

Development Agreement

Pursuant to Section 380.032(3), Florida Statutes

THIS DEVELOPMENT AGREEMENT (hereinafter "Agreement") is binding on the effective date as set forth herein below, by and between The City of Key West , a municipal corporation of the State of Florida (hereinafter referred to as the "City"), the Florida Department of Economic Opportunity, an agency of the State of Florida (hereinafter referred to as "DEO" or the "Department"), Harborside LLC, A Florida limited liability company (hereinafter referred to "Harborside") and M&I Regional Properties, LLC, a Wisconsin limited liability company(hereinafter referred to as "M&I"), collectively referred to as the "Parties" .

WHEREAS , the City of Key West is located within the City of Key West Area of Critical State Concern, as designated under section 380.05, Florida Statutes (hereinafter referred to as the "Act"), and Chapter 28-36, Florida Administrative Code; and

WHEREAS, DEO is the state land planning agency having the power and duty to exercise general supervision of the administration and enforcement of Chapter 380, Florida Statutes, which includes provisions relating to the areas of critical state concern within the state; and

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

WHEREAS, Harborside is the owner of certain rights to purchase certain real property acquired in foreclosure by M&I, which is the property formerly known as Jabour's Campground and Trailer Court, located at 223 Elizabeth Street, Key West, Florida (hereinafter referred to as "Jabour's Campground"), and two contiguous parcels, consisting of approximately 1.9 acres of upland area, all as more particularly described on Exhibit "A", a survey completed by Island Surveying, Inc., dated May 12, 2011, which is attached hereto and incorporated by reference (collectively referred to hereinafter as the "Property"); and

WHEREAS, on December 8, 2011, the Parties entered into a Revised Settlement Agreement for the Property, which is attached hereto and incorporated by reference as composite Exhibit "B" and which includes six(6) exhibits listed as "A" through "F"; and

WHEREAS, a previous agreement dated May 12, 2004 authorized by section 380.032(3), Florida Statutes, and attached as Exhibit "B" to the Revised Settlement Agreement dated December 8, 2011, was entered into by the Parties, and served to establish that 80 units were on the original Jabour's Campground property as a permissible nonconforming density, each having a Building Permit Allocation System (BPAS) factor equivalency of 1.0 Equivalent Single Family Unit Factor (ESFU) ; and

WHEREAS, subsequent to the execution of the 380 agreement dated May 12, 2004, additional lands contiguous to Jabbour's Campground were acquired by M& I's predecessor in title and were included in an amended Major Development Plan application that was approved on March 21, 2007, for development of the Property as a residential condominium project pursuant to Development Order No. 2007-004; and

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

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

WHEREAS, Harborside will acquire the Property from M&I and will redevelop the Property pursuant to the terms and conditions contained herein, subject to the City's approval of a revised Major Development Plan for the Property.

NOW, THEREFORE, in consideration of the mutual commitments, conditions and covenants herein contained in this document. Harborside, DEO, M&I and City hereby agree as follows:

Performances and Covenants

For the purposes of clarity and brevity, the exhibits referred to in paragraphs 1 through 14 below are the same exhibits, in number, sequence and content attached to Exhibit "B" of this Agreement, namely the Revised Settlement Agreement dated December 8, 2011.

1. All of the above recitals are true and are incorporated herein.

2. Harborside shall provide on the Property 63 off-street parking spaces (of which no more than 18 may be for compact vehicles) for parking 63 motor vehicles, and shall provide bicycle racks to accommodate 70 bicycles on the Property in addition to the 100 bicycle spaces referenced in Paragraph 4 below, as required by section 108-572(7) of the City Code of Ordinances. The Major Development Plan for the Property shall include provision for employee vehicle parking by providing one employee vehicle parking space on-site, and additional parking spaces in an off-site commercial parking facility. Harborside shall enter into negotiations for a special long-term contract with the City in order to provide for the resort hotel's use of 26 parking spaces at the City's Caroline Street Key West Bight parking lot. The negotiations shall be complete and a contract negotiated prior to the submittal of an application for Major Development approval. The contract shall become effective upon the effective date of the development order for the approval of Major Development, if that event occurs. Payment required under the contract shall commence when use of the spaces actually commences but in any event no later than certificate of occupancy. The initial term of the contract shall be forty (40) years and may be renewed thereafter by the City according to section 2-941(a) of the City Code of Ordinances applicable to lands within the boundaries of a Local Redevelopment Area. The twenty six (26) spaces which are the subject of the contract shall be reserved in name only, and shall not be marked or delineated by the City or Harborside. Hotel guest access to and use of the lot shall be by special placard made available to the owners of automobiles of the hotel guests and such placards shall be placed in the hotel guest automobiles parked at the lot. Any additional costs necessary to provide access to the parking lot for hotel guests, i.e. a new curb cut to be constructed on William Street or other improvements to City property necessitated by the contract shall be the sole and entire responsibility of Harborside. The number of spaces to which Harborside has access shall be based upon the following formula:

Spaces Required Which Are Not Provided on Site	Multiplied by	2010 Upper Tier Key West Annual Average Hotel Room Occupancy Reported by Smith Travel Research (Exhibit C)
33	x	78.2%

Equals 26 Parking Spaces
Required to serve the Hotel
At Average Annual Occupancy

The number of spaces to be contracted to Harborside shall be adjusted upward or downward on the fifth anniversary of the signing of the contract and every five years thereafter for the term of the lease and will be based upon the hotel room average annual occupancy percentage rate of the preceding five year period as published by the Smith Travel Research Star Reports for the Key West Upper Tier.

In order to compensate the City for the loss of revenue received by the City from the 26 spaces contractually reserved for Harborside, Harborside shall pay annually to the City \$107,354.00, based on the following formula :

Documented Annual Revenue Reserved Per Each Parking Space at Key West Bight Parking Lot (Exhibit D)	Multiplied by	Number of Parking Spaces for Harborside
\$4,129		26

Equals \$107,354.00 Annual Revenue Per Space
Lost by the City of Key West and Thus the Fee
To Be Paid by Harborside

The fee paid by Harborside shall be reviewed on the fifth anniversary date of the signing of the contract and every five years thereafter and adjusted upward or downward based on that review. The basis for the review and adjustment will be the average annual revenue for the preceding five-year period reported by the City in its document entitled Key West Bight Parking Lot Total

Revenue by Day and reference to the annual totals shall be made. The first payment for the parking spaces provided will be made by Harborside prior to the issuance of a certificate of occupancy for the resort hotel.

3. Harborside waives releases and surrenders to City any and all claim or demand it may have with respect to the Lazy Way alley. City shall have the right to restrict vehicular access to said alley and establish the same as a pedestrian mall. Harborside will, at its sole expense, (a) create a pedestrian entrance from Lazy Way to the Property and (b) build, manage and maintain a private park in the open space between Lazy Way and that entrance as illustrated on the attached conceptual site massing diagram, which is "Exhibit E". The park will be open to the public during daylight hours, and will be subject to reasonable rules and regulations, agreed to in writing by Harborside and the City. Such rules shall provide that no parking of vehicles of any kind, inclusive of scooters, motorcycle or bicycles shall occur on the designated park.

4. Harborside shall demonstrate that it has met the payment obligation to the City for the installation of additional bicycle racks sufficient for one hundred (100) spaces in the Caroline Street Corridor and Bahama Village Redevelopment District.

5. City and DEO recognize that Harborside has agreed not to build the two (2), one hundred fifty (150) seat restaurants and associated commercial floor area for a general store vested by Court Order, which was recognized by the settlement approved by City Resolution 03-279. Harborside shall provide food and beverage service on the Property limited to hotel guests registered at the hotel. The food preparation and food service areas only for such registered guests shall not exceed 7,000 square feet of enclosed structures, as illustrated and listed on "Exhibit E", conceptual massing diagram data sheet, together with outdoor accessory areas (pools, gardens and rooftop).

