



## DEVELOPMENT AGREEMENT

### BETWEEN The City of Key West and WHITE ST PARTNERS, LLC

**THIS AGREEMENT** is entered into by and between, WHITE ST. PARTNERS, LLC, INC., a Florida Limited Liability Company, (“WHITE ST PARTNERS, LLC”), and the CITY OF KEY WEST, a Florida municipal corporation (“City”), pursuant to Section 90-676 through 90-692 of the City Code, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (20012) and is binding on the “Effective Date” and terms set forth herein:

### TERMS OF AGREEMENT:

WITNESSETH:

A. The United States of America authorized the sale of certain properties owned by the United States Government; and

B. Peary Court is one of the properties to be sold pursuant to Act of Congress; and

C. WHITE ST PARTNERS, LLC have entered into a contract for the sale and purchase of Peary Court and is the contract purchaser of the property; and

D. Peary Court has 160 existing dwelling units (157 units and 3 units involuntarily destroyed by fire) and a 10,000 square foot commercial building; and

E. WHITE ST PARTNERS, LLC proposes to repair, rehabilitate or replace the existing 157 units as may be needed, re-build 3 units lost to fire (i.e., 160 existing multifamily dwelling units); and

F. WHITE ST PARTNERS, LLC agrees to voluntarily dedicate 22 dwelling units of affordable housing as soon as BPAS allocations are made available for 22 new additional units on site; and

G. the 22 new units will be located in the area where the 10,000 square foot commercial building is currently located; the 22 affordable housing units dedicated to affordable housing will be located among the existing dwelling units located within Peary Court and will available for affordable housing immediately upon allocation of 22 new units to Peary Court, See Exhibit B – Site Plan (an affordable housing allocation equivalent to 100% of the newly constructed units); and

H. WHITE ST PARTNERS, LLC will submit all affordable housing sales and rental applications to the Monroe County Housing Authority to conduct screening and verification of income-levels pursuant to City of Key West Comprehensive Plan Housing Element Policy 3-1.1.3 using the Housing Authority of City of Key West Affordability Policy; and

I. The property that is subject to the major development and development agreement is accurately described in Attachment A (herein referred to as "Property"); and

J. On \_\_\_\_\_, 2012, the City Commission expressed its preliminary interest pursuant to City of Key West Code Section 90-678 in entering into a Development Agreement with WHITE ST PARTNERS, LLC (Resolution 12-\_\_\_\_); and

K. The City reviewed and authorized a comprehensive plan designation of \_\_\_\_\_ and zoning designation of \_\_\_\_\_ for Peary Court **concurrent with and as part of, or prior to, this Development Agreement and Major Development Plan** after public hearings were duly noticed and held by the Planning Board on \_\_\_\_\_ 2012 which recommended approval (Resolution 2012-0\_\_); and approved by the City Commission at a meeting held on \_\_\_\_\_ 2012 (Resolution \_\_\_\_-\_\_\_\_); and

L. On \_\_\_\_\_, 20\_\_ the State of Florida Department of Economic Opportunity (DEO) found the comprehensive plan designation and zoning designation to be consistent with the Principles for Guiding Development for the Florida Keys Area of Critical State Concern as set forth in Section 380.0552(7), Florida Statutes (2012); and

M. The City Planning Board noticed a public hearing to consider this Development Agreement on \_\_\_\_\_, 2012, and the City Commission noticed a public hearing to consider this Development Agreement on \_\_\_\_\_ 2012 public hearings were held; and

N. The City of Key West has determined that this Major Development and Development Agreement is consistent with the local comprehensive plan, the land development regulations,

the Principles Guiding Development in the Florida Keys and further finds that the Major Development and Development Agreement is in the public interest, and will further the health, safety, welfare, and goals of the residents of the City of Key West.

**NOW, THEREFORE**, in consideration of the mutual covenants entered into between the parties, and in consideration of the benefits to accrue to each, it is agreed and the Development Agreement is approved as follows:

1. **Recitals Incorporated Herein.** The above recitals set forth in the preceding “Whereas” clauses are true and correct and are incorporated herein and made a part hereof.

2. **Ownership, Legal Description.**

a. **Ownership.** The Contract Owner of the subject site (“Peary Court site”) is WHITE ST PARTNERS, LLC. The United States conveyed the land as a unified title to WHITE ST PARTNERS, LLC on \_\_\_\_\_, 2012.

b. **Legal Description.** The legal description of the Peary Court site is described and incorporated into this agreement as *Attachment A*.

3. **Site Plan Approval, Modifications, Fire Safety, Wind Load, Energy Efficiency**

a. **Approval of a Site Plan.** This project will serve 160 market rate units and 22 units of moderately affordable housing for those persons and families who qualify for up to

moderately affordable housing. The development shall be consistent with the “Major Development Plan” for WHITE ST PARTNERS, LLC, hereby incorporated as ***Attachment B***.

**b. Modifications.** Modifications to the Major Development Plan are governed by City Code Section 108-91(c) and (d) as the Code exists on the effective date of this approval (unless the Code is amended from time to time to allow additional administrative or minor modifications, or extensions of time which shall then also apply to this development).

**c. Fire Safety.** WHITE ST PARTNERS, LLC shall provide all fire protection facilities as required by the City Fire Department and Life Safety Code administered by the City Fire Department.

**d. Wind Load.** WHITE ST PARTNERS, LLC shall ensure all new structures and repairs to existing structures continue to meet all applicable codes, including doors, windows, and cladding, to withstand the mile per hour peak winds as specified in the applicable Building Code.

**e. Energy Efficiency.** WHITE ST PARTNERS, LLC shall construct all new residential structures in conformance with the specifications of the State of Florida Energy Efficiency Code for Building Construction (State Energy Code).

**4. Public Utilities, Concurrency, Impact Fees.**

The Applicant and City staff have conducted a concurrency analysis for this project pursuant to City Code Chapter 94 (Concurrency Management), and Section 90-682(5) as set forth in *Attachment C*. All public facilities are available as of the date of this Development Agreement, and capacity for each is projected to be available concurrent with the impacts of development. The following is a list that identifies the public facilities that are required and that will service the development authorized by this Agreement; who shall provide the facilities; what new facilities, if any, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of development:

**a. Potable Water.** Potable water is supplied by Florida Keys Aqueduct Authority (FKAA), and domestic potable water transmission and potable water source capacity exist for this project as set forth in *Attachment C*.

**b. Electric Service.** Electric service is provided by Keys Energy Services, and capacity exists for this development as set forth in *Attachment C*.

**c. Solid Waste.** Solid waste service is provided by the City of Key West Waste Management or its designate, as determined by the City Commission, and capacity exists for this development as set forth in *Attachment C*.

d. **Transportation.** Transportation and road capacity exists for this development as set forth in *Attachment C*.

e. **Wastewater.** Wastewater treatment shall be provided by the City of Key West Wastewater Treatment Plant, and capacity exists for this development, as set forth in *Attachment C*.

f. **Recreational Facilities.** Private recreational facilities shall be provided at the Pear Court site and public recreational facility capacity exists for this development as set forth in *Attachment C*.

g. **Impact Fees.** The developer shall pay only those applicable impact fees for new dwelling units, subtracting for the demolition of 10,000 square feet of commercial use, according to the City's impact fee ordinance applicable to development in the City of Key West.

5. **Density, Intensity, Height, Affordable Housing, BPAS allocations: Local Development Approvals and Permits Approved or Needed.**

The project is a 182 dwelling unit development that will not exceed 35 feet in height that includes an existing 160 units and 22 newly constructed units totaling 182 units, of which 22 units shall be dedicated to moderate affordable housing for people who qualify for moderate affordable housing.

Project density and intensity for the use(s) proposed on site are set forth in the site data table contained in the Major Development Site Plan as set forth in Attachment B.

The 22 unit moderate affordable component of the project shall comply with, and only serve clients who meet, moderate affordable housing standards set forth in the City of Key West Comprehensive Plan Housing Element Policy 3-1.1.3 using the Housing Authority of City of Key West Affordability Policy.

The following City development approvals have been granted prior to this agreement, concurrent with this agreement or are needed for the development authorized by this Agreement:

**a. Amendments to the Comprehensive Plan (Future Land Use Map) and Rezoning (Land Development Code – Zoning Map).**

Prior to, or concurrent with this Development Agreement, the City reviewed and authorized a comprehensive plan designation of \_\_\_\_\_ and zoning designation of \_\_\_\_\_ for Peary Court concurrent with or prior to this Development Agreement; and a Major Development Plan after public hearings were duly noticed and held by the Planning Board on \_\_\_\_\_ 2012 which recommended approval (Resolution 2012-0\_\_ ); and approved by the City Commission at a meeting held on \_\_\_\_\_ 2012 (Resolution \_\_\_ - \_\_\_) concurrent with, and as part of, this Development Agreement.



**b. Major Development.**

Prior to, or concurrent with and as part of this Development Agreement, the City approved an application for Major Development Plan approval, after public hearings were duly noticed and held by: the Planning Board on \_\_\_\_\_2012, which recommended approval (Resolution 2012-0\_\_); and approved by the City Commission at meeting held on \_\_\_\_\_ 2012 (Resolution 12-\_\_\_\_).

**c. Site Plan.** Final site plan approval will be required by the City building official, fire marshal, and planning staff confirming compliance with this Agreement and applicable City Code requirements prior to any new construction.

**d. BPAS Allocation.** Recognizing the public interest in affordable housing at Peary Court, the City hereby prospectively allocates the next available twenty (22) equivalent single family units (ESFU) BPAS allocations, as defined herein by Policy 3-1.1.3 of the City of Key West Comprehensive Plan, for this project under the Building Permit Allocation System and zoning in progress resolution for Peary Court. As soon as and immediately upon allocation of 22 ESFU BPAS units, the Applicant will record a Declaration of Restrictive Covenant dedicating and limiting the use of 22 existing units within Peary Court for moderately affordable housing (equivalent to 100% of 22 units of new construction).



e. **Building Permits.** A building permit or permits under applicable building codes will be required prior to rehabilitation of existing structures or new construction.

f. **Mutual Cooperation.** The City agrees to partner and cooperate with the WHITE ST PARTNERS, LLC to provide expedited review in a timely manner of all applicable City of Key West permits, licenses, approvals, consents, BPAS exemptions or allocations and provide information for any grant applications necessary or appropriate to fully implement this Agreement.

6. **Development to Comply with Permits and City Comprehensive Plan and Code Provisions.** The development described in and authorized by this Agreement shall be constructed in accordance with all specified permit conditions, and in accordance with all applicable provisions of the adopted Comprehensive Plan and City Code. No certificate of occupancy for an individual phase shall be issued until the City approves all plans for that phase and that WHITE ST PARTNERS, LLC has complied with all conditions established in the conditional use and development plan approval and the building permit issued by the City and other regulatory entities for that phase.

7. **Finding of Consistency.** The City of Key West finds that the development authorized herein is consistent with the Comprehensive Plan and Land Development Regulations and the Principles Guiding Development in the Florida Keys as adopted and approved.

**8. Compliance with Permits, Terms, Conditions, Restrictions not Identified.** The failure of this Agreement to address a particular permit requirement, condition, term, or restriction shall not relieve WHITE ST PARTNERS, LLC of the necessity of complying with all applicable laws governing said permitting requirements, conditions, terms, or restrictions.

**9. Duration of Agreement and Renewal.**

**a. Duration of Agreement.** This Development Agreement shall remain in effect for a period of ten (10) years, commencing on the Effective Date set forth below, pursuant to City Code Section 90-684 and any applicable Florida Statutes Chapters 163 and 380 (2012). This Development Agreement may be renewed or extended as provided by City Code and applicable Florida Statutes.

**b. Agreement Renewal.** This Agreement may be renewed or extended upon an affirmative vote of the City Council.

**c. Phasing.** The project in shall be completed in a maximum of five phases, together with the corresponding required site work, as set forth in the Major Development Plan. The first phase shall commence within the first five (5) years of the date of this agreement and certificates of occupancy for all phases shall be completed within ten (10) years of the date of this agreement.

**d. Extension of Deadlines.** Deadlines contained herein shall commence on the Effective Date of this Development Agreement as set forth below, and this Development Agreement shall extend and replace any and all previous deadlines contained in prior approvals for this proposed development.

**10. Governing Laws**

**a. Controlling Regulations.** For the duration of this Agreement, all approved development on the Property shall comply with and be controlled by this Agreement and by the provisions of the Comprehensive Plan and City Code in existence on the effective date of this Agreement.

**b. State or Federal Laws.** If state or federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this Agreement, this Agreement shall be modified as is necessary to comply with the relevant state or federal laws. However, this Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common or statutory law.

**11. Amendments, Renewal, Revocation, Termination.** This Agreement may be amended, renewed, or terminated pursuant to applicable City Code and Florida Statutes:

**a. Amendments.** As provided in Section 163.3237, Florida Statutes (2012) and City Code Section 90-689, this Agreement may be amended by mutual consent of the parties to this



Agreement or by their successors in interest; an instrument in writing signed by the parties or their successors shall accomplish an amendment under this provision.

**b. Renewal.** As provided in Section 163.3229, Florida Statutes (2012) and City Code Section 90-682(a)(2), this Agreement may be extended or renewed by operation of law or the mutual consent of the parties, subject to the following public hearing requirements in Section 163.3225, Florida Statutes (2012). The City shall conduct at least two (2) public hearings, one of which may be held by the local planning agency at the option of the City. Notice of intent to consider renewal of the Agreement shall be advertised approximately seven (7) days before each public hearing in a newspaper of general circulation and readership in Monroe County, Florida, and shall be mailed to all property owners within 500 feet of the development before the first public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing. The notice shall specify the location of the land subject to the Agreement, the development uses on the Property, the population densities, and the building intensities and height and shall specify a place where a copy of the Agreement can be obtained.

**c. Revocation by City.** Pursuant to Section 163.3235, Florida Statutes (2012) and City Code Section 90-689, this Agreement may be revoked by the City if the City finds, on the basis of competent substantial evidence, that there has been a material failure by WHITE ST PARTNERS, LLC, to comply with the terms of this Agreement.

**d. Termination by Mutual Consent.** This Agreement may also be terminated by mutual consent of the parties.

**12. Breach of Agreement and Cure Provisions.**

**a. Written Notice to WHITE ST. PARTNERS, LLC.** If the City concludes there has been a material breach of this Agreement, prior to revoking this Agreement, the City shall serve written notice to WHITE ST PARTNERS, LLC identifying the term or condition the City contends has been materially breached and providing WHITE ST PARTNERS, LLC ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to the Agreement. Each of the following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of WHITE ST PARTNERS, LLC shall be considered a material breach of this Agreement: (a) failure to comply with the provisions of this Agreement; or (b) failure to comply with terms and conditions of permits issued by the City of Key West or other regulatory entity for the development authorized by this Agreement.

**b. Written Notice to the City.** If WHITE ST PARTNERS, LLC concludes that there has been a material breach in the terms and conditions of this Agreement, WHITE ST PARTNERS, LLC shall serve written notice to the City, identifying the term or condition that it contends has been materially breached and providing the City ninety (90) days from the date of

receipt of the notice to cure the breach or negotiate an amendment to the agreement. The following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the City, shall be considered a material breach of this Agreement: (a) failure to comply with the provisions of this Agreement, or (b) failure to timely process any application for site plan approval or other development approval required to be issued by the City for the development authorized by this Agreement.

c. **Right to Cure, Option to Terminate.** If a material breach of this Agreement occurs and is not cured within the time periods provided above, the party that provided notice of breach may elect to terminate this Agreement or may seek to enforce this Agreement as provided herein.

d. **Waiver of Breach.** If either party waives a material breach in this Agreement by the other party, such a waiver shall not be deemed a waiver of any subsequent breach.

13. **Notices.** All notices, demands, requests, or replies provided for or permitted by this Agreement, including notification of a change of address, shall be in writing to the addressees identified below, and may be delivered by any one of the following methods: (a) personal delivery; (b) deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; or (c) deposit with an overnight express delivery service with a signed receipt required. Notice shall be effective upon receipt. The addresses of the parties for such notice are as follows:



**TO WHITE ST. PARTNERS, LLC:** Registered Agent WHITE ST. PARTNERS, LLC, Registered Agent: Integra Real Estate LLC 2828 Coral Way Suite 303 Miami Fl 33145

**TO THE CITY:** City Manager, City of Key West 521 Angela Street Key West, Florida 33040 With a copy by regular U.S. Mail to: City Attorney, City of Key West P.O. Box 1409 Key West, Florida 33041

**14. Annual Report.** Fourteen days prior to the anniversary date of the Effective Date of this Agreement and each year following until its termination, WHITE ST PARTNERS, LLC shall provide to the City a report pursuant to City Code Section 90-688 (a), (b) and (c) identifying:

(a) the amount of development authorized by this Agreement that has been completed;

(b) the amount of development authorized by this Agreement that remains to be completed; and

(c) any changes to the plan of development that have occurred during the one (1) year period from the Effective Date of this Agreement or from the date of the last annual report.

(d) Pursuant to F.S. § 163.3235 and City Code Section 90-688 (a), (b) and (c), the city shall review land subject to a development agreement at least once every 12 months. Such review shall determine if there has been demonstrated good faith compliance with the terms of the development agreement. The city administrative official shall present the city commission with a report on the status of all activities and achievements pursuant to the development



agreement. Prior to the city's review of the status of a development agreement, the developer or property owner shall, within 14 days of the city commission's review of the development agreement, submit to the city a progress report indicating all activities and achievements since the execution of the development agreement and, if applicable, since the previous periodic report. If the city no longer has a record of the present property owner and/or developer, any requests or notices required by this Development Agreement shall be made to the property owner of record as shown on the records of the county property appraiser.

(e) Pursuant to City Code Section 90-687(b) For each annual review conducted during years six (6) through ten (10) of the development agreement, the review shall be incorporated into a written report which shall be submitted to the parties to the agreement and the state land planning agency.

(f) any other annual reporting requirements required by Florida Statutes, Florida Administrative Code or City Code Section 90-688 (a), (b) and (c) or Section 90-687(b) in existence on the effective date of this Development Agreement.

**15. Enforcement.** In accordance with Section 163.3243, Florida Statutes (2012) and City Code Section 90-692, any party to this Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes (2012), or the state land planning agency may file an action for injunctive relief in the circuit court of Monroe County, Florida, to enforce the

terms of this Agreement or to challenge the compliance of this Agreement with the provisions of Sections 163.3220-163.3243, Florida Statutes (2012).

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

**17. Assignment.** This Agreement may not be assigned without the written consent of the parties.

**18. Drafting of Agreement.** The parties acknowledge that they jointly participated in the drafting and review of this Agreement and that no term or provision of this Agreement shall be construed in favor of or against either party based solely on the drafting of the Agreement.

**19. Severability.** In the event any provision, paragraph or section of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the enforceability or the validity of the remaining provisions of this Agreement.

**20. Applicable Law.** This Agreement was drafted and delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida. Agreed venue for hearings held by the Division of Administrative Hearings shall be in Key West, Monroe County, Florida or in the Circuit Court in and for Monroe County, as governed by applicable law.

21. **Use of Singular and Plural.** Where the context requires, the singular includes the plural, and the plural includes the singular.
22. **Duplicate Originals; Counterparts.** This Agreement may be executed in any number of originals and in counterparts, all of which evidence one agreement. Only one original is required to be produced for any purpose.
23. **Headings.** The headings contained in this Agreement are for identification and reference purposes only and shall not be construed to amend, modify, or alter the terms of the Agreement.
24. **Entirety of Agreement.** This Agreement incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, or understandings regarding the matters contained herein. The parties agree that there are no commitments, agreements, or understandings concerning the subjects covered by this Agreement that are not contained in or incorporated into this document and, accordingly, no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether written or oral. This Agreement contains the entire and exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing signed by the parties.
25. **Recording and Transmittal.** Pursuant to City Code Section 90-690, not later than 14 days after the execution of a development agreement, the city clerk shall record the agreement with the clerk of the circuit court in the county. A copy of the recorded development agreement

shall be submitted to the state land planning agency within 14 days after the agreement is recorded as provided in F.S. § 163.3239. A development agreement shall not be effective until it is properly recorded in the public records of the county and until 30 days after having been received by the state land planning agency pursuant to F.S. § 163.3239.

**26. Date of Agreement.** The date of this Agreement is the date the last party signs and acknowledges this Agreement.

**27. Effective Date.** A development agreement shall not become effective until (a) the Comprehensive Plan Amendment, Land Development Regulation Amendment and this Development Agreement are received and approved by the state land planning agency pursuant to F.S. §§ 163.3239 and 380.0552 and (b) until the property is transferred to WHITE ST PARTNERS LLC and both the deed and the Development Agreement are properly recorded in the public records of the county. The date the agreement shall be effective is the date it is deemed approved by the state land planning agency (or on the date any objections by the state land planning agency are deemed waived) under Florida Statutes Chapter 380 and City Code Section 90-690 or the date of property transfer to WHITE ST PARTNERS LLC, whichever is later.

**28. Successors.** The burdens of the development agreement shall be binding upon and the benefits of the agreement shall inure to all successors in interest to the parties to the agreement as provided in F.S. § 163.3239 and City Code Section 90-691.

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

AS APPROVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA

ON \_\_\_\_\_, 2012

THE CITY OF KEY WEST

By \_\_\_\_\_

\_\_\_\_\_, MAYOR

Date : \_\_\_\_\_

ATTEST:

\_\_\_\_\_

CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

\_\_\_\_\_

CITY ATTORNEY

**FOR: WHITE ST. PARTNERS, LLC, INC.**

A Limited Liability Company

By \_\_\_\_\_

Managing Member

Date: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF MONROE

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_ 2012, by \_\_\_\_\_ who is personally known to me or who produced \_\_\_\_\_ as identification, and who did/did not take an oath.

\_\_\_\_\_

Notary Public, State of Florida At Large

[seal]

**ATTACHMENTS**

*Attachment A* - Legal Description

*Attachment B* – Major Development Site Plan

*Attachment C* - Concurrency Analysis/Letters

*Attachment D* – Affordable Housing Criteria and Table