroe County, Florida, said parcel being a Part of Lot 1 of Square 11 of Whitehead's Map of the said island as delineated in February 1829 and the said parcel being more particularly described by metes and bounds as follows: COMMENCE at the intersection of the NW'y right-of-way-line (ROWL) of Caroline Street with the SW'y ROWL of William Street and run thence in a SW'y direction along the NW'y ROWL of the said Caroline Street for a distance of 201.00 feet; thence NW'y and at right angles for a distance of 60.00 feet to the POINT OF BEGINNING of the parcel of land being described herein; thence continue NW'y along a prolongation of the preceding course for a distance of 57.20 feet; thence NE'y and at right angles for a distance of 6.50 feet; thence SE'y and at right angles for a distance of 57.20 feet; thence SW'y and at right angles for a distance of 6.50 feet to the POINT OF BEGINNING, said parcel containing 372 square feet.

Parcel E-3:

A parcel of land on the Island of Key West, Monroe County, Florida, said parcel being a Part of Lot 1 of Square 11 of Whitehead's Map of the said island as delineated in February 1829 and the said parcel being more particularly described by metes and bounds as follows: COMMENCE at the intersection of the NW'y right-of-way-line (ROWL) of Caroline Street with the SW'y ROWL of William Street and run thence in a SW'y direction along the NW'y ROWL of the said Caroline Street for a distance of 156.50 feet to the POINT OF BEGINNING of the parcel of land being described herein; thence continue SW'y along the NW'y ROWL of the said Caroline Street for a distance of 4.50 feet; thence NW'y and at right angles for a distance of 60.00 feet; thence NE'y and at right angles for a distance of 4.50 feet; thence SE'y and at right angles for a distance of 60.00 feet back to the POINT OF BEGINNING, the said parcel containing 270 square feet.

PARCEL F

On the Island of Key West and is part of Square 11 according to William A. Whitehead's map of said Island delineated in 1829 and is more particularly described as follows:

From the intersection of the northwesterly line of Caroline Street and the southwesterly line of William Street go northwesterly along the said southwesterly line of William Street a distance of 191 feet to a point; which point is the Point of Beginning; thence continue northwesterly along said southwesterly line of William Street a distance of 105 feet to a point; thence southwesterly and at right angles a distance of 176.52 feet to a point; thence southeasterly and at right angles a distance of 105 feet to a point; thence northeasterly and at right angles a distance of 176.52 feet back to the point of beginning.

PARCEL G

In the City of Key West known on Wm. A. Whitehead's map or plan of the Island of Key West, delineated February, 1829, as part of Lot 1 in Square 11; Commencing 161 feet from the corner of Caroline and William Streets, and running along Caroline Street in a Southwesterly direction 40 feet; thence at right angles in a Northwesterly direction 60 feet; thence at right angles in a Northeasterly direction 40 feet; thence at right angles in a Southeasterly direction 60 feet to the place of beginning.