6. The Property shall be developed as a resort hotel described and limited to the maximum floor area listed in Exhibit [Which Exhibit should this be ?], consisting of 96 hotel rooms, each receiving an ESFU allocation of 0.58 units, and customary resort amenities. Harborside and City have calculated that, after deducting 55.68 ESFUs ($96 \text{ units} \times 0.58 = 55.68$) from the 80 ESFUs attributable to the Property, and transferring 1 ESFU to existing structures at Parrot Key Resort at 2801 North Roosevelt Boulevard in the City of Key West,

there will remain unutilized 23.32 ESFUs, which Harborside shall surrender to City, along with the five (5) transient licenses which will not be required by the project (i.e. 101 previously licensed units minus 96 approved licensed units on site equals five (5) unused transient licenses). The five (5) licenses for the hotel rooms and the 23.32 ESFUs shall be surrendered to the City upon the effective date of this Agreement. Each hotel room shall receive a motel/hotel transient license pursuant to Section 66-109(10) (d) of the Code of Ordinances, shall be considered redevelopment pursuant to the Code of Ordinances, and shall remain exempt from exactions and fees imposed on new units (with such exemptions limited to affordable housing impositions under Code Section 122-1467, and impact fees required by Sections 54-80 through 54-162 inclusive of the Key West City Code). Each of the hotel rooms built on the Property shall be designed, constructed and occupied only as a single hotel room dwelling unit without lockout capacity (i.e., there will be only one key for each hotel unit) and without a kitchen. The total enclosed area (excluding porches, garages, and loading areas) of all buildings constructed on the Property shall not exceed 63,950 sq. ft.

Harborside shall seek certification of at least the Silver Level from the Florida Green Building Code Coalition; Harborside shall use best practices for recycling all solid waste; Harborside shall participate in the Florida Green Lodging Program; and Harborside shall implement best practices with regard to cisterns and on-site storage of rainwater for irrigation.

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

8. As authorized under the Settlement Agreement dated March 2, 2004, paragraph 8, the portion of Jabour's Campground located at 717 Caroline Street was divided from the Property and is not subject to this Agreement.

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

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

In the event the approved project is not completed within the seven years outlined herein, then any unused development rights shall lapse and become void, absent an extension approval from the City Commission. In the absence of such extension approval, all unused development rights shall revert to the City of Key West. The Parties agree that, except as otherwise provided for in this Agreement, Harborside shall not apply for any variances, exceptions, or waivers where such may be allowed by the City's Land Development Regulations in effect at the signing of this agreement or as may be in effect at the time of application for Major Development Plan approval. If Harborside applies for any such variances, waivers, or exceptions, the City may consider Harborside in breach of this agreement.

10. Harborside's Major Development Plan approval, when implemented, and not later than the termination of this Agreement as described in paragraph Twenty Four (24) below, shall eliminate any existing nonconformities, and will include the following improvements constructed at Harborside's expense: a) landscaped buffers within the Property on its Lazy Way and William Street boundaries to the City's standards as contained in the Land Development Regulations;, (b) a pedestrian sidewalk on William Street adjacent to the Property; and (c) an Historic-District streetscape together with a landscape buffer on the Property's Caroline Street and Elizabeth Street frontages.

11. The design characteristics of the structures to be constructed on the Property shall be approved by the City's Historical Architectural Review Committee ("HARC"), be compliant with the City's Historic Architectural Design Guidelines, and shall conform to the following additional requirements so as to harmonize to the maximum extent practical the appearance of these new structures with existing structures in or adjoining the historic Key West Bight, while conforming with flood-plain elevation requirements: building height shall conform to the maximum height requirement of the HRCC-1 District (35 feet plus 5 feet for pitched roof). Additionally, air handling equipment and other mechanical devices (e.g., HVAC) that are allowed by City regulations to occupy non-habitable space at or above maximum building height shall be shielded from street view by a screening device approved by HARC. Such screening device shall not be an extension of any roof beyond the maximum approved by HARC. The parking garage constructed beneath the first finished floor of the hotel building shall be concealed from view from public rights of way by using fill to minimize the gap between the first finished floor and the crown of the nearest road. (as allowed by HARC Design Guidelines Chapter VI, articles [o] and [p] pages 38 and 39).

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

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

14. Upon the approval of the Major Development Plan for the Property, but not later than October, 2012, the City shall submit for adoption changes to its Land Development Regulations which

specify a maximum transient accommodation/room size when properties containing such uses are proposed for re-development on or off site, or when new transient uses are established.

