

# **Ownership, Authorization and Verification**

## Description & Structure of Property Ownership

February 8, 2013

**TO:** Don Craig and Brendon Cunningham

**FROM:** John Gonzalez

**DATE:** February 8, 2013

**SUBJECT:** Ownership Summary for 3800, 3820, 3824, 3840, 3850 and 3852 N. Roosevelt as Required by Section 108-228 (7) of the Development Plan Submittal Guidelines

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### Introduction

There are a total of six (6) contiguous properties that are included in this project. For purposed of this memorandum, I will refer to the properties as follows:

1. 3852 N. Roosevelt Boulevard (the "**Days Inn Property**").
2. 3520 N. Roosevelt Boulevard (the "**Lexington Property**").
3. 3840 N. Roosevelt Boulevard (the "**Welcome Center Property**").
4. 3824 N. Roosevelt Boulevard (the "**Quality Inn Property**").
5. 3820 N. Roosevelt Boulevard (the "**Comfort Inn Property**").
6. 3800 N. Roosevelt Boulevard (the "**Wreckers Property**").

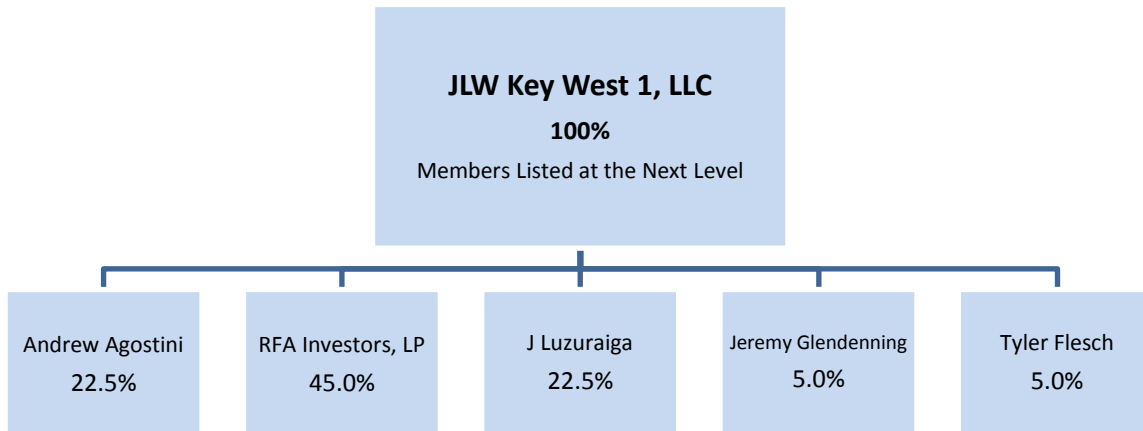
### Ownership Summary for the Days Inn Property, the Welcome Center Property, the Comfort Inn Property and the Welcome Center Property

The Days Inn Property, the Welcome Center Property, the Comfort Inn Property and the Welcome Center Property are owned by JLW Key West 1, LLC, a Florida limited liability company.

The members of JLW Key West 1, LLC and their respective ownership percentages, are as follows (Andrew Agostini is the managing member):

<b>Name and Address of Member</b>	<b>Membership Percentage</b>
Andrew V. Agostini 35 E. Wacker, Suite 3300 Chicago, IL 60601	22.50%
J Luzuriaga 49 Immigration St., Suite 103 Charleston, SC 29403	22.50%
RFA Investors, LP 35 E. Wacker, Suite 3300 Chicago, IL 60601 Attention: Ed Ross	45.00%
Jeremy Glendenning 49 Immigration St., Suite 103 Charleston, SC 29403	5.00%
Tyler Flesch 400 Hibben St., Suite 200 Mt. Pleasant, SC 29464	5.00%

Diagram Outlining Ownership of JLW Key West 1, LLC:



**Ownership summary for the Lexington Property:**

The Lexington Property is owned by the following entities through a co-tenancy structure, JRC Key West Hotel LLC, AVA Key West LLC, JL Key West LLC, and RFA Key West LLC.

The members of the co-tenancy and their respective ownership percentages are listed below (Andrew Agostini is the managing co-tenant):

Name and Address of Member	Membership Percentage
JRC Key West Hotel LLC 35 E. Wacker, Suite 3300 Chicago, IL 60601 Attention: Ed Ross	33.46%
AVA Key West LLC 35 E. Wacker, Suite 3300 Chicago, IL 60601 Attention: Andrew Agostini	16.67%
JL Key West LLC 49 Immigration St., Suite 103 Charleston, SC 29403 Attention: J Luzuriaga	16.67%
RFA Key West LLC 35 E. Wacker, Suite 3300 Chicago, IL 60601 Attention: Ed Ross	33.20%

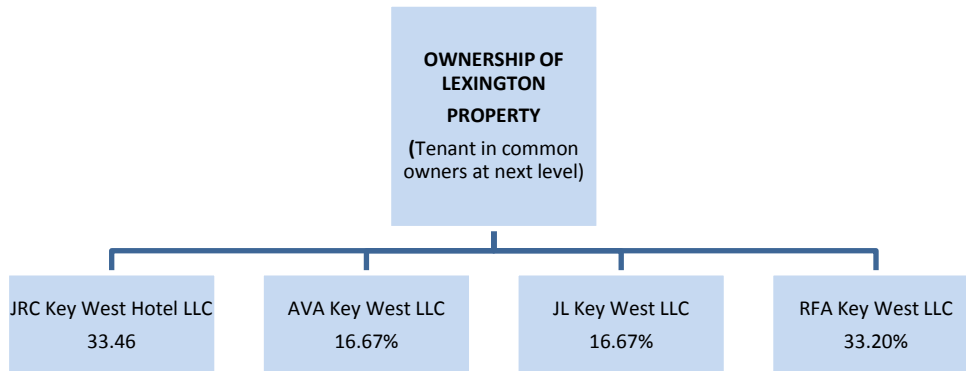
JRC Key West Hotel LLC is an Illinois Limited Liability Company.

AVA Key West LLC is an Illinois Limited Liability Company.

JL Key West LLC is an Illinois Limited Liability Company.

RFA Key West LLC is an Illinois Limited Liability Company.

Diagram Outlining Ownership of the Lexington Property:



**Ownership for the Quality Inn Property:**

The Quality Inn Property is owned by the following entities through a co-tenancy structure, RFA Key West II LLC, JL Key West II LLC, and JLW Key West 2, LLC.

The members of the co-tenancy and their respective ownership percentages are listed below (JLW Key West 2, LLC is the managing co-tenant):

Name and Address of Member	Membership Percentage
RFA Key West II LLC 35 E. Wacker, Suite 3300 Chicago, IL 60601 Attention: Ed Ross	55.10%
JL Key West II LLC 49 Immigration St., Suite 103 Charleston, SC 29403 Attention: J Luzuriaga	22.50%
JLW Key West 2, LLC 35 E. Wacker, Suite 3300 Chicago, IL 60601 Attention: Andrew Agostini	22.40%

The members of JLW Key West 2, LLC and their respective ownership percentages are as listed below (Andrew Agostini is the managing member):

Name and Address of Member	Membership Percentage
Andrew Agostini 35 E. Wacker, Suite 3300 Chicago, IL 60601	55.3572%
Jeremy Glendenning 49 Immigration St., Suite 103 Charleston, SC 29403	22.3214%
Tyler Flesch 400 Hibben St., Suite 200 Mt. Pleasant, SC 29464	22.3214%

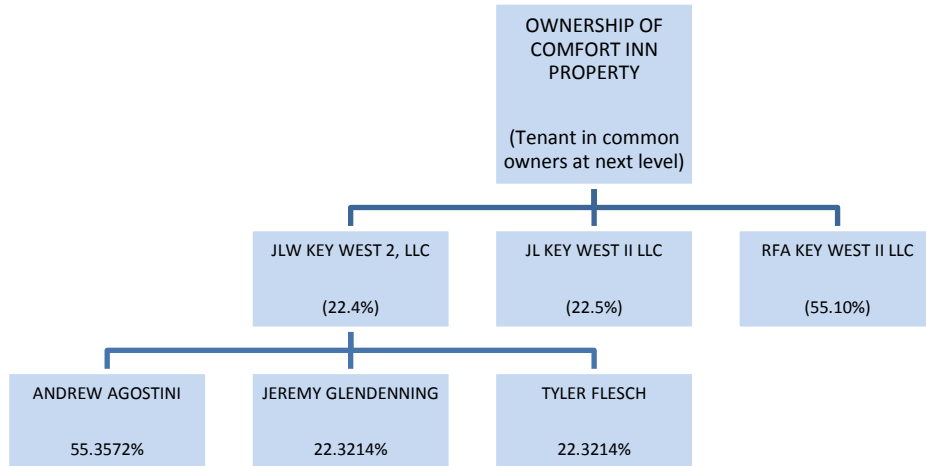


## Description & Structure of Property Ownership

February 8, 2013

RFA Key West II LLC is a Florida limited liability company.  
JL Key West II LLC is a Florida limited liability company.  
JLW Key West 2, LLC is a Florida limited liability company.

Diagram Outlining Ownership of the Quality Inn Property:



City of Key West  
Planning Department



Authorization Form  
(Where Owner is a Business Entity)

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Andrew Agostini as  
*Please Print Name of person with authority to execute documents on behalf of entity*

Managing Member of JLW Key West 2, LLC, the Managing JLW Key West 2 LLC, JL Key West II LLC, and RFA  
Co-Tenant of the Quality Inn Property of Key West II LLC  
*Name of office (President, Managing Member)* *Name of owner from deed*

authorize Butch Ross of Patterson Real Estate Advisory Group  
*Please Print Name of Representative*

to be the representative for this application and act on my/our behalf before the City of Key West.

[Signature]  
*Signature of person with authority to execute documents on behalf of entity owner*

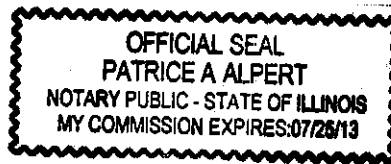
Subscribed and sworn to (or affirmed) before me on this 23rd of April, 2013 by  
*date*

ANDREW V. AGOSTINI  
*Name of Authorized Representative*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.

[Signature]  
*Notary's Signature and Seal*

PATRICE A. ALPERT  
*Name of Acknowledger typed, printed or stamped*



\_\_\_\_\_  
*Commission Number, if any*

City of Key West  
Planning Department



Authorization Form  
(Where Owner is a Business Entity)

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Andrew Agostini as  
*Please Print Name of person with authority to execute documents on behalf of entity*  
Managing Member of AVA Key West LLC, the Managing Co-Tenant of the Lexington Property of AVA Key West LLC, JRC Key West Hotel LLC, RFA Key West LLC, and JL Key West LLC  
*Name of office (President, Managing Member)* *Name of owner from deed*

authorize Butch Ross of Patterson Real Estate Advisory Group  
*Please Print Name of Representative*

to be the representative for this application and act on my/our behalf before the City of Key West.

[Signature]  
*Signature of person with authority to execute documents on behalf on entity owner*

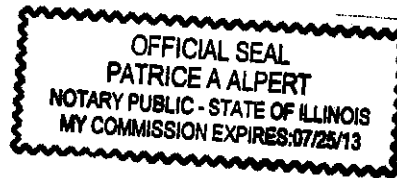
Subscribed and sworn to (or affirmed) before me on this 23rd April, 2013 by  
*date*

ANDREW N. AGOSTINI  
*Name of Authorized Representative*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.

[Signature]  
*Notary's Signature and Seal*

PATRICE A. ALPERT  
*Name of Acknowledger typed, printed or stamped*



\_\_\_\_\_  
*Commission Number, if any*

City of Key West  
Planning Department



Authorization Form  
(Where Owner is a Business Entity)

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Andrew Agostini as  
*Please Print Name of person with authority to execute documents on behalf of entity*

Managing Member of JLW Key West 1, LLC  
*Name of office (President, Managing Member)* *Name of owner from deed*

authorize Butch Ross of Patterson Real Estate Advisory Group  
*Please Print Name of Representative*

to be the representative for this application and act on my/our behalf before the City of Key West.

[Signature]  
*Signature of person with authority to execute documents on behalf on entity owner*

Subscribed and sworn to (or affirmed) before me on this 23<sup>rd</sup> April, 2013 by  
*date*

ANDREW V. AGOSTINI  
*Name of Authorized Representative*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.

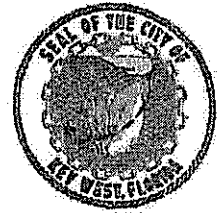
[Signature]  
*Notary's Signature and Seal*

PATRICE A. ALPERT  
*Name of Acknowledger typed, printed or stamped*



\_\_\_\_\_  
*Commission Number, if any*

City of Key West  
Planning Department



Authorization Form  
(Where Owner is a Business Entity)

Please complete this form if someone other than the owner is representing the property owner in this matter,

I, Andrew Agostini as  
*Please Print Name of person with authority to execute documents on behalf of entity*

Managing Member of JLW Key West I, LLC  
*Name of office (President, Managing Member)* *Name of owner from deed*

authorize John Gonzalez of JL Woode Ltd.  
*Please Print Name of Representative*

to be the representative for this application and act on my/our behalf before the City of Key West.

[Signature]  
*Signature of person with authority to execute documents on behalf on entity owner*

Subscribed and sworn to (or affirmed) before me on this 23<sup>rd</sup> April, 2013 by  
*date*

ANDREW V. AGOSTINI.  
*Name of Authorized Representative*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.

[Signature]  
*Notary's Signature and Seal*

PATRICE A. ALPERT  
*Name of Acknowledger typed, printed or stamped*



\_\_\_\_\_  
*Commission Number, if any*

City of Key West  
Planning Department



Authorization Form  
(Where Owner is a Business Entity)

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Andrew Agostini as  
*Please Print Name of person with authority to execute documents on behalf of entity*

Managing Member of AVA Key West LLC, the Managing AVA Key West LLC, JRC Key West Hotel LLC, RFA  
Co-Tenant of the Lexington Property of Key West LLC, and JL Key West LLC  
*Name of office (President, Managing Member)* *Name of owner from deed*

authorize John Gonzalez of JL Woode Ltd.  
*Please Print Name of Representative*

to be the representative for this application and act on my/our behalf before the City of Key West.

[Signature]  
*Signature of person with authority to execute documents on behalf on entity owner*

Subscribed and sworn to (or affirmed) before me on this 23rd April, 2013 by  
*date*

ANDREW V. AGOSTINI  
*Name of Authorized Representative*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.

[Signature]  
*Notary's Signature and Seal*

PATRICE A. ALPERT  
*Name of Acknowledger typed, printed or stamped*



\_\_\_\_\_  
*Commission Number, if any*

**City of Key West  
Planning Department**



**Authorization Form**  
*(Where Owner is a Business Entity)*

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Andrew Agostini as  
*Please Print Name of person with authority to execute documents on behalf of entity*  
Managing Member of JLW Key West 2 LLC, the Managing  
Co-Tenant of the Quality Inn Property of JLW Key West 2 LLC, JL Key West II LLC, RFA  
*Name of office (President, Managing Member)* *Name of owner from deed*  
Key West II LLC,

authorize John Gonzalez of JL Woode Ltd.  
*Please Print Name of Representative*

to be the representative for this application and act on my/our behalf before the City of Key West.

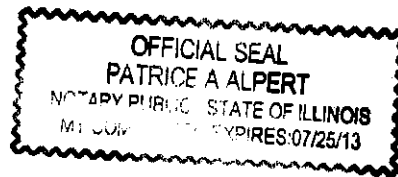
[Signature]  
*Signature of person with authority to execute documents on behalf on entity owner*

Subscribed and sworn to (or affirmed) before me on this 23rd of April, 2013 by  
*date*

ANDREW V. AGOSTINI  
*Name of Authorized Representative*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.

[Signature]  
*Notary's Signature and Seal*



\_\_\_\_\_  
*Name of Acknowledger typed, printed or stamped*

\_\_\_\_\_  
*Commission Number, if any*

City of Key West  
Planning Department



Verification Form

(Where Authorized Representative is an entity)

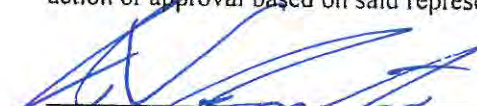
I, Andrew Agostini, in my capacity as Managing Member  
*(print name)* *(print position; president, managing member)*

of JLW Key West 1, LLC  
*(print name of entity serving as Authorized Representative)*

being duly sworn, depose and say that I am the Authorized Representative of the Owner (as appears on the deed), for the following property identified as the subject matter of this application:

3800, 3820, 3848, and 3852 North Roosevelt Blvd., Key West, FL, 33040  
*Street Address of subject property*

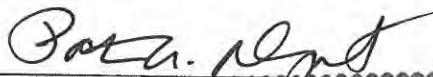
All of the answers to the above questions, drawings, plans and any other attached data which make up the application, are true and correct to the best of my knowledge and belief. In the event the City or the Planning Department relies on any representation herein which proves to be untrue or incorrect, any action or approval based on said representation shall be subject to revocation.

  
*Signature of Authorized Representative*

Subscribed and sworn to (or affirmed) before me on this Monday, March, 2013 by  
*date*

Andrew Agostini  
*Name of Authorized Representative*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.





Name of ~~Witness~~ *Witness* typed, printed or stamped

\_\_\_\_\_  
*Commission Number, if any*



City of Key West  
Planning Department



Authorization Form  
(Where Owner is a Business Entity)

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Andrew Agostini as  
*Please Print Name of person with authority to execute documents on behalf of entity*

Managing Member of JLW Key West 1, LLC  
*Name of office (President, Managing Member) Name of owner from deed*

authorize Andres Rubio and Manny Dominguez of Cooper Carry  
*Please Print Name of Representative*

to be the representative for this application and act on my/our behalf before the City of Key West.

[Signature]  
*Signature of person with authority to execute documents on behalf on entity owner*

Subscribed and sworn to (or affirmed) before me on this 4<sup>th</sup> day of March, 2013 by  
*date*

Andrew Agostini  
*Name of Authorized Representative*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.

[Signature]  
*Notary's Signature and Seal*



Name of Acknowledger, Agent, Principal or Stamped

\_\_\_\_\_  
*Commission Number, if any*

**City of Key West  
Planning Department**



**Authorization Form**  
*(Where Owner is a Business Entity)*

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Andrew Agostini as  
*Please Print Name of person with authority to execute documents on behalf of entity*

Managing Member of JLW Key West 1, LLC  
*Name of office (President, Managing Member) Name of owner from deed*

authorize Allen Perez of Perez Engineering and Development Inc.  
*Please Print Name of Representative*

to be the representative for this application and act on my/our behalf before the City of Key West.

[Signature]  
*Signature of person with authority to execute documents on behalf on entity owner*

Subscribed and sworn to (or affirmed) before me on this 4<sup>th</sup> day of March, 2013 by  
*date*

Andrew Agostini  
*Name of Authorized Representative*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.

Patrice A. Alpert  
*Notary's Signature and Seal*  
**OFFICIAL SEAL  
PATRICE A ALPERT  
NOTARY PUBLIC - STATE OF ILLINOIS  
MY COMMISSION EXPIRES 07/25/13**  
*Name of Acknowledger typed, printed or stamped*

\_\_\_\_\_  
*Commission Number, if any*

City of Key West  
Planning Department



Authorization Form  
(Where Owner is a Business Entity)

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Andrew Agostini as  
*Please Print Name of person with authority to execute documents on behalf of entity*

Managing Member of JLW Key West 1, LLC  
*Name of office (President, Managing Member) Name of owner from deed*

authorize Rod Radcliff and Michael McHale of Advent PDS  
*Please Print Name of Representative*

to be the representative for this application and act on my/our behalf before the City of Key West.

[Signature]  
*Signature of person with authority to execute documents on behalf on entity owner*

Subscribed and sworn to (or affirmed) before me on this 4<sup>th</sup> day of March, 2013 by  
*date*

Andrew Agostini  
*Name of Authorized Representative*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.

[Signature]  
*Notary's Signature and Seal*  
**OFFICIAL SEAL**  
**PATRICE A ALPERT**  
**NOTARY PUBLIC - STATE OF ILLINOIS**  
**MY COMMISSION EXPIRES: 07/25/13**  
*Name of Acknowledger typed, printed or stamped*

\_\_\_\_\_  
*Commission Number, if any*



City of Key West  
Planning Department



Authorization Form  
(Where Owner is a Business Entity)

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Andrew Agostini as  
*Please Print Name of person with authority to execute documents on behalf of entity*

Managing Member of JLW Key West 1, LLC  
*Name of office (President, Managing Member) Name of owner from deed*

authorize Thomas E. Pope  
*Please Print Name of Representative*

to be the representative for this application and act on my/our behalf before the City of Key West.

[Signature]  
*Signature of person with authority to execute documents on behalf on entity owner*

Subscribed and sworn to (or affirmed) before me on this 4<sup>th</sup> day of March, 2013 by  
*date*

Andrew Agostini  
*Name of Authorized Representative*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.

[Signature]  
*Notary's Signature and Seal*  
**OFFICIAL SEAL**  
**PATRICE A ALPERT**  
**NOTARY PUBLIC - STATE OF ILLINOIS**  
**MY COMMISSION EXPIRES 07/25/13**  
*Name of Acknowledger typed, printed or stamped*

\_\_\_\_\_  
*Commission Number, if any*

City of Key West  
Planning Department



Verification Form

(Where Authorized Representative is an entity)

I, Andrew Agostini, in my capacity as Managing Member of AVA Key West, LLC, the Managing Cotenant  
*(print name)* of the Lexington Property  
*(print position; president, managing member)*  
of AVA Key West LLC, JL Key West LLC, JRC Key West Hotel LLC, and RFA Key West LLC  
*(print name of entity serving as Authorized Representative)*

being duly sworn, depose and say that I am the Authorized Representative of the Owner (as appears on the deed), for the following property identified as the subject matter of this application:

3850 North Roosevelt Blvd., Key West, FL, 33040  
*Street Address of subject property*

All of the answers to the above questions, drawings, plans and any other attached data which make up the application, are true and correct to the best of my knowledge and belief. In the event the City or the Planning Department relies on any representation herein which proves to be untrue or incorrect, any action or approval based on said representation shall be subject to revocation.

*[Signature]*  
*Signature of Authorized Representative*

Subscribed and sworn to (or affirmed) before me on this 4<sup>th</sup> day of March, 2013 by  
Andrew Agostini  
*Name of Authorized Representative*  
*date*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.

*[Signature]*  
*Notary's Signature and Seal*  
**OFFICIAL SEAL**  
**PATRICE A ALPERT**  
**NOTARY PUBLIC - STATE OF ILLINOIS**  
**MY COMMISSION EXPIRES 07/25/13**  
*Name of Notary Public, typed, printed or stamped*

\_\_\_\_\_  
*Commission Number, if any*

City of Key West  
Planning Department



Authorization Form  
(Where Owner is a Business Entity)

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Andrew Agostini as  
*Please Print Name of person with authority to execute documents on behalf of entity*

Managing Member of AVA Key West, LLC, the Managing Co-tenant of the Lexington Property of AVA Key West LLC, JL Key West LLC, JRC Key West Hotel LLC, and RFA Key West LLC  
*Name of office (President, Managing Member)* *Name of owner from deed*

authorize Andres Rubio and Manny Dominguez of Cooper Carry  
*Please Print Name of Representative*

to be the representative for this application and act on my/our behalf before the City of Key West.

[Signature]  
*Signature of person with authority to execute documents on behalf on entity owner*

Subscribed and sworn to (or affirmed) before me on this 4<sup>th</sup> day of March, 2013 by  
*date*

Andrew Agostini  
*Name of Authorized Representative*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.

[Signature]  
*Notary Signature and Seal*  
OFFICIAL SEAL  
PATRICE A ALPERT  
NOTARY PUBLIC - STATE OF ILLINOIS  
MY COMMISSION EXPIRES: 07/25/13  
*Name of Acknowledger typed, printed or stamped*

\_\_\_\_\_  
*Commission Number, if any*



City of Key West  
Planning Department



Authorization Form  
(Where Owner is a Business Entity)

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Andrew Agostini as  
*Please Print Name of person with authority to execute documents on behalf of entity*

Managing Member of AVA Key West, LLC, the Managing Co-tenant of the Lexington Property of AVA Key West LLC, JL Key West LLC, JRC Key West Hotel LLC, and RFA Key West LLC  
*Name of office (President, Managing Member)* *Name of owner from deed*

authorize Rod Radcliff and Michael McHale of Advent PDS  
*Please Print Name of Representative*

to be the representative for this application and act on my/our behalf before the City of Key West.

[Signature]  
*Signature of person with authority to execute documents on behalf on entity owner*

Subscribed and sworn to (or affirmed) before me on this 4<sup>th</sup> day of March, 2013 by  
*date*

Andrew Agostini  
*Name of Authorized Representative*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.

[Signature]  
Notary's Seal  
PATRICE A ALPERT  
NOTARY PUBLIC - STATE OF ILLINOIS  
MY COMMISSION EXPIRES: 07/25/13  
*Name of Notary Public typed, printed or stamped*

\_\_\_\_\_  
*Commission Number, if any*

City of Key West  
Planning Department



Authorization Form  
(Where Owner is a Business Entity)

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Andrew Agostini as  
*Please Print Name of person with authority to execute documents on behalf of entity*

Managing Member of AVA Key West, LLC, the Managing Co-tenant of the Lexington Property of AVA Key West LLC, JL Key West LLC, JRC Key West Hotel LLC, and RFA Key West LLC  
*Name of office (President, Managing Member)* *Name of owner from deed*

authorize Allen Perez of Perez Engineering and Development  
*Please Print Name of Representative*

to be the representative for this application and act on my/our behalf before the City of Key West.

[Signature]  
*Signature of person with authority to execute documents on behalf on entity owner*

Subscribed and sworn to (or affirmed) before me on this 4<sup>th</sup> day, March, 2013 by  
*date*

Andrew Agostini  
*Name of Authorized Representative*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.

Patrice A. Alpert  
*Notary's Signature and Seal*  
OFFICIAL SEAL  
PATRICE A ALPERT  
NOTARY PUBLIC - STATE OF ILLINOIS  
MY COMMISSION EXPIRES: 07/25/13  
*Name of Acknowledger typed, printed or stamped*

\_\_\_\_\_  
*Commission Number, if any*





City of Key West  
Planning Department



Verification Form

(Where Authorized Representative is an entity)

I, Andrew Agostini, in my capacity as Managing Member of JLW Key West 2, LLC, the Managing Cotenant of the Quality Inn Property  
*(print name)* *(print position; president, managing member)*

of JL Key West 2 LLC, JL Key West II LLC, and REA Key West II LLC  
*(print name of entity serving as Authorized Representative)*

being duly sworn, depose and say that I am the Authorized Representative of the Owner (as appears on the deed), for the following property identified as the subject matter of this application:

3824 North Roosevelt Blvd., Key West, FL 33040  
*Street Address of subject property*

All of the answers to the above questions, drawings, plans and any other attached data which make up the application, are true and correct to the best of my knowledge and belief. In the event the City or the Planning Department relies on any representation herein which proves to be untrue or incorrect, any action or approval based on said representation shall be subject to revocation.

*[Handwritten Signature]*  
*Signature of Authorized Representative*

Subscribed and sworn to (or affirmed) before me on this 4<sup>th</sup> day of March, 2013 by  
*date*

Andrew Agostini  
*Name of Authorized Representative*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.

*[Handwritten Signature]*  
*Notary's Signature and Seal*  
**OFFICIAL SEAL**  
**PATRICE A ALPERT**  
**NOTARY PUBLIC - STATE OF ILLINOIS**  
**MY COMMISSION EXPIRES: 07/25/13**  
*Name of Notary Public, typed, printed or stamped*

\_\_\_\_\_  
*Commission Number, if any*

City of Key West  
Planning Department



Authorization Form  
(Where Owner is a Business Entity)

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Andrew Agostini as  
*Please Print Name of person with authority to execute documents on behalf of entity*

Managing Member of JLW Key West 2, LLC, the Managing Co-tenant  
of the Quality Inn Property JLW West 2 LLC, JL Key West II LLC, and RFA Key West II LLC  
*Name of office (President, Managing Member)* of *Name of owner from deed*

authorize Andres Rubio and Manny Dominguez of Cooper Carry  
*Please Print Name of Representative*

to be the representative for this application and act on my/our behalf before the City of Key West.

[Signature]  
*Signature of person with authority to execute documents on behalf on entity owner*

Subscribed and sworn to (or affirmed) before me on this 4th day of March, 2013 by  
*date*

Andrew Agostini  
*Name of Authorized Representative*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.

[Signature]  
*Notary's Signature and Seal*  
OFFICIAL SEAL  
PATRICE A ALPERT  
NOTARY PUBLIC - STATE OF ILLINOIS  
MY COMMISSION EXPIRES: 07/25/13  
*Name of Notary Public, typed, printed or stamped*

\_\_\_\_\_  
*Commission Number, if any*



City of Key West  
Planning Department



Authorization Form  
(Where Owner is a Business Entity)

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Andrew Agostini as  
*Please Print Name of person with authority to execute documents on behalf of entity*

Managing Member of JLW Key West 2, LLC, the Managing Co-tenant of the Quality Inn Property JLW West 2 LLC, JL Key West II LLC, and RFA Key West II LLC  
*Name of office (President, Managing Member)* of *Name of owner from deed*

authorize Rod Radcliff and Michael McHale of Advent PDS  
*Please Print Name of Representative*

to be the representative for this application and act on my/our behalf before the City of Key West.

[Signature]  
*Signature of person with authority to execute documents on behalf on entity owner*

Subscribed and sworn to (or affirmed) before me on this 4<sup>th</sup> day of March, 2013 by  
*Date*

Andrew Agostini  
*Name of Authorized Representative*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.

[Signature]  
*Notary's Signature and Seal*  
PATRICE A ALPERT  
NOTARY PUBLIC - STATE OF ILLINOIS  
MY COMMISSION EXPIRES-07/25/13

\_\_\_\_\_  
*Name of Acknowledger typed, printed or stamped*

\_\_\_\_\_  
*Commission Number, if any*

**City of Key West  
Planning Department**



**Authorization Form**  
*(Where Owner is a Business Entity)*

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Andrew Agostini as  
*Please Print Name of person with authority to execute documents on behalf of entity*

Managing Member of JLW Key West 2, LLC, the Managing Co-tenant  
of the Quality Inn Property JLW West 2 LLC, JL Key West II LLC, and RFA Key West II LLC  
*Name of office (President, Managing Member)* of *Name of owner from deed*

authorize Allen Perez of Perez Engineering and Development  
*Please Print Name of Representative*

to be the representative for this application and act on my/our behalf before the City of Key West.

[Signature]  
*Signature of person with authority to execute documents on behalf on entity owner*

Subscribed and sworn to (or affirmed) before me on this 4<sup>th</sup> day of March, 2013 by  
*date*

Andrew Agostini  
*Name of Authorized Representative*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.

[Signature]  
*Notary's Signature and Seal*  
**PATRICE A ALPERT**  
NOTARY PUBLIC - STATE OF ILLINOIS  
MY COMMISSION EXPIRES: 07/25/13  
*Name of Acknowledger typed, printed or stamped*

\_\_\_\_\_  
*Commission Number, if any*

**City of Key West  
Planning Department**



**Authorization Form**  
*(Where Owner is a Business Entity)*

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Andrew Agostini as  
*Please Print Name of person with authority to execute documents on behalf of entity*

Managing Member of JLW Key West 2, LLC, the Managing Co-tenant  
of the Quality Inn Property JLW West 2 LLC, JL Key West II LLC, and RFA Key West II LLC  
*Name of office (President, Managing Member)* of *Name of owner from deed*

authorize Thomas E Pope  
*Please Print Name of Representative*

to be the representative for this application and act on my/our behalf before the City of Key West.

[Signature]  
*Signature of person with authority to execute documents on behalf on entity owner*

Subscribed and sworn to (or affirmed) before me on this Monday, March, 2013 by  
*date*

Andrew Agostini  
*Name of Authorized Representative*

He/She is personally known to me or has presented \_\_\_\_\_ as identification.

[Signature]  
*Notary's Signature and Seal*  
**OFFICIAL SEAL**  
**PATRICE A ALPERT**  
**NOTARY PUBLIC - STATE OF ILLINOIS**  
**MY COMMISSION EXPIRES: 07/25/13**  
*Name of Acknowledger typed, printed or stamped*

\_\_\_\_\_  
*Commission Number, if any*



# FLORIDA DEPARTMENT OF STATE DIVISION OF CORPORATIONS



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## Detail by Entity Name

### Florida Limited Liability Company

JLW KEY WEST 1, LLC

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### Filing Information

**Document Number** L06000098363  
**FEI/EIN Number** 205735783  
**Date Filed** 10/06/2006  
**State** FL  
**Status** ACTIVE  
**Last Event** LC AMENDMENT  
**Event Date Filed** 12/28/2010  
**Event Effective Date** NONE

### Principal Address

35 EAST WACKER DRIVE, SUITE 3300  
CHICAGO IL 60601

Changed 12/28/2010

### Mailing Address

35 EAST WACKER DRIVE, SUITE 3300  
CHICAGO IL 60601

Changed 12/28/2010

### Registered Agent Name & Address

CORPORATION SERVICE COMPANY  
1201 HAYS STREET  
TALLAHASSEE FL 32301-2525 US

Name Changed: 12/28/2010

Address Changed: 12/28/2010

### Manager/Member Detail

**Name & Address**

Title MGRM

AGOSTINI, ANDREW V  
35 EAST WACKER DRIVE, SUITE 3300  
CHICAGO IL 60601

**Annual Reports**

**Report Year Filed Date**

2010      04/29/2010  
2011      04/26/2011  
2012      04/20/2012

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FLORIDA DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS



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**Detail by Entity Name**

**Florida Limited Liability Company**

JLW KEY WEST 1, LLC

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**Principal Address**

35 EAST WACKER DRIVE, SUITE 3300  
CHICAGO IL 60601

Changed 12/28/2010

**Mailing Address**

35 EAST WACKER DRIVE, SUITE 3300  
CHICAGO IL 60601

Changed 12/28/2010

**Registered Agent Name & Address**

CORPORATION SERVICE COMPANY  
1201 HAYS STREET  
TALLAHASSEE FL 32301-2525 US

Name Changed: 12/28/2010

Address Changed: 12/28/2010

**Manager/Member Detail**

**Name & Address**

Title MGRM

AGOSTINI, ANDREW V  
35 EAST WACKER DRIVE, SUITE 3300  
CHICAGO IL 60601

**Annual Reports**

**Report Year Filed Date**

2010 04/29/2010  
2011 04/26/2011  
2012 04/20/2012

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## ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTEREST

(JLW Key West 1, LLC)

THIS ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTEREST (this “**Assignment**”) is made and entered into as of the 20<sup>th</sup> day of July, 2012 (the “**Effective Date**”) by and between SH 7, INC., a Florida corporation (“**Assignor**”), and RFA INVESTORS, LP, a Delaware limited partnership (“**Assignee**”).

### RECITALS

A. JLW Key West 1, LLC, a Florida limited liability company (the “**Company**”), is governed by that certain Limited Liability Company Agreement of JLW Key West 1, LLC dated October 7, 2006, as amended by First Amendment to Operating Agreement of JLW Key West 1, LLC dated December 23, 2009, as further amended by Second Amendment to Operating Agreement dated as of December 27, 2010 (as so amended, the “**Operating Agreement**”). Any capitalized term used but not defined herein shall have its respective meaning as set forth in the Operating Agreement.

B. Assignor is the owner of a 22.50% membership interest in the Company (such interest, together with its capital account and all of its rights to allocation of income, losses, deductions, credits and distributions of cash flow, capital proceeds, liquidation proceeds and other rights, privileges and capital attributable to that interest and subject to all burdens and obligations of an owner of that interest that accrue, the “**Membership Interest**”).

C. Assignee currently is the owner of a 22.50% membership interest in the Company.

D. In connection with that certain Purchase and Sale Agreement dated as of June 19, 2012 (the “**PSA**”), Assignor desires to sell, transfer and assign the Membership Interest to Assignee, and Assignee desires to purchase, accept and receive the Membership Interest from Assignor, all in accordance with the terms and conditions contained in this Assignment.

**NOW, THEREFORE**, for and in consideration of the payments made under PSA, the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignment of Membership Interest and Withdrawal. Assignor hereby (i) irrevocably and unconditionally sells, assigns, grants, conveys, transfers, and sets over the Membership Interest unto Assignee, free and clear of any and all liens, encumbrances, claims or restrictions on transfer or voting, other than restrictions on transfer imposed by the Operating Agreement and the \$56.5 Million Loan (as defined in the PSA), together with all rights, title, benefits, and interest of Assignor in and to the Membership Interest, and (ii) resigns and withdraws as a Member of the Company.

2. Assumption. Assignee hereby takes and accepts the foregoing assignment of the Membership Interest, subject to the obligations of an owner thereof. Assignee hereby (i)

assumes and agrees to perform all of the obligations and liabilities associated with the Membership Interest, (ii) agrees to be bound by all the terms and provisions of the Operating Agreement and formation documents of the Company and (iii) accepts admittance as a substitute Member of the Company in place of the Assignor. From and after the Effective Date, Assignee shall be the owner a 45.00% membership interest in the Company.

3. Termination of Interest. The Assignor hereby acknowledges and agrees that, as a result of this Assignment, the Assignor hereby ceases to be a Member of or retain any right or interest in the Company from and after the Effective Date, and all each such right or interest is hereby vested in Assignee. The Assignor agrees that all cash flow, income, profits, proceeds, gains and losses related to the Membership Interest whether relating to the period from and after or prior to the Effective Date shall belong to the Assignee.

4. Consent of the Remaining Members. Pursuant to Article IX of the Operating Agreement and by execution of this Assignment, the remaining Members of the Company (other the JG Member and TF Member) hereby consent to the assignment of the Membership Interest from Assignor to Assignee, to the extent such consent is required under the Operating Agreement.

5. Release. The provisions of that certain Project Key West Mutual Release Agreement dated as of even date herewith and executed in connection with the PSA shall apply to this Assignment and are hereby expressly incorporated into this Assignment as if the same were set forth herein.

6. No Dissolution Caused. The parties to this Assignment hereby (i) acknowledge that neither the execution and delivery of this Assignment, nor the consummation of the transaction contemplated herein, is intended to cause a dissolution of the Company under Florida law, and (ii) agree that the Company will not be dissolved as a result of the execution and delivery of this Assignment.

7. Governing Law. This Assignment will be governed by, and construed in accordance with, the laws of the State of Florida without regard to the conflict of laws rules of such state, including all means of construction, validity and performance.

8. Counterparts. This Assignment may be signed in any number of counterparts, each of which will be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Any signature delivered by facsimile or by electronic transmission shall be deemed to be an original signature hereto.

9. Further Assurances. Each party hereto will, from time to time and at all times hereafter, without cost or expense to such party, upon every reasonable request to do so by the other parties, make, do, execute and deliver, or cause to be made, done, executed and delivered, all such further acts, deeds, assurances and things as may be legally required or reasonably necessary in order to further implement and carry out the intent and purpose of this Assignment.

10. Binding Effect; Modification. This Assignment shall be binding upon, and shall inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, successors, assigns, agents, legal representatives, bankruptcy trustees and attorneys. Any modification of this Assignment shall be effective only if in a writing executed by all the parties.

11. Entire Assignment. This Assignment, the PSA and any collateral documents and instruments executed in connection with the consummation of the transactions contemplated hereby contain the entire agreement among the parties with respect to the transactions contemplated hereby, and supersede all prior agreements, written or oral, with respect thereto.

12. Invalid Provisions. If any provision of this Assignment is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party hereto under this Assignment will not be materially and adversely affected thereby, (i) such provision will be fully severable, (ii) this Assignment will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, and (iii) the remaining provisions of this Assignment will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom.

**[signature page follows]**

**IN WITNESS WHEREOF**, the parties have executed this Assignment and Assumption of Membership Interest as of the day, month and year first written above.

**ASSIGNOR:**

SH 7, INC. a Florida corporation



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

Name: Robert A. Spottswood

Title: President

**ASSIGNEE:**

RFA INVESTORS, LP, a Delaware limited partnership

By: RFA Management Company LLC, a Delaware limited liability company, its general partner

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

Name: Edward W. Ross

Title: Manager

**REMAINING MEMBERS:**

\_\_\_\_\_  
**ANDREW V. AGOSTINI**

\_\_\_\_\_  
**J. LUZURIAGA**

**IN WITNESS WHEREOF**, the parties have executed this Assignment and Assumption of Membership Interest as of the day, month and year first written above.

**ASSIGNOR:**


**SH 7, INC.**, a Florida corporation

By: \_\_\_\_\_  
Name: Robert A. Spottswood  
Title: President

**ASSIGNEE:**

**RFA INVESTORS, LP**, a Delaware limited partnership

By: RFA Management Company LLC, a Delaware limited liability company, its general partner

By:   
Name: Edward W. Ross  
Title: Manager

**REMAINING MEMBERS:**

  
\_\_\_\_\_  
**ANDREW V. AGOSTINI**

\_\_\_\_\_  
**J. LUZURIAGA**

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption of Membership Interest as of the day, month and year first written above.

**ASSIGNOR:**

SH 7, INC., a Florida corporation

By: \_\_\_\_\_  
Name: Robert A. Spottswood  
Title: President

**ASSIGNEE:**

RFA INVESTORS, LP, a Delaware limited partnership

By: RFA Management Company LLC, a Delaware limited liability company, its general partner

By: \_\_\_\_\_  
Name: Edward W. Ross  
Title: Manager

**REMAINING MEMBERS:**

\_\_\_\_\_  
ANDREW V. AGOSTINI

\_\_\_\_\_  
J. LUZURIAGA



**SECOND AMENDMENT TO OPERATING AGREEMENT**  
**OF**  
**JLW KEY WEST 1, LLC**

THIS SECOND AMENDMENT TO OPERATING AGREEMENT OF JLW KEY WEST 1, LLC (this "**Amendment**") is made as of the 27<sup>th</sup> day of December, 2010 (the "**Effective Date**") by and among the parties hereto who are signatories to this Amendment (each a "**Member**") and collectively, the "**Members**"), constituting all of the members of JLW KEY WEST 1, LLC, a Florida limited liability company (the "**Company**").

**RECITALS:**

A. The Members entered into that certain Limited Liability Company Operating Agreement of the Company dated October 7, 2006, as amended by that certain First Amendment to Operating Agreement of the Company dated December 23, 2009 (as so amended, the "**Operating Agreement**"), which sets forth the regulations, terms and conditions under which the Company is operated.

B. The Company owns those certain real properties located in Key West, Florida and commonly known as (i) the current or former Radisson Hotel, located at 3820 N. Roosevelt Boulevard, (ii) the current or former Days Inn Hotel, located at 3852 N. Roosevelt Boulevard, (iii) the current or former El Meson de Pepe Restaurant, located at 3800 N. Roosevelt Boulevard, and (iv) the Conch Tour Train, located at 3840 N. Roosevelt Boulevard (collectively, the "**Properties**").

C. The Members desire to further amend the Operating Agreement to (i) reflect the resignation of SH 7, Inc., a Florida corporation ("**SH 7**"), as the Managing Member of the Company and (ii) appoint Andrew V. Agostini ("**Agostini**"), as the new Managing Member of the Company.

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Members hereby agree as follows:

1. Recitals; Defined Terms. The above recitals, definitions, preamble and provisions are hereby made a part of this Agreement. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Operating Agreement.

2. Resignation of Existing Managing Member. Pursuant to Section 7.3 of the Operating Agreement, SH 7 hereby resigns as the Managing Member of the Company, which resignation shall take effect on the Effective Date (such date also being referred to as the "**Resignation Date**"). SH 7 shall remain a Member of the Company. The foregoing resignation shall not affect SH 7's rights as a Member, if any, and shall not constitute SH 7's withdrawal as a Member.

3. Appointment of New Managing Member. Effective as of the Resignation Date, the Members hereby elect and appoint Agostini as the new Managing Member of the Company.

Agostini agrees to perform as Managing Member of the Company in accordance with the terms of the Operating Agreement.

4. New Property Management Agreement. Notwithstanding anything to contrary in Section 7.2 of the Operating Agreement, the Members hereby approve the entry by Owner into a one or more new property and hotel management agreements for the Properties with Hostmark Hospitality Group (“**Hostmark**”) on “market” terms and conditions acceptable to Agostini as the new Managing Member, provided, that the management fee payable to Hostmark shall not be in excess of the management fee that was paid to Spottswood Management, Inc.

5. Principal Office. Section 2.4 of the Operating Agreement is hereby deleted in its entirety and, in lieu thereof, there is substituted the following:

“**Principal Office.** The location of the Company’s principal office is 35 East Wacker Drive, Suite 3300, Chicago, Illinois 60611, or such other place as from time to time may be selected by the Managing Member.”

6. Registered Agent and Registered Office. Section 2.5 of the Operating Agreement is hereby deleted in its entirety and, in lieu thereof, there is substituted the following:

“**Registered Agent and Registered Office.** The statutory agent for service of process and the registered office of the Company in the State of Florida shall be the Person and office designated by the Managing Manager from time to time to serve in that capacity in accordance with the Act.”

7. Lender Approval. This Amendment shall not become effective unless and until approved by Bank of America, N.A., in accordance with the terms of the Loan.

8. No Other Changes. Except as specifically provided by this Amendment, no part of the Operating Agreement is in any way altered, amended or changed. In the event of any inconsistency between the Operating Agreement and this Amendment, the terms of this Amendment shall supersede and control to the extent of any such inconsistency.

9. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Florida, without reference to principles of conflicts of law.

10. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instruments. Any signature delivered by facsimile or by electronic transmission shall be deemed to be an original signature hereto.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the Members have executed this Amendment or caused this Amendment to be executed by its duly authorized representatives, as of the date first above written.

**MEMBERS:**

SH 7, INC., a Florida corporation

By: 

Name: Robert A. Spottswood

Title: President

\_\_\_\_\_  
ANDREW V. AGOSTINI

Being the Managing Member prior to the  
Resignation Date

Becoming the Managing Member from and  
after the Resignation Date

\_\_\_\_\_  
J. LUZURIAGA

RFA Investors, LP, a Delaware limited  
partnership

By: RFA Management Company LLC, a  
Delaware limited liability company, its  
general partner

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

Name: Edward W. Ross

Title: Manager


\_\_\_\_\_  
TYLER FLESCHE

\_\_\_\_\_  
JEREMY GLENDENNING

IN WITNESS WHEREOF, the Members have executed this Amendment or caused this Amendment to be executed by its duly authorized representatives, as of the date first above written.

**MEMBERS:**

SH 7, INC., a Florida corporation

  
ANDREW V. AGOSTINI

By: \_\_\_\_\_  
Name: Robert A. Spottswood  
Title: President


Being the Managing Member prior to the  
Resignation Date

Becoming the Managing Member from and  
after the Resignation Date

\_\_\_\_\_  
J. LUZURIAGA

RFA Investors, LP, a Delaware limited  
partnership

By: RFA Management Company LLC, a  
Delaware limited liability company, its  
general partner

By:   
Name: Edward W. Ross  
Title: Manager

\_\_\_\_\_  
TYLER FLESCH

\_\_\_\_\_  
JEREMY GLENDENNING

IN WITNESS WHEREOF, the Members have executed this Amendment or caused this Amendment to be executed by its duly authorized representatives, as of the date first above written.

**MEMBERS:**


SH 7, INC., a Florida corporation

\_\_\_\_\_  
ANDREW V. AGOSTINI

By: \_\_\_\_\_  
Name: Robert A. Spottswood  
Title: President

Being the Managing Member prior to the  
Resignation Date

Becoming the Managing Member from and  
after the Resignation Date

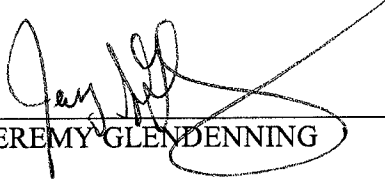
  
\_\_\_\_\_  
J. LUZURIAGA

RFA Investors, LP, a Delaware limited  
partnership

By: RFA Management Company LLC, a  
Delaware limited liability company, its  
general partner

By: \_\_\_\_\_  
Name: Edward W. Ross  
Title: Manager

\_\_\_\_\_  
TYLER FLESCHE

  
\_\_\_\_\_  
JEREMY GLENDENNING

IN WITNESS WHEREOF, the Members have executed this Amendment or caused this Amendment to be executed by its duly authorized representatives, as of the date first above written.

**MEMBERS:**

SH 7, INC., a Florida corporation

\_\_\_\_\_  
ANDREW V. AGOSTINI

By: \_\_\_\_\_  
Name: Robert A. Spottswood  
Title: President

Being the Managing Member prior to the  
Resignation Date

Becoming the Managing Member from and  
after the Resignation Date

\_\_\_\_\_  
J. LUZURIAGA

RFA Investors, LP, a Delaware limited  
partnership

By: RFA Management Company LLC, a  
Delaware limited liability company, its  
general partner

By: \_\_\_\_\_  
Name: Edward W. Ross  
Title: Manager

  
\_\_\_\_\_  
TYLER FLESCH

\_\_\_\_\_  
JEREMY GLENDENNING

**FIRST AMENDMENT TO OPERATING AGREEMENT**  
**OF**  
**JLW KEY WEST 1, LLC**

This First Amendment to Operating Agreement of JLW KEY WEST 1, LLC (this "Agreement") is made this 23 day of December, 2009 (the "Effective Date"), by and among the parties hereto who are signatories to this Agreement (each a "Member" and collectively, the "Members"), constituting all of the members of JLW KEY WEST 1, LLC, a Florida limited liability company (the "Company").

**Recitals**

A. The Members entered into the Operating Agreement of the Company dated October 7, 2006 (the "Operating Agreement"), which sets forth the regulations, terms and conditions under which the Company is operated; and

B. The Company, along with JLW Key West 2, LLC, a Florida limited liability company, RFA Key West II LLC, a Florida limited liability company, JL Key West II LLC, a Florida limited liability company, and SH 8, LLC, a Florida limited liability company (the "Co-Borrowers"), borrowed \$61,500,000.00 under a loan previously given by Bank of America, N.A., a national banking association, successor by merger to LaSalle Bank National Association, a national banking association, pursuant to that certain Loan Agreement dated November 8, 2006 and other loan documents related thereto, to finance the acquisition by the Company and the Co-Borrowers of certain properties located in Key West, Florida (the "Original Loan"); and

C. The Company, together with the Co-Borrowers, desire to modify and restructure the Original Loan with Bank of America, N.A., a national banking association, as agent on behalf of itself and Associated Bank, National Association, a national banking association (collectively, the "Lender"); and

D. In connection with the modification and restructuring of the Original Loan (the "Loan Modification") with the Lender, the Members desire to amend certain definitions contained in the Operating Agreement.

**Agreement**

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Members agree as follows:

1. Recitals; Defined Terms. The above recitals, definitions, preamble and provisions are hereby made a part of this Agreement. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Operating Agreement.

2. Amendments to Definitions in Operating Agreement.

(a) The definition of "Agent" contained in Section 1.1 is hereby deleted in its entirety and the following shall be substituted in place thereof:

**"Agent:** "Agent" shall mean Bank of America, N.A., a national banking association, as administrative agent on behalf of itself and certain other Lenders."

(b) The definition of "Banks" contained in Section 1.1 is hereby deleted in its entirety.

(c) The definition of "Lender(s)" shall be added to Section 1.1 of the Operating Agreement as follows:

**"Lender(s):** "Lender(s)" shall have the meaning given to such term in the Loan Agreement."

(d) The definition of "Loan" contained in Section 1.1 of the Operating Agreement is hereby deleted in its entirety and the following shall be substituted in place thereof:

**"Loan:** "Loan" shall mean the financing provided by Lenders, to the Company and Other Borrowers in the original principal amount of \$56,500,000.00 pursuant to the Loan Agreement, as the same shall be amended, consolidated, modified, or restated from time to time, including, without limitation, any amendments that increase the principal amount of the indebtedness."

(e) The definition of "Loan Agreement" contained in Section 1.1 of the Operating Agreement is hereby deleted in its entirety and the following shall be substituted in place thereof:

**"Loan Agreement:** "Loan Agreement" shall mean that certain Amended and Restated Term Loan Agreement to be dated December 23, 2009 by and among Agent, Lenders, the Company and Other Borrowers related to the Loan, as such Loan Agreement may be amended, modified, or restated from time to time, including, without limitation, amendments that increase the principal amount of the indebtedness."

(f) The definition of "Other Borrower" contained in Section 1.1 of the Operating Agreement is hereby deleted in its entirety and the following shall be substituted in place thereof:

**"Other Borrowers** "Other Borrowers" means JLW Key West 2, LLC, a Florida limited liability company, JL Key West II LLC, a Florida limited liability company, RFA Key West II LLC, a Florida limited liability company, and SH 8, LLC, a Florida limited liability company."

3. No Other Changes. Except as specifically provided by this Agreement, no part of the Operating Agreement is in any way altered, amended or changed. In the event of any inconsistency between the Operating Agreement and this Agreement, the terms of this Agreement shall supersede and control to the extent of any such inconsistency.

4. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without reference to principles of conflicts of law. Any signature delivered by facsimile or by electronic transmission shall be deemed to be an original signature hereto.

[Remainder of Page Intentionally Left Blank; Signature Page Follows.]



IN WITNESS WHEREOF, the Members have executed this Agreement or caused this Agreement to be executed by its duly authorized representatives, as of the Effective Date.

**MANAGING MEMBER:**

SH 7, Inc., a Florida corporation

By: 

Robert A. Spottswood, President

**MEMBERS:**

RFA Investors, LP,  
a Delaware limited partnership

By: RFA Management Company LLC,  
a Delaware limited liability company,  
its general partner

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

Edward W. Ross, Manager

\_\_\_\_\_  
Andrew V. Agostini

\_\_\_\_\_  
J. Luzuriaga

\_\_\_\_\_  
Tyler Flesch

\_\_\_\_\_  
Jeremy Glendenning

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**MANAGING MEMBER:**

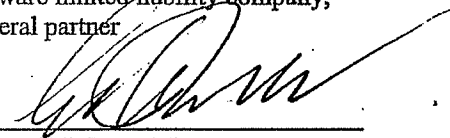
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By: \_\_\_\_\_  
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By: \_\_\_\_\_  
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Jeremy Glendenning

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SH 7, Inc., a Florida corporation

By: \_\_\_\_\_  
Robert A. Spottswood, President

**MEMBERS:**

RFA Investors, LP,  
a Delaware limited partnership

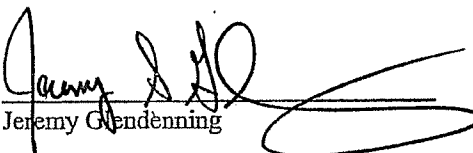
By: RFA Management Company LLC,  
a Delaware limited liability company,  
its general partner

By: \_\_\_\_\_  
Edward W. Ross, Manager

\_\_\_\_\_  
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\_\_\_\_\_  
J. Luzuriaga

\_\_\_\_\_  
Tyler Flesch

  
\_\_\_\_\_  
Jeremy Glendenning

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**LIMITED LIABILITY COMPANY OPERATING AGREEMENT**

**OF**

**JLW KEY WEST 1, LLC**

October 7, 2006

THE MEMBERSHIP INTERESTS CREATED BY THIS OPERATING AGREEMENT ARE NOT INTENDED TO CONSTITUTE SECURITIES. TO THE EXTENT THESE MEMBERSHIP INTERESTS ARE CONSTRUED TO BE SECURITIES, THEN SUCH SECURITIES REPRESENTED BY THIS OPERATING AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR REGISTERED NOR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE COMPANY, SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER OF ANY SECURITIES REPRESENTED BY THIS OPERATING AGREEMENT IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS AND CONDITIONS.

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**LIMITED LIABILITY COMPANY OPERATING AGREEMENT**  
**OF**  
**JLW KEY WEST 1, LLC**

In accordance with the Florida Limited Liability Company Act and subject to the Articles of Organization, which were filed on October 6, 2006 with the Florida Department of State, the members listed on Exhibit A, and such other persons or entities who from time to time are signatories hereto (the "Members"), adopt the following Limited Liability Company Operating Agreement regarding the conduct of the business and affairs of JLW Key West 1, LLC (the "Company").

**WITNESSETH:**

WHEREAS, the Members formed the Company under the Florida Limited Liability Company Act; and

WHEREAS, the Members desire to adopt this Agreement to set forth herein the regulations, terms and conditions under which the Company will be operated.

NOW, THEREFORE, set forth below are the regulations, terms and conditions of the operation of the Company.

**ARTICLE I - DEFINED TERMS; EXHIBITS, ETC.**

**1.1 Definitions.** As used in this Agreement, the following terms shall have the respective meanings indicated below:

"Act" means the Florida Limited Liability Company Act, as the same may be amended from time to time.

"Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) decrease such deficit by any amounts which such Member is obligated or deemed obligated to restore pursuant to this Agreement or the penultimate sentence of each of Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5). For these purposes, a Member is obligated to restore an amount to the Company to the extent (i) the Member is unconditionally obligated to restore part or all of its negative Capital Account balance in the manner described in Regulation Section 1.704-

1(b)(2)(ii)(b)(3), or (ii) the Member is unconditionally obligated to contribute capital to the Company;  
and

(b) increase such deficit by the items described in Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

**"Affiliate"** means any Person who or which, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with an entity (the term **"control"** for purposes of this definition meaning the ability, whether by ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to select the managing or general partner of a partnership, or otherwise to select, or have the power to remove and then select, a majority of those Persons exercising governing authority over an entity).

**"Agent"** means LaSalle Bank National Association, a national banking association, as agent for the Banks.

**"Agreement"** means this Limited Liability Company Operating Agreement, as originally executed and as amended, modified, supplemented or restated from time to time, as the context requires.

**"Articles of Organization"** means the Articles of Organization of the Company as filed with the Secretary of State of Florida, as the same may be amended or restated from time to time.

**"Bankrupt Member"** means any Member (a) that (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (iv) files a petition or answer seeking for the Member a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in a proceeding of the type described in subclauses (i) through (iv) of this clause (a); or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member's or of all or any substantial part of the Member's properties; or (b) against which, a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law has been commenced and sixty (60) days have expired without dismissal thereof or with respect to which, without the Member's consent or acquiescence, a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member's properties has been appointed and sixty (60) days have expired without the appointments having been vacated or stayed, or sixty (60) days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

**"Banks"** shall have the meaning given to such term in the Loan Agreement.

**"Business Day"** means any day on which banks are open for business in Key West, Florida.



**“Capital Account”** means, with respect to any Member, the separate “book” account which the Company shall establish and maintain for each Member in accordance with Section 704(b) of the Code and Regulation Section 1.704-1(b)(2)(iv) and such other provisions of Regulation Section 1.704-1(b) that must be complied with in order for the Capital Accounts to be determined in accordance with the provisions of the Regulations. In furtherance of the foregoing, the Capital Accounts shall be maintained in compliance with Regulation Section 1.704-1(b)(2)(iv), and the provisions hereof shall be interpreted and applied in a manner consistent therewith.

**“Capital Contribution”** means, with respect to each Member, the amount of money or property contributed to the Company by such Member from time to time.

**“Code”** means the Internal Revenue Code of 1986, as amended, or any replacement or successor law thereto.

**“Company Minimum Gain”** has the meaning ascribed to partnership minimum gain in Regulation Sections 1.704-2(b)(2) and 1.704-2(d), and any Member’s share of Company Minimum Gain shall be determined in accordance with Regulations Section 1.704-2(g)(1).

**“Depreciation”** means, for each Fiscal Year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for such year or other period in accordance with the depreciation method elected by the Company with respect to such asset, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction allowable for such year or other period bears to such beginning adjusted tax basis or as otherwise required under Section 1.704-1(b)(2)(iv)(g)(3) of the Regulations, or, in the reasonable discretion of the Managing Member, as otherwise permitted thereunder.

**“Distributable Cash”** means, with respect to any Fiscal Year or other applicable period, the excess, if any, as determined by the Managing Member, of (a) all cash of the Company from all sources for such period, including, without limitation, receipts from operations, contributions of capital by the Members, proceeds of borrowing or from the issuance of securities by the Company, deposits and all other Company cash sources and all Company cash reserves on hand at the beginning of such period over (b) all cash expenses and capital expenditures of the Company for such period, all payments of principal and interest on account of Company indebtedness (including any loans by any Member) and such cash reserves as the Managing Member determines in its discretion (or those mandated by law, contract or the Company’s debt instruments); provided, however, the amount of cash reserves shall initially be determined based upon pro forma projections developed by the Managing Member, and thereafter revised by the Managing Member as it deems appropriate.

**“Entity”** means any corporation, partnership (general, limited or other), limited liability company, company, trust, business trust, cooperative or association.

**“Event of Bankruptcy”** means any event that causes a Member to be deemed a Bankrupt Member.

**"Fiscal Year"** means the twelve-month period ending on December 31 of each year.

**"Gross Asset Value"** means, with respect to any asset of the Company, the adjusted basis of such asset for federal income tax purposes, except as follows:

(a) The Gross Asset Value of any asset contributed by a Member to the Company shall, as of the date of such contribution and subject to further adjustment as herein provided, be the gross fair market value of such asset, as agreed upon by the contributing Member and all other Members.

(b) The Gross Asset Values of all Company assets (including assets contributed to the Company) shall be adjusted to equal their respective gross fair market values, as agreed upon by the Members, as of each of the following times: (i) the acquisition of an additional Membership Interest by any new or existing Member in exchange for more than a de minimis capital contribution; (ii) the distribution by the Company to a Member of more than a de minimis amount of Company property or cash in consideration of the redemption, or partial redemption, of the Membership Interest of the Member or Members to whom such distribution shall be made if, in connection therewith, the Members determine that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company; and (iii) the liquidation of the Company within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g).

(c) The Gross Asset Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution as agreed upon by the Members.

(d) The Gross Asset Value of any Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m); provided, however, that Gross Asset Values shall not be adjusted to the extent the Managing Member determines that an adjustment pursuant to subparagraph (b) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (d).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to any of the foregoing, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Income and Net Losses.

If the Members cannot agree, the fair market values of the Company's assets shall be determined by an independent appraiser selected by the Members, and if the Members cannot agree on the choice of such appraiser, then by a certified public accountant approved by the Managing Member. No distribution in kind shall be made without the approval of the Members.

**"Incapacitated"** shall mean the inability, by reason of a reasonably verifiable physical or mental disability, of a person to perform such person's assigned duties to the Company, on a full-time basis, for a continuous period of 120 days or for an aggregate of 180 days in any 365 day period.

**"JG Member"** shall mean Jeremy Glendenning.

**"Key West Properties"** means the real property commonly known as the Radisson Hotel, the El Meson de Pepe Restaurant, the Conch Tour Train and the Days Inn, as more particularly described on Exhibit B attached hereto.

**"Liquidating Trustee"** means such Person as is selected at the time of dissolution by the Managing Member, which Person may include an Affiliate of the Managing Member or any Member. The Liquidating Trustee shall be empowered to give and receive notices, reports and payments in connection with the dissolution, liquidation and/or winding-up of the Company and shall hold and exercise such other rights and powers as are necessary or required to permit all parties to deal with the Liquidating Trustee in connection with the dissolution, liquidation, and/or winding-up of the Company.

**"Loan"** means the financing provided by Lender to the Company and the Other Borrowers in the original principal amount of \$61,500,000 pursuant to the Loan Agreement.

**"Loan Agreement"** means that certain Loan Agreement to be dated as of November 6, 2006 by and among Lender, the Company and the Other Borrowers, relating to the Loan.

**"Managing Member"** means the managing member of the Company as appointed in Section 7.1 of this Agreement.

**"Member Nonrecourse Debt"** has the meaning ascribed to partner nonrecourse debt in Regulation Section 1.704-2(b)(4).

**"Member Nonrecourse Debt Minimum Gain"** means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt was treated as a Nonrecourse Liability, determined in accordance with Regulation Sections 1.704-2(i)(2) and (3).

**"Member Nonrecourse Deductions"** has the meaning ascribed to partner nonrecourse deductions in Regulation Sections 1.704-2(i)(1) and 1.704-2(i)(2).

**"Members"** means the Persons listed on Exhibit A attached hereto and incorporated herein by reference, as the same shall be amended from time to time, who have been admitted to the Company in accordance with this Agreement and other Persons who become signatories hereto from time to time.

**"Membership Interest"** means a Member's entire interest in the Company, which shall entitle the Member to (a) an interest in the Net Income, Net Loss, Distributable Cash, and net proceeds of liquidation of the Company, as set forth herein; (b) any right to vote as set forth herein or as required under the Act; and (c) any right to participate in the management of the Company as set forth herein or as required under the Act. A Membership Interest is personal property and a Member shall have no interest in the specific assets or property of the Company.

**“Membership Percentage”** means, with respect to each Member, such Member’s percentage ownership interest in the Company set forth on Exhibit A attached hereto, as may be amended or adjusted from time to time.

**“Minimum Gain”** shall mean the minimum gain, determined by computing, with respect to each non-recourse liability, the amount of gain (of whatever character), if any, that would be realized if the Company disposed of (in a taxable transaction) the property subject to such liability in full satisfaction thereof (and for no other consideration), and by then aggregating the amounts so computed. Minimum Gain shall be computed in all respects in conformity with the Regulations. Without limiting the generality of the foregoing, all definitions relevant for Minimum Gain purposes shall have the meaning ascribed thereto in, or for purposes of, the Regulations.

**“Net Income”** or **“Net Loss”** shall mean the income or loss for federal income tax purposes determined as of the close of the Company’s Fiscal Year or as of such other time as may be required by this Agreement or the Code, as well as, where the context requires, related federal tax items such as tax preferences and credits, appropriately adjusted with respect to final determination of any of the foregoing for federal income tax purposes, and also adjusted as follows:

(a) Any income that is exempt from federal income tax and not otherwise taken into account in computing Net Income or Net Loss shall be added to such taxable income or loss.

(b) Any expenditures described in Section 705(a)(2)(B) of the Code, or treated as Section 705(a)(2)(B) expenditures pursuant to Regulation Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Income or Net Loss shall be subtracted from such taxable income or loss.

(c) In lieu of depreciation, amortization or other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year or other period.

(d) Gain or loss during any Fiscal Year on account of the sale, exchange, condemnation or other disposition of any assets, as determined in accordance with Section 1001 of the Code (or, where applicable, Section 453 of the Code), appropriately adjusted, however, with respect to final determination of the foregoing for federal income tax purposes, and also adjusted as follows:

(i) In the event the Gross Asset Value of any asset is adjusted pursuant to subparagraphs (b) or (c) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as though the same constituted gain or loss from the disposition of such asset for purposes of computing Net Income or Net Loss under the provisions of this Agreement.

(ii) Gain or loss, if any, resulting from any disposition of Company assets with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value.

**“Nonrecourse Deductions”** has the meaning set forth in Regulation Section 1.704-2(b)(1).

**“Nonrecourse Liability”** has the meaning set forth in Regulation Section 1.704-2(b)(3).

**“Other Borrowers”** means JLW Key West 1, LLC, a Florida limited liability company, JL Key West II LLC, a Florida limited liability company, RFA Key West II LLC, a Florida limited liability company, and SH 8, LLC, a Florida limited liability company.

**“Person”** means any natural person or Entity.

**“Prime Rate”** shall mean the fluctuating rate as reported in the *Wall Street Journal* or, in the event publication of the *Wall Street Journal* is terminated, in such successor national financial publication as determined by the Managing Member.

**“Project”** means the purchase, ownership, development, and management of the Property and may consist of the development, redevelopment, and management of a mixed use project on the Property which may include, without limitation, hotels, vacation ownership accommodations, restaurants, condominiums, retail uses, and residential accommodations.

**“Property”** means the Key West Properties, as more particularly described on Exhibit B attached hereto and incorporated herein by reference (as may be amended by the Managing Member from time to time to acknowledge the Company’s purchase of additional property or the sale of certain of the property listed on Exhibit B) including all improvements, personal property and other rights located thereon or appurtenant thereto.

**“Regulation” or “Regulations”** means the proposed, temporary and final regulations promulgated by the Treasury Department pursuant to the Code, as amended from time to time.

**“Tax Distribution”** means a distribution by the Company of Distributable Cash to the Members which is designed to estimate such Member’s respective tax liability with respect to such Member’s Membership Interest for the applicable time period. Each Tax Distribution shall be in an amount presently equal to an assumed aggregate Federal and state income tax liability of 40% of the cumulative taxable income (after taking account of allocated tax losses and deductions for any prior periods subsequent to the last Tax Distribution) allocated (or estimated to be allocated if not determined at such time) to such Member since the last Tax Distribution to such Member. In the event that the highest federal income tax rate tax for individuals is changed from 35%, the assumed rate above shall be likewise adjusted to reflect the change to such modified maximum federal tax rate (rounded up to the next whole percentage). All such Tax Distributions shall be determined and made without regard to any available or applied tax credits and otherwise without regard to the tax status, profile or other actual tax liability of the Members.

**“TF Member”** shall mean Tyler Flesch.

1.2 **Other Defined Terms.** Capitalized terms not defined in Section 1.1 shall have the meanings set forth in the other sections of this Agreement.

**1.3 References.** References to an "Exhibit" are, unless otherwise specified, to one of the exhibits attached to this Agreement, and references to an "Article" or a "Section" are, unless otherwise specified, to one of the articles or sections of this Agreement. Each Exhibit attached hereto and referred to herein is hereby incorporated herein by such reference.

## ARTICLE II - ORGANIZATION

**2.1 Organization of Company.** Effective as of October 6, 2006, the date of the filing of the Articles of Organization with the Secretary of State of the State of Florida, the initial Members formed the Company as a limited liability company governed by the terms hereof. Except as provided herein or in the Articles of Organization, the rights and obligations of the Members are as provided under the Act.

**2.2 Name.** The name of the Company is "JLW KEY WEST 1, LLC" or such other name as may be selected by the Managing Member.

**2.3 Purpose and Powers.** Subject to Article XI, the purpose and business of the Company is to acquire, develop, operate and manage the Project, and to engage in any and all activities or businesses related or incidental thereto as permitted by the Act. The Company shall not engage in any other activity not incidental to the foregoing without the prior written agreement of the Managing Member.

**2.4 Principal Office.** The location of the Company's principal office is 506 Fleming Street, Key West, Florida 33040, or such other place as from time to time may be selected by the Managing Member.

**2.5 Registered Agent and Registered Office.** The statutory agent for service of process and the registered office of the Company in the state of Florida shall be Robert A. Spottswood, 506 Fleming Street, Key West, Florida 33040, or such other statutory agent and registered office as the Managing Member may determine from time to time.

**2.6 Registered Members.** The Company shall be entitled to recognize the exclusive right of a person registered on its books as the owner of Membership Interests to receive distributions, and to vote or take other action as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of Membership Interests, and shall not be bound to recognize any equitable or other claim to or interest in such Membership Interests on the part of any other Person.

**2.7 Members.** The Members listed on Exhibit A, as the same may be amended from time to time, have been admitted to the Company as Members. The names and mailing addresses of the Members are set forth in Exhibit A attached hereto and incorporated herein by reference.

**2.8 No State Law Partnership; Liability to Third Parties.** The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture under any state law, and that no Member or Managing Member be a partner or joint venturer of any other Member, for any purposes other than federal and state tax purposes (for which the Members do intend to be taxed as a "partnership"), and that this Agreement not be construed to

suggest otherwise. Except as otherwise specifically provided in the Act, no Member shall be liable for the debts, obligations or liabilities of the Company, including under a judgment decree or order of a court and shall not be obligated to make any contributions to the Company to restore any negative balances in any Capital Accounts.

**2.9 Scope of Members' Authority.** Unless otherwise expressly provided in this Agreement, no Member shall have any authority to act for, or assume any obligations or responsibility on behalf of the Company or any other Member. Nothing contained herein shall constitute the Members as partners with one another in any matter (other than for federal income tax purposes) or render any of them liable for the debts or obligations of any other Member.

**2.10 Agreements Regarding Loans.**

(a) The parties contemplate that the Company may enter into loan agreements on a recourse or non-recourse basis. If a lender for a loan to the Company requires a guaranty or indemnity, a Member or an Affiliate of such Member, in such Member's sole discretion, may provide such guaranty or indemnity, and the Company shall indemnify such Member for any related loss, cost, claim or expense incurred by such Member or an Affiliate thereof, except any loss, cost, claim or expense arising thereunder as a result of the gross negligence or willful misconduct of such Member or an Affiliate thereof.

(b) No Member shall be obligated by reason of this Agreement to lend any money to the Company.

**ARTICLE III - CAPITAL CONTRIBUTIONS**

**3.1 Initial Capital Contributions.** The initial Capital Contributions of the Members named in the preamble to this Agreement have been or shall be made on the date of this Agreement in the form and amount as set forth on Exhibit A attached hereto.

**3.2 Withdrawal; Return of Capital; Interest.** Except as specifically provided herein, no Member shall be entitled to any distributions from the Company or to withdraw any part of such Member's Capital Contribution prior to the Company's dissolution and liquidation, or when such withdrawal of capital is permitted, to demand distribution of property other than money. No Member shall be entitled to interest on its Capital Contribution. No Member shall be obligated to restore any deficit balance in its Capital Account or bring its Capital Account into any particular relationship with the Capital Account of any other Member.

**3.3 Waiver of Appraisal Rights.** The Members hereby agree that no Member shall have any appraisal rights whether pursuant to the Act or otherwise.

**3.4 Additional Capital Contributions.**

(a) Each Member may, but shall not be required to, contribute to the capital of the Company, in addition to the amounts contributed as specified in Section 3.1, amounts equal to its Membership Percentage (as adjusted by Section 3.4(c), if applicable) of additional Capital Contributions (the "Pro-Rata Capital Contribution") whenever Members owning at least sixty-seven percent (67%) of the total Membership Percentages determine that additional Capital Contributions



are required to meet the obligations or needs of the Company, including, without limitation (i) real estate taxes and assessments, (ii) liability and other insurance premiums, (iii) utility charges, and (iv) payments of principal, interest and other charges which are then due and payable under any loan to the Company.

(b) Upon a determination by the Members owning at least sixty-seven percent (67%) of the total Membership Percentages that a call for additional Capital Contributions is needed, the Managing Member shall send notice of such determination to each Member other than to JG Member and TF Member (neither of whom shall have any obligation hereunder to make any additional Capital Contributions). Any such notice shall contain a statement setting forth the specific purpose for which a Pro-Rata Capital Contribution is required and the date upon which such Pro-Rata Capital Contribution will need to be made by the Members, which, except in the event of an emergency, shall not be less than thirty (30) days from the date of such notice, and not more than thirty (30) days in advance of the date on which it is anticipated that the Company will require such funds. Each Member (other than JG Member and TF Member) shall, prior to the date specified in such notice, deposit its proportionate share of the Pro-Rata Capital Contribution required by such notice in a bank account of the Company.

(c) In the event any Member (other than JG Member and TF Member) declines to make to the Company its Pro-Rata Capital Contribution within the time specified in any notice thereof (each, a "Non-Contributing Member"), the Managing Member (or any Member with knowledge thereof) shall send an additional notice to all Members setting forth such fact and the amount unpaid, and the other Members which have made their respective share of the Pro-Rata Capital Contribution (the "Contributing Members") shall have the right (the "Further Contribution Election"), but not the obligation, to either withdraw the share of the Pro-Rata Capital Contribution contributed by such Contributing Members or the Contributing Members may, pro rata, make additional Capital Contributions to the Company in amounts which in the aggregate equal the amount the Non-Contributing Member(s) failed or elected not to contribute (such amounts being hereafter called "Further Contributions"). The Non-Contributing Member(s) shall have a further period ("Repayment Period") of thirty (30) days (provided that if the Non-Contributing Member(s) sells all or part of its interest in the Company during the Repayment Period, or if the Company sells all or substantially all the Property during the Repayment Period, the Repayment Period expiration date shall be accelerated to the date of such sale) after notice from the Contributing Members that the Contributing Members has made Further Contributions (which notice shall specify the amount of the Further Contribution) to repay to the Contributing Members the amount of Further Contributions contributed by the Contributing Members, together with interest (until such amounts are repaid) on such Further Contributions at a rate per annum (the "Interest Rate") equal to twelve percent (12%). If the Contributing Members shall at any time collect interest at a rate in excess of the maximum interest rate permitted to be charged by law, the Contributing Members shall reduce the interest rate to the highest rate permitted by law and any interest payments actually collected in excess of such maximum rate shall be credited against the Further Contributions and thereafter refunded to the Non-Contributing Member(s). If the Non-Contributing Member(s) makes such repayment in full (with interest) prior to the expiration of the Repayment Period, the Non-Contributing Member(s) shall have been deemed to have made its share of the Pro-Rata Capital Contribution, and there shall be no adjustment in the Membership Percentages. If, at the end of the Repayment Period such Non-Contributing Member(s) shall have failed to repay in full the Further Contributions contributed by the Contributing Members, together with interest thereon, then, subject to Section 3.4(d) but otherwise effective as of the date the Further Contributions were made, the Contributing Members shall have their Membership Percentage increased as set forth below and the Non-Contributing

Member(s) shall have its Membership Percentage reduced as set forth below, and no interest shall accrue on the Further Contributions. The Membership Percentage with respect to each Member shall be equal to one hundred percent (100%) multiplied by a fraction, the numerator of which is the Unreturned Capital Contribution (as defined in Section 5.1 below) of each such Member and the denominator of which is the sum of all Unreturned Capital Contributions of the Members.

(d) In lieu of making Further Contributions and increasing its interest in the Company pursuant to subsection 3.4(c), a Contributing Member may elect to treat any Further Contributions and/or the Contributing Member's share of the Pro-Rata Capital Contribution as a non-recourse loan (rather than a Capital Contribution) to the Company (a "Member Loan"), which Member Loan will bear interest at the Interest Rate, by giving notice in writing to the Company and the Non-Contributing Member(s) within ten (10) days from the end of the Repayment Period. All accrued and unpaid interest on Member Loans shall compound monthly at the Interest Rate. Such loans shall be repayable as provided in Section 5.1(b).

(e) The Members shall, at the request of a Contributing Members, execute and deliver such amendments to this Agreement as the Contributing Member may reasonably request to reflect the adjustments pursuant to this Section 3.4. However, adjustments to the Membership Percentages pursuant to Section 3.4(c) shall occur automatically and no amendment to this Agreement is required for these adjustments to be effective.

(f) The remedies set forth in this Section 3.4 shall be the sole remedies available in the event that a Member declines to contribute to the Company its share of any Pro-Rata Capital Contribution, it being intended that no Member shall have any personal liability to make any Pro-Rata Capital Contribution.

**3.5 Risk of Loss.** Neither the Company nor any Member shall have any liability, personal or otherwise, for the repayment of any Capital Contribution of any Member, except to the extent that the assets of the Company are available after paying and providing for all liabilities of the Company.

#### **ARTICLE IV - ALLOCATION OF NET INCOME AND NET LOSS; ETC.**

**4.1 Net Income and Net Loss.** After giving effect to the special allocations set forth in Section 4.3 and subject to other provisions of this Article IV, Net Income and Net Loss for any Fiscal Year or other applicable period shall be allocated among the Members in accordance with and in proportion to the Members' respective Membership Percentages.

**4.2 Limitations on Net Loss Allocation.** Notwithstanding Section 4.1, Net Losses allocated to a Member pursuant to Section 4.1 shall not exceed the maximum amount of Net Losses that can be allocated without causing a Member to have an Adjusted Capital Account Deficit at the end of any taxable year. If any Member would have an Adjusted Capital Account Deficit as a consequence of an allocation of Net Losses pursuant to Section 4.1, the amount of Net Losses that would be allocated to such Member but for the application of this Section 4.2 shall be allocated to the other Members to the extent that such allocations would not cause such other Members to have an Adjusted Capital Account Deficit and allocated among such other Members in proportion to their positive adjusted Capital Account balances. If none of the Members can be allocated Net Losses

without such allocation causing such Members to have an Adjusted Capital Account Deficit, such Net Losses shall be allocated as if this Section 4.2 were not in effect. Any allocation of items of income, gain, loss, deduction or credit pursuant to this Section 4.2 shall be taken into account in making subsequent allocations pursuant to Section 4.1, and prior to any allocation of items in Section 4.1 so that the net amount of any items allocated to each Member pursuant to Section 4.1 and this Section 4.2 shall, to the maximum extent practicable, be equal to the net amount that would have been allocated to each Member pursuant to the provisions of Section 4.1 if such allocations under this Section 4.2 had not occurred.

#### **4.3 Special Allocations.**

(a) Company Minimum Gain Chargeback. Notwithstanding any other provision of this Article IV, if there is a net decrease in Company Minimum Gain during any taxable year or other period for which allocations are made, prior to any other allocation under this Agreement, each Member will be specially allocated items of income and gain relating to that period (and, if necessary, subsequent periods) in proportion to, and to the extent of, an amount equal to such Member's share of the net decrease in Minimum Gain during such year as determined in accordance with Regulation Section 1.704-2(g)(2). The items to be allocated will be determined in accordance with Regulation Section 1.704-2(f).

(b) Member Nonrecourse Debt Minimum Gain Chargeback. Notwithstanding any other provision of this Article IV, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulation Section 1.704-2(i)(5), shall be specially allocated items of income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulation Section 1.704-2(i)(4).

(c) Qualified Income Offset. A Member who unexpectedly receives any adjustment, allocation or distribution described in Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6) will be specially allocated items of income and gain in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of the Member as quickly as possible.

(d) Gross Income Allocations. Each Member who has an Adjusted Capital Account Deficit at the end of any Fiscal Year will be specially allocated, as quickly as possible, items of gross income and gain in the amount of such deficit.

(e) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year or other period for which allocations are made will be allocated to the Members among the Members in proportion to their respective Membership Percentages.

(f) Member Nonrecourse Deductions. Notwithstanding anything to the contrary in this Agreement, any Member Nonrecourse Deductions for any Fiscal Year or other period for which allocations are made will be allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which the Member Nonrecourse Deductions are attributable in accordance with Regulation Section 1.704-2(i).

(g) Code Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset under Code Sections 734(b) or 743(b) is required to be taken into account in determining Capital Accounts under Regulation Section 1.704-1(b)(2)(iv)(m), the amount of the adjustment to the Capital Accounts will be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis), and the gain or loss will be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted under Regulation Section 1.704-1(b)(2)(iv)(m).

(h) Interest in Company. Notwithstanding any other provision of this Agreement, no allocation of Net Income or Net Loss or item of Net Income or Net Loss will be made to a Member if the allocation would not have "economic effect" under Regulation Section 1.704-1(b)(2)(ii). The Tax Matters Partner, upon advice of independent tax counsel to the Company and with the consent of the Members, will have the authority to reallocate any item in accordance with this Section.

(i) Corrective Allocations. If the Company is required by Sections 4.3(c), (d), (f) and (h) above to make an allocation in a manner less favorable to the Members than is otherwise provided for in this Article IV, the Company shall, upon the advice of the Company's independent tax counsel that they are so permitted under Section 704(b) of the Code and the Regulations thereunder or other Code provisions, allocate Net Income or Net Loss arising in later Fiscal Years so as to bring the allocations of Net Income or Net Loss to the Members as nearly as possible to the allocations thereof otherwise contemplated by this Article IV as if such allocation were not made.

**4.4 Tax Allocations.** In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value in accordance with the "traditional method" set forth in Regulation Section 1.704-3(b)(1). For purposes of this Section, contributions of property by a Member shall be aggregated to the extent permitted pursuant to Section 1.704-3(e)(1) of the Regulations. Any recapture of depreciation pursuant to Sections 1245 or 1250 of the Code shall be allocated to the Members which realized the benefit of the deductions attributable to such recapture.

**4.5 Effect on Allocations of New Members or Assignees.** In the event that new Members are admitted to the Company or persons become Assignees on other than the first day of any Fiscal Year, Net Income and Net Loss for such Fiscal Year shall be allocated among the Members and Assignees in accordance with Code section 706, using any convention permitted by law and selected by the Company.

**4.6 Tax Withholding.** The Company shall be authorized to pay, on behalf of any Member, any amounts to any federal, state, provincial, territorial, local or foreign taxing authority, as may be necessary for the Company to comply with tax withholding provisions of the Code or other applicable income tax or revenue laws of any taxing authority. To the extent the Company pays any such amounts that it may be required to pay on behalf of a Member, such amounts shall be treated as a distribution to such Member and shall reduce the amount otherwise distributable to such Member. To the extent any amount so withheld exceeds the cash otherwise distributable to such Member, such expense shall be deemed a loan to the Member bearing interest at the Prime Rate, payable out of any future distributions, and if not earlier repaid upon termination of the Company or the sale or other disposition of any of such Member's Membership Interest.

**4.7 No Effect on Distributable Cash.** The provisions of this Article IV shall have no relevance whatsoever for purposes of determining each Member's share of the Company's Distributable Cash or liquidation proceeds.

**4.8 Member Expenditures Deemed Capital Contributions.** If any expenditure incurred by a Member, or any loan by a Member to the Company are deemed to be Capital Contributions by a Member to the Company, allocations of income, gain, loss or deduction shall be made in respect of such deemed Capital Contributions to the extent feasible to preserve the after-tax economic interests of the Members and in accordance with the requirements of Regulation Sections 1.704-1(b) and 1.704-2.

## ARTICLE V - DISTRIBUTIONS

**5.1 Distributions.** Distributable Cash, if any, shall be distributed only in the following order of priority:

(a) **Tax Distributions.** Except as may be prohibited by applicable law, within sixty (60) days after the close of each quarter of any Fiscal Year, the Managing Member shall cause the Company to distribute to each Member an amount of cash equal to such Member's Tax Distribution with respect to such quarter.

(b) **Remaining Distributable Cash.** After the Managing Member shall have made the distributions set forth in Section 5.1(a) and established reasonable and appropriate reserves from the remaining Distributable Cash as the Managing Member determines in its sole discretion, the Managing Member shall distribute any remaining Distributable Cash to the Members within sixty (60) days after the close of each quarter of any Fiscal Year as follows, unless Members holding at least ninety percent (90%) of the Membership Percentages decide that such distributions shall not be made:

(i) First, to those Members with outstanding Member Loans to the Company, pro rata in accordance with the outstanding principal balance and accrued and unpaid interest on their respective loans, until the accrued and unpaid interest and outstanding principal of all such loans are paid in full;

(ii) Next, to the Members in proportion to their Unreturned Capital Contributions (as defined below), if any, necessary for each such Member to receive a nine percent (9%) annual cumulative return on each Member's respective Unreturned Capital Contributions;

(iii) Next, to the Members in proportion to their Unreturned Capital Contributions, if any, to the extent of such Unreturned Capital Contributions; and

(iv) The balance, to the Members in accordance with their Membership Percentages, as they may be adjusted pursuant to Section 3.4.

The term "Unreturned Capital Contribution" means the amount of a Member's initial Capital Contribution and all subsequent Capital Contributions made, reduced (but not below zero) by all prior cash distributions to such Member pursuant to subsection 5.1(b)(iii).

(c) Notwithstanding Section 5.1(b), distributions made in connection with a liquidation of the Company shall be made to the Members as provided in Article X.

**5.2 Withholding.** Any amount that the Company is required to withhold and deposit with any governmental authority with respect to any federal, state, local or foreign tax liability of a Member, including any withholding pursuant to Sections 1441, 1442, 1445 or 1446 or any other applicable sections of the Code, shall be treated as an amount distributed to such Member and shall reduce, dollar for dollar, any distribution that would otherwise be made to such Member pursuant to this Agreement for that or any subsequent period.

## ARTICLE VI - ACCOUNTING AND ADMINISTRATIVE MATTERS

**6.1 Books and Records.** The Company will maintain true, complete and correct books of account of the Company, in accordance with such methodology, consistently applied, as determined by the Managing Member. The books of account shall contain particulars of all monies, goods or effects belonging to or owing to or by the Company, or paid, received, sold or purchased in the course of the business of the Company, and all of such other transactions, matters and things relating to the business of the Company as are usually entered in books of accounts kept by persons engaged in a business of a like kind and character. In addition, the Company shall keep all records required to be kept pursuant to the Act. A Member shall, upon prior written notice and during normal business hours, have access to the information described in Section 608.4101 of the Act, for the purpose of inspecting or, at the expense of such Member, copying the same. Any Member reviewing the books and records of the Company pursuant to the preceding sentence shall do so in a manner which does not unduly interfere with the conduct of the business of the Company. The books of account of the Company shall be kept and maintained at all times at the office of the Managing Member.

**6.2 Tax Records.** The Managing Member shall cause to be prepared in accordance with generally accepted accounting principles, and furnished to each of the Members as soon as practicable and in any event within forty-five (45) days after the close of the first three quarters of each fiscal year an unaudited statement, in reasonable detail, showing (a) the Company's statement of profit and loss and Members' equity for the portion of the year preceding the end of such quarter, and (b) a statement of the receipts and disbursements of the Company for the portion of the year preceding the end of such quarter. In addition, as soon as practicable, and in any event within ninety (90) days after the close of each fiscal year of the Company, the Managing Member shall cause to be furnished to each of the Members annual financial statements of the Company which shall be audited, from time to time, consisting of (a) the Company's balance sheet, as at the end of such fiscal year, (b) the Company's statement of profit and loss and equity for such fiscal year, (c) a statement of the cash flow of the Company for such fiscal year, and (d) a statement of changes in financial position, all of which are to be in reasonable detail and (in the case of audited statements) accompanied by an unqualified accountant's report by a firm of independent certified public accountants approved by the Managing Member. The Managing Member shall cause to be furnished to each Member such other reports, from available information, on the Company's operations and conditions, and projections of the Company's operations and conditions as may be reasonably requested by any Member.

**6.3 Tax Matters Partner.** The Managing Member is hereby designated as the Company's "Tax Matters Partner," as such term is defined in Section 6231(a)(7) of the Code, and in



such capacity is hereby authorized and empowered to act for and represent the Company and each of the Members before the Internal Revenue Service (the "Service") in any audit or examination of any Company tax information return and before any court selected by the Tax Matters Partner for judicial review of any adjustment assessed by the Service. The Managing Member does hereby accept such designation. The Managing Member shall not take any action as to tax matters that would adversely affect the tax liability or reporting position of any other Member in an amount in excess of \$25,000 without such Member's prior approval. The Managing Member shall not be liable for any action taken by it as Tax Matters Partner. All expenses incurred by the Managing Member in its capacity as the Tax Matters Partner shall be considered expenses of the Company for which the Managing Member shall be entitled to full reimbursement.

**6.4 Tax Elections.** All elections required or permitted to be made by the Company under any applicable tax laws shall be made by the Members.

**6.5 Budget Report.** At least sixty (60) days prior to the commencement of each Fiscal Year, and as a part of or following the annual Budget meeting, the Managing Member shall cause to be prepared and shall submit to all Members a budget setting forth the estimated receipts and disbursements (capital, operating and other) and estimated taxable income or loss of the Company for the forthcoming fiscal year. All Members shall consider such budget, and those Members owning at least ninety percent (90%) of the Membership Percentages shall, at least thirty (30) days prior to the commencement of the upcoming fiscal year, approve such budget with such additions, deletions and revisions as they deem appropriate. The approved budget is hereafter called the "Budget." When approved by those Members owning at least ninety percent (90%) of the Membership Percentages, the Managing Member shall cause copies of the Budget to be delivered to all Members, and shall implement the Budget and the Managing Member shall be authorized to make the expenditures and incur the obligations provided for in the Budget, without the need for such expenditures or obligations to be further approved.

**6.6 Bank Accounts.** The funds of the Company shall be deposited in an account or accounts of a type, in form and in banks or other temporary investments as shall be approved by the Managing Member. The accounts shall be in the name of the Company. Withdrawals from bank accounts shall be made by parties approved by the Managing Member. Company funds shall not be commingled with those of any other Person.

**6.7 Amending Exhibit.** In the event the Managing Member amends Exhibit B to acknowledge the Company's purchase of additional property or the sale of certain of the Property, the Managing Member shall provide to each Member a copy of the amended Exhibit B.

## ARTICLE VII - MANAGEMENT OF COMPANY AND VOTING BY MEMBERS

### 7.1 The Managing Member

(a) Managing Member. The initial Managing Member of the Company is SH 7, Inc. and thereafter any successor (who must also be a Member). Except as specifically provided in this Agreement, the management and control of the Company shall be vested in the Managing Member. The Managing Member shall be responsible for the establishment of operating procedures respecting the business affairs of the Company and overseeing or delegating the day-to-day operation

of the Company's business. Subject to the provisions of Section 7.2 below, the Managing Member shall have the power and authority to take any actions not prohibited under the Act or which are otherwise conferred or permitted by law, which the Managing Member determines, in its reasonable discretion, are necessary, proper, advisable or convenient to the discharge of its duties under this Agreement or applicable law to conduct the business and affairs of the Company, including, but not limited to, any decision to sell, mortgage, lease or otherwise transfer any assets of the Company, which shall be binding on the Company without the necessity of any further action. Subject to Section 7.2 below, the Managing Member shall have the right, power and authority to perform any and all other acts or activities customary or incident to the management of the Company's business on behalf of the Company.

(b) Delegation of Powers. The Managing Member may delegate its powers, but not its responsibilities, to any Member or to any other Person.

**7.2 Major Decisions Requiring Ninety-Percent Member Approval.** In addition to the other matters requiring the approval, consent or vote of the Members herein, the following actions and decisions ("Major Decisions") shall require the consent of Members holding at least ninety-percent (90%) of the Membership Percentages:

(a) Approval of the annual Budget and operating business plan of the Company and any decisions therefrom;

(b) Approval of capital expenditures not contained in the Budget and operating business plan in excess of the greater of (i) \$25,000, or (ii) ten percent (10%) of the current Budget;

(c) Except as set forth in an approved Budget, borrowing money or incurring or refinancing indebtedness related to the Property in excess of \$250,000 in the name of the Company or guaranteeing the obligations of another party other than in the ordinary course of business;

(d) Selection and hiring of financial advisors, placement agents and underwriters (debt and equity);

(e) Initiation and/or settlement of litigation involving an exposure in excess of \$250,000;

(f) Transactions with Affiliates (other than those provided for herein);

(g) Entering into any leasing and/or management agreement whether or not an Affiliate of any Member is the leasing and/or management agent;

(h) Approval of any in kind distribution to the Members, upon liquidation of the Company or otherwise;

(i) Reorganizing the Company or causing the Company to merge or consolidate with or into another Entity or acquiring another Entity or all or substantially all the assets of another Entity;

(j) Selling, transferring or leasing the Property or a portion thereof, or selling, transferring or leasing all or substantially all of the assets of the Company;

(k) Making any decision to file a voluntary bankruptcy petition or consent to the filing of an involuntary bankruptcy petition;

(l) except as provided in Section 10.1 hereof, dissolving or liquidating the Company; and

(m) Approval of the Company engaging in any other activity not incidental to the purpose and business of the Company pursuant to Section 2.3.

Notwithstanding the foregoing, any person, firm or corporation dealing with the Company shall be entitled to rely upon the signature of the Managing Member acting alone to any document or instrument as having been validly authorized by the Company.

**7.3 Resignation/Removal of Managing Member.** The Managing Member may resign at any time by giving written notice to the Members (the "Resignation Notice"). The resignation of the Managing Member shall take effect thirty (30) days after the Resignation Notice is given or at such earlier time as accepted by the Members; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The Managing Member may be removed, with or without cause, upon the affirmative vote of Members owning at least sixty-seven percent (67%) of the Membership Percentages. If no one is serving as Managing Member for any reason, then a new Managing Member shall be elected by the affirmative vote of Members owning at least sixty-seven percent (67%) of the Membership Percentages. The resignation of the Managing Member shall not affect the Managing Member's rights as a Member, if any, and shall not constitute the Managing Member's withdrawal as a Member.

**7.4 Member Meetings.** The Members shall conduct a management meeting as often as they deem that the management of the affairs of the Company shall require, but shall hold such meetings not less frequently than semi-annually, and shall conduct an annual Budget meeting (which may be included as a part of one of the semi-annual meetings). Such management meetings shall be held at the principal office of the Company or such other place or in such other manner as the Members may determine to (a) discuss the affairs of the Company and (b) make such other decisions as may be appropriate to the affairs of the Company. The Managing Member or its designee shall make reasonable efforts to send the Members a proposed agenda for each management meeting, but the foregoing shall not limit the business which may come before such management meeting. The foregoing shall not be construed to impair the ability of the Managing Member to act pursuant to this Agreement without a meeting. The Managing Member or its designee shall prepare written minutes of all decisions made at the management meetings in such form and detail as the Managing Member shall determine.

**7.5 Quorum and Voting.** Members owning at least ninety-percent (90%) of the Membership Percentages of the Company other than Defaulted Members shall constitute a quorum if present in person or by proxy. Except as provided elsewhere in this Agreement, for any act for which the vote of the Membership is taken, the vote of Members holding at least ninety-percent (90%) of the Membership Percentages shall be the act of the Company. For actions on which the Members will vote, no action may be taken at a meeting of the Members unless a quorum is present.

**7.6 Proxies.** At any meeting of the Members, a Member may vote by proxy executed in writing by the Member or by his, her or its duly authorized attorney in fact. Such proxy shall be filed with the Company before or at the time of the meeting. Unless otherwise provided therein, a proxy

shall not be valid more than three (3) years after the date of its execution, unless the proxy provides for a longer period.

**7.7 Waiver of Notice.** Whenever written notice is required to be given to the Member, a written waiver thereof signed by the Member entitled to such notice (whether, in the case of notice of a meeting, the written waiver thereof is signed before or after the meeting) shall be in all respects tantamount to notice. Attendance of a Member at a meeting of the Member shall constitute a waiver of notice of such meeting, except where a Member attends a meeting for the express purpose of objection to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

**7.8 Telephonic Meetings.** Any meetings of the Members may be held, or any Member may participate in any meeting of the Members, by use of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and communicate with each other.

**7.9 Other Activities of the Members.** Each of the Members, and each person, firm or corporation, directly or indirectly owning an interest in any Member or any partner of a Member, may enter into, participate in or continue to participate in, or be employed by, directly or indirectly, any business or undertaking of any nature or description, independently or with others, including the ownership, financing, leasing, operation, management, syndication, brokerage and development or other aspect of real property and interests therein (including businesses and investments competing with the Company), and neither the Company, any Members nor any members, shareholders or partners thereof, as such, shall have any right by virtue of this Agreement to participate in or to be offered to participate in any such business or undertaking or in the income, profits or losses derived therefrom.

**7.10 The Managing Member's Independent Activities.** The Managing Member shall devote such time to the Company business as it deems, in its sole discretion, necessary to manage and supervise the Company business in an efficient manner. The Managing Member shall not in any way be prohibited from or restricted in engaging or owning an interest in any other business venture of any nature, including any venture which might be competitive with the business of the Company. The Members intend that the Managing Member's acquisition, improvement, development, leasing, operation and holding of real and associated personal properties for investment in the Florida Keys region, or engagement in any and all activities related or incidental thereto by Managing Member shall not be deemed a breach of the Managing Member's duty of loyalty to the Company and the other Members. Consequently, neither this Agreement nor any activity undertaken pursuant hereto shall prevent the Managing Member from engaging in whatever activities it chooses, whether the same are competitive with the Company or otherwise, and any such activities may be undertaken without breaching any duty of loyalty or without having or incurring any obligation to offer any interest in such activities to the Company or any Member, or require any Member to permit the Company or any other Member to participate in any such activities, and as a material part of the consideration for the execution of this Agreement by each Member, each Member hereby waives, relinquishes, and renounces any such right or claim of participation.

A majority of the Members (in terms of Membership Percentages) may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable. A majority of the Members (in terms of Membership Percentages) may authorize or ratify, after full

disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

**7.11 Insurance.** The Managing Member shall cause the Company to carry and maintain in force insurance with such coverages and in such amounts as determined by the Managing Member, the premiums of which shall be a cost and expense of the Company. All such policies of insurance shall name the Company as insured and may name such other persons as insureds as may be required by the terms of contracts or instruments to which the Company is a party or as the Managing Member may deem necessary or desirable. All policies of liability insurance shall name all Members as additional insureds.

**7.12 Compensation; Reimbursement of Expenses.** The Company shall reimburse the Managing Member for all reasonable costs and expenses incurred by it in or related to the performance of its duties to the Company. Also, the Managing Member shall be reimbursed for any expenses (including reasonable attorneys' fees) incurred in prosecuting or defending any action on behalf of the Company or the Managing Member pertaining to the Company's affairs or this Agreement. Except as otherwise provided herein, the Members shall receive no compensation for their services to the Company in the capacity as a Member.

**7.13 No Authority of Individual Member.** Except as set forth in this Article VII, or otherwise in this Agreement, no Member, acting individually, nor any of their respective Affiliates, has the power or authority to bind the Company, or any other Member or to authorize any action to be taken by the Company, or to act as agent for the Company or any other Member, unless that power or authority has been specifically delegated or authorized by action of the Members.

**7.14 Presumption of Assent.** A Member who is present at a meeting of the Members shall be conclusively presumed to have assented to any action taken unless his, her or its dissent shall be expressed at such meeting and entered in the minutes of the meeting.

**7.15 Decision of Members by Written Consent.** Any action to be made by the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by the Members owning the Membership Percentages otherwise required for taking such action.

**7.16 Related Party Transactions.** Subject to Section 7.2, the Company may engage in transactions with Members or their Affiliates; provided, however, that (a) the Members are made aware of the material facts as to the relationship of the party to the Company and the contract or transaction is specifically approved or ratified in good faith by vote of all of the non-affiliated or disinterested Members or (b) the contract or transaction is fair as to the Company as of the time it is executed and delivered. Notwithstanding the foregoing, the parties acknowledge and agree that the Company may enter into hotel management agreements, managements agreements, co-tenancy agreements, construction agreements, and security service agreements with Members or their Affiliates.

## ARTICLE VIII - LIMITATION ON LIABILITY AND INDEMNIFICATION

**8.1 Exculpation of Liability.** No Managing Member or Member (each, an "Exculpated Party"), shall be liable, in damages or otherwise, to the Company or to any of the Members for any

act or omission by any such Exculpated Party pursuant to the authority granted by this Agreement, unless such act or omission results from fraud, gross negligence, or willful misconduct. The Company may indemnify, defend and hold harmless each Exculpated Party from and against any and all claims or liabilities of any nature whatsoever, including reasonable attorneys' fees, arising out of or in connection with any action taken or omitted by an Exculpated Party pursuant to the authority granted by this Agreement or otherwise, except where attributable to the fraud, gross negligence, or willful misconduct of such Exculpated Party. Each Exculpated Party shall be entitled to rely on the advice of counsel, public accountants or other independent experts experienced in the manner at issue, and any act or omission of such Exculpated Party pursuant to such advice shall in no event subject such Exculpated Party to liability to the Company or any Member.

## **8.2 Liability of Exculpated Parties and Members.**

(a) In carrying out their respective powers and duties hereunder, each Exculpated Party (as defined in Section 8.1 above) shall exercise its best efforts and shall not be liable to the Company or to any Member for any actions taken or omitted to be taken in good faith and reasonably believed to be in the best interest of the Company or for errors of judgment made in good faith.

(b) A Member who ceases to be a Member shall not be liable for or on account of obligations or liabilities of the Company incurred subsequent to its ceasing to be a Member.

**8.3 Indemnification of Managing Member.** In any pending or completed action, suit, or proceeding to which the Managing Member or any Member is or was a party by reason of the fact that such Managing Member or Member is or was the Managing Member or Member, the Company shall hold harmless and indemnify such Managing Member or Member from and against any and all losses, harm, liabilities, damages, costs, and expenses (including, but not limited to, attorneys' fees, judgments, and amounts paid in settlement) incurred by such Managing Member or Member in connection with such action, suit, or proceeding if such Managing Member or Member determined in good faith, that the course of conduct which caused the loss or liability was in the best interests of the Company, and provided that such Managing Member's or Member's conduct does not constitute gross negligence, willful misconduct, or breach of fiduciary duty to the Company.

**8.4 Advancement of Legal Costs and Expenses.** The Company shall advance Company funds to the Managing Member or Member for legal expenses and other costs incurred as a result of any legal action if the following conditions are satisfied: (a) the legal action relates to acts or omissions with respect to the performance of duties or services on behalf of the Company; (b) the legal action is initiated by a third party who is not a Member, or the legal action is initiated by a Member and a court of competent jurisdiction specifically approves such advancement; and (c) the Managing Member or Member undertakes to repay the advanced funds, together with interest at the Prime Rate plus 1%, to the Company in cases in which the Members determine that the Managing Member or Member should not be indemnified under this Article.

**8.5 Provisions Not Exclusive.** The exculpation of liability and indemnification provided by this Article shall not be deemed exclusive of any other limitation on liability or rights to which those seeking indemnification may be entitled under any statute, agreement, vote of Members or otherwise.



## ARTICLE IX - TRANSFERS; PURCHASE OPTIONS; DEFAULTING MEMBER

### 9.1 Transfer.

(a) Except as otherwise specifically set forth in this Agreement, the Members may Transfer their Membership Interests only upon the prior written consent of the other Members (other than JG Member and TF Member). As used in this Article, the term "Transfer" shall mean and include a Transfer of all or any portion of any holder of any ownership, voting, or beneficial interest in a Member such that this Article shall apply to any disposition, alienation or encumbrance of any capital stock or other equity, voting or other beneficial interest in a Member. Any purported Transfer, no matter how effected, which does not comply with the terms, conditions and procedures of this Agreement shall be null and void and shall not result in a transfer of any interest in the Company.

(b) Notwithstanding anything in subsection 9.1(a) to the contrary, if any Member shall receive an offer for all or any part of its Membership Interest which such Member wishes to accept, then, even after complying with the terms and provisions of subsection 9.1(a), such Member shall not sell such interest unless such Member shall cause each other Member to be afforded the opportunity to sell to the proposed transferee the same portion of each such other Member's Membership Interest as the interest proposed to be sold bears to the total interest of such Member, on terms and conditions at least as favorable as the terms and conditions proposed by the proposed transferee and accepted by such accepting Member. Any Member afforded such opportunity to sell which does not respond affirmatively within fifteen (15) days from the date of the notice affording such opportunity shall be deemed to have decided not to join in the opportunity to sell to the proposed transferee.

9.2 Permitted Transfers. The following Transfers shall be permitted without the prior written consent of the Members, provided that the transferor shall remain secondarily liable for its obligations hereunder unless all Members agree to release the transferor:

- (a) A transfer by a Member to an Affiliate of such Member; or
- (b) A transfer by a Member to another existing Member.

9.3 Transferees As Substitute Members; New Members. Notwithstanding any Transfer which may be permitted in accordance with the provisions of this Article IX, no Person, not then a Member, to whom a Membership Interest shall be Transferred in accordance with the provisions of this Article IX or other than in accordance with this Article IX shall be admitted as a substituted Member unless (a) such transferee shall agree in writing to be subject to the terms hereof and shall become a substituted Member hereunder, and (b) such transferee and the transferor otherwise complies with any other requirements imposed by the Members (other than the transferor). All reasonable costs and expenses incurred by the Company in connection with any Transfer, and, if applicable, the admission of a Person as a substituted Member, shall be paid by the transferor. In the event a transferee of a Membership Interest is not admitted as a substituted Member, such transferee shall be deemed a mere assignee of profits only without any right, power or authority of a Member hereunder and shall bear losses in the same manner as its predecessor in interest, and the transferor of such interest shall thereafter be considered to have no further rights or interest in the Company with respect to the interest Transferred, but shall nonetheless be subject to its obligations under this Agreement with respect to such interest. Additionally, the transferor shall be deemed to be a Defaulted Member. Upon admission of a transferee as a substituted Member, the transferor shall

withdraw from the Company, and be relieved of any corresponding obligations, to the extent of its Transferred Membership Interest.

**9.4 Certain Prohibited Transfers.** No Member shall sell or otherwise transfer its interest in the Company if such transfer would (a) require the Company, or the interest being transferred, to be registered under, or otherwise to be brought in compliance with, state or federal securities laws, (b) with respect to a transfer by a Member, including, without limitation, a shareholder, member or partner of a Member, cause the Company to be classified otherwise than as a partnership for federal income tax purposes or to be treated as a publicly traded partnership as provided in Code Section 7704, or (c) cause the Company to be in breach of or default under any mortgage, deed of trust or other security agreement encumbering the Company assets. If requested by the Managing Manager, the transferring Member shall, prior to effecting any transfer, deliver to the Company an opinion of counsel reasonably satisfactory to the Company and the Company's counsel to the effect that the proposed transfer would not violate the provisions of this Section 9.4.

**9.5 Transfer Upon Purchase Option Event.**

(a) Upon the occurrence of a Purchase Option Event (as defined below) with respect to a Member ("Selling Member"), the provisions of this Section 9.5 shall apply. A Purchase Option Event includes the following:

(i) The transfer of all or any portion of the Member's Membership Interest, except as otherwise provided in this Agreement, other than a court order charging the Member's Membership Interest that has not been foreclosed;

(ii) A Member's death, Incapacitation, or becoming a Bankrupt Member;

(iii) The unanimous vote of the other Members to purchase the Member's Membership Interest if (A) it shall be unlawful to carry on the Company's business with the Member, (B) there shall have been a Transfer of all or any portion of the Member's Interest, except as otherwise provided in this Agreement other than a court order charging the Member's Membership Interest which has not been foreclosed, (C) within ninety (90) days after the Company shall notify a corporate Member that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the Member fails to obtain a revocation of the certificate of dissolution or a reinstatement of its charter or its right to conduct business, or (D) a partnership or a limited liability company that is a Member shall have been dissolved and its business shall be in the process of being wound up;

(iv) In the case of a Member that is a trust or is acting as a Member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the Company, but not merely by reason of the substitution of a successor trustee;

(v) In the case of a Member that is an estate or is acting as a Member by virtue of being a personal representative of an estate, distribution of the estate's entire rights to receive distributions from the Company, but not merely the substitution of a successor personal representative; or

(vi) Termination of the existence of a Member if the Member is not an individual, estate, or trust other than a business trust.

(b) Upon a Purchase Option Event, the Selling Member or such Selling Member's administrator, trustee, or estate to whom the interest shall have been transferred by operation of law or any transferee or assignee of such Selling Member, administrator, trustee, or estate shall not have the right to participate in the management of the business and affairs of the Company or to become a Member and shall only be entitled to the Selling Member's allocations and distributions with respect to such interest in accordance with this Agreement.

(c) A Purchase Option Event set forth in paragraph (a)(i), (ii), (iii) or (iv) of this Section 9.5 shall be deemed to be wrongful. The Company shall be entitled to recover from the Selling Member any damages (excluding consequential damages) caused by a wrongful Purchase Option Event.

(d) The occurrence of a Purchase Option Event shall not cause the dissolution or the winding up of the Company.

(e) Upon the occurrence of any Purchase Option Event, the Company shall have the first option (but not the obligation) and the remaining Members, or such of them as so elect, the second option (but not the obligation) to purchase all or any portion of the Selling Member's interest in the Company at a price equal to the Fair Value of the Interest (as defined below) in the manner and upon the terms as hereinafter provided. The Company shall have sixty (60) days and the remaining Members ninety (90) days after the Company's receipt of actual notice of such Purchase Option Event (the "Purchase Option Period") to exercise their respective options.

(f) Any Person who exercises an option to purchase the interest of a Selling Member, or a portion thereof, granted in this Article IX shall do so by delivery of written notice of such exercise within the times provided herein to such Selling Member or his, her or its legal representative, to the other Members and to the Company. All of the other Members must approve the exercise of any option to purchase the interest of a Selling Member by the Company. If under the provisions of this Section 9.5 one or more Members have the right to purchase the interest of a Selling Member, unless otherwise agreed in writing by the purchasing parties, such purchase shall be made in accordance with the following procedure: Each Member who elects to purchase such interest may purchase up to an amount equal to the interest available to the Members multiplied by a fraction, the numerator of which is the Membership Percentage of such purchasing Member and the denominator of which is the aggregate of the Membership Percentages of all Members who have elected to purchase such available interest.

(g) Except as otherwise provided herein, no Member shall assign, pledge, encumber or use any of such Member's Membership Interest as security for any loan, except upon the written consent of all of the other Members.

(h) Unless otherwise agreed by the parties, the closing of the sale and purchase of a Membership Interest as provided for in this Section 9.5 (the "Closing"), shall take place at the principal office of the Company. The Closing for the purchase pursuant to this Section 9.5 shall take place not more than thirty (30) days after the expiration of the Purchase Option Period, or if the determination of the Fair Value of the Company by one or more appraisers is required under Section 9.5(k), the Closing shall take place not more than ten (10) days after the date on which such

appraiser(s) issue their opinions to the parties as to the Fair Value of the Company, if that date is later than the dates above specified. If any of the dates specified above is a Saturday, Sunday, or a state or federal holiday, then the Closing shall be held on the first business day thereafter. On the date of Closing, the selling and purchasing parties shall execute and deliver to each other documents which shall be required to carry out their undertakings hereunder including the payment of cash, if any is to be paid.

(i) The purchase price for a Membership Interest purchased pursuant to this Article IX shall be paid in immediately available funds, except that, at the option of the purchasing party or parties, the purchase price may be paid in sixty (60) consecutive equal monthly installments, the first of which shall be made one month after the date of the Closing. In the event that a purchasing party elects to pay the purchase price in installments as provided herein, the purchasing party's(ies') obligation to pay the purchase price shall be evidenced by the promissory note of the purchasing party made payable to the order of the selling party. Interest on the outstanding principal balance of such promissory note shall accrue at the fixed rate of the Prime Rate (as of the date of Closing) plus one percent (1%) and shall provide that it may be prepaid in whole or in part at any time without penalty. If the maker of the note is the Company, the note shall be unsecured, but each of the remaining Members shall guarantee the repayment of a portion of the note equal to his, her or its interest (after the selling Member's Membership Interest is purchased) multiplied by the original principal balance of the note. If the maker of the note is one or more Members, the note shall be secured by a pledge, to the payee of the note, of the interest purchased.

(j) In the event that the Fair Value of the Interest is not agreed upon by the purchaser(s) and the Selling Member, the "Fair Value of the Interest" shall equal the Selling Member's Membership Interest multiplied by the Fair Value of the Company (as defined below) on the date of the Purchase Option Event ("Valuation Date"). From time to time, the Members may unanimously agree upon the Fair Value of the Company by executing and filing with the Company a written instrument wherein such agreement is set forth, whereupon, for the period of time stated in the instrument the Fair Value of the Company so agreed shall supersede any other determination of the Fair Value of the Company. Such written instrument may, but need not, read as follows:

"The undersigned, being all of the Members of JLW Key West 1, LLC, do hereby pursuant to Section 9.5(j) of the Agreement dated October \_\_, 2006, agree that between \_\_\_\_\_, \_\_\_ and \_\_\_\_\_, \_\_\_, both dates inclusive, the Fair Value of the Company shall be an amount equal to \_\_\_\_\_ and No/100 Dollars ( \_\_\_\_\_ )."

In the event that no such agreement is in effect, then the term "Fair Value of the Company" shall be the amount set forth in the written valuation opinion of an appraiser acceptable to all Members, the expense of which appraisal shall be paid one-half (½) by the Selling Member and one-half (½) by the purchaser(s). In the event the Members cannot agree on an acceptable appraiser within thirty (30) days of notification from the Company to the Members of the necessity for such appraisal, the Fair Value of the Company shall be determined by three (3) appraisers, one selected by the Selling Member (or representative thereof), one by the purchaser(s), and the third by the two appraisers so selected. If the written valuation opinions ("Appraisals") of two of the appraisers are within five percent (5%) of each other (i.e., if the lower of the two Appraisals is no less than ninety-five percent (95%) of the higher), the Fair Value of the Company shall be the average of the two Appraisals with the least percentage difference. Otherwise, the Fair Value of the Company shall be the numerical

average of the three Appraisals. In the event three (3) appraisers are required, the Selling Member shall pay for the appraiser he, she or it selects, the purchaser(s) shall pay for the appraiser they select, and the cost of the appraiser selected by the other two appraisers shall be paid one-half (½) by the Selling Member and one-half (½) by the purchaser. All expenses to be paid by the purchaser(s) herein shall be paid by each purchaser party as follows: The expense multiplied by a fraction, the numerator of which is the interest purchased by such purchaser and the denominator of which is the total interest purchased by all purchasers. Each party shall select its appraiser within ten (10) days after expiration of the time to agree on a single appraiser, and the appraisers selected by the parties shall select a third appraiser within ten (10) days thereafter. Each appraiser shall provide his or her Appraisal to the Company and the Members within thirty (30) days after such appraiser's selection. The failure of a party to select his, her or its appraiser, or the failure of an appraiser to provide his or her Appraisal, within the times provided herein, shall eliminate such appraiser's Appraisal from consideration, and the Fair Value of the Company shall be determined on the basis of the remaining Appraisals. For purposes of determining the Fair Value of the Company, the appraiser(s) shall make the following adjustments:

(i) Insurance, if any, owned by the Company on the life of a deceased Member whose interest in the Company is the subject of purchase under this Agreement shall be valued at its cash value on the day before the Valuation Date and not at its face value, and

(ii) No adjustment shall be made on account of any event occurring subsequent to the Valuation Date.

(k) Notwithstanding anything herein to the contrary, if at any time the Company has only one Member, and if the Member's entire Membership Interest is transferred voluntarily by the Member by sale, exchange or gift, or involuntarily by reason of the Member's death, incompetence, an Event of Bankruptcy or dissolution, then the transferee(s) of such Membership Interest shall automatically become full Members of the Company.

(l) Any interest in the Company transferred in accordance with the terms of this Agreement shall remain subject to this Agreement (including the restrictions on transfer contained in this Section 9.5) as if no transfer had been made, including, without limitation, any transfer to a person not a party to this Agreement, and the transferee shall be required to acknowledge such fact in writing before the transfer of ownership of such interest shall be recorded in the books of the Company.

#### **9.6 Defaulting Member/Bankrupt Member.**

(a) If any Member fails to perform any of its obligations under this Agreement (other than a failure to make a Pro-Rata Capital Contribution pursuant to Article III), or violates the terms of this Agreement (any such Member, a "Defaulting Member"), any of the other Members shall have the right to give the Defaulting Member a notice of default specifically setting forth the nature of the default and stating that the Defaulting Member shall have a period of thirty (30) days to cure any default specified. If the Defaulting Member does not cure all such defaults, then any of the other Members shall have the right to do one or more of the following:

(i) Bring any proceeding in the nature of specific performance, injunction or other equitable remedy, it being acknowledged by each of the Members that damages at law may be an inadequate remedy for a default or threatened breach of this Agreement;

(ii) Bring any action at law by or on behalf of the Company or the other Member as may be permitted in order to recover damages;

(iii) Institute such proceedings as may be appropriate to secure an accounting and to dissolve, wind up and terminate the Company; and/or

(iv) Upon notice to the Defaulting Member, the Managing Member shall have the right to terminate any rights that the Defaulting Member may have with respect to the management of the Company, including the right to vote on Major Decisions, and if the Defaulting Member is the Managing Member, the other Members shall have the power to remove the Managing Member and designate a new Managing Member pursuant to Section 7.3.

(b) From and after the date on which a Member becomes a Bankrupt Member, all of such Member's rights to management and control of the Company shall immediately terminate, including, without limitation, the right to vote on any matter requiring the vote of the Members, the right to consent to transfers by any Member and the right to initiate any of the provisions of Section 9.5. The remaining Members shall have the sole power and right to act in all respects as if it were the sole Member(s) of the Company.

**9.7 Certificates; Legend on Membership Interest Certificates.** The Company has the option to issue certificates or instruments representing the Members' Membership Interests. If the Company determines to issue such certificates, such certificates shall be endorsed conspicuously on the face thereof with the following legend:

"The Membership Interest represented by this certificate is subject to a certain Limited Liability Company Operating Agreement dated as of October \_\_, 2006 by and among the Members of the Company, a copy of which Limited Liability Company Operating Agreement is available for inspection at the offices of the Company or may be available upon request."

**9.8 Repayment of Outstanding Loans of Members.** Notwithstanding any other provision of this Article IX, no Member may dispose his, her or its Membership Interest to a third party, and neither the Company nor any Member may elect to purchase the Membership Interest of another Member, unless such Member or the Company agrees to pay, in cash at the time of closing of such transaction, any and all outstanding loans, debts, and obligations owed by the Member to the Company.

## ARTICLE X - DISSOLUTION AND TERMINATION

**10.1 Dissolution.** The Company shall continue in effect until dissolved upon the first to occur of the following:

(a) The vote of Members owning at least ninety percent (90%) of the Membership Percentages to dissolve the Company;

(b) The entry of a decree of judicial dissolution of the Company under Section 608.441(3) of the Act or such other event requiring dissolution under the Act; or

(c) The Sale or other disposition of all or substantially all of the Company's assets and the collection of all amounts derived from any such disposition, including all amounts payable to the Company under any promissory notes or other evidence of indebtedness derived by the Company from any such disposition unless the Members agree, in writing, within ninety (90) days of such sale or disposition, to continue the Company.

**10.2 Accounting.** Upon the dissolution of the Company, a proper accounting shall be made of the assets and liabilities of the Company and the Capital Account of each Member as of the date of dissolution and of the items of Net Income and Net Loss from the date of the last previous accounting to the date of dissolution. The Liquidating Trustee shall cause financial statements (consisting of a balance sheet, statement of operations, statement of Members' equity and statement of cash flows) of the Company to be prepared in accordance with such methodology consistent with the books and records of the Company, presenting such accounting to be prepared and certified.

**10.3 Liquidating Trustee.**

(a) Upon the dissolution of the Company, the affairs of the Company shall be wound up and terminated and the Members shall continue to share Net Income, Net Loss, Distributable Cash and other items of the Company during the winding-up period in accordance with the provisions of Articles IV and V hereof. The winding-up of the affairs of the Company and the distribution of its assets shall be conducted exclusively by the Liquidating Trustee, who is hereby authorized to do all acts authorized by law for these purposes. The Liquidating Trustee, in carrying out such winding up and distribution, shall have full power and authority to sell, assign, transfer and encumber all or any of the Company assets.

(b) Upon the completion of the winding up of the Company and the distribution of all Company assets, the Company shall terminate and the Liquidating Trustee shall have the authority to execute and record any and all other documents required to effectuate the termination of the Company.

(c) The Liquidating Trustee shall be indemnified and held harmless by the Company from and against any and all claims, liabilities, costs, damages and causes of action of any nature whatsoever arising out of or incidental to the Liquidating Trustee's taking of or failure to take any action authorized under, or within the scope of, this Agreement; provided, however, that the Liquidating Trustee shall not be entitled to indemnification for:

(i) Matters entirely unrelated to the Liquidating Trustee's actions under the provisions of this Agreement; or

(ii) Fraud, willful misconduct, self-dealing or criminal activity.

**10.4 Liquidating Distribution.** In the event of the dissolution of the Company for any reason, the assets of the Company shall be liquidated for distribution in the following rank and order:

(a) First, to the payment and discharge of all the debts and liabilities in the order of priority as provided by the Act;



(b) Second, to the establishment of any necessary reserves to provide for contingent liabilities, if any;

(c) Third, to the payment of loans to the Company by the Members, if any, in the order of priority provided under this Agreement or by law; and

(d) Third, to the Members in proportion to their positive Capital Account balances after giving effect to the allocations set forth in Article IV hereof, treating any distribution of property as a sale thereof at fair market value.

Such distributions shall be made on or before a date (the "Final Liquidation Date") no later than the later to occur of (i) the last day of the taxable year of the Company in which the liquidation of the Company occurs and (ii) ninety (90) days after such liquidation. If the Liquidating Trustee, in its discretion, determines that the distributions will not be timely made, it may distribute all of the assets and liabilities of the Company in trust with the Liquidating Trustee, or such other Person as may be selected by the Liquidating Trustee acting as trustee; the purpose of the trust is to allow the Company to comply with the timing requirements under Regulation Section 1.704-1(b). The trustees of said trust shall distribute the former Company assets (however constituted, enhanced or otherwise) as promptly as such trustee deems proper and in the same manner as directed in this Section (without regard to this sentence or the preceding two sentences) and otherwise as required hereunder. The trust shall be terminated as soon as possible after the trust property is distributed to the beneficiaries thereof.

**10.5 Distributions in Kind.** Company property distributed in kind shall be transferred and conveyed to the distributees as tenants in common subject to any liabilities attached thereto so as to vest in them undivided interests in the whole of such property in proportion to their respective rights to share in the proceeds of the sale of such property in accordance with this Article.

## ARTICLE XI - LIMITATIONS ON COMPANY'S ACTIVITIES

**11.1 Special Purpose Entity.** This Article XI is being adopted in order to qualify the Company as a "special purpose entity" for the purpose of the Loan. So long as any portion of the Loan is outstanding, the provisions of this Article XI shall supersede and control any other provision contained in this Agreement to the contrary.

### **11.2. Limitation on Company's Activities.**

(a) So long as any portion of the Loan is outstanding, without the prior written consent of Lender, the Company shall have no authority to:

(i) Engage in any business other than the acquisition, ownership, operation, leasing and management of the Key West Properties and such activities as are necessary, incidental or appropriate in connection therewith;

(ii) Borrow money, incur any indebtedness or assume or guaranty any indebtedness of any other Person, other than normal trade accounts payable and lease obligations in the normal course of business, or grant consensual liens on the Key West Properties; except, however, that the Managing Member is hereby authorized to secure financing for the Company and the Other Borrowers pursuant to the terms of the documents related to the Loan and other

indebtedness expressly permitted in the documents related to the Loan, and to grant a mortgage, lien or liens on the Company's property to secure the Loan;

(iii) Dissolve or liquidate, in whole or in part;

(iv) Sell or lease, or otherwise dispose of all or substantially all of its assets;

(v) Amend, modify or alter this Article XI;

(vi) Merge or consolidate with any other Person; or

(vii) File a voluntary petition or otherwise initiate proceedings to have the Company adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company, or file a petition seeking or consenting to reorganization or relief of the Company as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Company; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Company or of all or any substantial part of the properties and assets of the Company, or make any general assignment for the benefit of creditors of the Company, or admit in writing the inability of the Company to pay its debts generally as they become due or declare or effect a moratorium on the Company debt or take any action in furtherance of any action.

(b) So long as any portion of the Loan is outstanding, the Company shall:

(i) Maintain its assets, accounts, books, records, financial statements, stationary, invoices and checks separate from and not commingled with any of those of any other Person (other than the Managing Member and the Other Borrowers);

(ii) Maintain its respective assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any constituent party of the Company, any Affiliate, or any other Person (other than the Managing Member and the Other Borrowers);

(iii) Conduct its business in its own name, hold regular meetings, as appropriate, to conduct its business and observe all customary organizational, operational and company formalities, as applicable;

(iv) Hold itself out to creditors and the public as a legal entity separate and distinct from any other entity;

(v) Prepare separate tax returns and financial statements, or if part of a consolidated group, then it will be shown as a separate member of such group;

(vi) Allocate and charge fairly and reasonably any common employee or overhead shared with its Affiliates;

(vii) Transact all business with its Affiliates on an arm's-length basis and not enter into any contract or agreement with an Affiliate, except upon terms and conditions that are

intrinsically fair and substantially similar to those that would be available on an arm's-length basis with third parties other than any Affiliate;

(viii) Except to the extent of the joint and several nature of the Loan, not assume, guarantee or pay the debts or obligations of any other Person;

(ix) Correct any known misunderstanding as to its separate identity;

(x) Not permit any of its Affiliates to guarantee or pay its or the Company's obligations (other than to the extent of (A) the joint and several nature of the Loan, and (B) limited guarantees, if any, set forth in the loan documents evidencing the Loan); and

(xi) Not make loans or advances to any other Person.

(c) Failure of the Company, or the Managing Member on behalf of the Company, to comply with any of the foregoing covenants or any other covenant contained in this Agreement shall not affect the status of the Company as a separate legal entity or the limited liability of the Members.

## ARTICLE XII - MISCELLANEOUS

**12.1 Authority to Amend.** Except as provided herein, this Agreement may be amended only by a writing approved by Members holding at least ninety percent (90%) of the Membership Percentages. The Managing Member shall notify all Members in writing of the substance of any such amendment, furnish a copy of the amendment and state the effective date of the amendment.

**12.2 Further Assurances.** Each Member agrees to execute, acknowledge, deliver, file, record and publish such further certificates, amendments to certificates, instruments and documents, and do such other acts and things as may be required by law, or as may be required to carry out the intent and purposes of this Agreement.

**12.3 Notices.** All notices, demands, consents, approvals, requests, offers or other communications which any of the parties to this Agreement may desire or shall be required to be given hereunder shall be in writing and shall be given (a) by registered or certified mail, return receipt requested, or (b) delivery, signed receipt required, via nationally recognized overnight delivery service, the cost and expense of such delivery to be borne by the sending party. All notices shall be addressed to the recipient at the address set forth on Exhibit A hereto unless such address is subsequently changed by giving to the other parties at least ten (10) days written notice thereof. Any notice sent in compliance with the above provisions shall be deemed delivered and received, except for electronic communications, on the third (3<sup>rd</sup>) business day next succeeding the day on which it was sent, or, if sooner, on the actual date received, and, in the case of electronic communications, only on the date the sending party receives acknowledgment of receipt of such notice.

**12.4 Governing Law.** This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the State of Florida, without regard to the conflict of laws principles thereof.

**12.5 Captions.** All articles and section headings or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

**12.6 Pronouns.** As used herein, all pronouns shall include the masculine, feminine, neuter, singular and plural thereof wherever the context and facts require such construction.

**12.7 Successors and Assigns.** This Agreement shall be binding upon the parties hereto and their respective executors, administrators, legal representatives, heirs, successors and assigns, and shall inure to the benefit of the parties hereto, and, except as otherwise herein expressly provided, their respective executors, administrators, legal representatives, successors and assigns.

**12.8 Extension not a Waiver.** No delay or omission in the exercise of any power, remedy or right herein provided or otherwise available to a party or to the Company shall impair or affect the right of such Member or the Company thereafter to exercise the same. Any extension of time or other indulgences granted to a Member hereunder shall not otherwise alter or affect any power, remedy or right of any other Member or of the Company or of the obligations of the Member to whom such extension or indulgence is granted.

**12.9 Severability.** If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to such Person or circumstances, other than as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision shall be valid and shall be enforced to the fullest extent permitted by law.

**12.10 Entire Agreement.** This Agreement, and the exhibits hereto, contain the entire understanding and agreement of the parties hereto relating to the subject matter hereof and all prior agreements relative hereto which are not contained herein.

**12.11 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed one agreement, but no counterpart shall be binding unless an identical counterpart shall have been executed and delivered by each of the other parties hereto.

**12.12 No Third Party Beneficiary.** The provisions of this Agreement shall be solely for the benefit of the parties hereto and their respective successors and assigns.

**12.13 Investment Representation.** Each Member represents, warrants and agrees that it is acquiring its Membership Interest solely for its own account for the purpose of investment only and not with a view to resale or distribution of all or any part thereof, nor with the intent of selling or otherwise distributing its Membership Interest at any particular time or upon the occurrence or non-occurrence of any predetermined event and further represents, warrants and agrees that it has had free access to all documents, information, books and records in the possession and control of the Members relating to the Company, the Property and the business of the Company. Each Member further represents that by reason of its knowledge and experience in financial and business matters, it is capable of evaluating the risks in the Company. Each Member understands that it must bear the economic risk entailed in purchasing the membership interests; that the membership interests of the Members have not been registered under the Securities Act of 1933 or qualified under the securities

laws of any state and may not be sold unless they are registered under the Securities Act of 1933 and qualified under the securities laws of any state (neither of which, in all likelihood, the Company will do) or an exemption from such registration and qualification is available and are further subject to the restrictions on transfer set forth in this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the 7 day of October, 2006.

**MANAGING MEMBER:**

SH 7, INC., a Florida corporation

By: \_\_\_\_\_  
Robert A. Spottswood, President

**MEMBERS:**

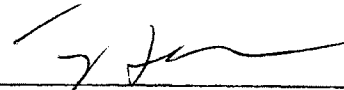
  
\_\_\_\_\_  
J LUZURIAGA

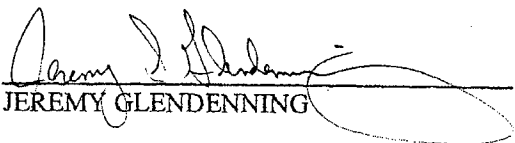
\_\_\_\_\_  
ANDREW V. AGOSTINI

RFA INVESTORS, LP, a Delaware limited partnership

By: RFA Management Company LLC, a Delaware limited liability company, its General Partner

By: \_\_\_\_\_  
Edward W. Ross, Manager

  
\_\_\_\_\_  
TYLER FLESCH

  
\_\_\_\_\_  
JEREMY GLENDENNING

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the 7 day of October, 2006.

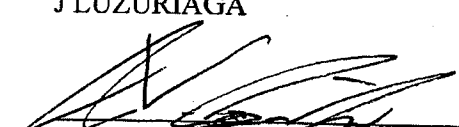
**MANAGING MEMBER:**

SH 7, INC., a Florida  
corporation

By:   
Robert A. Spottswood, President

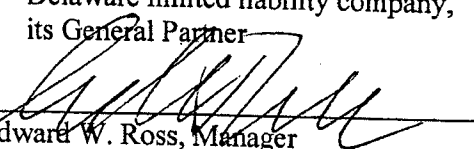
**MEMBERS:**

\_\_\_\_\_  
J LUZURIAGA

  
\_\_\_\_\_  
ANDREW V. AGOSTINI

RFA INVESTORS, LP, a Delaware limited  
partnership

By: RFA Management Company LLC, a  
Delaware limited liability company,  
its General Partner

By:   
Edward W. Ross, Manager

\_\_\_\_\_  
TYLER FLESCH

\_\_\_\_\_  
JEREMY GLENDENNING



**EXHIBIT A**

**TO**

**LIMITED LIABILITY COMPANY OPERATING AGREEMENT**

**OF JLW KEY WEST 1, LLC**

<b><u>Name and Address of Member</u></b>	<b><u>Initial Capital Contribution</u></b>	<b><u>Membership Percentage</u></b>
Andrew V. Agostini 401 N. Michigan Avenue, Suite 1300 Chicago, Illinois 60611	\$225.00	22.5%
J Luzuriaga Seabreeze Office Building 49 Immigration Street, Suite 103 Charleston, South Carolina 29403	\$225.00	22.5%
RFA Investors, LP 401 N. Michigan Avenue, Suite 1300 Chicago, Illinois 60611 Attention: Edward W. Ross	\$225.00	22.5%
SH 7, Inc. 506 Fleming Street Key West, Florida 33040	\$225.00	22.5%
Tyler Flesch Seabreeze Office Building 49 Immigration Street, Suite 103 Charleston, South Carolina 29403	\$50.00	5.0%
Jeremy Glendenning Seabreeze Office Building 49 Immigration Street, Suite 103 Charleston, South Carolina 29403	\$50.00	5.0%

**EXHIBIT B**

**TO**

**LIMITED LIABILITY COMPANY OPERATING AGREEMENT**

**OF JLW KEY WEST 1, LLC**

Description of Property

1. Radisson Inn Property 3820 North Roosevelt Boulevard, Key West, Florida 33040
2. El Meson de Pepe Property 3800 North Roosevelt Boulevard, Key West, Florida 33040
3. Conch Tour Train Property 3840 North Roosevelt Boulevard, Key West, Florida 33040
4. Days Inn Property 3852 North Roosevelt Boulevard, Key West, Florida 33040

FLORIDA DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS



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[Events](#)   [No Name History](#)

**Detail by Entity Name**

**Florida Limited Liability Company**

JLW KEY WEST 2, LLC

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**Filing Information**

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**Status** ACTIVE  
**Last Event** LC AMENDMENT  
**Event Date Filed** 12/28/2010  
**Event Effective Date** NONE

**Principal Address**

35 EAST WACKER DRIVE, SUITE 3300  
CHICAGO IL 60601

Changed 12/28/2010

**Mailing Address**

35 EAST WACKER DRIVE, SUITE 3300  
CHICAGO IL 60601

Changed 12/28/2010

**Registered Agent Name & Address**

CORPORATION SERVICE COMPANY  
1201 HAYS STREET  
TALLAHASSEE FL 32301-2525 US

Name Changed: 12/28/2010

Address Changed: 12/28/2010

**Manager/Member Detail**

**Name & Address**

Title MGRM

AGOSTINI, ANDREW V  
35 EAST WACKER DRIVE, SUITE 3300  
CHICAGO IL 60601

**Annual Reports**

**Report Year Filed Date**

2010 04/29/2010  
2011 04/26/2011  
2012 04/20/2012

**Document Images**

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**No Name History**

THIS INSTRUMENT WAS  
PREPARED BY AND AFTER  
RECORDING MAIL TO:  
Donald I. Resnick, Esq.  
Jenner & Block LLP  
353 North Clark Street  
Chicago, Illinois 60654

Doc# 1892593 07/24/2012 10:54AM  
Filed & Recorded in Official Records of  
MONROE COUNTY DANNY L. KOLHAGE

Doc# 1892593  
Bk# 2581 Pg# 113

*This space reserved for Recorder's use only*

### **COTENANTS' AGREEMENT**

(Quality Inn Key West: 3824 N. Roosevelt Blvd., Key West)

THIS COTENANTS' AGREEMENT (the "**Agreement**") is entered into as of the **20<sup>th</sup>** day of July, 2012 (the "**Effective Date**"), by and among **JLW KEY WEST 2, LLC**, a Florida limited liability company ("**JLW**" or "**Managing Cotenant**"), **RFA KEY WEST II LLC**, a Florida limited liability company ("**RFA**"), and **JL KEY WEST II LLC**, a Florida limited liability company ("**JL**"). The parties hereto are sometimes referred to individually as a "**Cotenant**" and collectively as the "**Cotenants**."

### **RECITALS:**

A. The Cotenants are the tenant-in-common owners of that certain real property (and any improvements located thereon) located at 3824 North Roosevelt Boulevard, Key West, Monroe County, Florida, as more particularly described on Exhibit A attached hereto, upon which is located the improvements commonly known as the current Quality Inn Key West Hotel (collectively, the "**Property**").

B. Title to the Property is owned by the Cotenants as tenants-in-common in the following percentages (the "**Percentage Interests**"):

JLW	22.40%
RFA	55.10%
JL	22.50%

C. The Property, along with certain other real property, is presently encumbered by that certain Amended and Restated Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated December 23, 2009 (as amended from time to time, the "**Mortgage**") made by the Cotenants (or their predecessors-in-interest) and JLW Key West 1, LLC, a Florida limited liability company ("**JLW1**"), to and for the benefit of Bank of America, N.A., a national banking association, as agent for itself and certain other lenders which become parties to the Amended and Restated Term Loan Agreement (together with its successors and assigns, the "**Lender**"). As used in this Agreement, the "**Loan**" shall mean that certain loan in the original principal amount of \$56,500,000.00 made by and among the Cotenants (or their predecessors-in-interest) and JLW1 collectively as borrower under the Loan (in such capacity,

collectively, "**Borrower**"), and Lender. In addition to the Mortgage, the Loan is further evidenced and secured by that certain Amended and Restated Promissory Note dated December 23, 2009 in the original principal amount of \$28,250,000.00 made by Borrower to the order of Bank of America and that certain Amended and Restated Promissory Note dated December 23, 2009 in the original principal amount of \$28,250,000.00 made by Borrower to the order of Associated Bank, National Association, a national banking association (such promissory notes are collectively, the "**Note**"), that certain Amended and Restated Term Loan Agreement dated December 23, 2009 (the "**Loan Agreement**") made by and among Borrower and Lender, that certain Amended and Restated Environmental Indemnity Agreement dated December 23, 2009 (the "**Indemnity**") made by and among Borrower, certain guarantors of the Loan to and for the benefit of Lender, and UCC financing statement(s) filed in the Office of the Clerk of the Circuit Court of Monroe County, Florida and with the Florida and Illinois Secretaries of State (the "**UCCs**"). As used in this Agreement, "**Loan Documents**" shall mean the Mortgage, Note, Loan Agreement, Indemnity, UCCs and such other documents evidencing, governing or securing or entered into relative the Loan.

D. The parties desire to memorialize their agreement regarding the operations of the Property so long as title thereto remains vested in them, as Cotenants.

#### **A G R E E M E N T S**

NOW, THEREFORE, for and in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Cotenancy.

(a) The purposes of this tenancy-in-common are to engage in the following activities: (i) to manage, lease, mortgage and dispose of the Property; and (ii) to take such other actions as the Cotenants deem necessary or advisable to carry out the foregoing. The Cotenants shall hold the Property for investment purposes only and not for the active conduct of a trade or business. In particular, the Cotenants shall only engage in activities which are customary services in connection with the maintenance and repair of the Property. Neither the Cotenants, nor its agents shall provide any non-customary services, as such term is contemplated under Code (as hereinafter defined) Sections 512 and 856 and Rev. Rul. 75-743.

(b) Each Cotenant acknowledges and confirms that it owns its interest in the Property as a tenant-in-common with the other Cotenants, and that each Cotenant's interest in the Property is its Percentage Interest. The Cotenants do not intend by this Agreement to create a partnership, joint venture, association or a trust for federal income tax purposes, but merely to set forth the terms and conditions upon which each of them shall hold their respective interests. Except as expressly provided herein or as otherwise agreed upon by all Cotenants in writing, no Cotenant is authorized to act as agent for, to act on behalf of, or to do any act that will bind, any other Cotenant or to incur any obligations with respect to the Property. Each Cotenant agrees and acknowledges that for federal income tax purposes they are tenants-in-common holding a direct ownership interest in the Property. Each Cotenant shall report its interest in the Property



in a manner consistent with the foregoing and otherwise not take any action that would be inconsistent with the foregoing.

(c) Without limitation of the preceding paragraph, none of the Cotenants shall have any fiduciary duty or obligation to any other Cotenant by reason of ownership of such Cotenant's interest in the Property or by reason of this Agreement. Each Cotenant and the partners, officers, directors, members, managers, and shareholders of each Cotenant may engage in whatever activities they choose, whether competitive with the Property or otherwise, without having or incurring any obligation to offer any interest in any such activities to any other Cotenant. Neither this Agreement nor the interest of any Cotenant in the Property nor the relationship among the Cotenants shall prevent any Cotenant, or the partners, officers, directors, members, managers, and shareholders of any Cotenant, from engaging in such activities, or require participation in such activities by any other Cotenant.

(d) No Cotenant has the right to (i) partition any portion of the Property; (ii) make application to any court or authority for a partition of the Property or for the appointment of a receiver for the Property; or (iii) commence or prosecute any action or proceeding for a portion of the Property or for the appointment of a receiver for the Property while the Loan remains outstanding, and each Cotenant hereby expressly waives and relinquishes all rights to seek a partition of the Property or the appointment of a receiver for the Property. Upon any breach of the provisions of this Paragraph 1(d) by any Cotenant, the other Cotenants shall be entitled to a decree or order restraining or enjoining such application, action, or proceeding. From and after the repayment in full or release of the Loan in accordance with the terms of the Loan Agreement, each Cotenant may at any time seek to have the Property partitioned corresponding to its Percentage Interests.

(e) The Cotenants hereby agree that the joint ownership of the Property as tenants in common shall be excluded from Subchapter K of the Internal Revenue Code of 1986, as amended from time to time (the "Code") and the Cotenants will report on their federal and state income tax returns all items of income, deduction, credits and expense consistent therewith which result from their Interests as provided in Treasury Regulation Section 1.761-2(b). No Cotenant shall notify the Commissioner of Internal Revenue that such Cotenant desires that Subchapter K of the Code apply to the Cotenants and each Cotenant hereby agrees to indemnify, protect, defend and hold the other Cotenants free and harmless from all costs, liabilities, tax consequences and expenses, including, without limitation, attorneys' fees, which may result from any Cotenant so notifying the Commissioner in violation of this Agreement or otherwise taking a contrary position on any tax return.

(f) Notwithstanding anything to the contrary contained herein, so long as any portion of the Loan is outstanding, and without the prior written consent of the Lender, neither the Managing Cotenant nor any Cotenant on its own behalf or on behalf of the Cotenants collectively shall have the power or authority to undertake any of the following:

i. engage in any business or activity other than those expressly permitted hereby;

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Bk# 2581 Pg# 115



ii. engage in any business or activity other than those expressly permitted pursuant to the Loan Documents, including, without limitation, the provisions related to the single asset entity and separateness of the Cotenants as set forth in the Loan Agreement which are hereby incorporated herein by reference;

iii. do any act which would make it impossible to carry on the ordinary business of any Cotenant or the Cotenants collectively;

iv. borrow money or incur any indebtedness or assume or guaranty any indebtedness of any other entity, other than normal trade accounts and lease obligations incurred in the ordinary course of business as permitted pursuant to the Loan Documents, or grant consensual liens on the Property; except, however, the Cotenants are specifically authorized to obtain the Loan, jointly and severally, and to execute the Loan Documents, including, without limitation, the Indemnity;

v. dissolve or liquidate any Cotenants or terminate this Agreement or the tenancy-in-common relationship evidenced hereby;

vi. make a Prohibited Transfer (as defined in the Loan Agreement) of any interest in the Property or make any other disposition except as expressly permitted by and in accordance with the Loan Documents, and further provided that nothing contained herein shall restrict or prohibit a Permitted Transfer (as defined in the Loan Agreement) in compliance with the Loan Documents;

vii. institute bankruptcy proceedings (or consent or acquiesce to any bankruptcy proceedings or actions) with respect to any Cotenant; or

viii. amend this Agreement in any respect.

(g) Notwithstanding anything to the contrary contained herein, so long as any portion of the Loan is outstanding, the Cotenants covenant and agree as follows:

i. No Cotenant may exercise any remedy provided for in this Agreement including any rights of indemnification against any other Cotenant.

ii. Each Cotenant acknowledges that any action by one Cotenant that constitutes an Event of Default (as defined in the Loan Documents), including, without limitation, commencement of any action to partition the Property, can result in Lender's exercise of all of its rights and remedies under the Loan Documents.

iii. Notwithstanding any other provision herein, the Cotenants agree and acknowledge that any amendment, modification, or termination of this Agreement shall require Lender's prior written consent.

iv. Notwithstanding any other provision herein, the Cotenants agree and acknowledge that each of the Cotenants and Property are subject to the Loan Documents, and the Cotenants shall comply with the provisions of the Loan Documents. In amplification of

the foregoing, each of the Cotenants covenants and agrees to comply with the provisions pertaining to single purpose entities and separateness set forth in the Loan Agreement.

v. There shall be no more than four (4) Cotenants or owners of the Property.

2. Finance.

(a) Except as otherwise provided herein, each Cotenant shall be entitled to such Cotenant's Percentage Interest of all revenues and receipts derived from the Property and the business of the Cotenants (including loan proceeds), and shall bear such Cotenant's Percentage Interest of all expenses and expenditures pertaining to the Property and the business of the Cotenants (including the Loan), provided that none of the Cotenants shall have any personal liability or obligation to any other Cotenant or any other person or entity with respect to any such expense or expenditure except as provided by separate agreement with the obligee with respect to such expense or expenditure. In no event shall the Cotenants have joint and several liability with respect to any obligation or liability pertaining to the Property or the business of the Cotenants, unless they expressly agree to undertake the same in an agreement separate from this Agreement. Notwithstanding the foregoing, the Cotenants acknowledge and agree that the obligations of the Cotenants under the Loan Documents, including, without limitation, the Note, Loan Agreement, and Indemnity, are joint and several.

(b) Notwithstanding Paragraph 2(a) above and subject to the provisions of the Loan Documents, all revenues and receipts of the Cotenants derived from the Property or the business of the Cotenants (including loan proceeds) shall be first applied to payment of or provision for all expenses and expenditures pertaining to the Property and the business of the Cotenants, as determined by the Cotenants. Subject to the provisions of the Loan Documents, all receipts shall be deposited in a bank account or accounts established by or at the direction of the Cotenants, and all disbursements for such expenses and expenditures shall be withdrawn therefrom.

(c) Notwithstanding Paragraph 2(a) above, subject to the provisions of Paragraph 3(a) hereof, if any Cotenant (the "**Contributing Cotenant**") pays more than such Cotenant's Percentage Interest of any expense, expenditure or obligation of or pertaining to the Property, the Loan or the business of the Cotenant, whether or not such contributing Cotenant has or had personal liability for payment thereof, the other Cotenants shall be liable to the Contributing Cotenant, upon notice by the Contributing Cotenant, for such other Cotenants' Percentage Interests of such expense, expenditure or obligation. If the other Cotenants fail to make such payment upon such notice, interest shall accrue thereon at the rate of twelve percent (12%) per annum, and the Contributing Cotenant shall, subject to the provisions of Paragraph 1(d), 1(g) and 11 hereof, have all rights and remedies available under applicable law for collection thereof.

3. Management.

(a) JLW is hereby designated as the Managing Cotenant ("**Managing Cotenant**") of the Property on behalf of the Cotenants. The Managing Cotenant may only be

replaced with the unanimous approval of the Cotenants. All Major Management Decisions shall be made solely upon the unanimous approval of the Cotenants. "Major Management Decisions" are the following: (i) selling, transferring, leasing, or otherwise disposing of all or substantially all of the Property; (ii) obtaining any financing secured by or encumbering the Property; (iii) materially altering or changing the physical condition or legal status of the Property; (iv) replacing the Managing Cotenant; (v) entering into any leasing agreement whether or not an affiliate of any Cotenant is the leasing agent; (vi) entering into any management agreement whether or not an affiliate of Cotenant is the management agent, including, without limitation, the approval of any hotel manager or any hotel management agreement; (vii) approval of the annual budget and operating business plan for the Property; (viii) approval of any expense, expenditure or obligation that may give rise to liability of a Cotenant under the provisions of Paragraph 2(c) hereof; (ix) approval of capital expenditures not contained in the budget and operating business plan in excess of the greater of (A) \$25,000.00 or (B) ten percent (10%) of the current budget; and (x) amending, supplementing or terminating this Agreement.

(b) Except for the Major Management Decisions, the Managing Cotenant shall have the right, power and authority, in the day-to-day management of the Property, to do or cause to be done any and all other acts deemed by the Managing Cotenant to be necessary or appropriate to effectuate the business, purposes and objectives of the Cotenants of the Property, including, without limitation, the making of payments under the Loan and the filing of any reports required by the terms of the Loan Documents, any communications with Lender, and any ordinary administration or management of the Property.

(c) Any person or entity dealing with the Property may rely on a certificate signed by the Managing Cotenant as to:

- i. the identity of the Managing Cotenant;
- ii. the existence or nonexistence of any fact or facts which constitute a condition precedent to acts by the Managing Cotenant or are in any matter germane to the affairs of the Property;
- iii. the persons who, or entities which, are authorized to execute and deliver any instrument or document of or on behalf of the Cotenants; or
- iv. any act or failure to act by the Cotenants or as to any other matter whatsoever involving the Cotenants.

(d) The Managing Cotenant shall devote such time to the affairs of the Property as the Managing Cotenant may, in its absolute discretion, deem necessary for the proper performance of its duties under this Agreement and shall be entitled to receive reasonable compensation for such services as set forth in an approved budget or otherwise agreed upon by the Cotenants. In addition, the Managing Cotenant shall be entitled to charge the Cotenants, or to be reimbursed by the Cotenants, for all expenses reasonably incurred by it in connection with the Property.

(e) The Managing Cotenant shall not be liable, responsible or accountable in damages or otherwise to the Cotenants for any act performed by it within the scope of its authority conferred by this Agreement, for its failure or refusal to perform any acts except those expressly required by the terms of this Agreement, or for its performance or omission to perform any acts on advice of accountants or legal counsel; provided, however, that the Managing Cotenant shall nevertheless be liable in all events to the Cotenants for such Managing Cotenant's own willful misconduct, gross negligence or violation of its fiduciary duties hereunder.

4. Transfers; Successor.

Except as specifically provided in this Agreement and subject to compliance with applicable securities laws and with the Loan Documents, including, without limitation, the terms of the Mortgage and the Loan Agreement, each Cotenant may sell, transfer, convey, pledge, encumber or hypothecate its interest or any part thereof. Any successor to any portion of the interest of any Cotenant in the Property, other than a single grantee or assignee of the interests of the Cotenants, shall be deemed to accept the interest so conveyed upon and subject to the terms and provisions of this Agreement and to have assumed all obligations of the grantor or assignor accruing from and after such conveyance, subject to the limitations on personal liability contained herein, which limitations shall be deemed applicable to the grantee to the extent that they were applicable to the grantor. Notwithstanding the foregoing, as long as any portion of the Loan is outstanding, any Cotenant must comply with the provisions of the Loan Documents, and, if necessary, obtain Lender's written consent prior to making any such transfer.

5. Books and Records.

The Cotenants shall jointly maintain, or cause to be maintained, accurate and complete books and records pertaining to the Property, and shall furnish, or cause to be furnished, to each Cotenant, such information as such Cotenant may reasonably require pertaining to the Property for inclusion on such Cotenant's federal and state income tax returns.

6. Notices.

All notices, consents and other communications permitted or required hereunder shall be in writing and shall be mailed by certified mail, return receipt requested, or by commercial overnight courier, or personally delivered, as follows:

To JLW:	JLW Key West 2, LLC
	35 East Wacker Drive
	Suite 3300
	Chicago, Illinois 60601
	Attn: Andrew V. Agostini



To RFA: RFA Key West II LLC  
35 East Wacker Drive  
Suite 3300  
Chicago, Illinois 60601  
Attn: Edward W. Ross

To JL: JL Key West II LLC  
49 Immigration Street  
Charleston, South Carolina 29403  
Attn: J. Luzuriaga

Mailed communications sent by United States certified or registered mail, postage prepaid, shall be deemed to have been given upon posting in the United States mails. Notwithstanding the foregoing and subject to the provisions of Paragraph 3 hereof, the Managing Cotenant is hereby designated as (i) the agent for service of process for all of Cotenants with respect matters pertaining to this Agreement, the Loan Documents or the Property; and (ii) the party under this Agreement to whom any and all notices and other communication from Lender to any one or more of the Cotenants should be delivered or communicated (and such designation shall be changed to another party under this Agreement only following thirty (30) days prior written notice to Lender). For any notice or other communication to be sent hereunder to any one or more of the Cotenants, a single such notice to the Managing Cotenant shall be effective as notice to the applicable Cotenants and multiple copies of the same notice shall not be required to be separately delivered to each of the Cotenants in order for such notice to be effective to the applicable Cotenants.

7. Governing Law.

This Agreement shall be governed and construed in all respects by and in accordance with the internal laws of the State of Florida.

8. Complete Agreement; Headings.

(a) This instrument constitutes the entire written agreement and understanding of the parties pertaining to the Property, and there are no prior or contemporaneous written or oral agreements, undertakings, promises, covenants or warranties not contained herein. No modification or amendment of this Agreement shall be binding upon any of the parties hereto, unless in writing executed by the Cotenants.

(b) Paragraph and section headings are for convenience of reference only, and are not part of this Agreement, and shall not be deemed to be an accurate or complete description of the matters described therein.

9. Severability.

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Bk# 2581 Pg# 120

In the event that any provision of this Agreement shall be unenforceable, in whole or in part, such provision shall be limited to the extent necessary to render the same valid and enforceable or shall be excised from this Agreement, as circumstances may require, and this Agreement shall be construed as if such provision had been incorporated herein as so limited, or as if said provision had not been included herein, as the case may be.

10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be taken to be an original and all collectively as one and the same instrument.

11. Subordination and Standstill. The Cotenants agree that this Agreement, and all rights, remedies of, and indemnities benefiting the Cotenants hereunder as to one another, shall at all times and in all respects be, and are hereby expressly made, fully subject to, junior, secondary and subordinate to the Loan Documents and the rights and remedies of Lender thereunder, including any future advances made by Lender. It is further agreed that the rights and remedies subordinated in the foregoing sentence shall include, but not be limited to, any rights under this Agreement, purchase options, rights of first refusal and rights to purchase the Property under Section 363(i) of the Bankruptcy Code.

12. Lender Third Party Beneficiary. It is specifically agreed by Cotenants that Lender shall be a third party beneficiary under this Agreement until such time as the Loan is repaid in full or released.

**[SIGNATURE PAGES FOLLOW]**

Doc# 1892593  
Bk# 2581 Pg# 121

IN WITNESS WHEREOF, the undersigned parties have executed Cotenants' Agreement as of the date first written above.

Signed, sealed and delivered in the presence of:

Michelle Dugley  
Name: Michelle Dugley  
Printed Name of Witness

J. Agostini  
Name: Andrew Agostini  
Printed Name of Witness

JLW:

JLW KEY WEST 2, LLC,  
a Florida limited liability company

By: [Signature]  
Name: Andrew V. Agostini  
Title: Managing Member

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of July, 2012, by Andrew Agostini, the Managing Member of JLW KEY WEST 2, LLC, a Florida limited liability company, on behalf of such entity, who is either personally known to me, or has produced a \_\_\_\_\_ driver's license as identification.

Patrice A. Alpert  
Print Name: PATRICE A. ALPERT  
NOTARY PUBLIC  
My Commission Expires: 7-25-13

(Notarial Seal)

[Signature Page Continues]



Doc# 1892593  
Bk# 2581 Pg# 122



Signed, sealed and delivered in the presence of:

**RFA:**

**RFA KEY WEST II LLC, a Florida limited liability company**

By: RFA Key West II Manager, LLC, a Florida limited liability company, as its Manager

By: RFA Investors, LP, a Delaware limited liability partnership, as its Manager

By: RFA Management Company LLC, a Delaware limited liability company, as its General Partner

By: Edward W. Ross  
Name: Edward W. Ross  
Title: Manager

Michelle Weiss  
Name: Michelle Weiss  
Printed Name of Witness

J. Agostini  
Name: Lauren Agostini  
Printed Name of Witness

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of July, 2012, by Edward W. Ross, as Manager of RFA Management Company LLC, a Delaware limited liability company, the General Partner of RFA Investors, LP, a Delaware limited partnership, the Manager of RFA Key West II Manager, LLC, a Florida limited liability company, the Manager of RFA KEY WEST II LLC, a Florida limited liability company, on behalf of such entity, who is either personally known to me, or has produced a driver's license as identification.



Patrice A. Alpert  
Print Name: PATRICE A. ALPERT  
NOTARY PUBLIC  
My Commission Expires: 7/25/13

[Signature Page Continues]

Signed, sealed and delivered in the presence of:

JL:

JL KEY WEST II LLC, a Florida limited liability company

Virginia B. Master  
Name: VIRGINIA B. MASTER  
Printed Name of Witness

By: JL Key West II Manager LLC, a Florida limited liability company, as its Manager

Dan Schwab  
Name: Dan Schwab  
Printed Name of Witness

By: J. Luzuriaga  
Name: J. Luzuriaga  
Title: Manager

STATE OF SOUTH CAROLINA )  
 ) SS.  
COUNTY OF CHARLESTON )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of July, 2012, by J. Luzuriaga, as the Manager of JL Key West II Manager LLC, a Florida limited liability company, as the Manager of JL KEY WEST II LLC, a Florida limited liability company, on behalf of such entity, who is either personally known to me, or has produced a SC driver's license as identification.

Dan Schwab  
Print Name: Dan Schwab  
NOTARY PUBLIC  
My Commission Expires: 10/20/20

(Notarial Seal)

Doc# 1892593  
BKN 2581 Pg# 124

**EXHIBIT A**

**Legal Description**

Commencing at the Northwest corner of Parcel 2 on "Plat of Survey of Lands on the Island of Key West, Monroe County, Florida," as recorded in Plat Book 3, Page 35 of the Public Records of Monroe County, Florida; thence Northeasterly and Easterly along the Southerly right of way line of North Roosevelt Boulevard 500.79 feet to a curve to the right and the Point of Beginning; said curve having a radius of 978.72 feet, a central angle of 01°58'48", a tangent length of 16.91 feet, a chord bearing of South 66°29'35" East, and a chord length of 33.82 feet; thence along the arc of said curve, an arc length of 33.82 feet to the end of said curve; thence South 65°16'55" East, a distance of 265.99 feet; thence South 33°07'56" West, a distance of 622.55 feet to a point on a curve to the left, having a radius of 417.89 feet, a central angle of 19°27'37", a tangent length of 71.66 feet; a chord bearing of North 57°18'20" West and a chord length of 141.25 feet; thence along the arc of said curve, an arc length of 141.93 feet to the end of said curve; thence North 18°07'46" East, a distance of 599.50 feet back to the Point of Beginning.

Doc# 1892593  
Bk# 2581 Pg# 125

MONROE COUNTY  
OFFICIAL RECORDS



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**No Events**   **No Name History**

**Detail by Entity Name**

**Foreign Limited Liability Company**

AVA KEY WEST LLC

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**Filing Information**

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**Principal Address**

35 E WACKER DR, SUITE 3300  
 CHICAGO IL 60601  
 Changed 02/19/2008

**Mailing Address**

35 E WACKER DR, SUITE 3300  
 CHICAGO IL 60601  
 Changed 02/19/2008

**Registered Agent Name & Address**

CORPORATION SERVICE COMPANY  
 1201 HAYS STREET  
 TALLAHASSEE FL 32301-2525 US

**Manager/Member Detail**

**Name & Address**

Title MGRM  
 AGOSTINI, ANDREW V  
 35 E WACKER DR, SUITE 3300  
 CHICAGO IL 60601

**Annual Reports**

**Report Year Filed Date**

2010      03/22/2010  
2011      04/14/2011  
2012      04/20/2012

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**No Events**

**No Name History**

THIS INSTRUMENT WAS  
PREPARED BY AND AFTER  
RECORDING MAIL TO:  
Donald I. Resnick, Esq.  
Jenner & Block LLP  
353 North Clark Street  
Chicago, Illinois 60654

Doc# 1892594 07/24/2012 10:54AM  
Filed & Recorded in Official Records of  
MONROE COUNTY DANNY L. KOLHAGE

Doc# 1892594  
Bk# 2581 Pg# 126

*This space reserved for Recorder's use only*

### **COTENANTS' AGREEMENT**

(Lexington Hotel Key West: 3850 N. Roosevelt Blvd., Key West)

THIS COTENANTS' AGREEMENT (the "**Agreement**") is entered into as of the 20<sup>th</sup> day of July, 2012 (the "**Effective Date**"), by and among JRC KEY WEST HOTEL LLC, an Illinois limited liability company ("**JRC Key West**"), AVA KEY WEST LLC, an Illinois limited liability company ("**AVA LLC**"), JL KEY WEST LLC, an Illinois limited liability company ("**JL LLC**"), and RFA KEY WEST LLC, an Illinois limited liability company ("**RFA LLC**"). The parties hereto are sometimes referred to individually as a "**Cotenant**" and collectively as the "**Cotenants**."

### **RECITALS:**

A. The Cotenants are the tenant-in-common owners of that certain real property (and any improvements located thereon) located at 3850 North Roosevelt Boulevard, Key West, Monroe County, Florida, as more particularly described on Exhibit A attached hereto, upon which is located the improvements commonly known as the current Lexington Hotel Key West (collectively, the "**Property**").

B. Title to the Property is owned by the Cotenants as tenants-in-common in the following percentages (the "**Percentage Interests**"):

JRC Key West	33.46%
RFA LLC	33.20%
AVA LLC	16.67%
JL LLC	16.67%

C. The Property is presently encumbered by that certain Amended and Restated Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated February 26, 2009 (the "**Mortgage**") made by the Cotenants (or their predecessors-in-interest) to and for the benefit of Bank of America, N.A., a national banking association (together with its successors and assigns, the "**Lender**"). As used in this Agreement, the "**Loan**" shall mean that certain loan in the original principal amount of \$16,500,000.00 made by and among the Cotenants (or their predecessors-in-interest) collectively as borrower under the Loan (in such capacity, collectively, "**Borrower**"), and Lender. In addition to the Mortgage, the Loan is



further evidenced and secured by that certain Amended and Restated Promissory Note dated February 26, 2009 in the original principal amount of \$16,500,000.00 (the "Note") made by Borrower to the order of Lender, that certain Term Loan Agreement dated February 26, 2009 (the "Loan Agreement") made by and among Borrower and Lender, that certain Amended and Restated Environmental Indemnity Agreement dated February 26, 2009 (the "Indemnity") made by and among Borrower, certain guarantors of the Loan to and for the benefit of Lender, and UCC financing statement(s) filed in the Office of the Clerk of the Circuit Court of Monroe County, Florida and with the Florida and Illinois Secretaries of State (the "UCCs"). As used in this Agreement, "Loan Documents" shall mean the Mortgage, Note, Loan Agreement, Indemnity, UCCs and such other documents evidencing, governing or securing or entered into relative the Loan.

D. The parties desire to memorialize their agreement regarding the operations of the Property so long as title thereto remains vested in them, as Cotenants.

### AGREEMENTS

NOW, THEREFORE, for and in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Cotenancy.

(a) The purposes of this tenancy-in-common are to engage in the following activities: (i) to manage, lease, mortgage and dispose of the Property; and (ii) to take such other actions as the Cotenants deem necessary or advisable to carry out the foregoing. The Cotenants shall hold the Property for investment purposes only and not for the active conduct of a trade or business. In particular, the Cotenants shall only engage in activities which are customary services in connection with the maintenance and repair of the Property. Neither the Cotenants, nor its agents shall provide any non-customary services, as such term is contemplated under Code (as hereinafter defined) Sections 512 and 856 and Rev. Rul. 75-743.

(b) Each Cotenant acknowledges and confirms that it owns its interest in the Property as a tenant-in-common with the other Cotenants, and that each Cotenant's interest in the Property is its Percentage Interest. The Cotenants do not intend by this Agreement to create a partnership, joint venture, association or a trust for federal income tax purposes, but merely to set forth the terms and conditions upon which each of them shall hold their respective interests. Except as expressly provided herein or as otherwise agreed upon by all Cotenants in writing, no Cotenant is authorized to act as agent for, to act on behalf of, or to do any act that will bind, any other Cotenant or to incur any obligations with respect to the Property. Each Cotenant agrees and acknowledges that for federal income tax purposes they are tenants-in-common holding a direct ownership interest in the Property. Each Cotenant shall report its interest in the Property in a manner consistent with the foregoing and otherwise not take any action that would be inconsistent with the foregoing.

(c) Without limitation of the preceding paragraph, none of the Cotenants shall have any fiduciary duty or obligation to any other Cotenant by reason of ownership of such

Cotenant's interest in the Property or by reason of this Agreement. Each Cotenant and the partners, officers, directors, members, managers, and shareholders of each Cotenant may engage in whatever activities they choose, whether competitive with the Property or otherwise, without having or incurring any obligation to offer any interest in any such activities to any other Cotenant. Neither this Agreement nor the interest of any Cotenant in the Property nor the relationship among the Cotenants shall prevent any Cotenant, or the partners, officers, directors, members, managers, and shareholders of any Cotenant, from engaging in such activities, or require participation in such activities by any other Cotenant.

(d) No Cotenant has the right to (i) partition any portion of the Property; (ii) make application to any court or authority for a partition of the Property or for the appointment of a receiver for the Property; or (iii) commence or prosecute any action or proceeding for a portion of the Property or for the appointment of a receiver for the Property while the Loan remains outstanding, and each Cotenant hereby expressly waives and relinquishes all rights to seek a partition of the Property or the appointment of a receiver for the Property. Upon any breach of the provisions of this Paragraph 1(d) by any Cotenant, the other Cotenants shall be entitled to a decree or order restraining or enjoining such application, action, or proceeding. From and after the repayment in full or release of the Loan in accordance with the terms of the Loan Agreement, each Cotenant may at any time seek to have the Property partitioned corresponding to its Percentage Interests.

(e) The Cotenants hereby agree that the joint ownership of the Property as tenants in common shall be excluded from Subchapter K of the Internal Revenue Code of 1986, as amended from time to time (the "Code") and the Cotenants will report on their federal and state income tax returns all items of income, deduction, credits and expense consistent therewith which result from their Interests as provided in Treasury Regulation Section 1.761-2(b). No Cotenant shall notify the Commissioner of Internal Revenue that such Cotenant desires that Subchapter K of the Code apply to the Cotenants and each Cotenant hereby agrees to indemnify, protect, defend and hold the other Cotenants free and harmless from all costs, liabilities, tax consequences and expenses, including, without limitation, attorneys' fees, which may result from any Cotenant so notifying the Commissioner in violation of this Agreement or otherwise taking a contrary position on any tax return.

## 2. Finance.

(a) Except as otherwise provided herein, each Cotenant shall be entitled to such Cotenant's Percentage Interest of all revenues and receipts derived from the Property and the business of the Cotenants (including loan proceeds), and shall bear such Cotenant's Percentage Interest of all expenses and expenditures pertaining to the Property and the business of the Cotenants (including the Loan), provided that none of the Cotenants shall have any personal liability or obligation to any other Cotenant or any other person or entity with respect to any such expense or expenditure except as provided by separate agreement with the obligee with respect to such expense or expenditure. In no event shall the Cotenants have joint and several liability with respect to any obligation or liability pertaining to the Property or the business of the Cotenants, unless they expressly agree to undertake the same in an agreement separate from this Agreement. Notwithstanding the foregoing, the Cotenants acknowledge and agree that the



obligations of the Cotenants under the Loan Documents, including, without limitation, the Note, Loan Agreement, and Indemnity, are joint and several.

(b) Notwithstanding Paragraph 2(a) above and subject to the provisions of the Loan Documents, all revenues and receipts of the Cotenants derived from the Property or the business of the Cotenants (including loan proceeds) shall be first applied to payment of or provision for all expenses and expenditures pertaining to the Property and the business of the Cotenants, as determined by the Cotenants. Subject to the provisions of the Loan Documents, all receipts shall be deposited in a bank account or accounts established by or at the direction of the Cotenants, and all disbursements for such expenses and expenditures shall be withdrawn therefrom.

(c) Notwithstanding Paragraph 2(a) above, subject to the provisions of Paragraph 3(a) hereof, if any Cotenant (the "**Contributing Cotenant**") pays more than such Cotenant's Percentage Interest of any expense, expenditure or obligation of or pertaining to the Property, the Loan or the business of the Cotenant, whether or not such contributing Cotenant has or had personal liability for payment thereof, the other Cotenants shall be liable to the Contributing Cotenant, upon notice by the Contributing Cotenant, for such other Cotenants' Percentage Interests of such expense, expenditure or obligation. If the other Cotenants fail to make such payment upon such notice, interest shall accrue thereon at the rate of twelve percent (12%) per annum, and the Contributing Cotenant shall, subject to the provisions of Paragraphs 1(d) and 11 hereof, have all rights and remedies available under applicable law for collection thereof.

### 3. Management.

(a) AVA LLC is hereby designated as the Managing Cotenant ("**Managing Cotenant**") of the Property on behalf of the Cotenants. The Managing Cotenant may only be replaced with the unanimous approval of the Cotenants. All Major Management Decisions shall be made solely upon the unanimous approval of the Cotenants. "**Major Management Decisions**" are the following: (i) selling, transferring, leasing, or otherwise disposing of all or substantially all of the Property; (ii) obtaining any financing secured by or encumbering the Property; (iii) materially altering or changing the physical condition or legal status of the Property; (iv) replacing the Managing Cotenant; (v) entering into any leasing agreement whether or not an affiliate of any Cotenant is the leasing agent; (vi) entering into any management agreement whether or not an affiliate of Cotenant is the management agent, including, without limitation, the approval of any hotel manager or any hotel management agreement; (vii) approval of the annual budget and operating business plan for the Property; (viii) approval of any expense, expenditure or obligation that may give rise to liability of a Cotenant under the provisions of Paragraph 2(c) hereof; (ix) approval of capital expenditures not contained in the budget and operating business plan in excess of the greater of (A) \$25,000.00 or (B) ten percent (10%) of the current budget; and (x) amending, supplementing or terminating this Agreement.

(b) Except for the Major Management Decisions, the Managing Cotenant shall have the right, power and authority, in the day-to-day management of the Property, to do or cause to be done any and all other acts deemed by the Managing Cotenant to be necessary or

appropriate to effectuate the business, purposes and objectives of the Cotenants of the Property, including, without limitation, the making of payments under the Loan and the filing of any reports required by the terms of the Loan Documents, any communications with Lender, and any ordinary administration or management of the Property.

(c) Any person or entity dealing with the Property may rely on a certificate signed by the Managing Cotenant as to:

- i. the identity of the Managing Cotenant;
- ii. the existence or nonexistence of any fact or facts which constitute a condition precedent to acts by the Managing Cotenant or are in any matter germane to the affairs of the Property;
- iii. the persons who, or entities which, are authorized to execute and deliver any instrument or document of or on behalf of the Cotenants; or
- iv. any act or failure to act by the Cotenants or as to any other matter whatsoever involving the Cotenants.

(d) The Managing Cotenant shall devote such time to the affairs of the Property as the Managing Cotenant may, in its absolute discretion, deem necessary for the proper performance of its duties under this Agreement and shall be entitled to receive reasonable compensation for such services as set forth in an approved budget or otherwise agreed upon by the Cotenants. In addition, the Managing Cotenant shall be entitled to charge the Cotenants, or to be reimbursed by the Cotenants, for all expenses reasonably incurred by it in connection with the Property.

(e) The Managing Cotenant shall not be liable, responsible or accountable in damages or otherwise to the Cotenants for any act performed by it within the scope of its authority conferred by this Agreement, for its failure or refusal to perform any acts except those expressly required by the terms of this Agreement, or for its performance or omission to perform any acts on advice of accountants or legal counsel; provided, however, that the Managing Cotenant shall nevertheless be liable in all events to the Cotenants for such Managing Cotenant's own willful misconduct, gross negligence or violation of its fiduciary duties hereunder.

#### 4. Transfers; Successor.

Except as specifically provided in this Agreement and subject to compliance with applicable securities laws and with the Loan Documents, each Cotenant may sell, transfer, convey, pledge, encumber or hypothecate its interest or any part thereof. Any successor to any portion of the interest of any Cotenant in the Property, other than a single grantee or assignee of the interests of the Cotenants, shall be deemed to accept the interest so conveyed upon and subject to the terms and provisions of this Agreement and to have assumed all obligations of the grantor or assignor accruing from and after such conveyance, subject to the limitations on personal liability contained herein, which limitations shall be deemed applicable to the grantee to

the extent that they were applicable to the grantor. Notwithstanding the foregoing, as long as any portion of the Loan is outstanding, any Cotenant must comply with the provisions of the Loan Documents, and, if necessary, obtain Lender's written consent prior to making any such transfer.

5. Books and Records.

The Cotenants shall jointly maintain, or cause to be maintained, accurate and complete books and records pertaining to the Property, and shall furnish, or cause to be furnished, to each Cotenant, such information as such Cotenant may reasonably require pertaining to the Property for inclusion on such Cotenant's federal and state income tax returns.

6. Notices.

All notices, consents and other communications permitted or required hereunder shall be in writing and shall be mailed by certified mail, return receipt requested, or by commercial overnight courier, or personally delivered, as follows:

To JRC Key West:	JRC Key West Hotel LLC 35 East Wacker Drive Suite 3300 Chicago, Illinois 60601 Attn: Edward W. Ross
To AVA LLC:	AVA Key West LLC 35 East Wacker Drive Suite 3300 Chicago, Illinois 60601 Attn: Andrew V. Agostini
To JL LLC:	JL Key West LLC 49 Immigration Street Charleston, South Carolina 29403 Attn: J. Luzuriaga
To RFA LLC:	RFA Key West LLC 35 East Wacker Drive Suite 3300 Chicago, Illinois 60601 Attn: Edward W. Ross

Mailed communications sent by United States certified or registered mail, postage prepaid, shall be deemed to have been given upon posting in the United States mails. Notwithstanding the foregoing and subject to the provisions of Paragraph 3 hereof, the Managing Cotenant is hereby designated as (i) the agent for service of process for all of Cotenants with respect matters pertaining to this Agreement, the Loan Documents or the Property; and (ii) the party under this Agreement to whom any and all notices and other communication from Lender

to any one or more of the Cotenants should be delivered or communicated (and such designation shall be changed to another party under this Agreement only following thirty (30) days prior written notice to Lender). For any notice or other communication to be sent hereunder to any one or more of the Cotenants, a single such notice to the Managing Cotenant shall be effective as notice to the applicable Cotenants and multiple copies of the same notice shall not be required to be separately delivered to each of the Cotenants in order for such notice to be effective to the applicable Cotenants.

7. Governing Law.

This Agreement shall be governed and construed in all respects by and in accordance with the internal laws of the State of Florida.

8. Complete Agreement; Headings.

(a) This instrument constitutes the entire written agreement and understanding of the parties pertaining to the Property, and there are no prior or contemporaneous written or oral agreements, undertakings, promises, covenants or warranties not contained herein. No modification or amendment of this Agreement shall be binding upon any of the parties hereto, unless in writing executed by the Cotenants.

(b) Paragraph and section headings are for convenience of reference only, and are not part of this Agreement, and shall not be deemed to be an accurate or complete description of the matters described therein.

9. Severability.

In the event that any provision of this Agreement shall be unenforceable, in whole or in part, such provision shall be limited to the extent necessary to render the same valid and enforceable or shall be excised from this Agreement, as circumstances may require, and this Agreement shall be construed as if such provision had been incorporated herein as so limited, or as if said provision had not been included herein, as the case may be.

10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be taken to be an original and all collectively as one and the same instrument.

11. Subordination and Standstill. The Cotenants agree that this Agreement, and all rights, remedies of, and indemnities benefiting the Cotenants hereunder as to one another, shall at all times and in all respects be, and are hereby expressly made, fully subject to, junior, secondary and subordinate to the Loan Documents and the rights and remedies of Lender thereunder, including any future advances made by Lender. It is further agreed that the rights and remedies subordinated in the foregoing sentence shall include, but not be limited to, any rights under this Agreement, purchase options, rights of first refusal and rights to purchase the Property under Section 363(i) of the Bankruptcy Code.

12. Lender Third Party Beneficiary. It is specifically agreed by Cotenants that Lender shall be a third party beneficiary under this Agreement until such time as the Loan is repaid in full or released.

**[SIGNATURE PAGES FOLLOW]**

**Doc# 1892594  
Bk# 2581 Pg# 133**



IN WITNESS WHEREOF, the undersigned parties have executed this Second Amended and Restated Cotenants' Agreement as of the date first written above.

**JRC KEY WEST:**

**JRC KEY WEST HOTEL LLC**, an Illinois limited liability company

Signed, sealed and delivered in the presence of:

By: RFA Management Company LLC, a Delaware limited liability company, its Manager


Michelle Gungler  
Name: Michelle Gungler  
Printed Name of Witness

By: [Signature]  
Edward W. Ross, its Manager

[Signature]  
Name: Loreen Agostini  
Printed Name of Witness

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

The foregoing instrument was acknowledged before me this 10th day of July, 2012, by Edward W. Ross, as Manager of RFA Management Company LLC, a Delaware limited liability company, the Manager of JRC KEY WEST HOTEL LLC, an Illinois limited liability company, on behalf of such entity, who is either personally known to me, or has produced a \_\_\_\_\_ driver's license as identification.

  
(Notarial Seal)

Patrice A. Alpert  
Print Name: PATRICE A. ALPERT  
NOTARY PUBLIC  
My Commission Expires: 7/25/13

[signature page continues]



**AVA LLC:**

Signed, sealed and delivered in the presence of:

**AVA KEY WEST LLC**, an Illinois limited liability company

Michelle Wajey  
Name: Michelle Wajey  
Printed Name of Witness

By:

Andrew V. Agostini  
Andrew V. Agostini, its sole member

Carren Agostini  
Name: Carren Agostini  
Printed Name of Witness

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of July, 2012, by Andrew V. Agostini, as the sole member of AVA KEY WEST LLC, an Illinois limited liability company, on behalf of such entity, who is either personally known to me, or has produced a \_\_\_\_\_ driver's license as identification.



Patrice A. Alpert  
Print Name: PATRICE A. ALPERT  
NOTARY PUBLIC  
My Commission Expires: 7/25/13

[signature page continues]





**EXHIBIT A**

**Legal Description**

[see attached]

**Doc# 1892594  
Bk# 2581 Pg# 138**

**Parcel A:**

A parcel of land on the Island of Key West, Monroe County, Florida, and being described as follows:

Commence at the Northeast corner of Block 15 of the KEY WEST FOUNDATION COMPANY'S PLAT NO. 2, as recorded in Plat Book 1, at Page 189, of the Public Records of Monroe County, Florida, and run thence North 68° 45' 40" East for a distance of 15 feet to the Westerly curb line of Roosevelt Boulevard; thence run North 21° 22' 20" West along the said Westerly curb line of Roosevelt Boulevard for a distance of 600 feet to the Point of Beginning of the parcel of land being described herein; thence run South 68° 45' 40" West for a distance of 255 feet; thence run North 21° 22' 20" West for a distance of 77.62 feet to a point on the dividing line between Parcel 1 and Parcel 22 as shown on an unrecorded map compiled by Bailey-Crawshaw; thence run North 68° 41' 40" East along the dividing line between the said Parcel 1 and 22 for a distance of 255 feet to a point being the Southeast corner of the said Parcel 1 and the Northeast corner of the said Parcel 22 and said point also being on the Westerly right of way (curb line) of the said Roosevelt Boulevard; thence run South 21° 22' 20" East along the Westerly right of way (curb line) of the said Roosevelt Boulevard for a distance of 77.90 feet back to the Point of Beginning; Less and Except right of way for North Roosevelt Boulevard (U.S. Highway No.1) as set forth in Order of Taking recorded in Official Records Book 923, Page 199, Public Records of Monroe County, Florida.

AND

**Parcel B:**

A parcel of land on the Island of Key West, Monroe County, Florida, and being described as follows:

Commence at the Northeast corner of Block 15 of the KEY WEST FOUNDATION COMPANY'S PLAT NO. 2, as recorded in Plat Book 1, at Page 189, of the Public Records of Monroe County, Florida, and run thence North 68° 45' 40" East for a distance of 15 feet to the Westerly curb line of Roosevelt Boulevard; thence run North 21° 22' 20" West along the said Westerly curb line of Roosevelt Boulevard for a distance of 677.90 feet to the Point of Beginning of the parcel of land being described herein, said Point of Beginning also known as the Southeast corner of Parcel 1 and the Northeast corner of Parcel 22 as shown on an unrecorded map compiled by Bailey-Crawshaw; thence run South 68° 41' 40" West along the dividing line between the said Parcels 1 and 22 for a distance of 240 feet; thence run North 21° 22' 20" West for a distance of 373.27 feet to the beginning of a curve, concave to the Southwest and having a radius of 305.43 feet; thence run Northwesterly along said curve for an arc distance of 85.90 feet; thence run North 62° 51' 49" East for a distance of 243.95 feet; more or less, to the Westerly right of way (curb line) of the said Roosevelt Boulevard; run thence Southeasterly along the curved Westerly right of way (curb line) of the said Roosevelt Boulevard, said curve being concave to the Southwest and having a radius of 536.16 feet, for an arc distance of 95.50 feet; thence run South 21° 22' 20" East along the Westerly right of way (curb line) of the said Roosevelt Boulevard for a distance of 387.93 feet back to the Point of Beginning; Less and Except right of way for North Roosevelt Boulevard (U.S. Highway No.1) as set forth in Order of Taking recorded in Official Records Book 923, Page 199, Public Records of Monroe County, Florida.

AND

Doc# 1892594  
BK# 2581 Pg# 139

**Parcel C:**

A parcel of land on the Island of Key West, Monroe County, Florida, and being described as follows:

Commence at the Northeast corner of Block 15 of the KEY WEST FOUNDATION COMPANY'S PLAT NO. 2, as recorded in Plat Book 1, at Page 189, of the Public Records of Monroe County, Florida, and run thence North 68° 45'40" East for a distance of 15 feet to the Westerly curb line of Roosevelt Boulevard; thence run North 21° 22'20" West along the said Westerly curb line of Roosevelt Boulevard for a distance of 677.90 feet to a point known as the Southeast corner of Parcel 1 and the Northeast corner of Parcel 22 as shown on an unrecorded map compiled by Bailey-Crawshaw; thence run South 68° 41'40" West along the dividing line between the said Parcels 1 and 22 for a distance of 240 feet to the Point of Beginning of the parcel of land being described herein, thence continue S 68° 41'40" West for a distance of 26.62 feet; thence run North 21° 14'20" West for a distance of 457.62 feet to the beginning of a curve, concave to the Southwest and having a radius of 100 feet; thence run Northwesterly along the said curve for an arc distance of 54.21 feet; thence run North 37° 37'40" East for a distance of 6.69 feet; thence run Southeasterly along a curve concave to the Southwest and having a radius of 305.43 feet for an arc distance of 145.90 feet; thence run South 21° 22'20" East for a distance of 373.27 feet back to the Point of Beginning.

**AND**

**Parcel D:**

A parcel of land on the Island of Key West, Monroe County, Florida, and being described as follows:

Commence at the Northeast corner of Block 15 of the KEY WEST FOUNDATION COMPANY'S PLAT NO. 2, as recorded in Plat Book 1, at Page 189, of the Public Records of Monroe County, Florida, and run thence North 68° 45'40" East for a distance of 15 feet to the Westerly curb line of Roosevelt Boulevard; thence run North 21° 22'20" West along the said Westerly curb line of Roosevelt Boulevard for a distance of 600 feet, thence run South 68° 45'40" West for a distance of 255 feet to the Point of Beginning of the parcel of land being described herein; thence run North 21° 22'20" West for a distance of 77.62 feet; thence run South 68° 41'40" West for a distance of 1.75 feet; thence run South 21° 22'20" East for a distance of 77.62 feet; thence run North 68° 45'40" East for a distance of 1.75 feet back to the Point of Beginning.

**AND**

Doc# 1892594  
Bk# 2581 Pg# 140

**Parcel E:**

A parcel of land on the Island of Key West, Monroe County, Florida, and being described as follows:

Commence at the Northeast corner of Block 15 of the KEY WEST FOUNDATION COMPANY'S PLAT NO. 2, as recorded in Plat Book 1, at Page 189, of the Public Records of Monroe County, Florida, and run thence North 68° 45'40" East for a distance of 15 feet to the Westerly curb line of Roosevelt Boulevard; thence run North 21° 22'20" West along the said Westerly curb line of Roosevelt Boulevard for a distance of 1065.83 feet to the beginning of a curve concave to the Southwest and having a radius of 536.16 feet; thence run Northwesterly along said curve and Westerly right of way (curb line) of the said Roosevelt Boulevard for an arc distance of 95.50 feet to the Point of Beginning of the parcel of land being described herein; thence run South 62° 51'49" West for a distance of 243.95 feet to a point on a curve concave to the Southwest and having a radius of 305.43 feet; thence run Northwesterly along the said curve for an arc distance of 60 feet; thence run North 37° 37'40" East for a distance of 241.66 feet more or less to the Westerly right of way (curb line) of the said Roosevelt Boulevard; thence run Southeasterly along the curved Westerly right of way (curb line) of the said Roosevelt Boulevard, said curve being concave to the Southwest and having a radius of 536.16 feet for an arc distance of 165 feet back to the Point of Beginning; Less and Except right of way for North Roosevelt Boulevard (U.S. Highway No.1) as set forth in Order of Taking recorded in Official Records Book 923, Page 199, Public Records of Monroe County, Florida.

Doc# 1892594  
Bk# 2581 Pg# 141

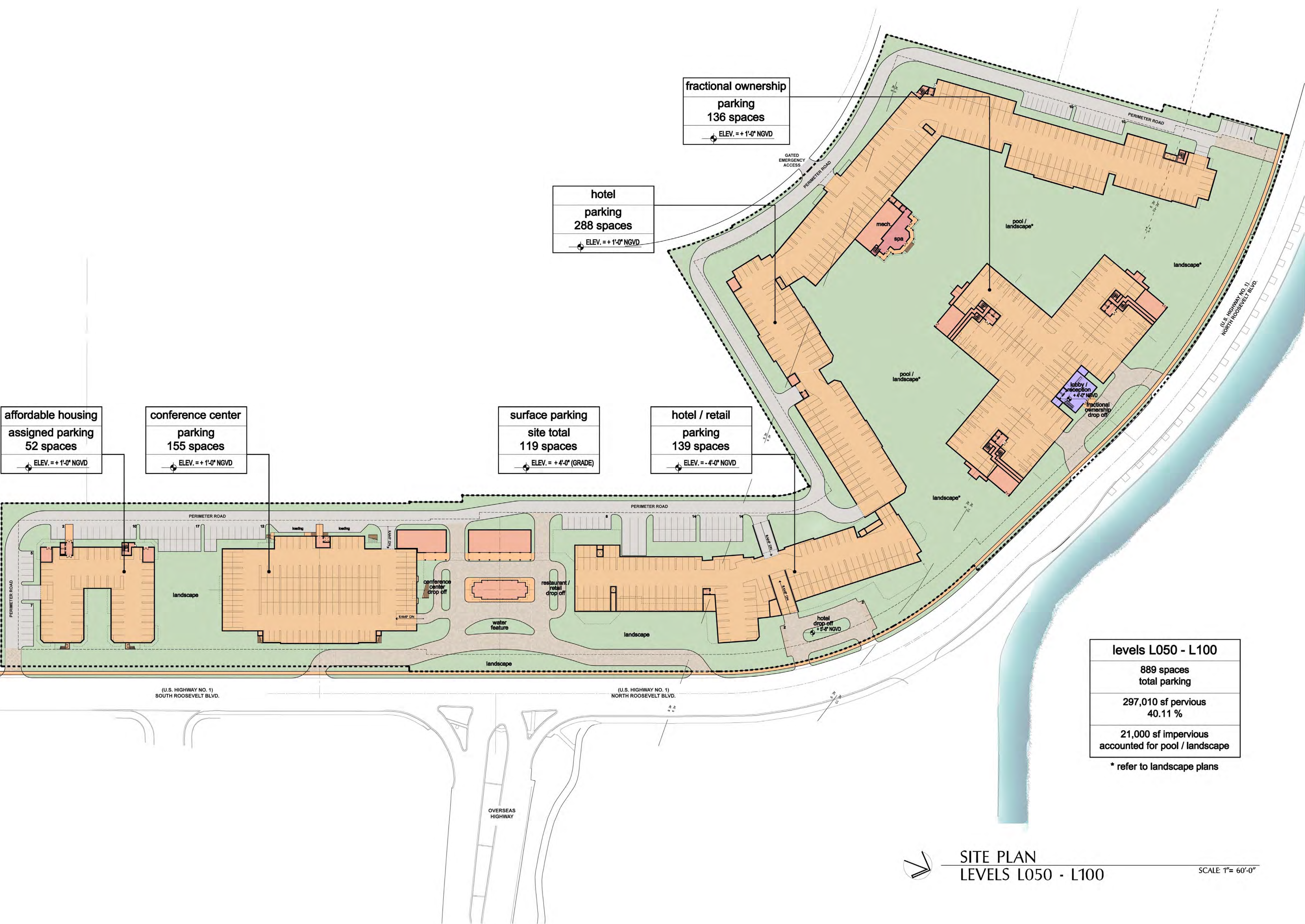
MONROE COUNTY  
OFFICIAL RECORDS

**2007 approved Development Plan,  
Key West Resort and Conference Center**





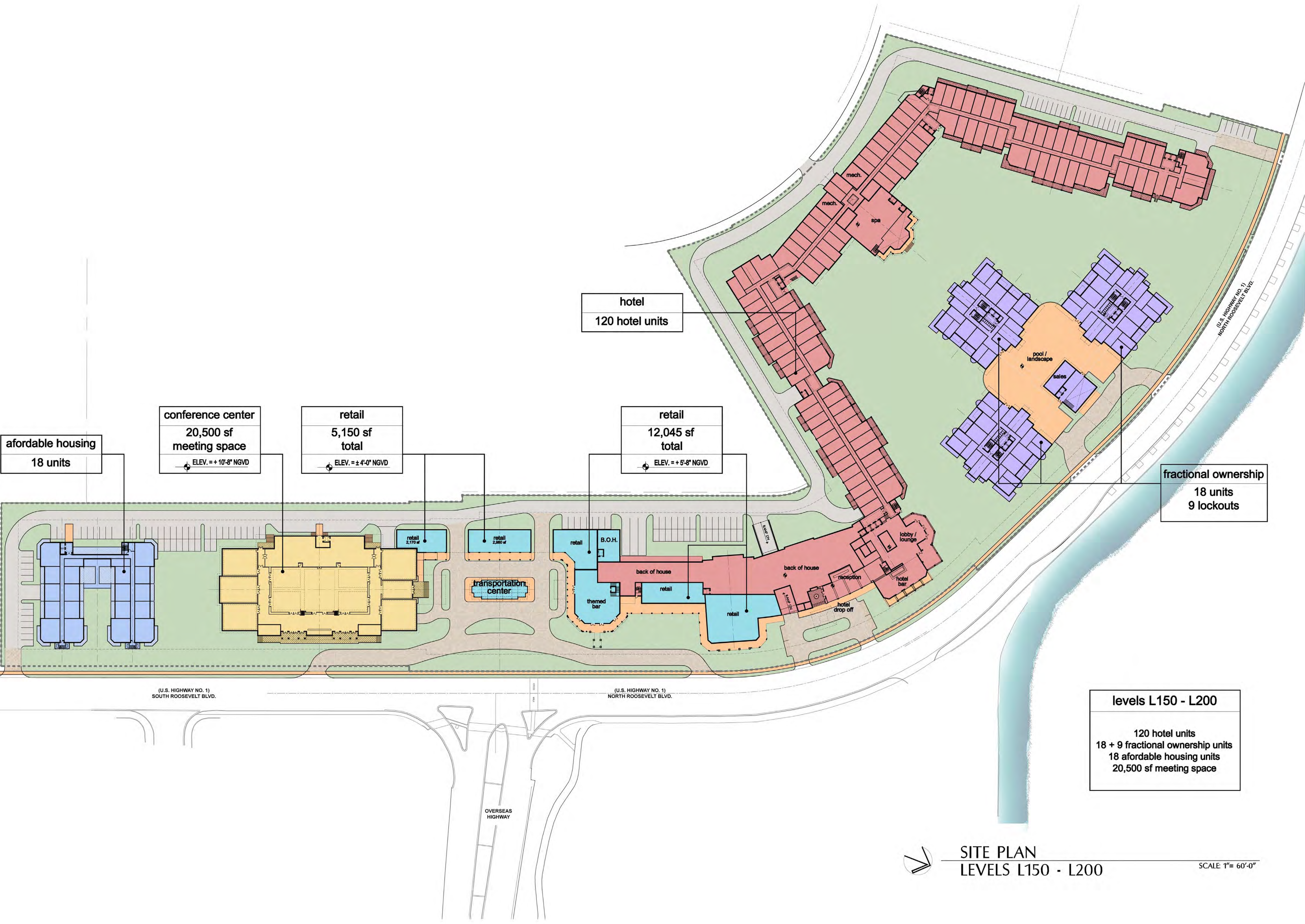




<b>levels L050 - L100</b>
889 spaces total parking
297,010 sf pervious 40.11 %
21,000 sf impervious accounted for pool / landscape
* refer to landscape plans

**SITE PLAN  
LEVELS L050 - L100** SCALE: 1"= 60'-0"





afordable housing  
18 units

conference center  
20,500 sf  
meeting space  
ELEV. = + 10'-8" NGVD

retail  
5,150 sf  
total  
ELEV. = ± 4'-0" NGVD

hotel  
120 hotel units

retail  
12,045 sf  
total  
ELEV. = + 5'-8" NGVD

fractional ownership  
18 units  
9 lockouts

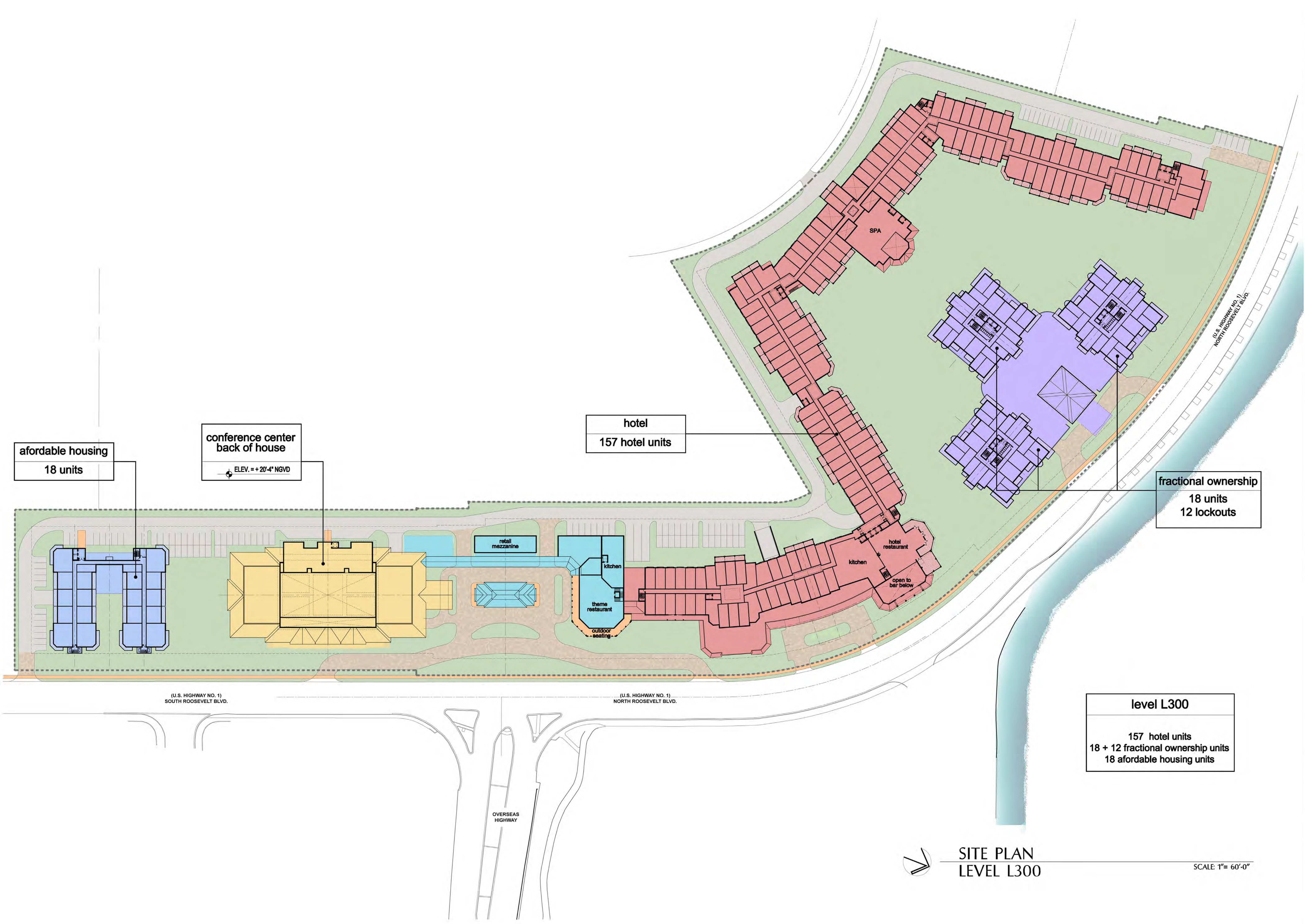
**levels L150 - L200**  
  
120 hotel units  
18 + 9 fractional ownership units  
18 affordable housing units  
20,500 sf meeting space



**SITE PLAN**  
**LEVELS L150 - L200**

SCALE: 1" = 60'-0"





afordable housing  
18 units

conference center  
back of house  
ELEV. = +20'-4" NGVD

hotel  
157 hotel units

fractional ownership  
18 units  
12 lockouts

level L300  
157 hotel units  
18 + 12 fractional ownership units  
18 affordable housing units

(U.S. HIGHWAY NO. 1)  
SOUTH ROOSEVELT BLVD.

(U.S. HIGHWAY NO. 1)  
NORTH ROOSEVELT BLVD.

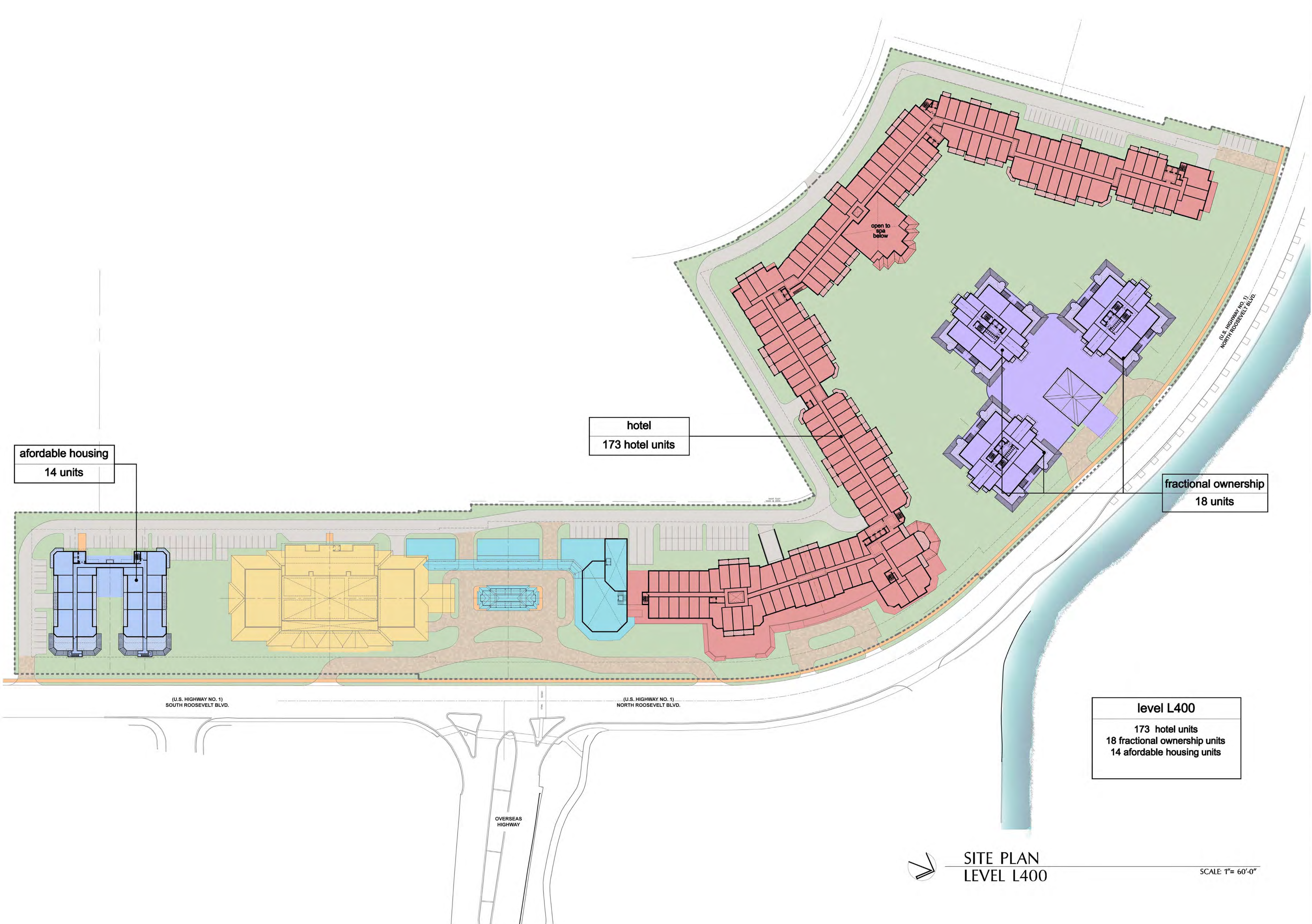
OVERSEAS  
HIGHWAY



SITE PLAN  
LEVEL L300

SCALE: 1" = 60'-0"





afordable housing  
14 units

hotel  
173 hotel units

fractional ownership  
18 units

level L400  
173 hotel units  
18 fractional ownership units  
14 affordable housing units

SITE PLAN  
LEVEL L400

SCALE 1"= 60'-0"



**DRC**  
**Minutes & Comments**

# Minutes of the Development Review Committee

March 6, 2013

Approved March 28, 2013

Planning Director, Don Craig called the Development Review Committee Meeting of March 6, 2013 to order at 10:00am at Old City Hall, in the antechamber at 510 Greene Street, Key West.

## ROLL CALL

**Present were:** Planning Director, Don Craig; Interim Forestry Manager, Karen DeMaria; ADA Coordinator, Diane Nicklaus; Sustainability Coordinator, Alison Higgins; Engineering, Karen Olson; Fire Department, Jason Barroso.

HARC Planner, Enid Torregrosa; General Services, Elizabeth Ignaffo; Building Official, John Woodson.

**Also in attendance were Planning Department staff:** Brendon Cunningham, Nicole Malo and Karen DeBerjeois.

## PLEDGE OF ALLEGIANCE

## APPROVAL OF AGENDA

## DISCUSSION ITEMS

### New Business

1. **Development Agreement Modification - 3800, 3820, 3824, 3840, 3850 and 3852 N. Roosevelt Blvd (RE# 00064940-000000, 00064950-000000, 00065060-000000, 00065530-000000, 00065540-000000 and 00065550-000000) – Request for a Modification to a Development Agreement for property located in the General Commercial (CG) zoning district per Section 90-689 of the Land Development Regulations of the Code of Ordinances of the City of Key West.**

#### Sustainability Coordinator Comments (Alison Higgins):

- As the City has committed to reducing by 15% the carbon footprint of our entire community (including tourists) and this project is essentially the entryway to Key West, with a significant footprint, it is important that this project be as sustainable as possible.
- I would like to see a commitment to this in the Land Development Agreement, which gives the minimum standards that the project will meet.
- I request that the minimum standards be:
  - Green Lodging designation for all hotels.
  - All existing cisterns to be utilized for irrigation
- Comp Plan Issues
  - I will be emailing them a list of sustainability items from the new Comp plan that they should be aware of.
  - Their two LEED team members will receive it on Friday and I will cc appropriate planning staff as well.
- Site Plans
  - Please include a sustainability summary narrative and LEED project score sheet (marked unofficial) for each hotel.
  - Include estimates on water/energy saved due to upgrades.

(Comments by other DRC members will be forwarded to the Planner).

2. **Major Development Plan Modification- 3800, 3820, 3824, 3840, 3850 and 3852 N. Roosevelt Blvd (RE# 00064940-000000, 00064950-000000, 00065060-000000, 00065530-000000, 00065540-000000 and 00065550-000000) - Request for a Modification to a Major Development Plan approval for property**



# Minutes of the Development Review Committee

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**located in the General Commercial (CG) zoning district per Section 108-91(C.)(3) of the Land Development Regulations of the Code of Ordinances of the City of Key West.**

Fire Department comments (Jason Barroso): At the time of the meeting the Fire Marshal office received a civil set of plans on Tuesday March 5, 2013 for our review. The requirements listed below only reflect that information. We have requested a full set of plans including a life safety plan and will be able submit additional requirements for DRC once I have had an opportunity to review them.

- The Fire Marshal office will require a complete set of plans for each project including a life safety plan.
- Each bldg. will be brought into compliance with all NFPA codes, local codes, FBC codes.
- Each bldg. will be fully sprinklered and supervised by a monitored fire alarm system.
- Need to provide alternative source of power (stand by power source generator) for fire pumps and sprinkler system where required by NFPA, local codes, and FBC.
- Developers and their representatives will coordinate with the Fire Marshal's office in reference to the new fire hydrants location.
- Developers and their representatives will coordinate with the Fire Marshal's office in reference to being able to quickly identify the different bldgs. for emergency responders.
- Developers and their representatives will coordinate with the Fire Marshal's office in reference to providing access only for emergency responders through an access gate in the rear of the properties.

Urban Forester comments (Karen DeMaria, Interim Urban Forestry Manager):

- Reviewing the plant lists, I do have objections to some of the plant material proposed to be planted. I emailed a copy of Florida Keys Native Tree list that we give to members of the public when they are inquiring about trees to plant to the applicants. This list better represents what species we are looking for in landscape plans. Particularly, I object to the planting of loblolly bay, youpon holly, and live oak into the area as these trees do not naturally occur in the Florida Keys. This is the entrance to Key West and we want the landscaping to represent the Florida Keys.
- What is the percentage of true native plant species in the landscape plan? Our code requires 70%. A lot of the plant species listed on the plans are not native plants or plants commonly seen to the Florida Keys. My office will work with the applicant in reviewing their landscaping plan with the understanding that there are trees that are common in Key West that are not native that they may want to use.
- I need a list of the trees being removed from the properties (name, size and condition), a list of any trees being rescued/relocated (name and size), and a list of trees that are remaining onsite in-situ (Sec 108-511).
- The plan, as presented, is overwhelming to review. It would be helpful to color code those trees that are remaining on-site and are part of the new landscape and the trees being removed.
- Do you have an irrigation plan and a plan to protect existing trees on-site? These are both required items for final approval.
- Tree Commission Conceptual approval of the landscape plan represents only those properties in Phase 1 A. The two properties in Phase 1 B (3800 and 3840 N. Roosevelt Blvd) are not presently included in our discussions.

FDOT Comments for 3800, 3820, and 3824 N Roosevelt Blvd:

- These properties are included in the reconstruction of N Roosevelt Blvd plans. All three properties have signed easement agreements with FDOT to allow for the building of an ADA regulation sidewalk curbside. There are current FDOT plans in place for driveway curb cuts and any change of these curb cuts should be discussed with Dave Romano, FDOT, at 786-387-3758. The remainder of the properties are not included in this project.

# Minutes of the Development Review Committee

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## ADA Coordinator comments (Diane Nicklaus):

- Although this is a renovation of existing rooms, I will remind you that 20% of the cost of the job should be delegated to ADA compliance. In hotels of 50 or more rooms or suites, additional accessible sleeping rooms or suites that include a roll-in shower shall also be provided. For hotels with 101 to 150 rooms there shall be 5 accessible rooms, 1 of which shall have a roll-in shower.
- Visual signal appliances shall be provided in buildings and facilities in each of the following areas: restrooms and any other general usage areas (meeting rooms, hallways, lobbies, and any other area for common use).
- Swimming pools must meet the lift requirements of the ADA regulations taking effect in March, 2012, delayed to January 31, 2013.
- Final comments will be issued during the Plan Review process when building plans are submitted.

## FEMA Coordinator comments (Scott Fraser):

Immediately prior to the Development Review Committee meeting, the City's FEMA Coordinator met informally with the Applicants to gain a better understanding of the proposal. As a result, only two points needed to be voiced during the meeting:

- Applicant has yet to submit property appraisals showing the market value of the existing buildings to be improved. Until such appraisals are received, staff is proceeding under a presumption that certain buildings won't exceed Substantial Improvement thresholds. However, City staff won't be able to make such a determination until it receives the appraisals and validated Cost of Improvement Affidavits. That information has the potential to dramatically change what may or not be permissible upon these sites.
- Each independent structure will need its own review, requiring appraisals that specifically identify the market values of each structure, along with separate Elevation Certificates, improvement cost affidavits and any other review requirements.
  - Cost of Improvement Affidavits need to be identified separately for each structure. Any costs claimed to be exempt from Substantial Improvement calculations should be tallied in a separate column adjacent to non-exempt costs.
- "Site D" was recently issued an unsafe building notice by the City's Chief Building Official and another by the Fire Marshal's office. However, those notices didn't specify what the structural deficiencies with that building. The specific existing hazards need to be identified by the City's building officials, so determinations can be made regarding what improvement costs may be exempt from Substantial Improvement threshold calculations.

Comments exchanged with the Applicants prior to the formal meeting are as follows:

- General comments for all buildings
  - A standard numbering system for buildings would make it much easier to identify specific buildings
    - This reviewer established an ad-hoc numbering system for these buildings simply for the purpose of this review; which is attached to this document.
  - Pool bars may very well equate to structures and need to be considered as such for FEMA compliance.
  - Although the site plans and property appraiser's office may have combined separate buildings for their own convenience, for floodplain management purposes, each structurally independent building needs to be reviewed upon its own merits. The continuation of a roof line or breezeway between buildings doesn't create a merger wherein multiple buildings are considered one structure.
- Site "A"
  - Where is the pool side bar to be located? Answer: Identified and numbered as building "A5."
    - Applicant advises no intent to Substantially Improve this structure.

# Minutes of the Development Review Committee

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- Building "A1": Design Flood Elevation (DFE) for newly constructed building "A1" is one foot higher than the required Base Flood Elevation (BFE).
  - Was this height intentional (albeit commendable)? Answer: Yes.
  - Is the building's base to have a filled enclosure with an elevated slab? Answer: yes
    - The plans should note this, since flood vents aren't shown (nor required with an elevated slab).
- Site "B"
  - Where is the pool side bar to be located? Answer: in an existing structure identified and numbered as building "B7."
  - Questioned whether Building "B1" might have an unpermitted downstairs enclosure used as retail space. Answer: Floodproofing indicators are present on the structure, which would have allowed its permitting.
    - The floodproofing for this section will need to be reviewed as part of this approval process.
  - Buildings identified herein as "B4e," "B4w" & "B5" appear to be structurally independently buildings, yet the site plans shows them as a single building. Each building needs to be reviewed on its own merits.
- Site "C"
  - Applicant's Scope Narrative
    - Should clarify that building #C1 is to be partly demolished, with the remaining portion rehabilitated.
    - Doesn't mention demolition of buildings #C5
  - Building "C1"
  - Pool Bar
    - Where is the pool side bar to be located? Answer: in a newly constructed structure identified and numbered as building "C6."
    - According to the site plan, one corner of this structure crosses into the next higher regulated flood zone, therefore the entire structure must meet the higher regulatory standards. Applicant may wish to revisit placement of this structure.
  - A detached food prep and mechanical storage building is proposed for demolition and rebuilding. Where on the site is it located? Answer: Identified and marked as Building "D5."
    - Haven't seen any plans for this structure as of yet.

Note - Ad-hoc building numbering system:

- Where possible, building numbers already assigned by the Monroe County Property Appraiser's office were utilized.
- In some instances, buildings appear on the existing site plans/surveys that don't show on the Property Appraiser's records. In those instances the numbering sequence was simply continued.
- In other instances, it seems the Appraiser's staff combined separate buildings for the convenience of their efforts. However, for floodplain management purposes, each structurally independent building needs its own review. In these instances, these combined buildings were separately identified as "B4e" & "B4w" for their east and west orientations.
- On the proposed site plans, where existing buildings are to be demolished and others constructed in their place, the demolished building's number was reused for the new building.

(Comments by other DRC members will be forwarded to the Planner).



**Minutes of the Development Review Committee**

**March 6, 2013**

Approved March 28, 2013

**ADJOURNMENT**

Meeting adjourned at 11:23am.

**Respectfully submitted by,  
Karen de Berjeois  
Administrative Assistant II  
Planning Department**