Construction and Administration of the Agreement

15. The Parties have entered into this Agreement as authorized by section 380.032, Florida Statutes, in recognition of the unique circumstances applicable to the Property, and in consideration of the public benefits to be obtained by promoting viable positive economic development of a vacant property, transferring Building Permits Allocation System allotments to the City for use to support affordable housing or beneficial use claims and by finally resolving litigation involving the Property. Therefore, this Agreement shall not be construed as establishing a precedent or procedure for any other development application.

16. The laws of the State of Florida shall govern this Agreement.

17. Authorized signatures. The Mayor of the City or his authorized designee shall execute this Agreement on behalf of the City following approval by the City Commission. The Director of the Division of Community Planning, or his authorized designee, shall execute this Agreement on behalf of DEO. Harborside and M&I shall execute the Agreement with signatures from their duly authorized representatives.

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

19. Entirety of Agreement. With the exception of the Revised Settlement Agreement dated December 8, 2011, which contains materially the same conditions, covenants and obligations as this Agreement, the Parties agree that 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 and duly signed by the parties.

20. Duplicate Originals. This Agreement may be executed in any number of originals, all of which evidence one agreement, and only

one of which need to be produced for any purpose. All such originals shall have the signatures of the duly authorized signatories identified in paragraph 17 above.

21. Enforcement. In the event of a breach of this Agreement, or failure to comply with any condition of it, the City, DEO, Harborside and M&I may enforce this agreement pursuant to sections 380.05 and 380.11, Florida Statutes, or as otherwise provided by law.

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

23. Termination. This Agreement shall terminate when the development on the Property subject to City approval receives its last and final Certificate of Occupancy. However, the requirements and obligations of this Agreement applicable to Harborside and M&I, which require continued action and implementation shall survive the termination of this Agreement and serve as a recordable restriction encumbering the Property.

24. State and federal law. If state or federal laws enacted after the effective date of this Agreement preclude and party's compliance with the terms of this Agreement, this Agreement shall be modified as necessary to comply with the relevant State or Federal laws. However, this Agreement shall not be construed to waive or supersede any contention under law that Harborside or M&I has acquired vested rights under prior law.

25. Enforcement.

a. In the event City or DEO finds that Harborside and/or M&I , or a successor is in material breach of this Agreement, and after notice is given as provided herein to respond to cure said breach, Harborside and/or M&I fails within a reasonable time to respond, cure, or secure an amendment resolving the breach, the City may utilize appropriate code enforcement remedies to cure any breach or seek through the Circuit Court of Monroe County enforcement of

the provisions of this Agreement or the Settlement Agreement dated December 8, 2011.

b. Nothing contained herein shall limit any other powers, rights or remedies that any party has, or may have in the future to enforce the terms of this Agreement.

26. Compliance with Other Laws. The failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve Harborside or M&I of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restrictions.

27. Recording. The City will record this Agreement with the Clerk of the Circuit Court of Monroe County within fourteen (14) days following signature by all parties. Harborside shall pay recording fees.

28. Successors and Assigns. This Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns and personal representatives.

29. Notices. All notices , demands requests , or replies provided for or permitted by this Agreement shall be in writing and may be delivered by any one of the following methods: (a) by personal delivery; (b) by deposit with the United states Postal Service as Certified or Registered mail, return receipt requested, postage prepaid, to the addresses stated below:

- a. City of Key West
City Clerk
3140 Flagler Avenue
Key West, Florida 33040

- b. Department of Economic Opportunity
Division of Community Planning
107 East Madison Street
Caldwell Building, MSC 160
Tallahassee, Florida 32399-2100

- c. Harborside LLC

d. M& I Regional Properties LLC
A Wisconsin Limited Liability Company

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

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

HARBORSIDE, LLC

CITY OF KEY WEST

By: _____
NAME: _____
TITLE: _____

By: _____
CRAIG CATES, Mayor

Witnesses:

ATTEST:

By: _____
CHERYL SMITH, City Clerk

M & I REGIONAL PROPERTIES, LLC,

Department of Economic Opportunity
Division of Community Planning

By: _____

By: _____

Witnesses:

Witnesses:

